

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

**Exhibits 542-a to 588**

FAXED



Telecommunications  
Industry  
Ombudsman

# Facsimile Cover Sheet

File No: \_\_\_\_\_

To: Mr Warwick Smith  
Company: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: 003 443 660

From: Grant Campbell  
Company: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

Date: 10 / 11 / 94  
Pages including this  
cover page: 2

### Comments:

Warwick  
Two COT related faxes follow:  
1. Allan Smith - Cape Bridgewater Holiday Camp  
2. Expression of Interest by Ferris Hodgson  
in conjunction with AMR Australia & Dr Gordon Hughes.  
Grant

542  
A

*Faxed  
details to  
Vic/Tas Regan*



Telecommunications  
Industry  
Ombudsman

February 9, 1994

Warwick L. Smith LLB  
Ombudsman

Ms. Fiona Hills  
Manager, Serious Disputes  
Commercial and Consumer Customer Affairs  
Telecom  
Locked Bag 4960  
MELBOURNE VIC. 8100

Dear Fiona,

*Re: Alan Smith  
Cape Bridgewater Holiday Camp  
Loss of Fax Capacity*

I spoke with Alan Smith on the 9th instant following our discussion on the 8th instant.

He has agreed that this is a new matter and whilst it may be indicating some ongoing problems, it is not a matter that relates directly to the preparation of his material to be presented to the Assessor.

I understand that the facts of this matter relate directly to loss of faxing capacity. Grant Campbell holds the file in this office.

Yours sincerely,

  
Warwick L. Smith  
Ombudsman

M34361

Per:

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

**542B**

# Facsimile Cover Sheet

To: Stephen Mead  
Company: Group General Counsel  
Phone:  
Fax: 07 832 4173

From: Grant Campbell  
Company:  
Phone:  
Fax: 03 634 8728

Date: 16/3/95

Pages including this  
cover page: 7

where is  
other 6 pages

Comments: Legally Privileged and Confidential

Stephen

I am sending you a copy of the interim reply sent to the TIO on 3 March in response to the complaint by Mr Ken Ivory. The report attached to the letter is essentially the reply I had prepared to TIO. We were (and still are) waiting on a full technical report from the network group about the implementation of the 1-800 Freecall service. You will note I have included a paragraph at the bottom of Page 2 of the report saying you refuse Mr Ivory's version of his discussions with you and your offer to speak with the Ombudsman about that matter.

The 1-800 issue will be addressed in the final response to the TIO. Our concern is not primarily with the impact any problems may have had on Mr Ivory's service. This would be minimal given the low call traffic on that service. Our main concern is first to get to the facts of the matter. We have been advised that some number ranges were not conditioned in some exchanges until around the end of the first week in November 1993. Two number ranges were very close to the 777 range which includes Mr Ivory's Freecall service (777592).

The matter has been raised at senior levels in the Network area to ensure it is pursued rigorously. Warren Jackson indicated there were some 15000 Freecall customers in September 1993. This is a large pool of potential claimants if our investigations find there were problems that prevented customers receiving calls via 1-800 prefix numbers. As against that, the window of exposure to any problems is 4-6 weeks. Double trunking of 008 and 1-800 calls should ameliorate potential claims also. The matter is being kept confidential given the difficult external environment facing the Company at the present time. I will keep you informed.

Regards

*Grant Campbell*

542c

000027



Internal Memo

To Gerry Moriarty  
 Managing Director, Network Products

From Steve Monro  
 Manager

Subject Customer Complaint

Commercial & Consumer  
 Customer Response Unit  
 2242 Exhibition Street  
 Melbourne, Vic 3000

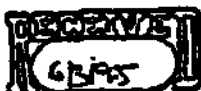
Australia

Telephone 03 632 3224  
 Facsimile 03 634 8728

Date 3 March 1995

Pager 016 378429

File



Attention

CC D Campbell  
 T Benjamin  
 S Black  
 G Campbell

This memo seeks your personal attention to a customer complaint that has the potential to become a significant corporate issue.

(2) On 19 January, 1995 a complaint was referred to this office through the Telecommunications Industry Ombudsman's Office. The complaint concerned a customer who claimed that his 1800 number was not connected until 7 months after the service was launched and 7 months after he started advertising it.

(3) A copy of the original complaint is at Attachment 1. The result of our investigations was an assurance that there could not have been a failure of the magnitude claimed on the customer's 1800 service. See Attachment 2. Additionally, a check of his 1800 account demonstrates a significant increase in call traffic that is assumedly associated with the commencement of a promotional campaign featuring 1800 number only.

(4) However, during the investigation of the issues raised by the customer, other factors were uncovered that have a direct bearing on the complaint and have undermined my confidence in the initial advice.

(5) Following up on a report that there may have been delays in conditioning some exchanges, I was informed that most metropolitan customers had access to 1800 by 20 September 1993. Further, while there were some acknowledged implementation problems in country NSW, it is assumed that all exchanges were conditioned within 4-6 weeks after 20 September (as) there were no further network faults being reported. Apparently, fault reporting was used to identify country exchanges that had not been conditioned. See Attachment 3.

(6) The reported failure to provide universal exchange conditioning by the 1800 Service launch date was compounded by file copies of E-Mails that suggest even wider problems with access to 1800 at launch. At least one 10,000 number range was missed in Perth, and 1,000 number

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blocks were missed elsewhere, although we had no working services on these ranges. See Attachment 4.

(7) The most disturbing feature was the report that the 747 and 767 number ranges were missed. After being assured that all numbers were conditioned in blocks of 10,000 it is confusing that two 1,000 number ranges were missed. There is no indication that the complainants service was adversely effected, by these missed number ranges. However, the complainants number 1800 777 592 is perilously close.

(8) I need to be absolutely certain of the facts in my reply to the TIO. Unfortunately, I have lost confidence in the reliability or completeness of the advice I am receiving.

(9) I am therefore seeking your personal intervention to confirm:

1. The date on which all exchanges were confirmed as conditioned to switch Free call number 1800 777 592.
2. If this date is not the 20 September 1993, what percentage of customers did not have access to 1800 777 592 up to that date.

(10) This particular customer's behaviour has been particularly rude. See Attachment 5. He is also threatening. He has allegedly been described as a vexatious litigant and is undoubtedly the most foul mouthed customer with whom I have had dealings. There is a strong likelihood that he will continue action against Telecom through all means available. An FOI request could obviously be very embarrassing without a clear, consistent picture of exchange conditioning.

(11) The deadline to resolve this issue with the TIO has expired. We are currently preparing an interim reply. However, we also have an outstanding billing dispute as the customer is refusing to pay bills when he has an outstanding compensation claim. Unfortunately, normal credit management practices would expand the compensation claim if a link can be established between failure of calls on 1800, loss of business and a consequential inability to pay Telstra bills.

(12) I therefore urgently seek your assistance in obtaining a quick response to the above questions.

*Steve Monroe*

Steve Monroe  
Manager  
Customer Response Unit

5420

H36280

(Doc "A")

From: Farrell, Bernadette  
To: Bartolotta, Alison F; Lock, Ken; Bartley, Ian; Behrman, Dave  
Cc: Izz, David E; Cousins, Sumner; Campbell, Grant; Morris, Steve  
Subject: Urgent!!! 1800 Customer Dispute  
Date: Wednesday, 15 February, 1995 11:47AM  
Priority: High

AL

I have had a call from the Major Dispute Unit, Customer Affairs, requesting assistance with a response to a claim for \$3.5 million by one Mr Ivory and also on the same issue a response to the TIO. Both need input from us by COB 16/2/95.

The issue is over the introduction of 1800 - official launch date 1 September 1993.

Your urgent response is requested on the following which may need some digging to find the answers:

### 1. NETWORK CONDITIONING

We had a problem where some exchanges were not conditioned (accidentally) by the 1 Sept 93 data. Those left out were usually fixed in response to a customer complaint that caller's could not get through on 1800. One of these was Salisbury ARE (Mr Ivory's exchange)

Jan,  
Would you please supply me with a list of all exchanges that were conditioned for 1800 post 1/9/93.

### 2. SCP UPGRADE

There may also have been a problem with the DMS accepting the 1800 number for trunking. An upgrade to the SCP may have been put in very shortly after the 1/9/93 to fix the problem.

Dave,  
Could you please advise whether the above is correct for anything else like 10 and if so supply more specific details.

### 3. ADVICE TO CUSTOMERS

I have a copy of a letter dated 18 March 94 and signed by Margaret Fairman which was sent to Fremantle customers advising them of potential problems with access to numbers beginning with 1 and 10 digit numbers. The letter goes on to say that Telecom is providing double trunking and that callers could still use 008. (Great, I will fax you a copy of the letter)

Alison/Ken,  
Was this the only communication of this nature to customers? Did we do any print advertising to advise customers of the potential limitation to 1800?

Please call me if you need to clarify any of the above.

Regards  
Bernadette

*NO they never but they employed Mr. Mead as a Counsel/barrister today, Lie + Conceal the Truth*

Page 2

H36290

5420

MAR 10 '95 06:14PM N. & I. B. MELBOURNE 613 6544601

MAR 07 '95 04:18PM

MAR 10 '95 06:14PM

Hore, Philippa J

From: Hore, Philippa J  
To: Parisi, Carmel  
Subject: RE: Ivory  
Date: Wednesday, 5 February 1997 1:41PM

Carmel, this is great. Thanks so much for getting back to me so quickly. It's a pity about the emails, but thanks for trying.

Speak to you soon.

Regards,

Philippa

-----  
From: Parisi, Carmel  
To: Hore, Philippa J  
Subject: RE: Ivory  
Date: Wednesday, 5 February 1997 11:02AM

Philippa

I've tried to check our emails as promised and LAN have advised they only keep the email backup for 1 year. There's no chance at all we've kept 1994 - sorry.

Quinton has had Mr Ivory before and although he's been aggressive & angry he has not threatened him. Quinton advised me that there was an employee who was the main case office for Mr Ivory in the early stages. The ex-employee's name is Grant Campbell. Grant then worked as the Deputy Telecommunications Industry Ombudsman and then on a senior management review team.

I know that Grant was faced with many threatening phone calls from Mr Ivory. Grant is available on 03 9890 0136. You should also know that he's requested a fee of \$300 a day for his information/services.

I also had a chat with our Sydney office and although they may have spoken to Mr Ivory he has never threatened them.

Referred as information.

Let me know if there's anything else I can do to help.

Thanks  
Carmel

- > From: Hore, Philippa J
- > To: Parisi, Carmel
- > Subject: Ivory
- > Date: Wednesday, 05 February, 1997 09:09AM
- >
- > Carmel,
- >
- > Could you please do me a favour and check with Quinton
- > whether Mr Ivory has ever made threats to him when he's
- > called in? I know that Quinton immediately refers all
- > Ivory's calls to Justin Wastell, but I'd just like to
- > confirm for the record that he hasn't been threatened as
- > well. Could you also let me know whether you can think of
- > anyone else that Ivory might have threatened? We want to

000973  
542E



11/10/01

117

MacHasson  
For file pls  
19/5/94

93 / 0599 - 02



18 May 1994

117

Telecommunications  
Industry  
Ombudsman

Warwick L. Smith LLB  
Ombudsman

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

*Facsimile: (03) 828 7394*

Dear Robin,

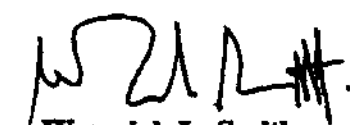
Re: COT Claimants

Herewith a letter from Dr Gordon Hughes for your background on the issue of Statements of Claim. Concern about access to documents under F.O.I has been expressed, the outcome which is not yet clear. The contents of this letter is the advise we are providing to the COT claimants.

Re: Secondary Arbitration

As you know Telecom cancelled Tuesdays meeting. Apparently they are seeking outside legal advice on aspects of the agreements with Austel. When they will be ready to proceed is uncertain. I will keep Rick Campbell advised of any news - nothing has been heard yet on anything relating to these matters at this office.

Yours sincerely

  
Warwick L. Smith  
Ombudsman

542 F

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

# Cape Bridgewater Camp

PORTLAND Ph: 03 5526 7267 Fax: 03 5526 7265

**"Country - Get - A - Ways"**

*A friendly place to meet a friend,  
to bring a friend, for social club activities*



015-C

Part of

## THE SHIPWRECK COAST

OVERLOOKING THE PICTURESQUE CAPE BRIDGEWATER BAY - BEAUTIFUL SANDY  
BEACHES, SAFE SWIMMING AND SURFING.

