The Telstra Cover-up

…when Telstra was permitted to commit illegal acts during a Federal Government-endorsed arbitration procedure

The Hon Malcolm Turnbull, The Hon Barnaby Joyce

Prime Minister of Australia Deputy Prime Minister

Mr Dan Tehan, Federal Member for Wannon

Ms Sue Laver, Telstra General Counsel

Mr John P Mullen, Telstra Board Chair

This report is being copied to the Hon Barnaby Joyce and Dan Tehan because each of your offices were provided with a CD of the first draft of this report between May and December 2014. Many members of the current government and Telstra's senior executives have been aware of these issues for years, after receiving conclusive evidence provided by me that support my claims. No investigation has ever been done by the government or Telstra, to either refute or validate those claims. I have now prepared this SVT report and the accompanying exhibits on the attached CD so that it can no longer be stated my claims are not valid .As with the previous report, we are providing a CD with exhibits 1-a to 50-c. I have also supported my statements in this report by refer ring to Exhibits which can be downloaded from my webpage **absentjustice.com**

In June 1993, when I first alerted AUSTEL that Telstra had a major network problem that was creating serious 008/1800/lock-up/short duration post-dialing delay faults, John MacMahon (AUSTEL's general manager of consumer affairs) and Bruce Mathews (from AUSTEL's monitoring unit) asked that I alert AUSTEL to any fresh evidence I might come across regarding this matter. John MacMahon wrote to Telstra's Steve Black on at least two occasions in January 1994, using my comparison of Telstra's Call Charge Analysis System (CCAS) data for the 055 267267 service line, which my 008/1800 free-call service line was trunked through. The data showed that Telstra (and therefore the government, too) certainly did have records showing massive deficiencies between the actual call termination period and what Telstra charged their customers. Telstra had a major, national network software problem, at least midway through 1993.

The Hon David Hawker (Dan Tehan's predecessor) worked with AUSTEL and me during 1994 in an attempt to discover how many businesses in his electorate were suffering from the same 008/1800/billing faults. The CD I provided to your offices in **2014** shows that in **August 1996**, AUSTEL was still demanding Telstra fix this ongoing 008/1800 billing problem.

The government regulator, AUSTEL / ACMA, allowed Telstra to continue to promote their 008/1800 free-call service even though they knew of the many deficiencies in it. Section 52 and 53 of the then-relevant Trade Practices Act states:

52 Misleading or deceptive conduct.

1. *A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive.*

2. *Nothing in the succeeding provisions of this Division shall be taken as limiting by implication the generality of subsection (1).*

53 False representations.

A corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or service or in connexion with the promotion by any means of the supply or use of goods or services...

Section 52 and 53 show that firstly, when AUSTEL allowed Telstra to continue to promote their 008/1800 service while aware of the many deficiencies in the product, they breached their statutory obligation to me as a claimant in the AUSTEL-facilitated government-endorsed arbitration by not officially notifying the arbitrator and the relevant Minister for Communications that the problems raised in my claim were ongoing and a separate issue Telstra had to address before the arbitrator could bring down a finding; and

Secondly, AUSTEL and Telstra breached their statutory obligations to the rest of the 008/1800 Telstra consumers by allowing Telstra to continue to promote this service for more than two years despite knowing the devastation this fault was causing to hundreds, possibly thousands, of 008/1800 consumers over many years.

Mr Turnbull, this report confirms I was told that these 008/1800/billing problems would be addressed – and fixed – during my arbitration.

The 2014 CD, discussed above, confirms Telstra's visit to my business on 14 January 1998. On 22 January 1998, correspondence between Senator Richard Alston (then Minister for Communications), Telstra and the TIO discusses the 008/1800 billing problems raised in my arbitration indeed continuing after arbitration. No one contacted me at this time and the evidence confirming his claims was covered up by Telstra, the minister's office and the TIO. This collusion begs investigation.

This current SVT report shows that even though I complained to AUSTEL in 1993 concerning Telstra's ongoing 008/1800 problems they allowed Telstra to not test the COT businesses that had this 008/1800 service, during the BCI testing of November and December 1993. Exhibit 30-m shows AUSTEL's Cliff Mathieson advised Telstra, on 9 December 1993, that Bell Canada International, through the advice of Telstra, had not tested the 008/1800 service. Finally, in November 1994, AUSTEL demanded to know why, during my arbitration (which included investigating my 008/1800 billing faults), Telstra failed to test my 008/1800 service line and only simulated the testing of the 1-800 service. Why did AUSTEL and the arbitrator allow the defendants to ONLY simulate the 1-800 SVT testing process? The answer is clear. Had Telstra performed the required mandatory SVT process of 30 incoming test calls, per line, to my business, it would have revealed to me, those testing my service, the arbitrator and his technical consultants, my technical advisors and those assisting Telstra in their arbitration that Telstra had major national network problems affecting all Telstra's 008/1800 free-call customers. It was simply cheaper to ruin my life and that of my partner by not addressing these ongoing issues – and it protected the Telstra Corporation from a potential massive class action.

Section 51(v) of the Constitution of Australia gives the Commonwealth Parliament of Australia power to legislate on "postal, telegraphic, telephonic, and other like services". The government should have maintained control of the national network issue with Telstra, not the defendants. Why was a corporation allowed to nullify the government's power?

Please read this Cape Bridgewater Holiday Camp Service Verification Report. I ask that you, your advisors and the government recommend that the matters raised in this April 2016 report are transparently and impartially investigated so that my partner and I can live the rest of our lives in peace.

For the purpose of this report I shall refer to myself as either Alan Smith or Alan.

A number of government agencies seem to have been complicit in a cover-up of Telstra shortfalls. For well over 20 years, Alan has been attempting to get Telstra to take responsibility for financial losses that businesses incurred due to faulty telephone and fax lines.

The Administrative Appeals Tribunal (AAT) hearing, 3rd October 2008

On 3 October 2008, during the AAT hearing into Alan Smith's claims, Mr Friedman directed ACMA to release, free of charge, all the FOI documents Alan had requested.

At this stage, critical documents, viewed for the first time, made it clear that AUSTEL/ACMA had known Telstra knew the SVT results they used to support their defence of Alan's arbitration claims were false.

Introduction

This document is a summary of much longer reports relating to two Casualties of Telstra (COT) claimants:

- a 183-page report regarding Graham Schorer's claims against Telstra, including 447 separate exhibits; and
- a 163-page report regarding Alan Smith's claims against Telstra, including 486 separate exhibits.

This summary report has been prepared specifically to show irregularities in the arbitration proceedings and potentially illegal actions on the part of other players in the saga. It shows:

1. how a legal arbitration process, administered under the Commercial Arbitration Act 1984 by the Telecommunications Industry Ombudsman (TIO) was hijacked by the defence, with complete disregard for the rule of law.
2. how a government-appointed regulator (then called AUSTEL) was powerless to intervene and stop the COT arbitrations being hijacked, perhaps because of clauses contained in the Australian Crimes Act 1914 that require public servants to withhold information in certain instances.
3. how three senior Telstra executives held positions on the TIO board and the TIO council at the same time as one or more of them were:
    a. the subjects of the TIO-administered COT arbitrations; and/or
    b. under investigation for misleading a Senate hearing.

    These clear conflicts of interest may have affected the TIO investigation during the COT arbitrations. Telstra FOI documents show that while Telstra's corporate secretary was also a member of the TIO board, he was given the task of deflecting the Senate charges.
4. how draft reports, prepared in 1994 by AUSTEL (now called ACMA), regarding the telephone complaints lodged by Alan Smith and Graham Schorer, were withheld from Graham and Alan until November 2007 and October 2008. These 1994 reports show AUSTEL found that Telstra had misled and deceived both Alan and Graham concerning their telephone problems.
5. how the four COT members were coerced into signing legally binding arbitration agreements drafted by Telstra; not by the special counsel attached to the TIO as they were purported to be and should have been. By signing these agreements, the COTs signed away critical rights that they would later need.
6. how changes were made to the final version of the arbitration agreement, after it was reviewed and approved by the solicitors representing the claimants in the arbitration, but before it was signed by the COT claimants. The claimants were only made aware of these changes at the time they were to sign the agreement. They were told that if they did not sign the agreement in its present form, the TIO would not continue to administer their already operating Fast Track Settlement Proposal. They reluctantly abandoned their FTSP (commercial assessment process).

Statutory bodies compromised

Experts called by Telecom Australia during the arbitration process, and whose evidence the arbitrator trusted, were compromised, either by provisions of The Crimes Act or by their close relationship with Telecom Australia. This includes AUSTEL, who failed to disclose critical information, at the request of Telecom Australia and the Telecommunication Industry Ombudsman (TIO).

AUSTEL compromised by the Australian Crimes Act and their close relationship with Telecom Australia

The Australian Crimes Act of 1914 contains clauses that prohibit public servants from revealing information they know about problems within, or related to, another government department. For example, AUSTEL employees could be prohibited from exposing issues they detected with actions taken by Telecom (then fully government-owned) while they were investigating the complaints lodged by various COT claimants against Telecom.

Under the Australian Crimes Act 1914, no one inside AUSTEL could publicly comment on their awareness that Telecom Australia was submitting false and/or flawed defence documents to support their arbitration defence.

Although restrictions on public servants speaking openly about their work were removed in 1974, perhaps public servants in AUSTEL and various ministerial offices used the Australian Crimes Act 1914 to allow them to withhold critical information. The Crimes Act was never cited as a reason for withholding critical evidence. However, if this is not the reason, then the only other possibility is that they withheld evidence knowingly, in breach of Australian law. None of the government bureaucrats that Alan worked with prior, during and after his arbitration have ever referenced the Privacy Act or the 1914 Crimes Act to explain why they concealed their knowledge of Telstra knowingly misleading and deceiving him over many years.

The TIO board and council compromised by close relationship with Telecom Australia

Not only did Telecom Australia's gagging of AUSTEL compromise evidence, but Telecom Australia also had personnel on the TIO board and council, a clear conflict of interest that may have led to the TIO itself becoming involved in a cover-up of Telecom Australia service shortfalls.

The cover-ups

Some critical aspects of the line testing, which Telstra agreed to conduct, were either not done at all or were only partially done. There were two aspects to the testing:

- testing the lines *out of* the exchanges to the properties of the COT claimants. During the arbitration process, Telstra assured AUSTEL that they would carry out a special type of Service Verification Testing (SVT) from the local exchanges to COTs' business premises (including Alan Smith's business) so that the arbitrator could be absolutely certain that all COT services were operating up to the regulator's standards. However, no such tests were ever performed on Alan's service lines.
- testing the lines *into* the exchanges of the COT claimants. This testing was supposed to be completed by Bell Corporation Canada using CCS7 monitoring equipment but it is clear that this testing was also not done because the Bridgewater exchange could not accept the CCS7 monitoring equipment.

The Service Verification Tests were never completed

The following two exhibits show correspondence between AUSTEL and Telecom Australia. AUSTEL was well aware of the deficiencies in the Service Verification Tests relating to the Cape Bridgewater Holiday Camp.

Although these tests were not carried out, Telecom Australia used their results to defeat Alan's claim in the arbitration hearing.

Exhibit #	Type of correspondence	Date	From	To
Exhibit 25-a	Letter	28 Nov 1994	Peter Gamble, Telstra	Norm O'Doherty, AUSTEL
Exhibit 23-f	Letter	16 Nov 1994	Norm O'Doherty, AUSTEL	Steve Black, Telstra NO cc

Summary and Commentary, Exhibits 25-a and 23-f

1994 Service Verification Testing

Exhibit 25-a shows that, on 28 November 1994, Telstra's Peter Gamble wrote to AUSTEL's Norm O'Doherty about a previous AUSTEL letter.

Mr Gamble's letter to Mr O'Doherty states:

"Norm,

"As agreed at one of our recent meetings and as confirmed in your letter of 16th November 1994, attached please find the detailed Call Delivery Test information for the following customers:

- *Bova – Ralphies Pizza, Mordialloc, Vic*
- *Love – Lovey's Restaurant, Dixons Creek, Vic*
- *Main – Glen Waters Fish Farm, Glenburn, Vic*
- *Smith – Cape Bridgewater Holiday Camp, Cape Bridgewater, Vic (PSTN and 1 800)*
- *Turner – Gourmet Revolution, Moorabbin, Vic*
- *Trzcionka – Trzcionka's Hairdressing, Glenelg, SA*

"This information is supplied to AUSTEL on a strict Telecom-in-Confidence basis for use in their Service Verification Test Review only and not for any other purpose. The information is not to be disclosed to any third party without the prior written consent of Telecom."

By what legal authority does Telecom Australia insist on confidentiality? The only legal authority behind such a request would be the Crimes Act 1914. Later changes to Australian law rendered this authority irrelevant, so how can Telstra require confidentiality from AUSTEL employees?

Exhibit 23-f. In this letter, AUSTEL warns Telstra that the Cape Bridgewater Holiday Camp SVT process was deficient.

Line testing done by Bell Canada International and the cover-up aided by AUSTEL

In addition to SVTs conducted on the lines from the exchange to the various properties of the COT claimants, there was official testing of the lines *into* the relevant exchanges that Bell Canada International (BCI) was supposed to conduct.

In November/December 1993, BCI officially advised AUSTEL that they had not found any major problems in the Telstra network in relation to the claims lodged by Difficult Network Fault (DNF) customers who, by then, were known as the Casualties of Telstra, or COT cases.

However, evidence shows that, in the case of the Cape Bridgewater/Portland exchange, these tests were not conducted, for the simple reason that the equipment BCI claimed they used – CCS7 monitoring equipment – could not be operated at that exchange.

For full details on the falsification of test results by BCI please refer to Brian Hodge's report dated 27 July 2007, see exhibits 30-f and 59.