*Visit our newest attraction - The Cape Bridgewater Seal Colony*

May 18, 2001

18 MAY 2001

Ms Kirsten Musgrove  
FOI Coordinator  
Australian Communication Authority  
P.O. Box 78  
Belconnen ACT 2616

**Attention Ms Kirsten Musgrove**

Dear Ms Musgrove

It appears once again that my attempt to receive information sought under the FOI Act 1982, has eluded me due to bureaucratic defective administration. I have recently been informed by international observers from the UN that Australia is considered close to the bottom rung when it comes to Human Rights issues.

I have copied a letter herewith addressed to Freehill Hollingdale & Page, Telstra's arbitration defence lawyers in my Fast Track Arbitration Procedure. This letter is most appropriate considering it is now over seven months since I first requested information from the ACA under the *freedom of information Act*.

I await your response as to when you believe I will receive the information sought.

Sincerely

  
Alan Smith

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**ALAN SMITH**

Cape Bridgewater Holiday Camp

16 May 2001

Freehill Hollingdale & Page  
P O Box 128a  
Collins St  
Melbourne 3001

Re: Telstra arbitration  
Smith, Cape Bridgewater Holiday Camp 1994/5

Dear Sir/Madam,

The recent media coverage of legal matters relating to the Timothy McVeigh case in the USA raises very similar important issues in relation to my arbitration with Telstra. As I am sure you are aware, in the McVeigh matter, his execution was delayed because a box of some 3000 documents was discovered in the FBI archives. None of these documents had been provided to McVeigh's legal counsel during his trial. It seems that this was an oversight rather than an intentional attempt to disrupt McVeigh's defence, but the similarities with my case certainly bear looking at. I therefore ask that your organization consider the following issues taken from my arbitration. These examples clearly show that documents which I sought under the discovery process of my Fast Track Arbitration, via my arbitrator, were withheld from me, either by Telstra or their defence counsel, during my arbitration.

1. On 28 December 1994, because I refuted the dates shown in Telstra's defence document titled "*Bell Canada International Addendum Report Cape Bridgewater*", I faxed an official request to my arbitrator asking him to seek, from Telstra, under the arbitration discovery process, all CCS7 data and other information which supported the Bell Canada testing in November 1993. The Victoria Police Major Fraud Group and the Commonwealth Ombudsman's Office have each been supplied with copies of this letter.

On 23 January 1995, my arbitrator wrote to me, confirming that Telstra considered they had no further information of relevance in their possession (refer copy attached).

On 24 January 1995, I responded, within the twenty-four period stipulated, confirming that the information I had originally requested under the arbitration discovery process had still not been supplied by Telstra

Further, I now have FOI documents which confirm that, before Telstra used the Bell Canada report addendum to support their defence, Telstra's arbitration technical consultant, Mr Peter Gamble, was fully aware that the test results included in the report were impracticable.

2. On 12 December 1994, as part of their defence, Telstra submitted a twenty-nine page technical report. This report stated that, after a Telstra technician had collected a TF200 touch-phone from my office on 28 April 1994, their laboratory testing had found the 'locking up' fault which I had reported on 27 April 1994, had been caused by spillage into the casing of the phone. Telstra's research unit later allegedly

identified the 'spillage' to be beer, which was reported to still be 'wet and sticky' when the phone arrived at their laboratory. I refuted this report since the actual testing had not taken place until 10 May 1994 and, to make matters even worse, as Telstra's own archival records now confirm, I had complained about this same fault numerous times since August 1993. Clearly spillage of beer could not stay 'wet and sticky' for this length of time, inside a telephone.

Telstra would not supply me with copies of their laboratory working notes so I could see how they had come to this conclusion, even though I requested these documents under the arbitration discovery process.

The Victoria Police Major Fraud Group, and the Commonwealth Ombudsman's Office have since been supplied with information which I received under FOI, on 28 November 1995 (six months after my arbitration had been deemed to be completed). This FOI information confirms that Telstra's laboratory file notes did exist at the time that I requested the documentation under the discovery process. What is even more alarming is that Telstra's laboratory technicians had added hand-written notes to the file note in question. These notes confirmed that their own testing showed that beer inside the casing of a TF200 touch-phone dried out within twenty-four hours. Since they had my phone in their possession for fourteen days BEFORE they started their testing, how could they possibly state in their defence that the beer was then still wet and sticky when their own investigations proved otherwise? These file notes clearly show that someone within Telstra either introduced the beer into the phone themselves, before it reached the laboratories, or the technical laboratory personnel knowingly fabricated the TF200 report.

Since Freehill Hollingdale & Page were Telstra's lawyers in my arbitration, I am now asking if you will follow the precedent set by the FBI in America and alert my arbitrator and the Telecommunication Industry Ombudsman's Office (who were administrators to my arbitration) to the fact that discovery documents were withheld during my arbitration. These actions perverted the course of justice - if I had been given the opportunity to examine these discovery documents during the arbitration process, I would then have had grounds to request that the arbitrator investigate the irregularities in Telstra's defence.

I await your response,

Sincerely,

Alan Smith

*Copies to:*

*Detective Sergeant Richard Watkins, Major Fraud Group, Victoria Police*

*Mr John Wynack, Commonwealth Ombudsman's Office*

*Ms Susan Campbell, Faculty of Law, Monash University, Clayton, Victoria.*

*Federal Bureau of Investigations*

*11000 Suite 1700 Wilshire Boulevard, Los Angeles, California, 90024-3672, USA*

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Alan Smith  
RMB 4408, Cape Bridgewater  
Portland 3305  
Phone 55 267267 Fax 55 267 265

Tony Shaw  
Chairman of the ACA  
Level 13, 200 Queen Street  
Melbourne Vic 3000

4 July, 2001

Dear Mr. Shaw

I draw your attention to the fact that,

- Austel (now the ACA) has always been a party to the Fast Track settlement proposal: Fast Track arbitration procedure and Special Arbitration administered by the TIO.
- The workings of the dispute resolution process used between Telstra and its customers administered by the TIO are of public interest and concern to the Senate. To date the Senates concerns have resulted in a Senate inquiry and a Senate recommendation.
- The conduct of Telstra and others participating in this dispute resolution process are the subject of the Victorian Police Major Fraud Group investigation. The Major Fraud Group's are committed to continue the investigation for the purpose of prosecuting those who have committed criminal acts.

My June 2001 letter to your office, provided ACA the Telecommunications Regulatory Authority with evidence of Telstra's unlawful actions in withholding of requested discovery documents during my arbitration Fast Track Arbitration Procedure and the conduct of the TIO Administrator refusal to address these issues.

The enclosed letter of July 2001 addressed to David Hawker MP contains attachments consisting of documentary evidence of Austel/ACA's knowledge of Telstra's conducting defective Verification Testing Procedures which Telstra used in a legal process as evidence of network performance at the same time the Regulator was covertly overseeing the process.

Austel/ACA in its role as Regulator did inform Telstra of the deficiencies in the Telstra-devised and conducted verification testing procedures prior to Telstra submitting the known deficient test results as arbitration evidence of alleged network performance in my arbitration (with the Regulator's knowledge), is a serious matter.

For the Regulator to allow this crime to remain unreported to the appropriate authorities And the Regulator's failure to advise the party who was the victim of the crime makes the Regulator accessory to this Telstra crime.

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For the Regulator to withhold from the public its knowledge of systemic problems existing within the Telstra Network and Billing Software resulting in numbers of Telstra customers being overcharged and incorrectly charged for actual calls and failed call attempts has compromised the Regulators integrity and made AUSTEL/ACA an accessory to a public crime perpetrated on Telstra's uniformed customers.

The documentary evidence of Austel/ACA's knowledge of these crimes was recently supplied to me under a "freedom of information" FOI request. (Refer to attached Example of Evidence sourced from Austel/ACA's the Australian Telecommunication Regulator own archives.

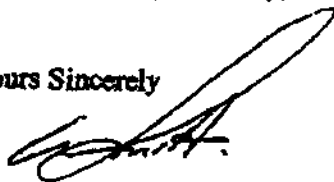
Similar Austel/ACA archive documentation received by me under FOI further confirms that Austel/ACA are again fully aware that Telstra knowingly used another set of deficient/impracticable test results during their defence of my arbitration as evidence to support alleged network performance into Cape Bridgewater.

I am formally lodging an official complaint with you Mr. Shaw, as Chairman of the Board of the Australian Communication Authority, and charge you with the responsibility to initiate an investigation into the irregularities I have drawn to the Regulators attention including:

- the existence of systemic network and billing software problems within the Telstra Network which results in
- short duration calls
- B Party not receiving calls or facsimiles
- Overcharging A Party for time-metered calls
- Incorrectly charging A Party for unsuccessful calls
- Double-charging A and B Party for successful calls

I will appreciate receiving your personal written response by C.O.B. Friday 13 July 2001 as to its action plan, if any, the Australian Communications Authority intends to take.

Yours Sincerely



Alan Smith

cc Director of Investigations, Mr. John Wynack, Commonwealth Ombudsman's Office.  
Detective Sergeant Richard Watkins Victoria Police Major Fraud Group  
Mr Steven Smith Shadow Minister of Communications Parliament House Canberra  
Senator Vicky Bourne Australian Democrats, Spokesperson for Communications  
Interested and concerned Senators.

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2 August 1996

Mr D Hambleton  
Group Manager Regulatory  
Telstra Corporation Ltd  
Locked Bag 4350  
MELBOURNE VIC 8100  
FACSIMILE NO: 9663-1218

Dear Mr Hambleton

**CHARGING FOR SHORT DURATION AND UNANSWERED CALLS**

I refer to publicity on the above issue in recent months and our ongoing liaison with Telstra since the issue was first raised in 1994.

I am now seeking a range of information to facilitate consideration of the substance, incidence and nature of complaints regarding short duration and/or unanswered calls. Certain of this information relates to statistics required to be furnished under section 5.4 of Licence Declaration No. 2 of 1991. I understand that Telstra's complaint management support system, CICERO, contains a sub-category which enables it to separately record complaints relating to short duration calls (SDC).

**Complaint data concerning short duration calls**

You are asked to provide AUSTEL with the following complaint data concerning short duration calls for the latest available twelve month period:

- (a) the total number of SDC complaints received by Telstra;
- (b) the percentage of the total number of billing complaints which concern SDC;
- (c) the number of SDC complaints relating to IDD Calls;
- (d) the number of SDC complaints concerning STD calls;
- (e) the number of SDC complaints relating to 008/1800 services,
- (f) the total number of 008/1800 services currently in operation, and
- (g) the number of SDC complaints relating to mobile services (if possible, disaggregated into digital and analogue technologies).

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*Dr Kelloha*

10142 007

*Please arrange response.*

*(Note he is seeking a reply by 13/7)*

Alan Smith  
RMB 4408, Cape Bridgewater  
Portland 3305  
Phone 55 267 267 Fax 55 267 265

Tony Shaw  
Chairman of the ACA  
PO Box  
Belconnen  
ACT 2616

*AS*  
*5/7*

4 July, 2001

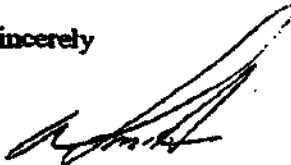
Dear Mr. Shaw

I refer you to the following faxed 8 pages including my letter addressed to yourself now dated 4 July 2001.

Please note that I have already sent the original letter to your Melbourne office by registered mail not dated. Would you please inform your Melbourne office when they receive this correspondence to date this information 4 July 2001.

Please except my apologies for this error.

Sincerely



Alan Smith

*Mr Neil  
Pls acknowledge by 13/7.  
We need to discuss.  
Laf.*

*Gina,  
has ackn info  
including a  
video!*

*Says*

544



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Your comment on the view included in recent newspaper reports that the problem has its highest incidence at older exchanges would also be appreciated.

Please advise whether the incidence of SDCs is known to be higher in particular charge zones. If so, please supply details for any zone where the incidence of SDC as a proportion of long distance calls is greater than 20% over a period of say one month or more.

#### Traffic study data concerning short duration calls

In relation to Telstra's advice of 16 October 1995 ( Mr Steve Black ) that some 12% of all long distance calls are valid calls of less than 15 seconds:

- (a) what is the current proportion of 'long distance' calls under 15 seconds;
- (b) does the 'long distance' category detailed include IDD calls; and
- (c) what proportion of 'long distance' calls are between 1-5 seconds, 6-10 seconds, and 11-15 seconds.

#### Telstra complaint handling practices concerning short duration calls

Telstra's advice quoted above stated that STD and IDD SDCs of 6 seconds or less are not charged to the caller. Please advise:

- (a) Is this practice confidential; and
- (b) the procedures which Telstra normally adopts when a customer complains of a short duration call, including the process of investigating the validity of the customer's complaint.

#### Advice to customers on how the duration of a call is measured

The advice quoted states that the billing system for 008/1800 services records the length of the call as the time between the called party picking up the phone and the caller hanging up at the end of the conversation and that this billing practice is no different from a normal call.

As these call measurement practices are relevant to the duration of the call which may appear on a customer's bill, please advise what advice Telstra provides to customers or has made publicly available on:

- (a) the commencement of the billing period of a 'normal' call; and
- (b) the completion of the billing period of a 'normal' call.

544

**AUSTEL**  
AUSTRALIAN  
TELECOMMUNICATIONS  
AUTHORITY

Melbourne  
Victoria 3004  
Tel: (03) 9828 7300  
Fax: (03) 9820 3021  
Free Call: 1800 333 526  
TTY: (03) 9829 7490

94/0269 -10

12 July 1995

Taits Solicitors  
PO Box 311  
WARRNAMBOOL 3280

Facsimile (055) 61 4567

Attn Mr Ezzy

Dear Sir

**Re: ALAN SMITH - CAPE BRIDGEWATER HOLIDAY CAMP**

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.

Yours faithfully



Cliff Mathieson  
General Manager  
Carrier Monitoring Unit

cc Mr A Smith  
Facsimile (055) 267 230

544

**Results of studies on the causes of short duration calls**

I acknowledge Telstra's recent advice of continuing difficulties in work to facilitate the Short Duration Call /customer perspective study first referred to in August 1994 and the hope that some progress on the support platforms would be made in June 1996.

Apart from this study—of which we would wish to be appraised—the letter of 16 October stated that Telstra proposed to undertake the following work in relation to short duration calls in the context of the possible existence of fault conditions:

- (a) technical research and testing with a focus on the customer access network; and
- (b) internal research involving overseas telcos.

Please advise the outcome of these studies.

Could I have your response by 23 August 1996 please. I would be pleased to discuss or clarify any of the issues raised in this letter.

Yours sincerely

John MacMahon  
General Manager  
Consumer Affairs

544

The attached 008/1800 account dated 18/8.96 is my own Telstra billed account for that period shown. I have enclosed this Telstra account and marked the date of July 23<sup>rd</sup> with an arrow for the following example.

- 1) At 09:12am, 09:14am, 09:14am, and 19:19am, we see 'four' short duration calls registered as having originated from 06257.

All four calls originated from the Commonwealth Ombudsman Office Canberra. I have since contacted John Wynack, Director of Investigations (COM) where he has informed me that at NO time did he make 'four' quick repetitive phone calls on July 23<sup>rd</sup> 1996. I.e.: speak to my office for 15 seconds, then putting the phone down only to ring yet again to speak for a further 12 seconds, then putting the phone down once again only to ring yet again to speak for a further 10 seconds, then only to put the phone down for the third time to yet again ring for a fourth time to speak for 9 seconds only.

I have used this one of several short duration call examples shown here that continued past the date of Telstra's deficient Verification Testing at Cape Bridgewater 29 October 1994 because the Commonwealth Ombudsman's Office is impartial and beyond reproach.

As you know full well both Austel/ACA and the TIO.s office, is aware that Telstra continued to wrongly bill my business for this type of incorrect charged call after my arbitration was to have addressed and rectified these faults. To date neither the ACA or the TIO have correctly investigated my valid claims.

Telstra and the TIO to date have still not offered any type of reimbursement to compensate for these wrongly billed accounts.

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**Telstra Bill**

Telstra Corporation Limited  
ACN 051 775 556 / ABN 33 051 775 556

**Tax Invoice**



Account number

**776 7288 200**

Bill number

**T 879 374 997-9**

Date of issue

**23 Jul 01**

Bill enquiries

**13 2000**

Opening Balance

\$197.30

We received

\$197.30cr

Balance

\$0.00

Total of this bill

\$343.43

Total amount payable

**\$343.40**

Payment to be made by

**07 Aug 01**

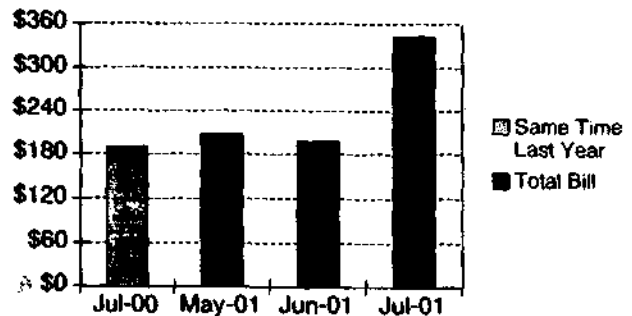
CAPE BRIDGEWATER HOLIDAY CAMP  
RMB 4409 CAPE BRIDGEWATER RD  
PORTLAND VIC 3305

**Item Account Summary Your Reference 03 5526 7265**

Item	Account Summary	Your Reference	Excl GST \$	Incl GST \$
475	• Usage charges	to 18 Jul	283.17	311.49
476	• Service and equipment	to 18 Aug	29.04	31.94
			<b>\$312.21</b>	
<b>GST in this bill</b>			<b>\$31.22</b>	
<b>Total of this bill (Including GST)</b>			<b>\$343.43</b>	<b>\$343.43</b>

**Calling Patterns Compared With Last Bill**

Local Calls	up by	\$17.91
STD Calls	up by	\$128.97
Calls to Mobiles	up by	\$4.98



Item	Date	Time	Location	Phone Number	Category	Duration	Rate
250	22 Jun	03:37 pm	Melbourne	0396140811	Day	2:15	0.82
249	22 Jun	03:40 pm	Melbourne	0396140811	Day	0:37	0.38
248	22 Jun	03:48 pm	Melbourne	0392877001	Day	0:50	0.44
326	22 Jun	07:41 pm	Melbourne	0395681824	Economy	16:33	3.14
348	23 Jun	09:03 am	Melbourne	0398668498	Economy	0:39	0.34
288	23 Jun	09:45 am	Melbourne	0398898928	Economy	35:22	6.44
343	23 Jun	05:05 pm	Melbourne	0398761254	Economy	10:12	2.01
298	23 Jun	05:55 pm	Melbourne	0398761853	Economy	1:36	0.51
297	23 Jun	06:00 pm	Melbourne	0398761254	Economy	3:12	0.78
340	23 Jun	07:39 pm	Melbourne	0398761853	Economy	0:50	0.37

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Item **STD Calls - Itemised** continued

**STD calls** continued

	Date	Time	Place	Number	Rate	Min:Sec	Incl GST \$
	<b>Telephone Service 03 5526 7265 continued</b>						
156	04 Jul	04:43 pm	Melbourne	0399636988	Day	1:03	0.50
157	04 Jul	04:45 pm	Melbourne	0399636988	Day	0:41	0.41
367	04 Jul	06:59 pm	Melbourne	0395681824	Multi Rate	0:54	0.44
293	05 Jul	04:42 am	Canberra	0262195200 ←	Economy	4:44	1.05
354	05 Jul	05:32 am	Hamilton	0355721141	Economy	4:35	0.68
185	05 Jul	09:36 am	Buderim	0754453198	Day	6:29	1.93
184	05 Jul	10:10 am	Melbourne	0392877001	Day	0:41	0.40
258	05 Jul	10:34 am	Buderim	0754453199	Day	0:34	0.38
257	05 Jul	10:36 am	Buderim	0754453198	Day	1:45	0.68
256	05 Jul	11:08 am	Melbourne	0392877099	Day	0:30	0.35
126	05 Jul	01:36 pm	Melbourne	0396420800	Day	1:22	0.58
125	05 Jul	01:51 pm	Warrnambool	0355627727	Day	16:05	2.96
154	05 Jul	06:12 pm	Melbourne	0392877001	Day	1:04	0.50
155	05 Jul	06:13 pm	Melbourne	0392877099	Day	7:44	2.26
180	05 Jul	06:33 pm	Melbourne	0392877099	Day	18:57	2.97
176	06 Jul	07:50 am	Melbourne	0392877001	Day	1:49	0.69
272	06 Jul	09:10 am	Melbourne	0392877099	Day	0:09	0.26
273	06 Jul	09:11 am	Melbourne	0395852636	Day	0:20	0.31
92	06 Jul	12:06 pm	Melbourne	0392877099	Day	8:31	2.47
93	06 Jul	12:24 pm	Melbourne	0394491346	Day	0:36	0.38
90	06 Jul	12:25 pm	Melbourne	0396420800	Day	15:36	2.97
302	07 Jul	12:12 pm	Melbourne	0398898928	Economy	18:20	3.45
294	08 Jul	10:29 am	Melbourne	0398761853	Economy	1:06	0.41
291	08 Jul	03:27 pm	Melbourne	0395681824	Economy	22:56	4.25
244	09 Jul	01:37 pm	Canberra	0262773410	Day	4:18	1.35
246	09 Jul	01:41 pm	Brisbane	0732810077	Day	6:22	1.91
245	09 Jul	01:49 pm	Melbourne	0396140800	Day	5:52	1.77
192	09 Jul	02:49 pm	Melbourne	0392877099	Day	1:18	0.57
325	10 Jul	06:02 am	Melbourne	0392877001	Economy	6:10	1.31
148	10 Jul	07:37 am	Melbourne	0398668498	Day	27:51	2.97
206	10 Jul	08:28 am	Melbourne	0398761853	Day	1:16	0.56
208	10 Jul	09:48 am	Hamilton	0355719180	Day	3:10	0.78
209	10 Jul	09:52 am	Melbourne	0392877001	Day	0:31	0.36
231	10 Jul	01:30 pm	Melbourne	0396140811	Day	1:50	0.70
232	10 Jul	01:33 pm	Melbourne	0396140811	Day	1:17	0.57
229	10 Jul	01:35 pm	Melbourne	0396140811	Day	1:43	0.68
227	10 Jul	01:37 pm	Melbourne	0396140800	Day	3:03	1.02
230	10 Jul	01:40 pm	Melbourne	0396140811	Day	1:28	0.60
228	10 Jul	01:47 pm	Melbourne	0396140811	Day	0:52	0.45
233	10 Jul	02:09 pm	Melbourne	0396425459	Day	0:33	0.36
174	11 Jul	08:36 am	Melbourne	0392877001	Day	1:03	0.49
191	11 Jul	10:18 am	Melbourne	0392877099	Day	19:43	2.97
253	11 Jul	12:27 pm	Melbourne	0396425459	Day	0:50	0.44
101	11 Jul	12:58 pm	Melbourne	0392877001	Day	1:22	0.58
138	11 Jul	03:34 pm	Melbourne	0392877099	Day	0:30	0.35

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00:80 120:00F

## 15.00 ADDITIONAL TESTS

Additional tests have been programmed for Devlin Bridge and Cape Bridgewater. The results were not available in time for the first draft and have been added in this addendum.

### 15.10 Glen Waters Fish Farm John Mayne

Numbers - 057 978 384  
057 978 376 (Fax)  
057 978 425 (Fax)

### 15.20 Cape Bridgewater Holiday Camp Alan Smith

Numbers - 055 276 276  
- 055 267 230 (Fax)  
- 055 267 260 (Gold Phone)  
008 816 522 translates to 055 267 267

#### Test Base

The test base was extended to country exchanges with the addition of these two COT cases. Test calls were originated both from country and metropolitan exchanges using Traffic Route Testers (TRT) and terminating calls to Test Call Answer Relay Sets (TCARS) or Portable Tone Answer Relay Sets (PTARS).

These units enable call completion to the same hundreds group of numbers in the exchanges where COT customers reside.

#### Scope and Procedures

The test base was extended to include two specific COT customers with services homing on country exchanges. These customers offered extra challenges since the services offered by both clients encouraged calling from urban and rural exchanges in peak and non peak periods.

Telecom Planners assisted in drafting a test case that would ensure a representative sample of exchanges to originate calls and test the Public Switched Telephone Network (PSTN) completing calls to the Devlin Bridge ARK-D rural X-bar office parented off Seymour AXE digital exchange and to the remote multiplexing equipment serving Cape Bridgewater from the Portland AXE digital exchange.

As shown in 15.13 and 15.23, the TEKELEC CCS7 monitoring system was used to monitor all CCS7 links terminating to the homing exchanges of the two COT clients. As tests were performed, network specialists in Brisbane tracked all calls and provided immediate response and analysis of all traffic failing to terminate.