Exhibit #	Type of correspondence	Date	From	To
Exhibit 30-i	Letter	12 Jul 1995	Cliff Mathieson, AUSTEL	Tait's
Exhibit 30-e	Witness statements	12 Dec 1994 8 Dec 1994	Christopher Doody David Stockdale	Arbitrator
Exhibit 30-f	Report	27 Jul 2007	Brian Hodge	Commissioned by Graham Schorer COT spokesperson

Summary and Commentary, Exhibits 30-i, 30-e and 30-f

AUSTEL are asked to withdraw the Bell Canada International evidence from the arbitration process

In Canberra, on 21 March 1995, Alan Smith spoke to both Frances Woods and Cliff Mathieson of AUSTEL. Mr Mathieson was the facilitator of the COT/Telstra Fast Track Arbitration Procedure (FTAP). Alan told Mr Mathieson (then AUSTEL's chief engineer) he believed the Bell Canada International Cape Bridgewater tests were fundamentally flawed and either AUSTEL and Dr Hughes (the arbitrator) or Telstra (the defendants) should therefore withdraw the BCI test results from Alan's arbitration process.

AUSTEL's "off-the-record" admissions

On several occasions, AUSTEL personnel have made off-the-record admissions relating to the evidence:

- When asked to withdraw the evidence, Mr Mathieson replied that he understood Alan's, and other COT claimants', frustrations related to the BCI and SVT tests. However, he said, AUSTEL was powerless to intervene and he was unable to comment further on the matter.
- On 12 July 1995, AUSTEL's chair, Mr Neil Tuckwell, and AUSTEL's Cliff Mathieson (an ex-Telecom Australia employee), without being specific, advised Alan Smith's solicitors (Tait's) that the BCI tests might not have been conducted at all. Cliff Mathieson stated:

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

"The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the tests should be referred to those who carried them out or claim to have carried them out." (See exhibit 30-i)

Additional statements from Brian Hodge MBA of BC Telecommunications, who Telstra employed as an engineer for 29 years (see exhibit 30-f), plus two Telstra witnesses (see exhibit 30-e) also confirm that BCI could not have carried out the tests they describe in their Cape Bridgewater report.

Exhibit #	Type of correspondence	Date	From	To
Exhibit 46-a	Telstra arbitration defence document B003	26 Nov 1996	Telstra	Arbitrator

Summary and Commentary, Exhibit 46-a

The consequences of public servants withholding evidence

Were Mr Tuckwell and Mr Mathieson stopped in some way from spelling out the truth 21 years ago? If either of these public servants had told the truth as they knew it, Alan Smith's matters, involving countless hours of litigation since, would have been investigated and found correct in 1995.

During the COT arbitrations, as official COT spokesperson, Graham Schorer had many discussions with COT members regarding serious flaws in the BCI and SVT reports presented as evidence in the arbitrations. The fundamentally flawed BCI investigation and the SVT process uncovered none of the real and serious problems that those COTs who still had businesses running, were still experiencing. Four COT claimants had already lost their businesses by then, as a direct result of the undetected telephone problems.

Graham also received many complaints from COT claimants about the unethical way that Telstra carried out the SVT process. Graham refused to have these tests carried out at his business unless Telstra first connected a calling line identification monitoring device so he could see the results for himself and not rely solely on Telstra statements that the tests were effective. Telstra never did conduct a SVT on Graham's lines in 1994/95, the time period recommended by the AUSTEL quarterly COT case report.

Exhibit 46-a, Telstra's own arbitration briefing report B003 shows Graham Schorer was still lodging complaints in 1995/96 about the same type of telephone problems that AUSTEL raised with then-Minister for Communications, the Hon David Beddall, in August 1993. Nothing had changed between 1993 and 1996, even though the 1994 arbitration process was supposed to have located and fixed these problems.

Senate estimates committee reports

Exhibit #	Type of correspond-ence	Date	From	To
Exhibit 46-c Exhibit 23-j	Page 132 from Hansard records Page 133 of the same Hansard records	25 Feb 1994	Senator Richard Alston, Senate estimates committee	AUSTEL chair Robin Davey

Summary and Commentary

AUSTEL:

- allowed Telstra to limit the scope of the COT BCI and SVT tests; and
- also allowed Telstra to limit the parameters regarding the government regulator's mandatory testing standards so that only the complainants Telstra believed were suffering from telecommunications problems need be included in the testing process. They determined that, as Alan and Graham were not experiencing problems as they were claiming, they (Telstra) were not required to do the testing. See also exhibit 30-g, page 243 of the AUSTEL report.

These two reports further confirm that AUSTEL warned Telstra twice during the COT arbitrations that the SVT process that Telstra carried out on 29 September 1994, at the Cape Bridgewater Holiday Camp, was deficient. However, Telstra was still permitted to submit the results of this deficient testing process to the arbitration, covered by Telstra affidavits swearing that the testing process had met all of AUSTEL's regulatory standards.

Summary and Commentary
Exhibit 46-c, page 132 from Hansard records of a Senate estimates committee meeting on 25 February 1994, shows then-Shadow Minister for Communications, Senator Richard Alston, questioning the then-chair of AUSTEL. The questions concerned what the chair of AUSTEL knew about the AXE telephone exchange recorded voice announcement (RVA) that had caused major problems for Alan Smith's business since 1992, by incorrectly advising callers that: "The number you are calling is not connected." This same RVA problem occurred at the Lonsdale AXE exchange servicing Graham's business between October 1995 to at least January 1996 (see Exhibit 46-a). Page 133 (see Exhibit 23-j) of the same Hansard record confirms Senator Alston asked AUSTEL's Robin Davey, in relation to Telstra's SVT process: *"Are you developing indicative performance standards to ensure that carriers provide an adequate phone service?"* and Mr Davey's reply: *"Yes, indeed. In the context of the COT cases we are working specifically to get an agreement on a standard upon which we can sign off that the complainants, if they settle with Telecom, are receiving an adequate standard of telephone service at the time."* When Senator Alston asked: *"Will that be backed up by direction?"* Mr Davey responded: *"If necessary, yes."*

Please note: The media quoted Senator Eggleston, regarding the findings of a Senate Estimates Committee hearing, as stating: ***"They*** [Telstra] ***have defied the Senate working party. Their conduct is to act as a law unto themselves."*** Further private and privileged Hansards also show that many senators fought hard against Telstra, to no avail. One particular Telstra employee, who was part of the Telstra FOI unit investigated by the Senate Estimates working party during 1998-1997, is today, still at Telstra's legal helm deflecting claims to prevent another investigation into the corporation.

Are these issues connected to the Australian Crimes Act 1914?

The second paragraph at the start of the BCI report shows that Cliff Mathieson either couldn't, or wouldn't, discuss with Alan Smith what he knew about AUSTEL being aware that Telstra was using documents they knew were flawed in their defence of a legal process facilitated by the government.

Mr Mathieson was reluctant to continue this conversation with Alan, which suggests his silence was secured by some level of implicit threat from, or personal loyalty to, Telecom Australia. The Crimes Act has never been named as the reason for withholding evidence, however if this is not the reason, the only other possibility is corruption at some level.

Telecom Australia cover-up of issues with the Flexitel equipment

Exhibit #	Type of correspond-ence	Date	From	To
Exhibit 45	Golden Messenger report/briefing	c. Mar 1994	AUSTEL	AUSTEL
Exhibit 17-c	Letter	11 Jan 1994	Steve Black, Telstra	Warwick Smith, TIO
Pages 16, 17, 18 and 38 of exhibit 45, from AUSTEL's own draft report ,show, Telstra knowingly deceived Graham regarding the Flexitel telephone system they sold him during Graham's Federal Court proceedings. At the time, this report was provided for comment to Telstra only (not to Graham) even though AUSTEL knew Graham was in arbitration regarding the very same issues.				

On 11 January 1994, Telstra's Steve Black wrote to then-TIO and administrator of the arbitration process, Warwick Smith:

"I also wish to confirm to you my previous advice regarding arrangements made with AUSTEL for the release of documents obtained from Telecom to the four customers currently proposed for the Fast Track arbitration process.

"Information obtained from Telecom, in the course of AUSTEL's regulatory functions, and relevant to any parties involved in a formal arbitration process with Telecom under the control of the Telecommunications Industry Ombudsman (TIO) will only be released after consultation with the TIO and Telecom." (See exhibit 17-c)

Again, Telecom Australia was invoking confidentiality, but under what authority?

Breaches of the Supreme Court Act relating to FOI Discovery

Exhibit #	Type of correspond-ence	Date	From	To
Exhibit 50-a FOI folio 94/0269-05 (22)	Letter	13 Oct 1994	Telstra personnel, (identity withheld)	Parliament House Canberra, ACT 2600, Office of the Hon Michael Lee, MP, Minister for Communications
Exhibit 50-b	Statutory declaration, written at the request of the AFP	14 May 1994	Alan Smith	TIO

Summary and Commentary, Exhibits 50-a and 50-b

Alan wrote E50-b at the request of the AFP because, while he was accessing requested discovery documents under the agreed process of FOI, he uncovered that Telstra was defacing/altering those documents. He provided this statutory declaration to the arbitrator and TIO office. The URGENT document was from the deputy TIO (Sue Harlow) to the TIO Warwick Smith, attaching evidence of this defacing by Telstra: "*He left an example of this with us (also attached).*" The TIO never acted on this evidence. One example of government officials and/or AUSTEL public servants withholding their knowledge of Telstra's illegal acts towards fellow Australians during the COT arbitrations can be seen in a letter dated 13 October 1994 (see E50-a).

The office of the Hon Michael Lee, Minister for Communications received this AUSTEL FOI document, originally sent by a Telstra whistleblower (name withheld) to Parliament House Canberra, ACT 2600. This letter implicates two Telstra executives, Steve Black and Rod Pollock, in the altering and removal of information from the discovery documents requested by the COT claimants under FOI.

This letter, under the heading "Concerns and Issues," states:

"Mr Steven Black Group General Manager of Customer Affairs who has the charter to work to address and compensate Telecom's 'COT' customers as well as the management of other customer issues related to Telecom, is involved in and initiates conduct and work practices that are totally unethical…

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

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

"Steve Black has sought to cover up the true facts of disclosure of customer information. Particularly he has sought to cover up 'broadcasting' of the customers [sic] *private information."*

This letter was never disclosed during the arbitration hearings.

Please note: someone has added a handwritten comment on page one, pointing to Rod Pollock's name and noting:

"Warwick Smith has been critical of Pollock on some issues."

Summary and Commentary, Exhibits 50-a and 50-b
On 16 May 1994, Alan Smith left evidence with Sue Harlow (deputy TIO) for her to pass on to Warwick Smith, together with his statutory declaration. In these documents, he also named Rod Pollock as one of the Telstra employees who removed information on requested documents and/or did not provide the correct documentation that should have accompanied received FOI documents. Sue Harlow was employed by AUSTEL after this incident. She wrote to Senator Alston on behalf of AUSTEL concerning both the TIO and AUSTEL's concerns that Telstra was not participating in the arbitrations in an appropriate manner. Ms Harlow made no mention of her knowledge that Telstra altered information on requested FOI documents in an attempt to minimise their liability at the costs to the COT cases claims. Again, by what authority did AUSTEL withhold their knowledge from Senator Alston in 1996? Telstra had acted unlawfully towards the COT cases and, in doing so, the process had not afforded them natural justice. It is important to understand that, before Alan Smith and Graham Schorer signed their arbitration agreements on 21 April 1994, Warwick Smith (TIO) already had both the Coopers & Lybrand and AUSTEL COT reports. The AUSTEL report in particular explained the importance of the SVT process, which was implemented in response to recommendations in the Coopers & Lybrand report, to ensure that the phone services of any Difficult Network Fault (DNF) customers were operating to AUSTEL's specified standards. Telstra did not adhere to important promises that both AUSTEL and Telstra gave to the COT cases before they signed the FTAP. Why was AUSTEL powerless to comment on Telstra's unlawful conduct when submitting known-deficient SVT defence documents? When Mr Rumsewicz's report (see exhibit 28) indicated that Telstra's SVT process was not necessarily accurate, noting: *"the statistical test being applied to the collected data is inappropriate"* …why was Telstra permitted to use this collected data to support their COT arbitration defence?

AUSTEL's concerns about Telecom Australia's Service Verification Testing

Exhibit #	Type of correspond-ence	Date	From	To
Exhibit 23-k	Letter	20 Jan 1994	Cliff Mathieson (AUSTEL specialist advisor networks)	General Manager, Network Operations, Telecom Australia
Exhibit 51	AUSTEL COT Cases Report	13 Apr 1994	AUSTEL	Public Domain
Exhibit 52	Letter	27 Apr 1994	Steve Black, Telecom Australia	Robin Davey Chairman of AUSTEL
Exhibit 53		Jul 1994	AUSTEL	
Exhibit 54	Recommendation 18 and 19			
Exhibit 55	Recommendation 25			

Summary and Commentary, Exhibits 23-k, 51, 52, 53, 54 and 55

It is established in exhibit 37-d that AUSTEL allowed Telstra to limit their mandatory parameter performance testing standards so that Telstra could meet their licence obligations, but this disadvantaged some COT claimants who had already signed for arbitration.

It is also established (see exhibits 23-a to -f) that, regardless of Telstra's deficient SVT of some COT cases' businesses, AUSTEL turned a blind eye and allowed Telstra to use the inadequate results to support their arbitration defence.