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IN THE MATTER OF an arbitration pursuant to  
the Fast Track Arbitration Procedure dated 21  
April 1994

Between

ALAN SMITH

Claimant

and

TELSTRA CORPORATION LTD trading as  
TELECOM AUSTRALIA

Telecom

## WITNESS STATEMENT OF DAVID JOHN STOCKDALE

I, DAVID JOHN STOCKDALE, Principal Technical Officer Grade 2, of 7th Floor, 35 Collins Street, Melbourne, in the State of Victoria, solemnly and sincerely declare and affirm as follows:

### BACKGROUND

1. I am a member of Telecom's Networks and Interconnect Branch ("NIB"), in the Service Quality Improvement section. I previously worked for National Network Investigations (NNI) between October 1986 and May 1994.
2. NNI is the final point of referral in Telecom for the investigation of complex or unresolved faults with a customer's service. The requirement for involvement of NNI in a technical investigation is such that all normal fault handling procedures should be applied to the customer's problem (e.g. the appropriate "first-in" maintenance group should conduct testing and consult with the customer) prior to NNI being involved. NNI is a general network investigations group, as opposed to a technology specific support group (which can only provide technical support for a specific range of equipment). By referring a problem to NNI, a standard investigative procedure can be undertaken to determine that all aspects of the total customer service are operating satisfactorily.
3. I have been employed with Telecom continuously since February 1980.
4. My industrial experience can be broadly considered in two phases, Exchange Operations and Network Investigations. As a result of several years in Exchange and Inter-Exchange Maintenance, I was involved with the maintenance and operation of a wide variety of switching and transmission systems and this has given me the opportunity to develop a good working knowledge of the day-to-day requirements of Exchanges and of Network operations as a whole. Over the six and a half year period that I worked in operations, I was involved in ARE, ARF and Step by Step exchange maintenance, as well as the maintenance and operation of a wide variety of transmission and support systems.

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5. My experience in Network Investigations brought me into detailed contact with a broad cross section of the Network whilst working as part of a team of specialists. I have had to develop a detailed working knowledge of the switching, signalling, metering and transmission systems that make up the network as a whole and I have been involved in detailed, complex technical investigations into a variety of problems in the network and customer equipment areas. This has given me valuable insight into problem solving of complex network problems, as well as a good knowledge of the activities and requirements of many areas of Telecom. My work has led me to seek further knowledge in the Engineering field and as a result I have undertaken the Bachelor of Engineering part -time for the last six years.
6. More recently I have taken up a position as signalling systems specialist with the Service Quality Improvement section of Networks and Interconnect Branch. In this position I am required to provide technical assistance into the analysis of signalling data for the analogue and digital exchange system, with a specific emphasis on Common Channel Signalling System number 7 (CCS7).

#### MR SMITH

##### The first investigation of Mr Smith's service.

7. I was involved, as one of the principal investigating officers, with NNI's original investigation of Mr Smith's telephone service, between July 1992 & January 1993.
8. At the time that the NNI investigation commenced, Mr Smith had complained that customers who called him received a recorded voice announcement that his telephone was not connected ("RVA"). This information was conveyed to NNI by Mr. Smith, and also in background information passed to NNI from the Network Management Centre (the area that requested NNI involvement). The majority of these RVA complaints reportedly arose for calls from Melbourne.
9. There was substance in Mr Smith's original RVA complaint for a period of less than three weeks in March 1992. The problem in question related to a specific main trunking exchange situated in Melbourne known in Telecom as the MELU exchange. In March 1992, calls that passed through Melbourne to Cape Bridgewater progressed through one of three main exchanges - known as MELQ, MELU and MELX. At the MELU exchange in Windsor, a change was incorrectly made to programming within the network which resulted in calls to telephone numbers beginning with 055 267 not getting through. The problem was remedied on 19 March 1992 and Mr Smith was made aware of this problem both verbally and at a later point by Rosanne Pittard.
10. My colleague Hew Macintosh, through searches at the MELU exchange, discovered the RVA problem existed between 4 and 19 March 1994. This period was determined by checking the exchange data log for MELU to determine the date the change had been implemented and the date the resulting problem was rectified.
11. During NNI's original investigation of Mr Smith's alleged problems, the only event discovered that was of substance was the MELU problem. The commercial resolution of this problem was dealt with by Rosanne Pittard.

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12. NNI's first investigation was very lengthy and involved numerous test calls and the collection of line data. As an indication, an interim analysis of the work undertaken included a table detailing the testing completed and it showed a total of over 34,000 test calls had been made from a variety of origins. In the course of making these test calls, we did inadvertently cause a problem within the network. When conducting a test call run of over 8,000 calls from the Richmond area to Cape Bridgewater, we experienced an abnormally high congestion level. On further investigation it was found that a route between Hamilton and Portland had blocked itself from use due to an excessive number of short duration calls made over that route. It is almost certain that our test calls resulted in that problem.
13. Even after the MELU problem was remedied, we continued with our investigation and did not assume that everything was satisfactory with Mr Smith's telephone service until our investigation was completed. This was done in response to continued reports of difficulty by Mr. Smith and to ensure that there were not other factors influencing the performance of Mr Smith's service.
14. At the time of our first investigation, Mr. Smith received incoming calls and could make calls out on his 267 267 line. Many of the complaints received by those attempting to call Mr Smith up to that point were that Mr Smith's telephone was busy when Mr Smith said it was not. I believe that Mr Smith often miscalculated when he was on the telephone or for how long. On many occasions SMART 10 line event monitoring records established that when a person attempted to call Mr Smith, Mr Smith was talking to someone else on his 267 267 line.

#### The second investigation of Mr Smith's service.

15. I was also involved with NNI's second investigation of Mr Smith's telephone service, from May 1993 until December 1993, as a principal investigating officer (the investigation has, as yet, not been officially closed due to an ongoing requirement for NNI involvement). On 3 June 1993, as part of the second investigation of Mr Smith's telephone service, both myself and Hew Macintosh met with Mr Smith at his Cape Bridgewater premises to discuss his reported problems and to ascertain more detailed information about the configuration and usage of his service. At the conclusion of our discussions with Mr Smith, we returned by car to Melbourne only to realise later that we had left Hew's briefcase at Mr Smith's premises. Gordon Stokes from Telecom in Portland went to pick up the briefcase from Mr. Smith's premises. Mr Smith gave Gordon the briefcase and while Gordon was going through the documents contained in that briefcase to make sure everything was there, Mr Smith came out to Gordon's car and handed him another file which had originally been in the briefcase. The documents in the briefcase were also in a different order when recovered from Mr Smith than they had been originally. It is therefore clear that Mr Smith looked through the contents of the briefcase. The contents of the briefcase included the complete file from NNI's first investigation of Mr Smith's alleged faults. During the evening of the day the briefcase was left at Mr Smith's premises, SMART 10 line event monitoring records show that Mr Smith's 055 267 230 service was used to make calls to a number of people, some of whom he had not previously called who were related to data held in files from the briefcase. This suggests that Mr Smith had gone through not only the files relating to his service, but also other business and personal material kept in the briefcase.

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16. One letter contained in the briefcase was a summary report prepared by myself which concluded that the MELU fault had existed for approximately six weeks. When I had prepared this summary report, I referred to the initial investigations NNI conducted into the MELU problem. However, as mentioned above, Hew Macintosh had made further investigations at the MELU exchange which revealed that the problem had only existed for a maximum of three weeks. Although a note concerning Hew's investigation was on Mr Smith's file at the time I wrote my summary report, I had overlooked it when preparing the summary report and therefore used the incorrect estimate of six weeks. This oversight on my part was corrected in the final report of early 1993.
17. During NNI's second investigation of Mr Smith's service, we inadvertently caused a fault ourselves as part of implemented testing procedures. This fault arose from the use of the "malicious call trace" facility ("MCT"), that was placed on Mr. Smith's service at the Portland Exchange in an attempt to ensure more detailed data relating to Mr Smith's incoming calls. The additional information (specifically Calling Party number information) was required so that we could more accurately match possible problem calls against his fault reports. Mr Smith knew this form of testing was being undertaken, as we had discussed it with him. During the period that malicious call tracing was in place, when Mr Smith received calls from exchanges that can only provide limited detail regarding the A party number and hung up his telephone, there was a 90 second period after he hung up that the Exchange controlling the call believed that his call was not over. (Limited call details can occur for exchange technologies such as step by step. This is known as Partial Calling Line Identification, Partial CLI.). As a result, if parties attempted to call Mr Smith within this 90 second period, they would not be able to do so. Likewise, if Mr Smith attempted to make calls during this 90 second period, his phone would appear to be "dead" with no dial tone.
18. This fault is likely to have had only a marginal effect on Mr Smith's telephone service and was possible only between late May 1993 and early August 1993. The customer whose complaint alerted us to the problem was calling from Horsham.
19. The party calling from Horsham who alerted us to the MCT problem reported that they had a telephone discussion with Mr Smith which lasted for about fifteen minutes. However, the SMART 10 line event monitoring records suggest that the call in question lasted for two hours. Mr Smith believes this is evidence that the network has serious problems. My belief is that Mr Smith did not hang up his phone after the call was completed and therefore the SMART 10 equipment did not record his call as ending until the phone was later hung up. I base this belief on the testing conducted as a result of the discovery of the side effect of using MCT, as well as analysis of CCS7 data for the period that the MCT facility was in use.
20. At the beginning of our second investigation of Mr Smith's telephone service, we placed CCS7 testing equipment at the Warmambool exchange because the Portland Exchange, despite being an AXE digital exchange, does not utilise CCS7 signalling and could not facilitate CCS7 testing. Placing CCS7 testing equipment at the Warmambool exchange was a way of arriving at data relating to calls to and from Mr Smith's services for calls that went through the

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Warmambool exchange. The majority of Mr Smith's incoming and outgoing STD calls went through the Warmambool exchange.

21. CCS7 testing showed that during the period that the MCT was on the Portland exchange, no other calls were received by Mr Smith from exchanges that would cause a problem other than the Horsham call in question.
22. We also used End of Selection "call trapping" at the Portland exchange which provided us with even further information. This is a method whereby the exchange operations staff were requested to modify data relating to the handling of Mr Smith's incoming calls so that call path details for each call (both local and STD/IDD) were stored in a personal computer attached to the exchange. This method was employed at the discretion of local operations staff over a period of some months. However, this form testing has now ceased because call trapping is not designed for extended use in this way and can limit the normal operation and maintenance of the exchange.
23. During our second investigation SMART 10/CCAS line event monitoring equipment was also installed at the Portland Exchange to record call data relating to Mr Smith.
24. Whenever Mr Smith raised a query, we checked all the call data from all the various data gathering units. This gave a number of different data sources with which to compare and thereby increased our ability to respond to reported difficulties. At no point did we discover a serious ongoing fault that would explain or support Mr Smith's perceived problems.
25. During NNI's investigations of Mr Smith's telephone service we were not locked into rigid rules concerning the way our testing was to be conducted. We were inventive in trying to think up novel ways of testing for faults with Mr Smith's service. An example of this was the use of CCS7 and also End of Selection tracing, both techniques uncommon at that time for general investigations. Nevertheless, despite running thousands of test calls and employing a range of investigative methods, it was not possible to isolate a recurrent fault with Mr Smith's service that would result in problems of the magnitude that he was alleging.
26. At the meeting with Mr Smith that involved the briefcase incident, it was also agreed after discussions with Mr. Smith, that we should limit his 055 267 267 line from being able to make outgoing calls (with the exception of making calls to emergency services and to Telecom's service difficulties and faults). Mr Smith indicated that he did not use the 267 267 service for outgoing calls however call data and billing information showed that this was not the case. As a result of our discussions with Mr Smith, he agreed that limiting outgoing calls from 267 267 would be to his advantage and after NNI arranged with local operations staff to implement the appropriate changes, the line number 055 267 230 became Mr Smith's sole outgoing line for normal telephone calls. It was hoped that this would overcome the problem where callers into Mr Smith's camp reported the phone being busy because Mr Smith was inadvertently using the 267 267 service to make a call himself. However, it would not overcome the problem where Mr Smith left the phone off the hook.
27. In 1993 NNI were also called to investigate Mr Schorer's telephone service in North Melbourne. Mr Schorer had regular occasion to call Mr Smith. During this

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Investigation we noticed that some complaints logged by Mr Schorer on the Leopard fault reporting system were due to mis-dialling. If Mr Schorer made outgoing calls from his premises, he could choose from either PABX lines (which require him to dial 0 before his intended number) or direct exchange lines (which do not require the additional 0 to be dialled). The line event monitoring records show that on some occasions Mr Schorer dialled 0 when it was unnecessary, and on other occasions did not dial 0 when it was necessary. For example, if Mr Schorer attempted to telephone Mr Smith on 055 267 267 through his PABX and did not dial the extra 0, he would dial 55 267 267 (which is an unallocated number) and would receive a recorded voice announcement. Alternatively, if Mr Schorer dialled the extra 0 when he should not have, he would dial 0055 267 267 (which is an unallocated 0055 number) and again he would receive a recorded voice announcement.

**Conclusion**

28. I believe that Telecom has provided Mr Smith with a very high level of personal attention (in terms of the amount of resources that have been committed to solving his problems). Examples of this include the assistance rendered to Mr Smith in relation to equipment not directly Telecom's responsibility (e.g. his facsimile machines), repeated attempts to try and identify a possible cause of Mr Smith's perceived difficulties and extensive time spent allaying Mr Smith's concerns.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne )  
in the State of Victoria )  
this 6<sup>th</sup> day of December 1994. )

*David Jackalle*

Before me:

*Wayne Condon*  
.....  
**WAYNE MAURICE CONDON**  
Frostell Hollingdale & Page  
101 Collins Street, Melbourne  
A Solicitor holding a current  
Practising Certificate pursuant  
to the Legal Profession  
Practice Act 1988.

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**IN THE MATTER OF** an arbitration pursuant to  
the Fast Track Arbitration Procedure dated 21  
April 1994

Between

**ALAN SMITH**

Claimant

and

**TELSTRA CORPORATION LTD trading as  
TELECOM AUSTRALIA**

Telecom

## **WITNESS STATEMENT OF CHRISTOPHER JAMES DOODY**

I, **CHRISTOPHER JAMES DOODY**, Regional Field Manager, Telecom Network Operations - Eastern, Country Victoria, of 111 Doveton Street South, Ballarat, in the State of Victoria, solemnly and sincerely declare and affirm as follows:

### **BACKGROUND**

1. I have been employed with Telecom Australia for 17 years and have been in my current position since June 1994.
2. In March 1991 I took up a position as a Network Performance Consultant as part of Telecom's Network Operations Group. My role was to look at the performance of the switching transmission and service delivery areas of Network Operations Country Victoria. This role principally involved making recommendations to the Network Operations Manager Country Victoria on ways to improve the performance of those areas. These recommendations included such things as the introduction of performance monitoring systems and measure, maintenance process improvements and trend analysis on a regional basis.

### **MR SMITH**

#### **1992 Involvement**

3. In late March 1992 I made arrangements for a testing program to be undertaken throughout every AXE node and major trunking node in Victoria to confirm that calls from those nodes could successfully be made to 055 267 XXX telephone numbers. I therefore established that there was excellent telephone access from all AXE nodes and major trunking nodes throughout Victoria to 055 267 XXX telephone numbers including those of Mr Smith.

#### **1993/94 Involvement**

4. From December 1993 until April 1994 I held a position as a Network Operations Case Manager for Mr Smith and another Telecom customer who believed they were having ongoing problems with their telephone service. Complaints were referred to me by Bruce Pendlebury and Alan Miles of the Glen Waverley Fault Management & Diagnostic Group.

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Each complaint made by Mr Smith was investigated.

Mr Smith made a complaint about a customer's call from a particular location, I often directed the local exchange technicians to undertake a program of test calls through to the test line number which was 055 267 211. There were no faults ever detected by this testing program in relation to any of Mr Smith's complaints.

In addition to this testing system, I made arrangements to utilise CCS7 call data which was derived from equipment set up at the Warrambool AXE exchange. There were no problems identified by this standard test method.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne )  
in the State of Victoria )  
this 20 day of December 1994. )

*Chris Dooley*  
.....

Before me:

*Chris McLeod*  
.....

**CHRISTOPHER MARK McLEOD**  
Freehill Hollingdale & Page  
101 Collins Street, Melbourne  
A Solicitor holding a current  
Practising Certificate pursuant  
to the Legal Profession  
Practice Act 1968.

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service providers and so on which are complaints about the billing system. Does that indicate that she may have been partly wrong?

Mr Benjamin—From memory, I do not think the Bell Canada inquiry looked at billing systems.

Senator SCHACHT—The claim is that she said that Bell Canada's international report substantiated that there were no systematic problems within Telstra's billing system; that was her claim. I am just saying that, since then, you have got major litigation running into hundreds of millions of dollars between various service providers and other telecommunications providers claiming false overbilling running into hundreds of millions of dollars.

Mr Ward—I cannot comment on the Simone Simmons statement and I guess we will get that checked if it is not with us today.

Senator SCHACHT—So we start at the right place. That is another question being taken on notice.

Mr Ward—No, I did not say that. We will check if we can get the information from the people we have here. The comment I was going to make about billing was that, since that time, the development in the wholesale market of service provision between Telstra and service providers has taken off quite significantly, and that is a wholesale, if you like, billing service based on, at that stage, a retail platform. I suspect—and we will have this checked—that the Bell Canada report would not have looked at that aspect of the billing.

Senator SCHACHT—Has Telstra received any complaints from CoT members and other people about the BCI report findings being flawed or fabricated?

Mr Benjamin—Yes, there have been complaints made—sorry, not fabricated; there have been complaints made by various CoT members about disagreement with aspects of the Bell Canada report.

Mr Armstrong—Can I just add I think one of the CoT members has alleged that the Bell Canada report was fabricated.

Senator SCHACHT—That is what I am saying: there is a pile of stuff there that has come into my office from a range of CoT case people and I am trying to summarise a range of their complaints. They claim it is fabricated. I do not automatically accept that. I want to get them on the record in order to get the cases into the open. I want to get to the bottom of many of those complaints. As a result of those complaints, did you find that Telstra had to take any action in respect of the BCI report to rectify any inaccuracies or shortcomings in the system?

Mr Armstrong—Yes. The basis upon which it was put that the report was fabricated was an apparent clash of dates, as I recall, with two sets of testing. This goes back a couple of years. I believe that claimants raised the matter with the TIO. Telstra went to Bell Canada and raised the clash of dates with it. As I recall, Bell Canada provided a letter saying that there was an error in the report.

Senator SCHACHT—Can you please provide us with a copy of that letter from Bell Canada?

Mr Armstrong—I do not have it with me.

Senator SCHACHT—Can you get it for us?

Mr Armstrong—Yes.

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

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

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

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

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

Mr Benjamin—I might be assisted by Mr Pinnock.

Mr Pinnock—Yes.

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

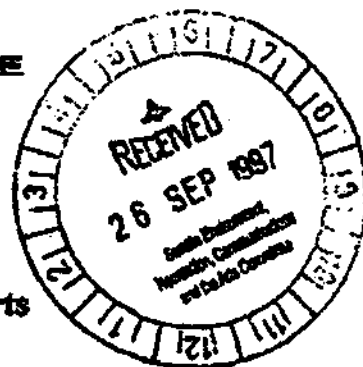
Mr Benjamin—My involvement in CoT cases, I believe, was known to the TIO council.

Senator SCHACHT—No, did you declare your interest?



PARLIAMENT OF AUSTRALIA · THE SENATE

**SENATOR RON BOSWELL**  
LEADER OF THE NATIONAL PARTY IN THE SENATE  
SENATOR FOR QUEENSLAND



**The Environment and Recreation Communications and the Arts  
Legislation Committee.**

**Matters arising from Telstra Annual Report 1995-1996**

**Questions on notice to Telstra and the Telecommunications Industry  
Ombudsman - Friday 26 September 1997.**

**TELSTRA:**

1. What was the nature of the CoT Cases complaints concerning the BCI (Bell Canada International) Report? Please list the name of the CoT Case member and the specific complaints.
- ✓ 2. Did Telstra provide BCI with the Network Performance documents including those documents which record "Congestion" and "Switching" losses in order for them to reach their conclusions when formulating their report.
3. Has Telstra taken any action to rectify the apparent inaccuracies or shortcomings in the BCI Report.
- ✓ 4. Did Telstra submit the BCI Report to the Arbitrator and/or the Administrator for his consideration. Did the Arbitrator refer to the BCI Report in his "Awards."? Is the BCI Report still being used in the non-completed Arbitrations?
- ✓ 5. Why did Telstra knowingly use the Addendum BCI Report, Cape Bridgewater in Arbitration, when Telstra was aware that the Report was flawed.
- ✓ 6. Why did Telstra not advise the Arbitrator, the Administrator or the Cot cases that the BCI Report was flawed.
7. Have Telstra in response to the CoT Members FOI requests limited the documentation provided to the specific CoT telephone lines, therefore excluding documents relevant to the performance of the Exchange and Telstra Network, when the testing conducted by BCI and which was recorded in the BCI Report identified the exchange and network servicing the Cot Members individual telephone services.

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PARLIAMENT OF AUSTRALIA · THE SENATE

**SENATOR RON BOSWELL**  
LEADER OF THE NATIONAL PARTY IN THE SENATE  
SENATOR FOR QUEENSLAND

8. Why did Telstra limit the scope of individual CoT Members' FOI requests to their telephone lines when Telstra had recorded in Board Meeting Minutes that "Congestion" was one of the CoTs complaints, when documents relating to the performance of the Telstra Network contained information relating to "Congestion" and switching failures relevant to the CoTs telephone services.
9. As BCI identified in their Report the network servicing and relevant to the individual CoT Cases, Why did Telstra limit the CoT Cases FOI requests to their individual lines and exclude Exchange and Network documents.
10. Has Telstra provided to the CoT Cases the "data" in disk form or hard copy, generated from the testing identified in the BCI Report.
11. Has Telstra destroyed or otherwise disposed of documents relevant to the CoT Arbitration/Litigation's or the disputes which are the subject of them, after those proceedings were on foot or within the contemplation of the parties to them.
12. Did Telstra disclose to AUSTEL all documents relevant to the issues and "Objectives" the subject of those proceedings; prior to the handing down of AUSTEL's findings and recommendations on the "CoT Cases" dated 13 April 1994, and if not, describe by reference to the nature of and the dates of any such documents which were not so disclosed. If not, why were these documents withheld?
13. Did CoT Members complain that Telstra personnel had provided false or misleading statements under oath in Telstra's defence? If so please provide details of the name of the complainant and the nature and date of the complaint.
14. Were the Statutory Declarations and/or Telstra's Defence Submissions withdrawn when the inaccuracies were identified.

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Senator Boswell

Has Telstra taken any action to rectify the apparent inaccuracies or shortcomings of the BCI report?

Answer:

→ The only inaccuracy in the BCI report which Telstra is aware of is an apparent clash in the dates of two sets of testing to the Portland Exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 267 211, see section 15.23 of the BCI Report.

By way of a letter dated 6 September, 1994 Telstra wrote to Bell Canada International (BCI) noting this apparent clash in dates and seeking BCI's comments to same. A copy of Telstra's letter to BCI is at Attachment 7. Attachment 1 to these answers are copies of two letters received by Telstra from Gerald Kealey of Bell Canada International in response. In those letters, Mr. Kealey notes: ↙

*"Unfortunately, the wrong date was recorded in the hand written notes which was transcribed to the final report for Telstra. It must be pointed out that, while the actual date was incorrectly recorded, this error does not affect the validity of the testing process or the test results and is not a significant factor in accessing the overall performance of the network."*

→ As noted in the answer to the first question above, Mr. Smith made complaints about the BCI testing in documentation lodged by him with the Arbitrator in the arbitration process and also in a letter to the Arbitrator in June, 1995. A copy of a letter from the Arbitrator to the Telecommunications Industry Ombudsman, which attaches a copy of a letter dated 20 June, 1995 from Mr. Smith to the Arbitrator which sets out his complaints, is at Attachment 3. The Telecommunications Industry Ombudsman referred that complaint to Telstra and, by way of a letter dated 21 August, 1995, Telstra provided to the Telecommunications Industry Ombudsman a copy of the letter dated 11 August, 1995 from BCI to Telstra. A copy of Telstra's letter to the Telecommunications Industry Ombudsman is at Attachment 8. Telstra also provided a copy of that letter from BCI to Mr. Smith.

Senator Boswell

Why did Telstra not advise the Arbitrator, the Administrator or the CoT cases that the BCI Report was flawed?

Answer:

→ Telstra has not at any time believed that the BCI Report was flawed. In relation to the allegations made by Mr. Smith that the BCI Report was flawed, Telstra notes that Mr. Smith raised these allegations with the Arbitrator during his arbitration and with the Administrator.