On 20 January 1994, AUSTEL's Cliff Mathieson and Michael Elswood (manager, international standards section) wrote to Telstra's general manager, network operations, concerning the SVTs:

"Where test results do not meet the essential outcome, remedial action should be taken and the relevant tests repeated to confirm correct network operation." (See exhibit 23-k)

Points 5.25, 5.26, 5.29 and 5.32 on pages 89 to 92 of the 13 April 1994 AUSTEL COT cases report state:

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

- *identified the type of faults which his business had experienced. …*

"Mr Smith has informed AUSTEL that his major concern and stipulated condition at the time of 'settlement' *was that his service should operate, and continue to operate, at normal standards. …*

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

"The fact that faults continued to impact upon the businesses in the period following the settlement shows a weakness in the procedures employed. That is, a standard of service should have been established and signed off *by each party. It is a necessary procedure of which all parties are now fully conscious and is dealt with elsewhere in this report. Its omission as far as the initial* 'settlement' *of the* original COT Cases *were concerned meant that there was continued dissatisfaction with the service provided without any steps being taken to rectify it. This inevitably led to a dissatisfaction with the initial* 'settlement' *and to further demands for compensation. To avoid this sort of problem in the future, AUSTEL is, in consultation with Telecom, developing –*

- *a standard of service against which Telecom's performance may be effectively measured*
- *a relevant service quality verification test."* (See exhibit 51)

On 27 April 1994, Telstra's Steve Black wrote to Robin Davey Chairman of AUSTEL noting:

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

"Once agreement has been reached of these Verification Tests, Telecom will be in a position to commence the testing of the services associated with COT customers, and ensure they meet the agreed requirements for a satisfactory service." (See exhibit 52)

AUSTEL's July 1994 report states Telecom indicated that if the SVTs show *"an unacceptable level of service then the required replacement of network equipment will be undertaken"*, to bring the service up to an acceptable standard. (See exhibit 53)

AUSTEL's July 1994 report, Recommendation 22:

"At an appropriate time AUSTEL will be requesting a sample of reports provided to DNF customers to ensure that the process is being successfully implemented." (See exhibit 54)

AUSTEL's July 1994 report, Recommendation 25:

"AUSTEL notes that DNF customers have characteristically reported recurring faults over extended periods of time. Clarification will be required of the definition of 'service repairs' when a fault recurs after initially having been determined as 'repaired'. This issue will need to [be] *addressed in the context of this recommendation."* (See exhibit 55)

AUSTEL's July report, Recommendation 26:

"Each of the telephone services of the DNF customers will also be scheduled for Service Verification Testing to objectively establish their current level of service."

Consumer Affairs Victoria (CAV)

In 2007, following the Howard Liberal/National government reneging on their agreement with Senator Barnaby Joyce to have COT arbitrations independently assessed, a very senior ex-Victoria Police officer , Alan Smith and Graham Schorer met with Peter Hiland (Barrister for the CAV) who agreed to investigate the matter, on behalf of the Victorian government, after this ex-police officer (holder of the Order of Australia) explained the type of evidence Alan had compiled. Peter Hiland stated that, if Alan's and this ex-police officer statements were correct, then a number of crimes were committed and the CAV would investigate. Alan's documents confirm:

1. AUSTEL (as communications regulator), the Federal government and various senators and the first four COT claimants were all advised the arbitration process would be conducted under the agreed ambit of the Commercial Arbitration Act 1984 (Vic), however, the government was officially advised by the administrator of the process (TIO) on 26 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."***

2. The same administrator advised the government in the same 26 September 1997 report that although the COT claimants were promised before they signed the arbitration agreement that Telstra would supply all relevant requested discovery documents under the Freedom of Information ACT (FOI Act), the claimants did not get those promised documents.

3. The four original COT claimants (including Graham and Alan) and their lawyers were told their arbitration agreement was drafted independently by the TIO office, when in fact it had been drafted by the defendants (Telstra and or their lawyers).

4. Even though the arbitrator condemned this same arbitration agreement as not a credible document to have used in the arbitration procedures, he and the administrator used it any way;

5. In at least four separate arbitrations, documents faxed by the claimants and/or their advisors, were intercepted by a third fax machine connected to Telstra's network before those documents were received at the intended destination;

6. During Alan Smith's arbitration, at least two arbitration reports prepared by the arbitration resource unit, who were appointed by the administrator (TIO) to assess the various claims, were submitted as evidence even though the reports were incomplete.

In October 2007, this ex-police officer submitted 31 files to CAV. In April 2008, Peter Hiland requested a CD of all exhibit documents so he could distribute copies to his investigators. The official Statement of Facts and Contentions that Alan Smith lodged with the AAT included a 163-page report and over 760 documents, which were all provided to CAV.

During 2008, this ex-police officer was in regular contact with the CAV, telling Graham, Cathy (Alan's partner) and Alan, over the 12-month period that the CAV advised they were working through the evidence and finding it overwhelming – as anyone reading those 31 bound submissions will agree.

List of Exhibits

Exhibit #	Date	Commentary
Exhibit 1	23 Sep 1992	Page 84 from the final April 1994 AUSTEL COT cases report states at point 5.6: *"Given the extent of testing and monitoring which had taken place and Telecom's failure to identify the cause of the faults over a period of years, AUSTEL supported the* original COT Cases *in their stance."* Point 5.7 notes: *"Argument on the general theme continued. By letter dated 23 September 1992, Telecom's Group Managing Director, Commercial and Consumer, informed Mr Schorer as spokesperson for the* original COT Cases – *'The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your members' services is agreed to be normal. As I explained at our meeting, we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services. At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards. Until we have an understanding of these continuing and possibly unique faults, we have no basis for negotiation or settlement.' "*
Exhibit 2	20 Dec 1993	Four weeks after Graham Schorer and Alan Smith signed the Fast Track Settlement Proposal on 23 November 1993, Telstra was concerned that some of the exchanges that serviced the COT cases would not meet the regulatory required conditions contained in their telecommunication licence. An internal Telstra email states: *"I understand there is a new tariff filing to be lodged today with new performance parameters one of which commits to 98% call completion at the individual customer level.* *"Given my experience with customer disputes and teh* [sic] *recent BCI study, this is cause for concern. We will not meet this figure in many exchanges around Australia particularly in country areas."* As shown below in a further Telstra internal email FOI folio R04205, AUSTEL's then-acting chair Bob Horton (ex-Telstra employee) allowed Telstra to minimise their mandatory parameter testing and notes: *"The powers to set mandatory performance standards that AUSTEL has been given could well be used in some sort of regulatory outcome from AUSTEL's current COT case investigation."* (See exhibit 37-c) As will be seen below, AUSTEL warned Telstra on 11 October and 16 November 1994 that their SVT did not meet the required regulatory outcome. However, Telstra still submitted (under oath, in sworn statements) that they achieved a success rate of 99.8 per cent to the COT arbitrator, even though NO SVT (incoming test calls) were generated to the business under investigation by the arbitrator (see exhibits 23- e, 23-f and 23-g) below.
Exhibit 17-c	11 Jan 1994	Telstra's Steve Black writes to AUSTEL and the then-TIO, Warwick Smith who was, at that time, also the administrator of the COT arbitration process, stating: *"I also wish to confirm to you my previous advice regarding arrangements made with AUSTEL for the release of documents obtained from Telecom to the four customers currently proposed for the Fast Track arbitration process. ...* *"Information obtained from Telecom, in the course of AUSTEL's regulatory functions, and relevant to any parties involved in a formal arbitration process with Telecom under the control of the Telecommunications Industry Ombudsman (TIO) will only be released after consultation with the TIO and Telecom."* **IMPORTANT QUESTION** By what authority did they require non-disclosure by AUSTEL to the COT cases of material critical to their cases? How could Telstra insist on silence from AUSTEL?

Exhibit #	Date	Commentary
Exhibit 3-a	18 Jan 1994	Dr Hughes (arbitrator) advises Graham Schorer that the TIO has provided him with a document called *"Telstra Corporation Limited – 'Fast Track' Proposed Rules of Arbitration".*
Exhibit 23-k	20 Jan 1994	AUSTEL's Cliff Mathieson (specialist advisor, networks) and Michael Elsegood (manager, international standards section) write to Telstra's general manager of network operations regarding the SVTs: *"Where test results do not meet the essential outcome, remedial action should be taken and the relevant tests repeated to confirm correct network operation."*
Exhibit E3-b	3 Feb 1994	On 3 February 1994, Dr Hughes writes to Graham Schorer, enclosing a copy of the Fast Track Arbitration Procedure that Dr Hughes drafted with law firm Minter Ellison (the TIO-appointed special counsel). When Dr Hughes advises Graham Schorer about a number of changes in the arbitration agreement, Graham is reluctant to accept the changes, still believing he does not have to abandon the already-signed Fast Track Settlement Proposal.
Exhibit 4-a	17 Feb 1994	PLEASE NOTE: On 24 October 1997, the then-TIO John Pinnock provided Ms Pauline Moore (under confidentiality) evidence confirming that the FTAP agreement provided by Dr Hughes to Graham Schorer and used in the FTAP had in fact been drafted by Telstra (the defendants) not by Dr Hughes or Minter Ellison. On **17 February 1994**, Telstra's Steve Black writes to Dr Hughes, stating: *"Telecom agrees with the general spirit of our proposal procedure, but disagrees with the specific clause set out below."* Dr Hughes and Warwick Smith seemed to forget that this wasn't Telstra's proposal to write. It was not kindness by Telstra that brought the COT claimants to the negotiation table – it was an unwritten agreement that the COT claimants would not push for a Senate inquiry into allegations of misleading and unconscionable conduct by Telstra towards the COT cases. Point **1.6** on page 2 in the AUSTEL COT cases report states: *"Until recently, Telecom's approach to the* COT Cases *might reasonably have been perceived by the* COT Cases *as one of indifference. But, more recently, the* COT's *persistence, AUSTEL intervention, Ministerial involvement, the threat of a Senate inquiry and adverse publicity has resulted in Telecom adopting a more positive, conciliatory approach.* Point **1.18** on page 6 in the AUSTEL COT cases report states: *"When the initial* settlements *were reached with the* original COT Cases*, the standard of service then applicable was not objectively established and there is reason to believe that difficult network faults may have continued to affect their services."*
Exhibit 5-a	17 Feb 1994	Page 3 of the minutes from the pre-arbitration meeting confirms Dr Hughes made a commitment, to Graham Schorer as spokesperson for COT, that if the COT four claimants went into the FTAP process: *"that as arbitrator, he would not make a determination on incomplete information".* In the case of Alan Smith, Dr Hughes did make a determination on incomplete information.
Exhibit 6	21 Feb 1994	Dr Hughes provides Graham Schorer with a document confirming there was still no change to clause 10.2.2 of the Fast Track Arbitration Agreement.

Exhibit #	Date	Commentary
Exhibit 7-a	23 Feb 1994	This letter from Mr Black to Dr Hughes refers to a fax sent from Mr Black to Dr Hughes (21 February 1994). The letter also documents changes to the FTAP but makes no comment on the removal of the words "*… each of the claimants' claims"* from clause 10.2.2. Graham and Alan were not advised that clause 10.2.2 had been altered. Please note Steve Black states on page 3 of this letter: *"Telecom is of the view that Special Counsel and the Resource Unit should be accountable for any negligence on their part in relation to the arbitration process, given that these parties are acting in their capacity as experts. Therefore, this clause should not be amended so as to include an exclusion from liability for Special Counsel and the Resource Unit."* It is important to also note Graham and Alan believed that the special counsel, Ferrier Hodgson Corporate Advisory, and DMR Group Australia would be made accountable for any negligence on their part in relation to the arbitration process. It is also confirmed that on 19 April 1994 that Dr Hughes' office still believed the special counsel, and the resource unit would not be excluded from liability.
Exhibit 23-j	25 February 1994	During Alan Smith's FTSP arbitration process, Senator Richard Alston raised the AXE problems in the Senate estimates committee with the then-chair of AUSTEL, Robin Davey, stating: *Senator ALSTON: "I refer you to a minute from Telecom dated 2 July 1992 in relation to Mr Alan Smith of Cape Bridgewater – no doubt well known to you and to me. This minute says:* *'Our local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a Recorded Voice Announcement saying that the number is disconnected. They believe that it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE.'* *"The upgrading to AXE exchanges has continued apace since that time, has it not?"* *Mr Davey: "My understanding is that it has, yes."* Senator ALSTON: "On the face of that letter then suggests or implies that you will be having more and more complaints as a result – presumably some sort of overload." Although Robin Davey informs Senator Richard Alston that AUSTEL is working towards a performance standard and the telephone services of all the COT claimants would have to reach this standard before they were signed off, Mr Davey's successor, Neil Tuckwell, did not adhere to this. When Mr Tuckwell learnt that the SVT process was grossly deficient, he did nothing to rectify the matter.
Exhibit 7-c	2 Mar 1994	Telstra's internal email FOI document folio D01166, dated 2 March 1994, from Steve Black to David Krasnostein, of Telstra's legal directorate, advises that, if Telstra walked away from the COT negotiations it could lead to a Senate enquiry. Mr Black notes: *"My course therefore is to force Gordon Hughes to rule on our preferred rules of arbitration."* This document is relevant to ***exhibit 7-a***, i.e., Telstra's rules of arbitration, which states that the special counsel and the resource unit would not be excluded from liability. This is the same agreement that Telstra's Steve Black was trying to force Dr Hughes to use. If Graham Schorer and Alan Smith had signed Telstra's rules of arbitration on and around 2 March 1994, they would have signed the agreement that had not been altered at this point of time.

Exhibit #	Date	Commentary
Exhibit 46	3 Mar 1994	The exhibits in 46 and the draft report (available on absentjustice.com/Open Letter Evidence File Nos 4-7) show AUSTEL has, since the time of their report on both Graham and Alan's telephone problems, withheld their knowledge of the damning information contained in those draft reports. They also did not provide the AXE information they should have provided under the direction of the AAT. Why have AUSTEL withhold this vital evidence from Alan? If AUSTEL had given Alan a copy of their AUSTEL draft report during the arbitration, the claims could have been amended. The arbitrator may even have decided that it was not appropriate to continue with the arbitration because AUSTEL (the government regulator) had already found in Graham and Alan's favour – before the arbitration had even begun.
		PLEASE NOTE: Alan Smith's business was also trunked off an AXE exchange that AUSTEL noted in their draft report suffered with RVA faults. The 64-page draft report in relation to Alan Smith's claims against Telstra, prepared by AUSTEL on 3 March 1994 but not provided to Alan until ACMA finally sent him a copy him 21 November 2007, can be viewed at absentjustice.com/Open Letter File Nos 4-7. *"The maximum impact on your incoming STD calls from Melbourne could have been up to 50%."* (See Open letter File No/6, p37) Point 103 of this report is decidedly critical of Telstra for misleading and deceptive statements they made regarding the MELU Lonsdale Exchange RVA problem, stating that: *"It is apparent from Telecom's documentation that no investigation of the duration of the MELU data error problem would have been initiated without the persistence of Mr Smith's complaints on the matter."* (See Open letter File No/6, p39) Then, in the next point (104), the report states: *"The assessment provided to Mr Smith that up to 50% of STD calls from Melbourne to the Cape Bridgewater Holiday Camp would have been affected by the MELU RVA problem appears to be accurate."* (See Open letter File No/6, p39) If Alan had received a copy of this draft report before his arbitration began, the arbitrator would have had to find against Telstra in relation to many of Alan's claims. Since a copy of the report was not given to Alan at the appropriate time however, in the same way that a copy of the report regarding Graham's Telstra claims was not given to Graham, we have to conclude AUSTEL favoured Telstra against Graham and Alan.
Exhibit 8-a	22 Mar 1994	Dr Hughes, Steve Black, Simon Chalmers, Telstra lawyer David Krasnostein, Peter Bartlett, Warwick Smith and TIO secretary Jenny Henright meet in private to discuss the FTAP process. Please note: there was no COT member present at this meeting. Telstra's minutes from this meeting confirms their understanding that Warwick Smith stated, "that he would not endorse the rules as fair unless clause 10.2.2 repeated clause 2(f) of the Fast Track Settlement Proposal". The words "each of the claimants' claims" were removed. 1. When was the wording "each of the claimants' claims" removed from the FTAP rules that we signed 21 April 1994, believing them to be the same FTAP rules we first agreed to 21 February and 17 March 1994? 2. When was Warwick Smith advised of the removal of the wording "each of the claimants' claims" from the FTAP rules? This alteration rendered the agreement different to the rules he stated he would endorse. 3. Has Warwick Smith ever been advised of this removal? 4. Is an arbitrator allowed to meet with the defendants and their lawyers without the claimants being present?

Exhibit #	Date	Commentary
Exhibit 8-b	22 Mar 1994	Peter Bartlett faxed this letter and attachments, dated 22 March 1994, to Graham. This letter, headed Fast Track Settlement Proposal notes: *"Attached are the comments on the Telecom draft, I delivered to Gordon Hughes on Friday, 18 March.* *"Clearly a number of amendments suggested by Telecom are unacceptable. If Gordon can receive your comments on the Telecom draft, he can form a view as to what, in his view, is fair and reasonable."* Mr Bartlett states, on page four of this letter, regarding ***Clause 10.2.2***: *"This is potentially the most difficult clause. Clause 2(f) of the FTSP provides:* *'that in conducting the review the assessor will make a finding on reasonable grounds as to the causal link between each of the COT Cases claims and alleged faults or problems in his or her telephone service.' "* Clause 10.2.2 of the Minter Ellison agreement provides that: *"the Arbitrator will make a finding on reasonable grounds as to the causal link between the claimant's claims and the alleged faults or problems with the relevant telephone service".* Clause 10.2.2 of the Telecom Australia draft provides that: *"the Arbitrator will make a finding as to the causal link between the alleged service difficulties, problems and faults in the provision to the claimant of telecommunication services".* Telecom Australia has deleted "on reasonable grounds" from the first line. Whether the words *each of the COT Cases claims* were left out of clause 10.2.2 deliberately or by mistake, it is clear that clause 10.2.2 was still under discussion on 22 March 1994 and, because Mr Bartlett has not referred to this part of clause 10.2.2 being deleted, we must assume that *each of the COT Cases claims* was still included in the agreement at this point. On page 8 of this letter, however, Mr Bartlett refers to clauses 24, 25 and 26 as still being under discussion. When Dr Hughes wrote to Graham on 31 March 1994 (see E9-a below), nine days after Mr Bartlett's letter, he stated: *"I am enclosing the latest draft of the Fast Track Arbitration Procedure which has been forwarded to me today by Messrs Minter Ellison Morris Fletcher."* He makes no reference to changes in clauses 24, 25 and 26 (all three clauses were still intact, as can be seen from that document), although the words *"each of the COT Cases claims"* were removed without advising the COT cases. The arbitrator likewise made NO reference that this agreement they were working on was Telstra's original arbitration agreement t had previous been faxed from Telstra's office to the TIO office on 10 January 1994**.**

Exhibit #	Date	Commentary
		To summarise: 1. Peter Bartlett writes to Graham on 22 March 1994, suggesting that clauses 24, 25 and 26 need further discussion. 2. Dr Hughes writes to Graham on 31 March 1994, attaching the agreement, without any mention of any alterations to clauses 24, 25 and 26 or that the words "each of the COT Cases' claims" in clause 10.2.2 were removed. 3. Peter Bartlett writes to Ann Garms, attaching the same FTAP agreement that Dr Hughes had sent to Graham, still with no mention of any alterations to clauses 24, 25, 26 and 10.2.2, or the intended changes. 4. Dr Hughes' secretary, Caroline Friend, faxes to William Hunt and Alan Goldberg the same FTAP agreement that Dr Hughes sent to Graham, and Peter Bartlett sent to Ann Garms, again with no mention of any changes to clauses 24, 25, 26 and 10.2.2. 5. We have previously established that William Hunt used the agreement that was faxed to him by Caroline Friend in discussion with Minter Ellison on 20 April 1994 (the day after he received it) and that there is no record of either Ann Garms, Graham or Alan agreeing to the removal of, or alterations to, clauses 24, 25, 26 and 10.2.2. 6. The changes were done secretly, without the claimants' knowledge or consent, and appear to have been done with the full knowledge of those who benefited from these deletions; Ferrier Hodgson Corporate Advisory and the special counsel, Minter Ellison.
Exhibit 8-c	22 Mar 1994	7. This fax, dated 22 June 1994, from the TIO office to AUSTEL, proves the $250,000 liability clause, removed from both Graham and Alan's arbitration agreements, was re-inserted into the arbitration agreement for the following 12 COT claimants.
Exhibit 8-d	22 Mar 1994	8. These three letters, all dated 29 December 2008, confirm that Dr Hughes (the COT arbitrator), Peter Bartlett (legal counsel for the COT arbitrations) and Chris Chapman (chair of ACMA) were all told about the secret alterations that were made to the arbitration agreement, while none of the claimants were given that same information. Mr Chapman has still not explained why the government regulator allowed the liability clause to be removed from Graham and Alan's agreements but re-inserted for the other COT claimants, thereby discriminating against Graham and Alan. It does seem, however, that this discrimination is connected in some way to AUSTEL's other acts of discrimination and bias, including the SVT issues discussed below, further supporting our claim that there is a need for an investigation into why the regulator and some of their employees have been afraid to speak out regarding COT arbitration issues. Points 7 and 8 should be assessed in relation to other information (see below), which shows that AUSTEL did not protect the rights of the COT claimants during the AUSTEL-facilitated arbitration process. ***Exhibit 8-c*** includes a letter to Peter Bartlett that refers to clause 11.2 on page six of the Special Rules of Arbitration for the second group of COT claimants. It shows that AUSTEL, Peter Bartlett and the TIO all knew the $250,000 liability cap on claims against the TIO-appointed resource unit was re-inserted into the agreement for the next 12 COT claimants AND knew that the same liability clauses had been secretly removed from the agreement used for Graham Schorer and Alan Smith's arbitration, to their severe detriment.
Exhibit 9	31 Mar 1994	Dr Hughes faxes Graham Schorer the latest draft of the FTAP agreement.

Exhibit #	Date	Commentary
Exhibit 10-a	7 Apr 1994	Mr Black's letter to David Krasnostein includes: *"I have told Mr Bartlett that the only basis on which Telecom would attend a meeting is to formally sign the rules – no further discussion or negotiation to be entered into."* This suggests that perhaps Bartlett had expressed a view that the FTAP rules were not fair. **Comment:** Could it be that both Peter Bartlett and Dr Hughes knew that clause 10.2.2 was altered to favour Telstra's defence? It appears Mr Black was concerned at Graham pushing Dr Hughes to read the AUSTEL report because it states our matters were to be heard under a review/settlement process and that the remaining COT claimants would have their matters heard in arbitration. If Dr Hughes had read the AUSTEL report, he would have known that our matters were never intended to go before arbitration. Telstra strongly objected to Dr Hughes seeing this report because it states the COT four were to be assessed under the AUSTEL-facilitated Fast Track Settlement Proposal, with the other COT-type complainants to be implemented into the yet-to-be-devised Special TIO Arbitration Agreement. Please note: the AUSTEL COT report referred to in this memo by Mr Black, was soon to become a public document.
Exhibit 11	12 Apr 1994	Dr Hughes writes to Peter Bartlett stating: *"further in relation to clauses 25 and 26, both Ferrier Hodgson Corporate Advisory and DMR Inc are concerned about their potential liability. As the clauses presently read, they would be liable to a maximum of $250,000.00 per claim. This is likely to significantly exceed their professional fees in relation to each claim. Ferrier Hodgson's preference (and also the preference of DMR) would be for a total exclusion of liability but, failing that, they would accept a lower cap more commensurate with their anticipated fees. …* *"I appreciate that one claimant has already executed the agreement in its current form. The others will no doubt be pressed to do likewise over the next few days. I further appreciate you will be reluctant to introduce additional changes to the draft procedure at this delicate stage of negotiations but it is of course fundamental that account be taken of the concerns raised by members of the Resource Unit. Perhaps the agreement should be executed in the current form and then agreement sought from the parties to vary the terms to take into account any proposals by Ferrier Hodgson or DMR which you agree are reasonable."* PLEASE NOTE: There is no reference in this letter regarding the concerns or the rights of the claimants.
Exhibit 12	13 Apr 1994	Peter Bartlett of Minter Ellison faxed this copy of the Fast Track Arbitration Procedure agreement, with clauses 24, 25 and 26 intact, to Ann Garms the day after Dr Hughes' letter. Please note: Mr Bartlett makes NO reference in the covering facsimile to Ms Garms that this copy of the FTAP agreement was only a draft and that clauses 24, 25 and 26 would be removed before she signed the agreement.

Exhibit #	Date	Commentary
Exhibit 13	19 Apr 1994	When Caroline Friend, Dr Hughes' secretary, faxes a copy of the arbitration agreement to William Hunt and Mr Goldberg, she notes, on the fax cover sheets: *"Further to my telephone discussion with Mr Graham Schorer of todays* [sic] *date, at his request, I attachfor* [sic] *your attention, a copy of the 'Fast Track' Arbitration Procedure of 31st March 1994."* It was later established that, **after** these faxes were sent, someone removed clauses 25 and 26 from the version of the document and altered clause 24. This altered document was presented to Graham Schorer and Alan Smith to be signed on 21 April 1994, without notifying Mr Hunt, Mr Goldberg, Graham or Alan of those alterations. On 19 and 20 April 1994, Graham Schorer and Alan Smith discussed with William Hunt whether they should sign the FTAP. Mr Hunt provided the copy of the agreement that he received via fax from Ms Friend. Graham was adamant that he did not want to sign the agreement because it was too legalistic and did not mirror the original FTSP agreement. However, Mr Hunt suggested that it was probably the best they could hope for under the then-present circumstances. Alan remembers that Mr Hunt also stated that if they didn't sign the agreement then, the process would be delayed even more and their claims could face an uncertain future. Alan and Graham strongly believe that Mr Hunt would not have advised them to sign had he known that: • clauses 25 and 26 were to be secretly removed and • clause 24 altered. The alteration to the document meant that FHCA, DMR (Australia) and the TIO's special counsel were relieved of any liability for negligence, conscious or otherwise. They also believe that Mr Goldberg, too, would have strongly advised against Graham and Alan signing the agreement had he known it was altered after he had provided legal advice on it, but before the agreement was presented to Graham and Alan for their signatures.
Exhibit 14	21 Apr 1994	Graham Schorer and Alan Smith abandon the already-signed Settlement Proposal and accept the Fast Track Arbitration Agreement as the same agreement they were shown on 31 March, 13 April and 19 April 1994. Please note: no one advised Graham Schorer or Alan Smith to the alterations to clause 10.2.2, 24, 25 and 26, until they were about to sign the agreement.
Exhibit 52	27 Apr 1994	This letter from Steve Black, Telstra's arbitration defence coordinator, to Robin Davey, chair of AUSTEL states: *"Attached for your information, an updated draft of the standard Verification Tests for use in Telecom's Public Switched Telephone Network.* *"The tests have been prepared in consultation with Cliff Mathieson of AUSTEL, and will form the basis for determining whether an individual telephone service is operating satisfactory. …* *"Once agreement has been reached on these Verification Tests, Telecom will be in a position to commence the testing of the services associated with COT customers, and ensure they meet the agreed requirements for a satisfactory service."*
Exhibit 51	Apr 1994	Pages 89 to 92 of the April 1994 AUSTEL COT cases report, show the telephone problems the claimants reported continued to occur because the SVT process was not in operation during the first COT settlement process in 1992. Neil Tuckwell failed to ensure that the SVT process met the regulatory standards during the 1994/5 arbitrations. The COT claimants, whose businesses were still suffering from the same major telephone problems that had sent them into arbitration in the first place (see exhibit 49), complained that the SVT process was not carried out correctly. They continued to watch their businesses being destroyed for years after AUSTEL had told government ministers that the SVT process had been successfully completed. As discussed above, exhibit 23-j shows Robin Davey (then the chair of AUSTEL) stated AUSTEL was working to get an agreement on a standard and the telephone services of each COT claimant would have to reach this standard before they were signed off. Mr Davey's successor, Neil Tuckwell, did not adhere to these standards.