11 August 1995

Mr Steve Black  
Group General Manager Customer Affairs  
Telstra Corporation Limited  
37/242 Exhibition Street  
Melbourne Victoria 3000  
AUSTRALIA

Dear Mr Black

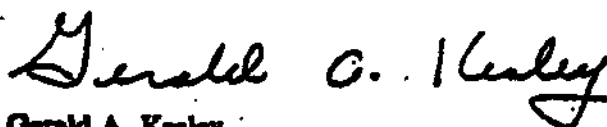
I am sorry for the late reply but I did not receive your correspondence dated September 6, 1994 concerning the anomaly found in the date of the test call records. However, Kevin Dwyer did call me in August 1994. Kevin Dwyer and I discussed the tests performed, equipment used both at the originating and terminating office and the test results. I also reviewed my personal travel log to verify the times and dates of my movements from Melbourne to Portland during the testing period.

I was subsequently provided with a copy of the correspondence on August 7 1995 as well as a copy of my original hand written notes on tests performed and the network failures noted.

Specifically, the anomaly involved the start and finish times for the test run for a small number of test calls from Richmond digital exchange (RCMX), test line 03 428 8974 to Portland exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 267 211 (detailed in Section 15.23 of the report).

Unfortunately, the wrong date was recorded in the handwritten notes which was transcribed to the final report for Telstra. It must be pointed out that, while the actual date was incorrectly recorded, this error does not affect the validity of the testing process or the test results and is not a significant factor in assessing the overall performance of the network.

Yours sincerely



Gerald A. Kealey  
Bell Canada International

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ERC&amp;A 36

SENATE—*Legislation*

Tuesday, 24 June 1997

**Mr White—Yes.**

**Senator O'CHEE—**And what were you told in that induction briefing about the group's role?

**Mr White—**In the first induction—and I was one of the early ones, and probably the earliest in the Freehill's area—there were five complainants. They were Garms, Gill and Smith, and Dawson and Schorer. My induction briefing was that we—we being Telecom—had to stop these people to stop the floodgates being opened.

**Senator O'CHEE—**What, stop them reasonably or stop them at all costs—or what?

**Mr White—**The words used to me in the early days were that we had to stop these people at all costs.

**Senator O'CHEE—**So when you were told to do a document better, that meant to do a better job of stopping them at all costs?

**Mr White—**I would say explaining the information available to the best of my ability. That is the best way I can explain it.

**Senator O'CHEE—**To the satisfaction of—

**Mr White—**The team leader.

**CHAIR—**Mr White, were you ever expected to fabricate information or to misinterpret the evidence?

**Mr White—**No.

**CHAIR—**So you were asked to explain to the best of your ability, if this could be explained not as Telstra's mishandling of it but as an error that could be explained?

**Mr White—**I was never ever coerced to do something that was immoral or illegal.

**Senator O'CHEE—**Mr Pinnock, you just heard evidence of this group being established after the fast-track arbitration process was set up.

**Mr Pinnock—**I am not sure whether the evidence was that it was after it was set up. I understood it was to be at the same time. But in the event, I take your point on that, Senator.

**Senator O'CHEE—**You have just heard evidence about the activities of this

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ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS

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**IN THE MATTER OF** an arbitration pursuant to  
the Fast Track Arbitration Procedure dated 21 April  
1994

Between

**ALAN SMITH**

Claimant

and

**TELSTRA CORPORATION LTD trading as  
TELECOM AUSTRALIA**

Telecom

### **WITNESS STATEMENT OF IAN JOBLIN**

I, **IAN ARMSTRONG JOBLIN** of 118 Queen Street, Melbourne in the State of Victoria solemnly and sincerely declare and affirm as follows:-

#### **QUALIFICATIONS**

1. I am a consulting Forensic Psychologist. I have a Master of Arts with honours in Psychology from Massey University in New Zealand. I have seventeen years experience as a consultant Forensic Psychologist and I have been a registered psychologist with the Victorian Psychological Council since 1977.
2. Attached hereto and marked "IAJ-1" is a list of the professional bodies of which I am a member, a summary of my employment history, a list of my consultancies and a list of my recent publications and research.

#### **INSTRUCTIONS**

3. I have been retained by Messrs Freehill Hollingdale & Page, the solicitors acting for Telstra Corporation Limited ("Telecom") to review a report on the psychological status of Mr Alan Smith which had been prepared by Mr Christopher Mackey dated 10 June 1994, to interview Mr Smith, to draw my own conclusions as to Mr Smith's psychological status and to report my views to Telecom for the purposes of the arbitration commenced against Telecom by Mr Smith on behalf of the Cape Bridgewater Holiday Camp in which Mr Smith has, I understand, asserted a claim for psychological harm.
4. In order to prepare for the interview with Mr Smith I read the following written material:
  - (a) A report of Mr Christopher Mackey, Psychologist, dated 10 June 1994, addressed to Dr Gordon Hughes.
  - (b) An Austel publication entitled "The COT Cases Austel's Findings and Recommendations" dated April 1994.
  - (c) A Coopers & Lybrand report entitled "The view of Telecom Australia's Difficult Network Fault Policies and Procedures" dated November 1993.

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- (d) A Bell Canada International Inc study entitled "Telecom Australia Rotary Hunting Group Study".
  - (e) Telecom's response to the reports of Coopers & Lybrand and Bell Canada International, dated December 1993.
  - (f) A Bell Canada International Inc addendum to its report, dated 10 November 1993.
  - (g) A five page chronology a copy of which is attached and marked "IAJ-2".
5. I propose, below, to set out my conclusions on Mr Smith's psychological status as at the date of my interview with him and to make some observations on the report of Mr Smith's psychological status prepared by Mr Mackey.

#### OPINION ON MR SMITH'S PSYCHOLOGICAL STATUS

6. I interviewed Mr Alan Smith at the Richmond Henty Hotel in Portland, Victoria on 12 September 1994. The interview commenced at 9:30 am and finished at 2:00 pm. The interview took place in a private part of the hotel. No one other than Mr Smith and I was present during the course of the interview. During the interview with Mr Smith I obtained a background history from him and I had a discussion with him in relation to the dealings that he has had with Telecom. I also carried out a psychological evaluation of Mr Smith as more particularly described below.
7. Mr Smith was born in the United Kingdom and is aged forty years. I obtained information from Mr Smith during the interview about his family history, his siblings, his education and his employment. Much of Mr Smith's working life has involved working on ships however Mr Smith also completed a course in hotel management and he worked in a number of hotels and restaurants in and around Melbourne for a period before returning to the sea in the early 1970's. He subsequently bought a truck and began working as a courier however that venture appears not to have been successful and he went back to sea to work on tugs at the Port of Melbourne. He remained in that employment until purchasing the Cape Bridgewater Holiday Camp in 1988. Mr Smith explained that over the twelve to thirteen years that he was working on tugs he was also involved in various catering projects in his spare time.
8. Mr Smith told me that he purchased the Cape Bridgewater Holiday Camp in 1988 with a view to expanding the camp to become a function, conference and educational centre. Mr Smith said that he wished to attract school groups and groups of underprivileged children where they could undertake educational pursuits as well as survival skills.
9. I also obtained information in the course of my interview with Mr Smith about Mr Smith's failed marriage. Mr Smith does not attribute the breakdown of his marriage to Telecom and the difficulties he has had with them. It seems from a review of the history of the relationship that there were some considerable bouts of marital disagreement, even prior to Mr Smith purchasing the property at Cape Bridgewater. Mr Smith reported, for example, that his wife did not like the involvement he had in the hospitality and hotel industries in Melbourne, that she would have preferred him to remain at sea, and indeed appreciated the time off that he would have when working at sea. Mr Smith reported that basically his marital relationship was satisfactory at the time when he was working at sea. He reported that in the early 1970's, when he was managing restaurants in Melbourne he returned to sea and that, this was due to the difficulties he began to have with his wife. Mr Smith also reported that his wife did not wish him to proceed with the financial outlay involved with the purchase of a truck to commence a courier business as it would have necessitated using the house as collateral. Again in response, Mr Smith went back to work at sea, this time on the tugs in Melbourne.

10. Mr Smith reported that when they moved to Cape Bridgewater Mr Smith began to have difficulties with his telephone, that the relationship with his wife became increasingly strained and his wife did not appreciate his drive to sort the situation out with Telecom. Mr Smith said that as he became increasingly involved with the difficulties with his telephone his wife became increasingly frustrated over his preoccupation with the matter and the marriage then ended.
11. In summary, in relation to the marriage, it is my opinion that Mr Smith's marriage did not end because of any reason which could be attributable to an act or a omission of Telecom. Although somewhat speculative, my conclusion is that Mr Smith's marriage was headed towards irretrievable breakdown prior to 1988 when Mr Smith purchased the Cape Bridgewater Holiday Camp business.
12. During the interview I also discussed with Mr Smith, in broad terms, his financial situation which he claims to be precarious. I also questioned Mr Smith about his recreational pursuits and Mr Smith told me that he spent twenty-four hours a day at work at the Cape Bridgewater Holiday Camp.
13. Mr Smith was, at all times, cooperative during the interview he was not under any misapprehension over the nature of the interview nor my role in the preparation of a report for Telecom.
14. Mr Smith is a man of obvious intelligence. Although no formal intelligence testing has been carried out on Mr Smith, intelligence or lack of it, is not an issue in this report.
15. From my interview with Mr Smith I formed the conclusion that there was no basis for suggesting that alcohol plays any role in any of the difficulties Mr Smith currently reports.
16. It is quite clear from my interview with Mr Smith that he is preoccupied with the difficulties which he states he has had with his phone. In my professional opinion his preoccupation has become a clinical obsession. This obsession, preoccupies his time and, Mr Smith has found that his psychological and physical resources to develop the camp as he says he intended to, have suffered.
17. I have no doubt that Mr Smith's psychological state has reached a point where the difficulties that he states he has had with Telecom and his associated obsession with such alleged difficulties have become pervasive and have insinuated themselves into most aspects of Mr Smith's functioning. The extent of Mr Smith's preoccupation and obsession with Telecom is manifested by the fact that any symbol representing Telecom may generalise to cause him distress even though that symbol may be totally unrelated to any complaint or alleged fault with Mr Smith's telephone system. It is, in my opinion, quite apparent that Mr Smith has obviously developed psychological problems within himself as a result of the difficulties he perceives he has had with Telecom. I am firmly of the view, however, that deterioration of Mr Smith's business (should that be established) and his associated psychological state is extremely difficult to attribute to factors relating to his dealings with Telecom. There is no doubt that this man has developed a dysfunctional personality which is displayed in his preoccupation with Telecom. This preoccupation has created a situation which has become dysfunctional from a psychological perspective for the continuation of the Mr Smith's business. I am of the opinion that it is not possible to say that there is a causative link between Mr Smith's psychological deterioration and an act or omission of Telecom.
18. The issue of a cause and effect relationship relating to Mr Smith's psychological dysfunction is of vital importance. The development of his obsession and preoccupation

with Telecom which became dysfunctional was not, in my opinion, the only choice for personality development that Mr Smith had. That is, in my professional opinion, Mr Smith did not have to develop an obsession, he did not have to become dysfunctional and it is my opinion that his obsession developed because of pre-disposing personality factors which, under conditions of perceived stress, were exacerbated and predominated to become an obsession. The operative factor, however, is that they did not necessarily have to become that way over the time since 1988. Mr Smith had, in my opinion, a choice of psychological states. Unfortunately, he developed an obsession to the detriment of his overall psychological condition and this made it more difficult for him to deal with business and commercial issues.

19. Logical and rational thoughts processes often become unavailable to persons who are obsessed. It is important to differentiate between obsessions and compulsions. Obsessions in this case are persistent ideas, thought or impulses that are experienced as intrusive and inappropriate and cause marked anxiety or stress. Mr Smith does not, in my opinion, recognise the unreasonableness of his obsession or that his behaviour is or was excessive. Because excessive intrusions can be distracting they frequently result in inefficient performance. Indeed, Mr Smith reported to me that he is unable to concentrate. He also reported a lack of motivation and the feeling of debilitation. I am of the opinion, however, that it is extremely difficult to attribute these effects to any act or omission of Telecom. It is useful, here, to make reference to the concept of the "ordinary man". In my opinion the difficulties an "ordinary man" would have, that Mr Smith asserts he had, would not create in the mind of the "ordinary man" the dysfunction that it created in the mind of Mr Smith.