Exhibit #	Date	Commentary
Exhibit 15	25 May 1994	Graham Schorer writes to Dr Hughes noting: *"Due to circumstances and events beyond the direct and/or indirect control of Graham Schorer plus other related claimants, companies etc., I am formally applying for an extension of time on behalf of Graham Schorer plus other related claimants, companies etc., pursuant to Clause 7.1 in the "Fast-Track" arbitration procedure…* *"The reason for this request are as follows:-...* *"A substantial burglary in Golden's premises on the 4 March, 1994 and the theft of vital equipment and records.* [Including] *"One of two word processors with its laser printer and back up disks containing Golden's sales quotas, customer agreements, facsimiles and all the correspondence facsimiles and most of the documentation relating to telephone service difficulties, problems and faults in relating to Graham's present claim."* **Please note:** Also on 4 March 1994, approximately one-and-a-half hours after Golden Messenger's burglary, another COT claimant's business, Dawson Pest Control, was also burgled. Mr Dawson remarked it was strange the burglars only stole business records and Telstra-related information. On 11 October 1994, during Alan Smith's arbitration oral hearing (taped) he informed the arbitrator that the Cape Bridgewater Holiday Camp booking information and banking statements had disappeared from his office. Alan provided Telstra FOI documents to the Australian Federal Police in 1994 that confirmed Telstra was documenting the dates when Alan would be in Melbourne (away from his business). In one instance, Telstra documented an intended Melbourne trip weeks before the trip.
Exhibit 16	21 Jun 1994	AUSTEL's John MacMahon writes to Steve Black stating: *"AUSTEL is continuing to receive complaints as to the quality of service from a number of the COT Cases* • *Mr Smith at Cape Bridgewater continues to express concern about the ability to receive and send facsimiles.* • *Mr Schorer at North Melbourne continues to claim that customers are reporting an inability to make a successful phone call to his business."* The Implementation of the Recommendations of the COT cases report ,states: *"The role of the Service Verification Tests (SVT) in the determination of the adequacy of a DNF service is that the SVT clearly have to be conducted well before 30 May 1995 to meet the requirement of recommendation 25. For example, if the SVT indicate an unacceptable level of service then a considerable amount of time may be required to rectify the service in question, particularly if major replacement of exchange equipment is required to bring the service to the accepted standard."* In regards to the adequacy of the telephone service provided to Alan Smith and Graham Schorer by Telstra, it is obvious the service was less than adequate. In October 2007, Alan provided Consumer Affairs Victoria (CAV) with a copy of the above SVT statement and conclusive proof that the arbitrator and his resource unit ignored his claims that Telstra had NOT carried out their SVT testing at his business. Because of this deception, the arbitrator's resource unit did not pick up the phone and faxing problems his business was still experiencing. Allen Bowles, ex-commander of the Major Fraud Group Victoria Police, provided the evidence, *SVT Test LGE File*, in hard copy to the CAV in person in October 2007 and again in March/April 2008 on a CD, at the request of the CAV. Both Peter Hiland, CAV solicitor, and Allen Bowles believe this was one of the most important pieces of evidence showing how corrupt Telstra and at least one AUSTEL representative was, in allowing Telstra to rely upon this false and fabricated evidence (see also absentjustice.com/Main Evidence File 2 and 3).

Exhibit #	Date	Commentary
Exhibit 17 Exhibit 17-a Exhibit 17-b	11 Jul 1994	Telstra's Steve Black writes to Warwick Smith (TIO) stating: *"Telecom will also make available to the arbitrator a summarised list of information which is available, some of which may be relevant to the arbitration. This information will be available for the resource unit to peruse. If the resource unit forms the view that this information should be provided to the arbitrator, then Telecom would accede to this request."* (See exhibit 17-a) The statement in Mr Black's letter, *"if the resource unit forms the view that this information should be provided to the arbitrator",* confirms that both Warwick Smith and Mr Black, are fully aware the TIO-appointed resource unit Ferrier Hodgson Corporate Advisory (FHCA) was **secretly** assigned to vet the arbitration procedural documents on route to Dr Hughes. If FHCA decided a particular document was not relevant to the arbitration process then it would not be passed on to Dr Hughes or the other parties. On page 5 of the Commercial Arbitration Act 1984, under Part II – Appointment of Arbitrators and Umpires it, point six states: *"Presumption of single arbitrator* *"An arbitration agreement shall be taken to provide for the appointment of a single arbitrator unless –* *a) the agreement otherwise provides; or* *b) the parties otherwise agree in writing."* (See E17-b) The Fast Track Arbitration Procedure signed by Graham and Alan on 21 April 1994, mentions only one arbitrator. Neither Alan nor Graham have ever seen a written agreement anywhere that allows for a second arbitrator to determine what information the first arbitrator will see.
Exhibit 18	12 Jul 1994	Telstra's Paul Rumble writes to Graham Schorer stating: *"I confirm my understanding that you wished to make an informed decision as to which documents were required and that you might take a few days in order to make an informed decision."*
Exhibit 19 and Exhibit 20	9 Aug 1994	Graham Schorer's letter to Dr Hughes, the arbitrator, states: *"I am writing to you to confirm what progress has been made to date regarding documents being received under the three different F.O.I. applications.* *"...documents relating to Graham Schorer and Golden Applications consist of many duplicate copies and does not represent all of the documents applied for under the two F.O.I. Applications, being 24 November 1993 and 21 April 1994."*
Exhibit 20	9 Aug 1994	Graham Schorer writes to Dr Hughes again: *"I have enclosed a facsimile from Telecom, received at my premises on 26 July 1994 at 11.41 pm.* *"This facsimile states that Telecom has forwarded all of the documents that fall within my F.O.I .applications to the T.I.O. for onforwarding to the Arbitrator.* *"Would the Arbitrator please advise in writing as to what date the documents were delivered to the Arbitrator's premises. Also please advise myself as to what arrangements that I need to comply with for the viewing of the same documents."*
Exhibit 21	11 Aug 1994	Dr Hughes writes to Graham Schorer noting: *"I acknowledge receipt of your facsimile dated 9 August 1994.* *"No documents of the nature which you describe have been delivered to me.* *"I do not wish to become directly (or even indirectly) involved in your FOI application. At the same time I cannot ignore the fact that your FOI application is relevant, or may be relevant, to the proper submission of your claim."*
	22 Aug 1994	Page 18, from the AUSTEL COT cases report states at recommendations 20 and 22: *"At an appropriate time AUSTEL will be requesting a sample of reports provided to DNF customers to ensure that the process is being successfully implemented."*

Exhibit #	Date	Commentary
Exhibit 22	7 Sep 1994	Dr Hughes writes to Graham Schorer noting: *"It was never my intention that the submission of your claim be deferred indefinitely pending completion of your FOI claim. I have sought to avoid the costs and inefficiencies involved in a substantial amendment to your claim in the event that a significant amount of material becomes available after the claim is formally submitted."*
Exhibit 23-a	29 Sep 1994	These two Telstra CCAS data records, for the Service Verification Tests (SVT) conducted at Alan Smith's business, confirm that Telstra only tested calls going out of Alan Smith's business and NOT the required regulatory incoming SVT calls.
Exhibit - 23-b	2 Oct 1994	Alan Smith writes to Ted Benjamin, copied to Dr Hughes, AUSTEL and Warwick Smith, stating his concerns regarding Peter Gamble's lack of professional integrity when conducting the SVT at the Cape Bridgewater Holiday Camp 29 September 1994.
Exhibit 23-c	10 Oct 1994	Alan Smith's second letter to Ted Benjamin again discusses Alan's concerns about the SVT and states Alan and his partner would send separate statutory declarations regarding the inappropriate conduct of the SV test process.
Exhibit 23-e	11 Oct 1994	AUSTEL's letter to Peter Gamble confirms Telstra's SVT process did NOT meet the agreed regulatory SVT standards.
		Please note: The documents finally received by Alan Smith through the FOI process, on 13 January 2009, shows Telstra and AUSTEL were aware by 11 October 1994 that the SVT process should never have been used by Telstra as defence documents during the COT case arbitrations (See also Exhibits 23-e, 23-f, 25-a, 26, and 28). So, AUSTEL knew the SVT process was not carried out according to the agreed standards and the BCI report was not conducted according to the BCI report and then, on top of this, AUSTEL allowed Telstra to limit the mandatory performance parameters of their testing so Telstra could still meet their licensing conditions. What caused AUSTEL to remain silent and fail to fulfil its legal requirement as regulator of Telecom Australia?
Exhibits 50-a, 50-b and 50-c	13 Oct 1994	Graham Schorer and Alan Smith receive exhibit 50-a, in 2001, under FOI from government regulator ACMA. This letter, from a Telstra whistleblower, is dated 13 October 1994. Exhibits 50-b and 50-c support the comments made in exhibit 50-a concerning Telstra altering relevant information and/or removing information from discovery documents requested by the COT claimants in an attempt to minimise Telstra's liability.
Exhibit 23-d	17 Oct 1994	Ted Benjamin responds to Alan Smith's letter of 10 October 1994, in the usual Telstra manner, denying Mr Smith's claims.
Exhibit 23-f	16 Nov 1994	This letter from AUSTEL to Telstra's Steve Black also confirms Telstra's SVT at Alan Smith's holiday camp did not meet the regulatory standards.
Exhibit 24-a	22 Nov 1994	Telstra's Peter Gamble writes to Graham Schorer stating: *"An opportunity has become available for Telecom to carry out some specialised testing using a new piece of equipment which has only just become available.* *"I am proposing that we use this equipment to carry out some tests on both your PSTN and ISDN services. ... The second unit will be moved between a number of locations which have been selected by taking note of your previous comments on locations where callers have reported difficulties in contacting your business. ...* *"The tests will be conducted by Mr Wayne Parker and Mr Jeff Thompson of Bell Canada International, who will also tabulate the results. The BCI staff will be assisted by two of my staff members, Mr Bruno Tonizzo and Mr Colin Roberts."*

Exhibit #	Date	Commentary
Exhibit 24-b		The Telstra SVT technicians mentioned in this document, Mr Bruno Tonizzo and Mr Colin Roberts, were also present with Peter Gamble during the deficient SVT process at Alan's premises on 29 September 1994. See page 1 (Smith Case) and Peter Gamble's witness statement dated 12 December 1994. Should Telstra have used the same Telstra technical staff that abandoned the deficient Cape Bridgewater Holiday Camp SVT during the pending Golden Messenger SVT process? Again, this supports Graham's valid reason for demanding Telstra connect calling identification monitoring to his incoming service lines on the days they performed their SVT calls.
Exhibit 24-c		Page 198 from the AUSTEL COT cases report further supports the validity of Graham Schorer's demand for calling line identification, as it states: *"8.79. Telecom's conduct has been less than that which might be expected of a model corporate citizen –* • *in insisting on strict proof of a causal link between faults and their effect on a business when its own records are deficient in recording faults"* At 8.80, AUSTEL recommends that - • *"Telecom's advice to its customers experiencing difficult network faults on the outcome of its monitoring/testing should state the limitations of its monitoring/testing regime"* Telstra certainly didn't advise Alan Smith or the arbitrator, Dr Hughes, about the limitations in their SVT monitoring/testing regime performed on Alan's services during his arbitration. **PLEASE NOTE**: On page 3 in Michael Rumsewicz's report to AUSTEL, dated 15 November 1994, when referring to the SVT process, he states: *"Customer calling profiles (which provide the basis of the Service Verification Test test calling pattern) would be more accurate determined through the use, for instance, of Tekelec/CCS7 equipment…"* Bell Canada International (BCI) was supposed to use the Tekelec/CCS7 equipment when testing the exchanges to which Graham and Alan's businesses connected. Tekelec/CCS7 equipment couldn't be used at Cape Bridgewater due to the type of exchange. Yet Telstra still maintains the BCI Cape Bridgewater report is correct and the report states that Tekelec/CCS7 equipment was used. Mr Rumsewicz's report supports how important it was for Graham Schorer to demand Telstra connect some type of calling line monitoring equipment to his service lines while performing the SVT process.
Exhibit 25-a	28 Nov 1994	Peter Gamble writes to AUSTEL's Norm O'Doherty, general manager of consumer affairs, in response to AUSTEL's 16 November 1994 letter, which questions the deficiencies in the SVT process at the Cape Bridgewater Holiday Camp. However, Peter Gamble's letter appears to provide SVT information to AUSTEL, without ever having performed a second set of tests at the Cape Bridgewater Holiday Camp, despite the tests being deficient. *"The detailed results of the Call Delivery Tests should be read in conjunction with the individual Service Verification Test Reports, which will provide further information on the origins and destinations, together with details of the time period to be used for the call analysis. ...* *"You are already aware, the equipment which carries out the SVT Call Delivery Tests is able to hold the call for the required 120 seconds (as shown on the results sheets), but is unable to confirm that the call has been held past 40 seconds."*

Exhibit #	Date	Commentary
Exhibit 25-a cont.	28 Nov 1994	PLEASE NOTE: On 13 January 2009, Alan Smith received a collection of FOI documents from ACMA. These documents show that, at least by 28 November 1994, Telstra and AUSTEL both knew that the SVT data did not record one single incoming test call being held for the required 120 seconds. The SVT section of Telstra's 12 December 1994 defence of Alan's arbitration claims should not have recorded all the SVT calls as successful, but should have recorded the truth instead – that Telstra's equipment was not able to substantiate that each test call was held for the required period. AUSTEL's final report (April 1994) shows that: 1. The SVTs were an integral part of the arbitration process, implemented specifically to determine the reliability of the telephone lines connected to the premises of the COT Difficult Network Fault customers, and 2. AUSTEL and Telstra worked together to design the testing process and equipment. However, correspondence exchanged between AUSTEL and Telstra also shows that neither party was sure the end-to-end SVT monitoring equipment was reliable. AUSTEL, as the communications regulator, should have warned the arbitrator and the claimants about these problems as they knew Telstra intended to use the SVT data as part of their arbitration defence. Only six months prior, on 28 November, AUSTEL received advice from Peter Gamble (see exhibit 25-a) about the deficiencies associated with Telstra's SVT call line monitoring equipment. AUSTEL commented at point 8.80 in their April 1994 COT cases report that: *"AUSTEL recommends that -* • *Telecom's advice to its customers experiencing difficult network faults on the outcome of its monitoring/testing should state the limitations of its monitoring/testing regime."* (See exhibit 24-c)
Exhibit 23-g	12 Dec 1994	Peter Gamble's witness statement, on behalf of Telstra's arbitration defence of Alan Smith's claim, states the SVT process had met all the regulatory requirements. Peter Gamble knew this had NEVER been the case.
Exhibit 23-h	12 Dec 1994	This statutory declaration by Telstra's Steve Black, states that, from his perusal of Telstra's defence reports (which included the SVT process), they were correct on all accounts. Mr Black made this statement regardless of being aware the Cape Bridgewater SVT process was deficient.
Exhibit 23-i	12 Dec 1994	Page 4 from Telstra's briefing report regarding their defence states: *"These tests are recognised by AUSTEL as an appropriate measure of service performance. Tests undertaken on the CBHC* [Cape Bridgewater Holiday Camp] *service were successful on all lines."* Please note: this is the report Steve Black discusses in his statutory declaration, stating: *"However, I have reviewed the Report and I am informed by each of the authors that the Report accurately states the facts stated in the Report."* AUSTEL alerted Steve Black on 16 November 1994 (one month previous) that the Cape Bridgewater Holiday Camp tests were deficient.

Exhibit #	Date	Commentary
Exhibit 26	13 Dec 1994	Peter Gamble replies to the 16 November letter from AUSTEL's Norm O'Doherty concerning the deficient SVT tests, including only simulating the 1-800 test calls, which stating: *"Thus for both Mr. Alan Smith and Mr. Gary* [sic] *Dawson, the network equipment utilised for calls to the test 1-800 numbers were the same as that which would have been used for their 008 service. …* *"In response to requests from customers for more rigorous "end-to-end" testing procedure, a more detailed test specification was developed which aimed to generate 100 test calls to a customer's service from five or six locations. ...* *"Two tests have been carried out using this procedure, one on Mr. Colin Turner's service, and one on Mr. John Main's service. However, there have been three key problem areas identified which apply both to the original demonstration tests and the revised procedure. The first has involved obtaining sufficient staff to carry out the test. Two alternative sources have been tried, but neither can be guaranteed on an ongoing basis, which is why the Test Program has not continued further. ...* *"When the Service Verification Test was originally developed it was understood that the NEAT units could hold a call for 120 seconds. However when detailed test schedules were being prepared it was discovered that while the NEAT system could hold a call for 2 minutes, it could not confirm a call hold time beyond the 45 seconds taken to perform the transmission test.* *"A proposed software modification to NEAT has been discussed with the supplier who initially offered a modification to be available by November 1994. This feature has now, apparently, been delayed indefinitely. To meet the SVT requirement a variety of test call generating systems were investigated, but none was able to hold and confirm a test call for the required 2 minutes. Various modifications were considered and some tests carried out but they were unable to provide reliable results.* *"Telecom is currently concluding negotiations for the supply of a new generation of call generating equipment, for which the ability to hold and confirm a call for 120 seconds is mandatory. Further information will be provided as it comes to hand."*
		PLEASE NOTE: This letter was written the day after Peter Gamble submitted his arbitration witness statement, attesting to the arbitrator that his Cape Bridgewater Holiday Camp SVTs had met ***all*** of the regulator's requirements. As a point of interest: the COT Difficult Network Fault customers named by Peter Gamble in this document (Smith, Dawson, Turner and Main) have all complained about the inappropriate way Telstra conducted their respective SVT procedures.
Exhibit 27	15 Dec 1994	This letter from COT spokesperson, Graham Schorer, confirms he advised Telstra's Steve Black that: "*During a telephone conversation between you and I earlier this week, I informed you:- ...* *(b) I was aware that Telecom/Bell Canada International had abandoned tests on Gary* [sic] *Dawson's telephone service last Friday, 9 December 1994, and the official reason given was that the new equipment does not like Australian conditions;* *(c) I required in writing from Telecom the results and reasons for such tests were abandoned."* PLEASE NOTE: Alan Smith raised this letter and subsequent response to this letter (see below, dated 23 December 1994), with the arbitrator, linking these abandoned tests with the abandoned SVT tests at his business on 29 September 1994. Alan received no response from the arbitrator concerning these two letters or the abandoning of the SVT process at Alan's business.

Exhibit #	Date	Commentary
Exhibit 28	15 Dec 1994	On 15 December 1994, Mr M Rumsewicz submitted *Report on Telecom Australia's Service Verification Tests* (G.001), which he prepared on behalf of the government regulator, AUSTEL (see exhibit 28). This report was based on documentation provided by Telstra but still, on pages 3, 10 and 13 (see exhibit 23-i) of this report, it shows Mr Rumsewicz noting his concerns surrounding the SVT process. Therefore, AUSTEL should have informed either the TIO (administrator to the COT arbitrations) or the arbitrator of Mr Rumsewicz's concerns regarding the correctness of the Telstra's SVT data. Telstra should not have used the results of their SVTs in a legal process (e.g., the COT arbitrations) because those results were not conclusive. Exhibit 23-a confirms that if the CCAS data regarding Telstra's SV testing, of even one single incident at Alan Smith's business, had been provided to Mr Rumsewicz then Mr Rumsewicz would have had to conclude that Telstra fabricated the Cape Bridgewater Holiday Camp testing. On page 10 of his report, Mr Rumsewicz notes: *"Telecom Australia, as part of document G.001, applies a standard technique based on hypothesis testing. Hypothesis testing is used to determine whether there is sufficient evidence to reject one hypothesis (known as null hypothesis) in favour of another (known as the alternative hypothesis). If insufficient evidence exists to reject the null hypothesis, the null hypothesis is accepted. It is critical to note this is not the same as saying that the null hypothesis has been verified."* …and on page 13 he reports: *"We believe that, given the stated purpose of the Service Verification Tests supplied in the Telecom Australia Customer Fault Management Procedures document (000 841) and that of the AUSTEL COT cases report, the statistical test being applied to the collected data is inappropriate. We believe the alternative test described above is more suitable and, in addition, promotes customer confidence in the test procedure and analysis. ...* *"We believe that the analysis of collected data should be expanded to include an examination of call failures broken down by originating exchange, time of day and type of failure. In the event that correlations in the failures are found, further investigations, as appropriate, should be undertaken."* These comments indicate how AUSTEL became a party to Telstra's deceit when they wrote to Minister Lee MP, then Minister for Communications, on 2 February 1995, supporting both Mr Rumsewicz's report and the COT SVT process. On 3 October 2008, in Melbourne, Alan Smith attended an Administrative Appeals Tribunal hearing regarding the refusal of the Australian Communication Media Authority (ACMA) to provide him with many FOI documents related to his arbitration. Mr Friedman, the AAT member hearing Alan's case, found that AUSTEL was involved in allowing Mr Rumsewicz's report to wrongly provide a clean bill of health for the SVT process, and stated he didn't find Alan's claims to be either "frivolous or vexatious". Even though Mr Friedman's findings were forwarded to Mr Chapman, the recently resigned chair of ACMA, Mr Chapman did not come forward on behalf of the regulator (previously called AUSTEL, now called ACMA), during his 10-year tenure, to rectify the sins of his predecessors.
Exhibit 28 cont.	15 Dec 1994	**IMPORTANT ISSUE** The government regulator, then called AUSTEL, facilitated the COT arbitrations. Before the COT arbitrations began, AUSTEL confirmed in their COT cases report that Telstra's conduct in dealing with COT claimants was: *"…less than that which might be expected of a model corporate citizen".* Therefore, AUSTEL should not have allowed Telstra, under any circumstances, to provide Dr Rumsewicz with the raw SVT data during their arbitration procedure before it had been scrutinised by either the TIO-appointed technical consultants or AUSTEL.

Exhibit #	Date	Commentary
Exhibit 28 cont.	15 Dec 1994	**PLEASE NOTE 1:** Garry Dawson is another of the COT DNF customers used by Mr Rumsewicz to determine the validity of Telstra's SVT process, yet Ted Benjamin's letter to Graham Schorer (see exhibit 29) admits Telstra and Bell Canada International abandoned the SVT process at Garry Dawson's premises because of equipment failure. Mr Benjamin's letter to Graham Schorer, in response to Graham's letter to Steve Black on 15 December 1994, agrees with Graham's statement that: *"I was aware that Telecom/Bell Canada International had abandoned tests on Garry Dawson's telephone service last Friday, 9 December 1994, and the official reason given was that this new equipment does not like Australian conditions."*
Exhibit 28 cont.	15 Dec 1994	**PLEASE NOTE 2:** Mr Rumsewicz's report is dated 15 December 1994. Telstra and Bell Canada International abandoned the Dawson SVT six days earlier, on 9 December. In his letter to Graham Schorer (see exhibit 29) Telstra's Ted Benjamin does not refer to any repeat testing between 9 and 15 December (when Mr Rumsewicz completed his report). It would be inappropriate to have run the testing on 10 and 11 December as these were a Saturday and Sunday. This leaves only three days, 12-14 December, for: • Telstra and Bell Canada to locate SVT equipment that was compatible • to carry out a second round of testing • and collate all the testing information from complex data. ... in time to provide it to Mr Rumsewicz to include the test results in his report, which was submitted on 15 December. Obviously, the Dawson SVT process, like the SVT process carried out at Alan Smith's business, was fundamentally flawed.
Exhibit 28 cont.	27 Oct 1994	Exhibit 29-a is a letter from Colin Turner, dated 27 October 1994, to Telstra's Ted Benjamin noting: *"Service Verification Testing: You keep referring to the 'Deed'. You should have thought of that and tabled the G001 documents to the Arbitrator instead of keeping them secret. Don't give me any rubbish about agreement with Austel as they would have agreed to Telecom's recommendations*[.] *I was NOT consulted over the issue and any 'in club' agreements would be designed to enhance Telecom's position. I complained about faulty cables for years. I complained about faults for years. I complained about service for years. Telecom then used abhorrent standover tactics which frightened me beyond belief to settle. As soon as that settlement took place Telecom came and replaced old water damaged cables in my street, and then you have the gall to want to do tests AFTER you have probably fixed some of the faults."* While Mr Turner's letter does not actually state that the SVT process conducted at his premises was flawed, he has conveyed to fellow COT members that the SVT process was a farce.
Exhibit 28 cont.	27 Oct 1994	A 26 September 1995 letter from Telstra's Peter Gamble to AUSTEL's Cliff Mathieson was provided, amongst other relevant information concerning Graham Schorer's SVT issues, to Consumer Affairs, Victoria, in October 2007. The letter states: *"The initial request to all customers to allow Service Verification Tests to be carried out are made verbally. During these discussions the need to determine an incoming call profile is explained and as much information as the customer is able to provide is noted. Following these discussions, but prior to the carrying out of the Customer Specific Line tests, three customers:* • *Mr G Schorer (Golden Messenger), North Melbourne, Vic* • *M C Turner (The Gourmet Revolution) Cheltenham, Vic* • *Mr M Wiegmann (Michael Wiegmann Drafting Services), Jindabyne South NSW* *withdrew their permission for the Customer Specific Line tests to be carried out."*

Exhibit #	Date	Commentary
Exhibit 28 cont.	15 Dec 1994	**QUESTION** If Mr Turner refused his permission for the Customer Specific Line tests to be carried out at his business, then whose raw data did Telstra provide to Mr Rumsewicz (10 months previously) as the data they stated was from the Customer Specific Line tests conducted at Mr Turner's premises? It should also be noted in Graham Schorer's SVT letter to Steve Black (see exhibit 27) he states: *"I pointed out to you that I was aware that this equipment had run into problems when trying to run tests on Ralph Bova* [sic] *service, which you responded that you were not aware of."*
Exhibit 28 cont.	15 Dec 1994	**Conclusion surrounding the SVT process for seven DNF customers:** Of the seven COT SVT cases named by Dr Rumsewicz on page 19 in his report, it is quite clear in the case of Smith, Turner and Dawson that the SVTs were definitely flawed and the further SVT test carried out for Bova appears possibly flawed also. So three, perhaps four, flawed assessments from seven studies by Dr Rumsewicz confirms his report is fundamentally flawed. Dr Rumsewicz's report should not have been discussed in any government publication like the AUSTEL third quarterly COT report. The fact that this AUSTEL third quarterly COT case report was supplied to the COT arbitration process is even worse.
Exhibit 29-a	23 Dec 1994	Telstra's Ted Benjamin writes to Graham Schorer noting: *"I refer to your letter of 15 December (ref 1431) addressed to Mr Black. I note your comments. ...* *"Some tests were carried out but, because Bell Canada and Telecom were not satisfied with the performance of the equipment in all respects it was decided not to continue with the tests."* <u>PLEASE NOTE:</u> Alan Smith maintains that if an umpire had monitored the SVT process at his business, then Telstra would not have been able to lie under oath concerning their Cape Bridgewater Holiday Camp tests. Alan spoke with Warwick Smith (TIO) concerning how undemocratic it was for his office and the arbitrator to have allowed the defendants (Telstra) to perform the arbitration SVT process without supervision by either the arbitration technical consultants or AUSTEL. Like most of Alan's arbitration concerns raised with the TIO and arbitrator, this SVT issue was ignored.
Exhibit 30-a	10 Jan 1995	Graham writes to Steve Black in response to Ted Benjamin's letter of 23 December 1994. Graham's letter is headed Re: Proposed Telecom Verification Testing – In Response to Golden's Correspondence dated 15 December 1994 Ref 1431. Graham's letter sends a clear message to Telstra regarding his distrust of Peter Gamble. (See pages 3 to 7) The SVT exhibits confirm Graham had good reason not to trust Mr Gamble or Telstra unless they connected calling line identification equipment during their pending SVT. Graham and Alan Smith's telephone accounts show numerous telephone calls to each other during this period. Alan remembers frequently conveying frustration to Graham regarding the deficient BCI and SVT testing process and telling Graham not go down the same SVT path without ensuring the transparency of the SVT process. The following Exhibits 30-b, 40-d, 40-e and 40-f (SVT) show that Alan Smith and Graham Schorer had every reason to doubt Telstra's credibility when it came to monitoring equipment.