### COMPREHENSIVE PERSONALITY TESTING

20. I conducted comprehensive personality testing of Mr Smith by means of the Minnesota Multiphasic Personality Inventory. This non-projective test has the advantage of having validity scales. Excessive scores on any of these scales makes the clinical scales invalid. Accordingly, a subject attempting to present himself or herself in a better or worse light can be detected. In this case Mr Smith did not present himself in any light other than his genuine assessment and the clinical scales are therefore, in my opinion, valid. The clinical scales with regards to Mr Smith's personality profile, completed as a result of my interview of Mr Smith as marked, included scale 3 (hysteria), scale 4 (a scale measuring social difficulties and the absence of strong pleasurable experiences) and scale 9 (hypomania).
21. The scales indicate that Mr Smith has a personality which dictates impulsive, acting out behaviour. He is somewhat grandiose and hyperactive, but not depressed. It is to be noted from the literature that such persons may become belligerent if grandiose plans are interrupted. He is thus seen as experiencing flights of ideas and often unable to delay gratification. He lacks insight into his own and other's behaviours. He denies the presence of psychological problems. He looks for simplistic, concrete solution to problems. His personality indicates that he is fighting against something, usually some form of conflict with authority. The combination of these scales indicates that the driving aspects of his personality dictate a tendency towards conflict with little insight except for simplistic and concrete solutions to problems.

### CONCLUSIONS

22. I spent considerable time reviewing the documentary materials supplied by Telecom's solicitors, I conducted an extensive interview with Mr Smith and I administered comprehensive personality testing. As stated above, a number of areas of Mr Smith's

occupational and vocational life have demonstrated failures. Mr Smith attributes the failures in these areas directly to Telecom. It is my opinion that Mr Smith has developed an obsession in his attitude towards Telecom and it is that obsession with its psychological correlates which has, in turn, created a dysfunctional psychological state. In these circumstances failure in social and vocational pursuits was inevitable. Mr Smith's personality testing confirmed this conclusion.

23. There is no doubt that Mr Smith is somewhat psychologically distressed. It is however, in my opinion, quite inappropriate to draw any cause and effect relationship between Mr Smith's psychological status and any actions or omissions on the part of Telecom.
24. There is, in my opinion, no doubt that Mr Smith's underlying personality factors were exacerbated under conditions of stress. That stress, however, is a reaction to perceived problems with Telecom. The reaction in turn, became Mr Smith's *raison d'être*. In my opinion it did not have to be. Unfortunately now Mr Smith has become preoccupied with these problems however I do not consider him to be depressed nor paranoid. Any psychological dysfunction displayed by Mr Smith is symptomatic of his obsession and preoccupation.

#### REVIEW OF MR MACKEY'S REPORT OF 10 JUNE 1994

25. I have examined in some detail the report prepared by Mr Christopher Mackey dated 10 June 1994 in relation to Mr Alan Smith's psychological status and I refer to that report.
26. I have no doubt that Mr Mackey's discussion of further test results on the last paragraph of page 2 are reported objectively by concluding that results "are consistent with at least a moderately disabling level of stress associated with traumatic experiences....". In my opinion the crucial issue is to determine the basis of those traumatic experiences, assuming the symptoms can be taken as being present. What is difficult, however, is to attribute those traumatic experiences and the resulting stress of them, in Mr Smith's case solely and wholly to his difficulties with Telecom. It must be noted that Mr Smith's subjective report of such difficulties and the actual difficulties in fact may be in conflict.
27. Mr Mackey refers to "symptoms indicative of a post-traumatic stress reaction". In my experience this diagnosis is one fraught with considerable difficulty in terms of objectivity and diagnosis. While Mr Mackey reports such symptoms in Mr Smith consistent with such a diagnosis, I note Mr Mackey's comment in the last sentence of page 3, in which he seems to indicate that the symptoms of the post-traumatic stress have "likely been exacerbated by exposure to previous traumatic experiences.....".
28. I note in Mr Mackey's summary and opinion that in his opinion Mr Smith "currently suffers from major depression as well as an anxiety disorder associated with stress which he perceives as traumatic". I am concerned over Mr Mackey's diagnosis of a major depression. It is not clear from Mr Mackey's report as to whether or not his diagnosis is of a major depressive disorder, single episode, or a major depressive disorder, recurrent. The diagnosis Mr Mackey makes of a major depression was not, in my opinion, notified when I saw Mr Smith on the 12th September 1994. I am of the opinion that it would not have been possible that between the time of Mr Mackey's interview with Mr Smith on the 4th June 1994 and the time of my interview with Mr Smith on the 12th September 1994 that he had recovered from a major depressive disorder to the point where I could report with

diagnosis Mr Mackey makes of a major depression was not, in my opinion, notified when I saw Mr Smith on the 12th September 1994. I am of the opinion that it would not have been possible that between the time of Mr Mackey's interview with Mr Smith on the 4th June 1994 and the time of my interview with Mr Smith on the 12th September 1994 that he had recovered from a major depressive disorder to the point where I could report with some emphasis that he was not in my opinion depressed. It further does not seem that in the intervening three or so months between Mr Mackey's interview and my interview that Mr Smith had any intense therapeutic endeavour to rid himself of the dysfunctional symptoms of a major depression or a post-traumatic stress disorder.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne )  
in the State of Victoria )  
this 6th day of December 1994. )



Before me:



.....  
**WAYNE MAURICE CONDON**  
*Freohill Hollingdale & Page*  
101 Collins Street, Melbourne  
A Solicitor holding a current  
Practising Certificate pursuant  
to the Legal Profession  
Practice Act 1958.

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**LAW PARTNERS**  
**BARRISTERS & SOLICITORS**

LAW PARTNERS MELBOURNE  
Level 1, 140 Queen Street, Melbourne 3000  
DX 612 Melbourne  
P: (03) 9002 2200 F: (03) 9002 2000

13 December 1995

Our ref: GV/9510820

Mr Alan Smith  
Cape Bridgewater  
Holiday Camp  
PORTLAND 3305

Dear Mr Smith,

**RE: ALAN SMITH FAST TRACK CONCILIATION WITH TELSTRA CORP.**

We refer to the above matter and our discussions of the events and circumstances surrounding your claim against Telstra.

We have had the opportunity to carefully consider and evaluate the information you have provided to us in relation to the "fast track arbitration process" (FTAP) in which you were recently involved.

From the extensive discussions we have had with you and the correspondence and documentation we have had the benefit of considering it would appear that the FTAP failed to meet its objective of being a non legalistic, unbiased, speedy and cost effective form of resolving your dispute with Telstra.

It also appears that there may have been numerous breaches of the rules of natural justice during the FTAP. Certainly there are allegations against some of the key figures involved in the process which prima facie appear to be capable of being substantiated.

Allegations of impropriety are made against Telstra, the independent technical experts and the arbitrator. Unfortunately we have not yet had the opportunity of putting these allegations to the parties involved in order to obtain their response.

Overall however, we are of the opinion that the FTAP was fundamentally flawed given its objectives. The actions of Telstra and other key figures in the process were to say the least, against the spirit of the FTAP. In short we believe it would be possible to set aside the arbitrator's decision on the basis of failure of natural justice during the course of the FTAP.

We enclose an account for our services to date and look forward to receiving your further instructions in relation to this matter.

Yours faithfully,

**LAW PARTNERS**  
per Gene Volovich

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CONFIRMATION  
OF FAX

10 January 1996



Telecommunications  
Industry  
Ombudsman

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

John Pinnock  
Ombudsman

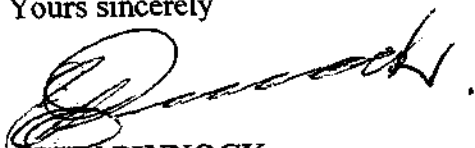
Dear Mr Smith

I refer to your letter of 31 December 1996 in which you seek to access to various correspondence held by the TIO concerning the Fast Track Arbitration Procedure.

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

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

Yours sincerely



JOHN PINNOCK  
OMBUDSMAN

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

TIO LTD ACN 057 634 787  
National Headquarters  
315 Exhibition Street  
Melbourne Victoria

Box 18098  
Collins Street East  
Melbourne 3000

Telephone (03) 9277 8777  
Facsimile (03) 9277 8797  
Tel. Freecall 1800 062 058  
Fax Freecall 1800 630 614



14 April 1994

**PROTECTED**Detective Superintendent Jeff Penrose  
Australian Federal PoliceCOMMERCIAL AND CONSUMER  
CUSTOMER AFFAIRS37/242 EXHIBITION STREET  
MELBOURNE  
VICTORIA 3600  
AustraliaTelephone (03) 632 7700  
Facsimile (03) 632 3241

Facsimile No. (06) 275 7437

Dear Mr Penrose

I have attached for your information a copy of correspondence received from Mr Alan Smith of Cape Bridgewater Holiday Camp and a response from Telecom. Mr Smith's letter to Telecom appears to be inferring that Telecom has obtained this information by monitoring his service. Mr Clinton Porteous, a journalist from the Herald Sun has rung Telecom indicating that Mr Smith has made allegations to him that Telecom has obtained this information through monitoring of his service. Telecom has not responded to Mr Porteous.

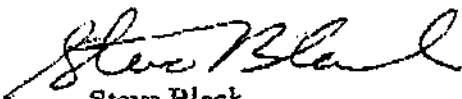
As you will note from the correspondence, Telecom has records indicating that Mr Smith has disclosed this information to three Telecom officers over the last 12 months. Accordingly, Mr Smith's allegation that he has not disclosed this information to Telecom is untrue.

By advice dated 14 January 1994, Mr Trevor Hindson of the Vic/Tas Region has advised me that voice monitoring of Mr Smith's Cape Bridgewater telephone service has been carried out as follows:

"To check that incoming calls to the Portland Exchange were successfully connected through to Mr Smith, the investigating technical officer at Portland Telephone Exchange set up equipment which trapped data on these calls, then sounded an alarm. This process was established from approximately June 1993 to August 1993, however, the equipment was only set up to trap data while this particular officer was available."

The documents provided to Mr Smith appear to have been prepared in April 1993. Comparison of this with the technical information on voice monitoring outlined above indicates that the information was disclosed to Telecom, and the documents were prepared, prior to the voice monitoring taking place.

Yours faithfully

Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS**PROTECTED****FREEDOM OF INFORMATION ACT 1982  
(COMMONWEALTH)  
DOCUMENT HAS BEEN REVIEWED  
UNDER THE FOI ACT  
THE AUSTRALIAN FEDERAL**  
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in which you don't mention the name of the bus service, and you're asking for a guarantee of your phone service?

A. That's right.

Q29. And again you've shown on this document that handwritten onto the document is the actual name of the bus service? \*

A. I think this is the worst out of the lot of them, because at no stage, I mean it was only a small charter but I, I kept this one very, very clear and there's no way in the world that I disclosed who it was. Because let's face it, I'm not saying anyone else would've got this contract, it was only a small charter but the point is I mentioned it in the letter form that I wanted a, a guarantee so that I could tell this gentleman, because the same person experienced problems with my phone, and I thought well at least I can do the right thing if I can give him a guarantee then, you know, then he could guarantee to his people that yeah okay, we can, we can do the service. A handwritten note is the name of the bus company on the right hand side which, it's just. \*

Q30. And had you been making calls to the bus company around that time, or to the owner?

A. Oh yes, yes, yeah, yeah.

Q31. And that handwritten note just for the purpose of the tape is O'Meara is the name?

A. O'Meara and actually that same fellow did send a letter prior, prior to that, that he'd experienced problems with my phones, prior. So there is a letter in Telecom archives and I have a copy, where he actually sent a letter complaining about getting through to Cape Bridgewater. \*

Q32. Right. All right so we'll just, you've also said that there are other documents there, they're not directly relating to the live monitoring issue they show that the malicious call trace has been set up on your line without your knowledge.

A. That's right.

Q33. And those documents you say clearly that the malicious call trace has affected the service

FREEDOM OF INFORMATION ACT 1982  
(COMMONWEALTH)  
DOCUMENT HAS BEEN RELEASED  
UNDER THE FOI ACT 1982  
THE AUSTRALIAN FEDERAL POLICE

COMPANIES AS WITH

559



# CAPE BRIDGEWATER Holiday Camp

Near Abel & Kinn

R.M.B. 402, CAPE BRIDGEWATER, VIC., 3208  
TELEPHONE: (052) 267 267.

10-9-92

Mark Ross  
Customer Service Manager  
Commercial-Country Victoria  
P.O. Box 299  
Ballarat.  
Fax-053-3491776

...  
- ...  
- ...  
ONGAAN

Dear Mark

I will keep this letter short and direct and to the point as you are well aware of my telecommunication problems. While at the South West Tourism promotion campaign in Melbourne early this week, I was approached by the proprietor of a bus charter company to tender for a very lucrative tourism venture starting next year. How ever with fairness to the many people who would be involved with this proposition I would have to be able to guarantee them I have a reliable phone service.