Exhibit #	Date	Commentary
Exhibit 30-b		On 7 September 1993, Robin Davey, AUSTEL's chair, writes to Telstra's corporate secretary Jim Holmes on re COT case monitoring arrangements: *"I have similar concerns about you seeking AUSTEL's approval of the monitoring equipment so long after we first asked tests to be done. There are concerns by some of the customers Telecom is to monitor about the effectiveness of the monitoring equipment. These concerns have been inspired, at least in part, by comments made by Telecom employees to those customers and, of course, the problem experienced by Mr Smith when testing/monitoring equipment caused additional problems for him. ...* *"The draft list of conditions for installation of monitoring equipment in the customers' premises only serve to reinforce my view that your letter is an attempt to have* 'two bob each way' *– if the testing does not favour Telecom, you have laid a foundation for claiming that it is due to customer interference."*
Exhibit 30-c		Page 24 from the first AUSTEL COT cases report dated July 1994 states under Recommendation 18: *"Telecom acquire equipment suitable for monitoring the service actually received at a customer's premises (cf: Coopers & Lybrand Recommendation 10 and Bell Canada International's Rotary Hunting Group Study Recommendation 8.3)."*
Exhibit 30-d		Page 53 from the December 1993, Bell Canada International Rotary Hunting Group Study Recommendation 8.3 states: *"On two occasions during the testing process, test equipment failures were experienced (AMERITEC AMIXT and ELMI Smart-10) which required a re-start of testing activities …* *"A further recommendation, is to increase the supply of the more sophisticated trouble shooting test equipment such as the Tekelec CCS 7 equipment. ..."*
Exhibit 30-e		This relates to the Tekelec CCS7 equipment. Telstra witness statements by David Stockdale (8 December 1994) and Chris Doody (12 December 1994) confirm this equipment cannot be utilised at either the Portland exchange or the unmanned Cape Bridgewater RCM. The statement made in the BCI Rotary Hunting Group Study Recommendation 8.3: *"On two occasions during the testing process, test equipment failures were experienced"* …should be read in conjunction with Alan's recollection of similar testing equipment failing while Telstra performed the SVT process at his premises. In Peter Gamble's letter to AUSTEL on 13 December 1994 (see exhibit 26) he states on page 3: *"When the Service Verification Test was originally developed it was understood that the NEAT units could hold a call for 120 seconds. However when detailed test schedules were being prepared it was discovered that while the NEAT system could hold a call for 2 minutes, it could not confirm a call hold time beyond the 45 seconds taken to perform the transmission test.* *"A proposed software modification to NEAT has been discussed with the supplier who initially offered a modification to be available by November 1994. This feature has now, apparently, been delayed indefinitely. ..."*
Exhibit 30-f		Statements from Brian Hodge MBA of BC Telecommunications, who Telstra had previously employed as an engineer for 29 years, further confirm that BCI could not have carried out the tests they describe in their Cape Bridgewater report.
Exhibit 30-f cont.		**Question** If the software modification to the NEAT system was not available in November 1994, then what software did Telstra's Peter Gamble use 29 September 1994 (10 weeks previous) when he had to abandon the incoming SVT tests to the Cape Bridgewater Holiday Camp?

Exhibit #	Date	Commentary
Exhibit 30-f cont.		**Please note:** It is important to link Peter Gamble's SVT letter to AUSTEL's Norm O'Doherty (see exhibit 26), which states: *"Telecom is currently concluding negotiations for the supply of a new generation of call generating equipment, for which the ability to hold and confirm a call for 120 seconds is mandatory,"* …with Mr Gamble's second statement on page one of his SVT letter dated 28 November 1994, to Norm O'Doherty (see Exhibit 25-a): *"This information is supplied to Austel on a strictly Telecom-in-Confidence basis for use in their Service Verification Test Review only and not for any other purpose. The information is not to be disclosed to any third party without the prior written consent of Telecom."*
Exhibit 30-g		**Please note:** AUSTEL noted, regarding the limitations to BCI's November 1993 testing of the COT claimants' phone lines (see point 11.8, page 243 of the COT cases report), that: *"AUSTEL had agreed to the study being so limited on the basis that other monitoring it had requested Telecom to undertake on AUSTEL's behalf should provide AUSTEL with the data on the efficacy of the customer access network."* This comment must be taken into account in conjunction with the type of monitoring equipment used for the SVT process and the in-confidence clandestine arrangement between Telstra and AUSTEL, because it shows that AUSTEL knew, as a result of the previous limitations of the BCI testing, just how important the correct testing of the COTs' "customer access network" was.
Exhibit 30-g		Page 243 of the AUSTEL report shows that AUSTEL did have some control over the BCI testing, so why did they inform Taits (lawyers) differently?

Exhibit #	Date	Commentary
Exhibit 31-a	12 May 1995	Dr Hughes (arbitrator) writes to Warwick Smith, stating the arbitration agreement rules he had just deliberated under in Alan Smith's claim did not allow enough time for: *"the production of documents, obtaining further particulars and the preparation of technical reports".* Dr Hughes went further, actually apologising for: *"the brevity of these comments",* and noting that the time frame for future arbitrations would need to be longer than it presently was. NONE of the COT cases were advised during their respective arbitrations, by either Dr Hughes or the administrator Warwick Smith, that it was the opinion of the arbitrator the agreement was not credible. **Summary Regarding Rules Not Credible** Dr Hughes noted in his award for Alan Smith 2.1 (d) that he *"considered it essential that both parties had every reasonable opportunity to place relevant material before me, regardless of the time frame set out in the arbitration agreement".* Dr Hughes made no mention anywhere at point 2.1, or anywhere else in his award, of the comments he would later make in his 12 May 1995 letter regarding his belief that the time frames in the arbitration agreement needed extending for the process to remain credible. Dr Hughes made no comment in his award regarding the many Telstra FOI issues raised by Mr Smith, during the arbitration process, including: • The Commonwealth Ombudsman's correspondence condemning Telstra's provision of FOI documents to Graham Schorer and Alan Smith (including references to the way Telstra stopped supplying Alan because he assisted the Australian Federal Police in their investigation) and; • Advice that Telstra was illegally deleting information from documents legally requested by Alan. After handing down Alan Smith's award, Dr Hughes' letter to Warwick Smith, warned the TIO that one of the three reasons the arbitration process was not credible in its present form was that the agreement did not allow enough time for the preparation of technical reports. At no time after 12 May 1995, did Dr Hughes advise Graham Schorer of the deficiencies in the arbitration agreement or his advice to Warwick Smith that the agreement needed revising.
Exhibit 31-a cont.		Likewise the arbitrator confirmed in his 12 May 1995 letter that the ***original agreement*** was not credible for many reasons. Had Alan Smith and Graham Schorer been advised that Telstra had drafted the agreement, they would have asked their lawyers to appoint someone with arbitration knowledge to view the agreement more thoroughly than they did. An independent graded arbitrator NOT associated with the arbitration would have discovered those same discrepancies that the arbitrator cited on the day he handed down his award, but this would have come to light before Alan and Graham signed the agreement. The arbitrator and TIO's collusion with the Telstra Corporation in concealing who really drafted the agreement has destroyed many lives. Did it not dawn on the arbitrator and TIO during Alan's arbitration appeal that Telstra and their lawyers might have drafted the agreement purposely to destroy the COT cases before they had a chance to access the documents? This 12 May 1995 letter confirms this is where many discrepancies arose.
Exhibit 30-h	29 Jun 1995	On behalf of Alan Smith, Taits of Warrnambool, Victoria, contact AUSTEL on 29 June 1995 regarding deficiencies in both the NEAT and BCI testing processes.

Exhibit #	Date	Commentary
Exhibit 30-i	12 Jul 1995	AUSTEL's Cliff Mathieson's confusing response to Taits in his letter of 12 July 1995, however, states: *"The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the tests should be referred to those who carried them out or claim to have carried them out."*
Exhibit 35	10 Nov 1995	A comparison of pages 17 and 18 from the AUSTEL quarterly COT cases report of 10 November 1995 (see exhibit 35) and statements in the SVT Report prepared by Mr Rumsewicz (see exhibit 28) shows that whoever prepared the AUSTEL report misled and deceived then-Minister for Communications, Michael Lee, regarding the SVT process. For example, page 17 of the AUSTEL quarterly report states: *"Telstra has now completed its programme of Service Verification Tests on the sixteen DNF Customers referred to Telstra by AUSTEL, with the exception of three customers who have refused to allow the tests to take place."* Graham Schorer was one of the three who refused.
Exhibit 35 cont.		Page 18 of AUSTEL's November 1995 quarterly report includes the statement that: *"All services on which the SVT was carried out have met or exceeded the SVT requirements."* …but exhibits 23-a and 23-f show that the tests conducted at Alan Smith's business did NOT meet (and therefore did NOT exceed) the regulatory requirements of the process. Why did AUSTEL and some of their public officers not tell Alan Smith or the arbitrator that they had written to Telstra on 16 November 1994, advising that the Cape Bridgewater Holiday Camp SVT process was deficient? Were they invoking the Crimes Act or were they compromised in some other way so that telling the truth was not in their own interests?
Exhibit 35 cont.	10 Nov 1995	However, various COT claimants were still experiencing telephone problems long after the completion of the SVT process. Exhibit 49 (discussed below) shows that, when Telstra visited the Cape Bridgewater Holiday Camp, 52 months after the SVT process was carried out, their own records show the technicians noting that it "appeared from documents Alan provided" that the problems he raised during his arbitration continued to occur after the end of the arbitration. All this information has been before AUSTEL and the TIO since 1998, 47 months after AUSTEL told Minister Lee (on 2 February 1995) that: *"All services on which the SVT was carried out have met or exceeded the SVT requirements."*
Exhibit 35 cont.	10 Nov 1995	In 2008, Alan Smith brought to the attention of Mr Chris Chapman, then-chair of ACMA, both the Rumsewicz report and AUSTEL's previous reluctance to investigate their reasons for allowing Telstra to use SVT reports, which Telstra and AUSTEL knew were fundamentally flawed, as arbitration defence documents. ACMA has not yet acted on this information. This further suggests that many public officials, with a bias against some of the COT claimants and strong links to Telstra (some AUSTEL/ACMA people are ex-Telstra), have been falsifying or withholding evidence. In so doing they have caused serious problems, not only for the COT claimants, but also for those Australian telecommunications consumers in general who have approached ACMA with complaints similar to those raised by the COTs.

Exhibit #	Date	Commentary
Exhibit 31-c	23 Jan 1996	The arbitrator writes to the TIO, stating: "*I enclose copy letters dated 18 and 19 January 1996 from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters…* *"the implications to the arbitration procedure if I make a full and frank disclosure of the facts…"* What was he hiding? An independent and honest arbitrator would have reminded the TIO that he had written to the previous TIO (on 12 May 1995) citing the arbitration agreement he had used on Alan's arbitration as not a credible document, but he'd used it anyway. If the arbitrator's May 1995 letter had been supplied to the Institute of Arbitrators Australia in Jan 1996, they would have investigated why the arbitrator had used a non-credible agreement and discovered the defence, in fact, drafted it. The agreement was not credible because it did not allow enough time in the process for the **production of documents**, **obtaining further particulars** or **the preparation of technical reports**, as the arbitrator himself said. I believe the Prime Minister of Australia the Hon Malcolm Turnbull, a just and good barrister, would also conclude here that had the arbitrator honestly told Laurie James (president of the Institute of Arbitrator Australia) the arbitration agreement he used was not credible, something would have been done about this travesty of justice in 1996.
Exhibit 41	19 Mar 1996	William Hunt's file notes state: *"At or about the same time Bell Canada had Telstra doing reports on its service in relation to Golden's receipt of same. At or about the same time similar tests were being done on the Telstra equipment to Smith and the results of those cover the demonstration that they could not have been done. …* *"Telstra abandoned certain tests …. One can only assume that the reports were unsatisfactory to Telstra or supportive of Schorer."*
Exhibit 43	11 Jul 1996	This letter from Sue Harlow to Senator Richard Alston attached the sixth AUSTEL COT cases report, which notes on page 12 under the heading Conduct of the Arbitrations: *"The TIO believes some comment on the behaviour and attitude of Telstra in the conduct of these Arbitration* [sic] *is warranted."* *"Recommendation 30 of the AUSTEL COT report recommends that the 'proposed arbitration procedure require* [sic] *only a finding on reasonable grounds as to the causal link between a claim for compensation and alleged faults and allow reasonable inferences to be drawn from material'. All three arbitration procedures make provision for this lower standard of proof. However, Telstra's conduct in the defence of most (if not all) claims has tended to assert that strict legal proof in relation to causation is required and is characterised by reliance on legal principals not in keeping with the spirit with which these arbitrations were instituted.* *"The TIO believes that Telstra has, in all claims, responded in an overly legalistic manner. It has shown a tendency to deny liability under every potential clause of action on the basis of perceived statutory and contractual immunities."* Ms Harlow, however, failed to tell Senator Alston that Alan Smith had described to both the arbitrator and Ms Harlow how Telstra blacked out relevant information in documents after he saw documents at Telstra's Melbourne offices (see exhibits 48-a and 48-b, below) that had not had blacked out sections previously. Alan provided copies of both versions of those documents as proof of his claims. Although AUSTEL has a considerable amount of evidence of Telstra illegally altering information on documents legally requested under discovery, AUSTEL has still not publicly supported the COT claimants who are, after all, innocent Australian citizens. It seems, again, that the Crimes Act has blinded some public officers in AUSTEL (some of them still working with ACMA) to the principles of natural justice.

Exhibit #	Date	Commentary
Exhibit 31-b,	26 Sep 1997	The Senate Hansard shows the TIO informing Senator Schacht the COT arbitrations were conducted outside of the ambit of the arbitration procedures. *"Firstly, and perhaps most significantly, the arbitrator had no control over that process, because it was a process conducted entirely outside the ambit of the arbitration procedures."* Conducting the COT arbitrations outside of the agreed ambit of the arbitration procedure was not the way the government (who endorsed the arbitrations) was told the process would be conducted. It is clear the arbitrator did NOT conduct the process as he should have and therefore as soon as the Senate and government was advised of this on 26 Sept 1997, all or the arbitrations should have been declared null en void. By the government not acting upon this advice given by the TIO, they are responsible for what the COT cases have suffered since this disclosure.
Exhibit 49	4 Feb 1998	This letter, from Telstra's Ted Benjamin to John Pinnock, TIO, attaches Telstra file notes following their 14 January 1998 investigations into the continuing phone problems affecting Alan Smith's business.
Exhibit 46-e	Oct 1998	Telstra waited until October 1998 before supplying George Close (technical advisor to Graham Schorer and Alan Smith's arbitration) with hundreds of Telstra minutes from their two-weekly conferences where this known AXE problem was discussed on a regular basis noting: *"**ACTION POINT: AXE-T (Edwin Khaw) to raise Charging Check issues with Ericsson, and advise when final solution will become available.* *"**ACTION POINT: AXE-T (Bob Paton) to check that testing of RVA routes after the next AX62 conversion is performed.* *"**ACTION POINT: AXE-T (Bob Paton) to supply NSS CW with a list of outstanding package 2 faults, in order to reach agreement on those which must be solved prior to first implementation."* Exhibit 46-e is just one document from over 100 Telstra conference memos that should have been supplied under discovery to Alan Smith prior him submitting his claims. On 3 October 2008, under instruction from Mr G Friedman of the Administrative Appeals Tribunal (AAT), the respondents to Alan Smith's FOI complaints ACMA were to supply Alan, free of charge, all the FOI information pertaining to his FOI matters under investigation by the AAT.
Exhibit 57	16 Nov 2006	This letter from Senator Joyce to the Hon Senator Helen Coonan states: *"I must remain with my commitment to the people involved with the CoTs cases. The commitment is representing their frustrations and finding a resolution to the issue.* *"The resolution to the issue, is referenced in your letter of 13th September 2005, where you state 'I agree that there should be finality for all outstanding "COT" cases and related disputes. I believe that the most effective way to deal with these is for me to appoint an independent assessor to review the status of all outstanding claims.' "* As of 2016, neither Telstra nor the government have addressed the agreed unresolved Telstra COT case issues.
	27 Jul 2007	The full report, commissioned by Graham Schorer COT spokesperson and completed by Brian Hodge, is available on absentjustice.com/Main Evidence File No 3. Telstra had previously employed Brian Hodge, MBA, of BC Telecommunications, as an engineer for 29 years.
Exhibit 46-f	3 Nov 2008	Exhibit 46-f is a letter from Alan Smith, dated 3 November 2008, to Mr Chris Chapman chair of ACMA advising him that ACMA had still not released the AXE documents they were obliged to provide him under direction of Mr Friedman during the AAT hearing. This letter shows Alan clearly articulating how the FOI process failed him during his arbitration, and that AUSTEL knew there were numerous problems with the Ericsson AXE exchanges.

Exhibit #	Date	Commentary
Exhibit 46-g		Point 7.40, on page 168, of the April 1994 AUSTEL COT case report states: *"AUSTEL recently became aware that Telecom had prepared an internal document on the subject of this AXE fault and on 21 March 1994 sought a copy from Telecom."* As of 2016, ACMA has still **not** abided by the orders given by Mr Friedman, AAT, and supplied Alan Smith with a copy of this AXE report.
Exhibit 45		**COMMENT** Exhibit 45 confirms that AUSTEL's draft report condemned Telstra for misleading and deceiving Graham Schorer during his Federal Court proceedings. Graham Schorer did not receive AUSTEL's report until October 2008 – 14 years **after** he went into arbitration. Graham's website, justicecommand.com, will address not only Telstra's misleading and deceptive conduct but also AUSTEL's decision to withhold their own more adverse findings from him. The government should never have allowed him to enter arbitration when they had already found so heavily against Telstra.
Exhibit 48	31 Mar 1994	This letter from AUSTEL's general manager, John McMahon to Graham states: *"The Telecommunication Act 1991 requires, in effect, that where as a result of an investigation AUSTEL makes a finding that is adverse to a respondent it must afford the respondent an opportunity to make submissions in relation to the matter. Accordingly, AUSTEL will be making a copy of its draft report available to Telecom for its perusal at its premises on Wednesday, 6 April and Thursday, 7 April 1994. …* *"As a matter of courtesy I would like to give to you and other directly interested parties the opportunity to view the draft report."* Graham was not given a copy of their draft report referred to in their letters (see exhbit 47a and b) until October 2008. Neither did they provide a copy of their draft report regarding Alan Smith's ongoing telephone problems until November 2007. It is important to link the lack of documents from ACMA after directions from the AAT (exhibit 46-f) with AUSTEL/ACMA's reluctance to ever admit that the SVT process – the most important part of the COT arbitration process – was either not administered lawfully or, at the very least, not administered transparently or in accordance with basic Australian legal processes. After all, if the telephone faults reported by a business are still occurring at the end of an arbitrator's deliberations, how can a successful outcome ever be attained?

After writing to Kate Hebbard, director of ACMA, on 15 September 2010 (see exhibit 62), I continued to draw attention to what transpired as a result of Telstra and AUSTEL (now ACMA) colluding to hide from the government that Telstra did not perform the required 30 SVT incoming tests to my three business lines 055 267 267, 055 267 260 and 055 257 230 on 29 September 1994, as Telstra's own CCAS data on that day confirms.

Correspondence from me to the Australian Department of Communications, Telecommunications Industry Ombudsman office, ACMA and various Federal and state government offices, including ministers, shows I have not stopped trying to expose the truth of what is now contained in our April 2016 SVT report. I remind both the Hon Malcolm Turnbull and the Hon Barnaby Joyce that my joint Open Letter to them both, dated **22 September 2015**, clearly shows my arbitration matters remain unresolved. My correspondence has still not been properly answered even though the government's own archives have documented how unlawfully the Telstra Corporation conducted themselves prior, during and after the COT arbitrations.

008/1800 issues

Exhibit#	Date	Commentary
Exhibit 30-k	May 1993 Jan 1994	These five testimonials are only a few of the documents that support Alan's complaints of the short-duration lock-up 008 billing problems, which regularly told the callers the 008 number they were calling was not connected.
Exhibit 30-l	11 Oct 1993, 1 Nov 1993 and 5 Nov 1993	These three Telstra FOI documents H246291, H36293 and H36178 confirm Telstra acknowledging internally that the 008/1800 short duration post dialling problem experienced by their customers was a national problem.
Exhibit 30-m	9 Dec 1993	This letter from AUSTEL's Cliff Mathieson confirms Bell Canada International (BCI) did not perform the 008 testing of Telstra's network.
Exhibit 30-o	27 Jan 1994	This letter from AUSTEL's John MacMahon to Telstra's Steve Black advises Telstra that callers were having problems reaching Alan on the 008/1800 number.
Exhibit 30-p	16 Nov 1994	This letter from AUSTEL's Norm O'Doherty to Telstra's Steve Black confirms Telstra only simulated the 008/1800 SVT test calls to another number and not Alan's number, which was under investigation as part of the government-endorsed arbitration process.
Exhibit 30-q	4 Oct - 1 Dec 1994	These three letters between AUSTEL and Telstra, during Alan's arbitration, confirm Telstra advised the regulator AUSTEL they would address Alan's short duration lock-up billing problems as part of their arbitration defence of his claims.
Exhibit 30-r	12 May 1995	It is established that the arbitrator sent a letter by fax to Warwick Smith stating the agreement he had just used in Alan's arbitration was not credible (but was used it anyway). However, Warwick Smith's media release stated Alan's arbitration was a success. Warwick Smith knew Telstra had still not addressed the major issues in Alan's arbitration claim, namely the 008/1800 billing issues and the lock-up problems that caused some of these billing problems.
Exhibit 30-s	3 Oct 1995	In this letter, written five months after Alan's arbitration was declared a roaring success by the TIO Warwick Smith in his 12 May 1995 media release, AUSTEL's Cliff Mathieson finally tells Steve Black that Telstra had still not addressed the 008/1800 billing problems raised in Alan's arbitration. Nether Warwick Smith nor his successor John Pinnock have ever withdrawn this media release after the TIO was advised in this 3 October 1995 letter that Telstra had not addressed the major billing issues which I raised in my arbitration claim.
Exhibit 30-t	16 Jan 1998	This Telstra file note, prepared by Telstra's Lyn Chisholm describes her visit to Cape Bridgewater in which, after viewing Alan's latest 1800 billing documentation, she concludes 008/1800 billing issues originally raised in his arbitration claim continued after the arbitration was over.

In addition to the known-008/1800 issues, the letters of 8 and 9 April 1994 (see **Exhibit 30-U**) show that potentially 120,000 COT-type complaints mischievously became limited to just 50 or more. The government regulator allowed Telstra to attempt to fix the 008/1800 problem over a period exceeding two years from 1993 to 1996 and, at the same time, allowed Telstra to promote a service product that both knew was grossly deficient. But worse still, when Telstra wrote these 8 and 9 April 1994 letters (during the COT investigations) demanding AUSTEL modify their investigations, which revealed 120,000 COT-type complaints, to show only 50 or more complaints in their formal COT cases report, AUSTEL must have known that some of these 120,000 customers were experiencing 008/1800 billing problems.

Summary

So here we are in 2016, with continuing delays in relation to the installation of the National Broadband Network (NBN) roll-out, with huge problems created by the very corroded copper wire joints that still exist around the country and with the very obsolete Customer Access Network (CAN) infrastructure that was still being patched up quite recently, even though, back in 1992, the Casualties of Telstra (COT) group provided AUSTEL (the government communications authority) with clear proof of the problems existing in the network. All those problems are still apparent in the system, 24 years after COT first raised the alarm.

This SVT report (above) is clear: if the arbitrator and AUSTEL had, back in 1994, ensured that Telstra carried out the mandatory Service Verification Tests a second time, after their equipment failed the first time, then that second series of tests may well have revealed just how bad the rural network was, right around Australia.

Alan has numerous documents that confirm, from 1996 and onwards, that senators and senior bureaucrats warned the Howard Government that they should not offer shares in the Telstra Corporation to the Australian public without first alerting them to the real problems that were plaguing the network, rather than just giving the company a 100% clean bill of health.

AUSTEL's secret findings in relation to the Cape Bridgewater network proved that the government knew exactly how poor the Telstra service was (see **absentjustice.com/Open Letter/ Evidence Files No/4 to 7**) but AUSTEL hid those findings from the arbitrator and from Alan, as the claimant. The information we have supplied here demonstrates that, as late as 2016, the government regulator and their public service employees are still deliberately withholding their knowledge of the many deficiencies in the COT arbitration process. This clear evidence supports our request that the current government should investigate the reports listed above, the accompanying CD and all the exhibits now available on the website and the accompanying CD.

Conclusion

It is established that the arbitrator, Dr Hughes, had never performed such a complex set of arbitrations before and was certainly not a graded arbitrator, as all parties were led to believe. A graded arbitrator would have immediately recognised that the defendants in the process should NEVER have been allowed to do the testing without the arbitration technical consultants being present. After all, how could technical consultants conclude their technical report if they were not witnesses to the arbitration SVT? Dr Hughes refused Alan Smith's request to have his service lines re-tested (see absentjustice.com/**Arbitrator Evidence File Nos/44** , **48** and **101**) even though Alan continued to complain to the arbitrator of ongoing telephone and faxing problems after the 29 September failed SVT process.

The arbitration technical consultants warned the arbitrator twice, in their 30 April 1995 report (see absentjustice.com/**Home-Page File No/79**, pages 5 and 37), that Alan had been reporting problems up to that date. However, when Alan asked for the arbitrator's own technical consultants to witness 10 calls on each line on 6 April 1995, the arbitrator still refused to. Something was radically wrong with the whole arbitration process. That any arbitrator could bring a judgment down when his own resource unit had asked for extra weeks to view Alan's technical issues (see absentjustice.com/**Arbitrator Evidence File Nos/28 and 30**) is unbelievable.

Remember, prior and during Alan's arbitration, Telstra was already under investigation by the AFP, for alleged criminal conduct towards him, and also under investigation by the Commonwealth Ombudsman, for breaching the FOI Act, yet Telstra was allowed to conduct the SVT to submit as evidence.

It is disgraceful that Australia, a Western country, allowed the defendant to carry its own arbitration SVT process during a government-endorsed arbitration. The arbitrator ruled on the **defendant's claims** and not the claimant's evidence of ongoing telephone problems. It is clear from absentjustice.com/**Main Evidence File No/2** and **3** that Telstra did not conduct the government regulatory required SVT process at all.