This company has over many months tried to contact me without much success hearing an engaged signal constantly before making contact, so they are well aware of my past problems.

I have explained I am under the assumption my telecommunication problems are now over or at least just about rectified which I hope is the case.

If Telecom would now guarantee me an efficient service I can pursue this tender, could you Mark or your Victorian Divisional Manager write me a short note confirming this guarantee. I am counting on this venture to not only give me a much needed occupancy boost but an awareness of our local tourism outlets.

I would need this letter know later than 15th of September as offers of interest must be in by then, if this could be arranged I would be obliged.

Respectfully

Alan Smith

George West

George West

053 257 267 560

000611

SENT BY: HUNT & HUNT

: 12- 5-95 : 2:41PM :

MELBOURNE OFFICE

61 3 277 8797;# 2



# Hunt & Hunt

LAWYERS

**Partners**  
 David M. Scarlett  
 Edward S. Boyce  
 James G.F. Harrowell  
 Christine A. Colley  
 Gordon L. Hughes  
 Mark T. Knapman  
 Ian S. Craig  
 Peter J. Ewin  
 Wayne B. Cahill  
 Neville C.H. Debnay  
 Grant D. Seaton  
 Charles Yevers  
 Andrew Leslie Smith  
 William P. O'Shea

**Consultants**  
 Kenneth M. Martin  
 Richard J. Kellaway  
 Andrew J. Judd

**Associates**  
 Shane C. Hind  
 John S. Mohar  
 Melissa A. Henderson  
 James V. Gallichio  
 John D.F. Morn

12 May 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FAX: 277 8797

Mr Warwick Smith  
 Telecommunications Industry Ombudsman  
 21 Exhibition Street  
 Melbourne VIC 3000

Dear Warwick

### FAST-TRACK ARBITRATION PROCEDURE

You have asked me for my comments on the arbitration process, now that I have delivered my first ruling.

Upon my return from leave in 2 weeks, I would be happy to discuss this matter with you in detail.

In simple terms, my observations are as follows:

- as far as I could observe, both Telecom and Smith co-operated in the Smith arbitration;
- the time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;
- in particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;
- there have been allegations by Smith and other claimants that Telecom deliberately slowed the process by delaying the production of documents under FOI - certainly the FOI claims have caused delays but I am unable to comment as to whether there has been a deliberate delaying tactic;
- request for further particulars are, I think, unavoidable - although the emphasis in the arbitration process is upon a quick resolution of the dispute, a party (in this case Telecom) faced with a significant claim

Melbourne

Sydney

Sydney

Melbourne

Melbourne

561A



ENT BY:HUNT & HUNT

:12- 5-85 : 2:41PM :

MELBOURNE OFFICE-

61 3 277 8797:8 3

2

against it is entitled to be presented with particularised complaints, not generalised and unsubstantiated allegations;

- the preparation of technical reports by the claimants is always going to be a problem - in simple terms, Telecom has all the information and the claimant has to pay a technical expert to examine and interpret it.

In summary, it is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement.

There are some other procedural difficulties which revealed themselves during the Smith arbitration and which I would like to discuss with you when I return. These centre principally upon the fact that claimants, who are often seeking large sums, are generally unable to specify the legal basis for their claim (eg negligence, breach of contract, Trade Practices Act), yet it is necessary for me to base my rulings upon a breach of legal duty. This means that I have to in part rely upon Telecom to identify the legal basis of the claim made against it (which is somewhat perverse and which was in any event handled by Telecom in a less than satisfactory manner), and/or I have to search myself for a legal basis without assistance from the parties (which inevitably contributes to the time and expense associated with the proceedings).

I wonder whether some pro forma document could be developed which could point claimants in the right direction.

I apologise for the brevity of these comments. I am happy to provide you with a more detailed written report when I return from leave in 2 weeks. Ultimately, I think we should have a conference involving you, me and Peter Bartlett to consider these and related issues.

Yours sincerely

  
GORDON HUGHES

561A



F/UR

**PRIVATE &  
CONFIDENTIAL**

**Telecommunications  
Industry  
Ombudsman**

Warwick L Smith LLB  
Ombudsman

**FACSIMILE COVER SHEET**

- TO:**
- The Hon. Lionel Bowen AC ( Council Chairman)
  - Mr. Ross Ramsay (Board Chairman) - Manager Government Liaison  
Optus Communications Pty. Ltd.
  - Mr. Ted Benjamin - National Manager, Customer Response Unit  
Telecom Australia
  - Ms. Holly Rathe - Communications Law Centre
  - Mr. Ewan Brown - Executive Director  
SETEL
  - Ms. Elizabeth Morley - ACA
  - Mr. John Rohan - Managing Director  
Vodafone Australasia Pty. Ltd.
  - Mr. Andrew Bailey - Director, Corporate & Regulatory Affairs  
Optus Communications Pty. Ltd.
  - Ms. Gillian Welshe - Director of Corporate Affairs  
Telecom Australia
  - Mr. Rob Simpson - General Counsel  
Optus Communications Pty. Limited
  - Mr. John Fries - Financial Director  
Vodafone Pty. Ltd.
  - Mr. Graeme Ward - Director of Corporate Planning  
Telstra

**FROM:** Warwick Smith

**DATE:** May 12, 1995

**NO. OF PAGES** Including Coversheet (4)

**Message:**

Memo and attach. follow

*Benjamin*

*Yellow Pages*

*Term of Ombudsman  
conditions in his contract.  
Articles of Association for Ombudsman.*

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

**5613**



Telecommunications  
Industry  
Ombudsman

Warwick L. Smith LLB  
Ombudsman

MEMORANDUM

TO: Council Members  
Board Members

FROM: Warwick Smith

DATE: May 12, 1995

SUBJECT: COT Case

The first COT Case result has been received and distributed to the parties today.

Enclosed for your information is:

- Press Release
- Advice to Telecom upon the distribution of the result.

Dr. Hughes has left for Greece today. Pia and myself will deal with reactions from Tuesday and I will brief Council at its meeting on Wednesday 17th if that proves necessary.

All other AUSTEL sponsored COT Claimants are now in the Arbitration process, with Arbitrators appointed.

The next COT case result is expected in the middle of June at the soonest.

Regards,

*WSL*

**Warwick L. Smith**  
Ombudsman

encs.

561 B

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

# MEDIA Release



Telecommunications  
Industry  
Ombudsman

**FRIDAY 12TH MAY, 1995**

## **MEDIA RELEASE**

### ***1ST TELECOM COT CASE ARBITRATION FINALISED***

The Telecommunications Industry Ombudsman, Administrator of the Fast-Track Arbitration Procedure, today released to the parties the Arbitrator's Award in the first COT Case arbitration.

The arbitration is a confidential process, with the arbitration agreement having been negotiated by the parties and the Administrator with the assistance of Special Legal Counsel in mid 1994. This arbitration process flowed from a settlement proposal brokered by ALSTEL.

The Administrator noted that the arbitration process, under the direction of the independent Arbitrator Dr Gordon Hughes, appointed with the agreement of the parties, had been run in accordance with principles of natural justice.

"While the issue of the customer's access to documentation via FOI had caused delays in the process, the arbitration procedure proved to be a fair and successful means of finally resolving this long-standing dispute" the Administrator said.

Whilst not identifying the claimant or the quantum of the Award, the Administrator noted that the findings of the Resource Unit, the specialist technical advisers to the Arbitrator, indicated that the claimant had suffered considerable technical difficulties during the period in question. It was found that faults did exist which caused the service to fall below a reasonable level, and that apart from some customer premises equipment (which includes telephone cabling, phones, answering machines or facsimiles connected within the customer premises), most of the problems were in the Inter Exchange Network.

For further information please contact:

**MR WARWICK SMITH**  
PH: (03) 9277 8777

561 B



# COPY



12 May 1995

**PRIVATE & CONFIDENTIAL**

Telecommunications  
Industry  
Ombudsman

Warwick L Smith ULB  
Ombudsman

Mr Ted Benjamin  
National Manager Customer Response Unit  
Telecom  
37/242 Exhibition Street  
MELBOURNE VIC 3000

*By hand*

Dear Ted,

*Fast-Track Arbitration Procedure - Alan Smith and Telecom*

I enclose for your information a copy of the Arbitrator's Award in this matter.

You should of course be aware of your obligations under the Fast-Track Arbitration Procedure to treat this Award, the subject matter of the arbitration proceedings, the conduct of the procedure and the confidential information (as defined in clause 16 of the Procedure) as strictly confidential, pursuant to clause 17 of the Procedure.

You will remember the terms of the recent amendment to the Procedure (clause 18A) whereby the Administrator is able to make public comment on the process and on any findings of general application to the telecommunications industry, without identifying the claimant or the quantum of any Award. I enclose for your information a copy of the media release issued by this office today, which gives effect to clause 18A.

Yours sincerely

Warwick L. Smith  
Ombudsman

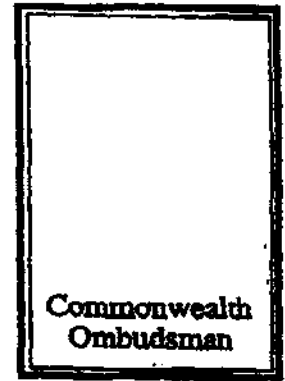
cc. Dr Gordon Hughes  
Mr Peter Bartlett

561B

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

Ref No: A/97/123

9 July 1998



Mr Graham Schorer  
Golden  
PO Box 313  
NORTH MELBOURNE 3051

ADDRESS:  
6TH FLOOR  
1 FARRELL PLACE  
CANBERRA ACT 2601

POSTAL:  
PO BOX 442  
CANBERRA ACT 2601

TELEPHONE:  
(06) 276 6111

TOLL FREE:  
1 800 133 057

FACSIMILE:  
(06) 249 7829

INTERNATIONAL  
FACSIMILE:  
61-6-249 7829

Dear Mr Schorer

I refer to your letter of 4 July 1998 (faxed on 6 July 1998) concerning the letter you received from the Department of Communications and the Arts dated 23 June 1998.

The Amended Terms of Reference provided to the Working Party by the Senate Committee did not 'provide a forum to investigate Telstra's alleged conduct of misleading the Senate.'

Yours sincerely

  
John Wynack  
Chair, Working Party

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Ref No: A/97/123

10 July, 1998

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

Dear Mr Armstrong

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

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

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

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

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

ADDRESS:  
6TH FLOOR  
1 FARRELL PLACE  
CANBERRA ACT 2601

POSTAL:  
PO BOX 442  
CANBERRA ACT 2601

TELEPHONE:  
(02) 6276 0111

TOLL FREE:  
1 800 133 057

FACSIMILE:  
(02) 6249 7829

INTERNATIONAL  
FACSIMILE:  
61-2-6249 7829

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

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

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

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

Yours sincerely



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

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

**STD calls** *continued*

	Date	Time	Place	Number	Rate	Min:Sec	\$
	<b>Telephone Service 03 5526 7265</b> <i>continued</i>						
469	28 Nov	10:03 am	Melbourne	0398761254	Economy	0:10	0.18*
472	28 Nov	10:05 am	Melbourne	0398761254	Economy	9:38	1.72*
357	28 Nov	01:34 pm	Melbourne	0398761853	Economy	19:23	3.30*
427	29 Nov	05:12 pm	Melbourne	0397555480	Economy	2:40	0.58*
424	30 Nov	10:34 am	Melbourne	0398761254	Day	1:01	0.48*
423	30 Nov	10:39 am	Melbourne	0392877099	Day	1:24	0.61*
425	30 Nov	10:42 am	Brisbane	0738521711	Day	12:12	4.42*
375	30 Nov	11:20 am	Melbourne	0398761853	Day	0:52	0.43*
374	30 Nov	11:21 am	Melbourne	0398761254	Day	1:49	0.74*
355	30 Nov	01:59 pm	Melbourne	0398761853	Afternoon	0:48	0.39*
394	01 Dec	08:56 am	Melbourne	0398761853	Day	2:54	1.09*
393	01 Dec	09:05 am	Melbourne	0398761254	Day	4:54	1.74*
395	01 Dec	10:30 am	Brisbane	0733623322	Day	1:12	0.57*
433	01 Dec	01:28 pm	Melbourne	0392877001	Afternoon	3:55	1.30*
434	01 Dec	01:32 pm	Melbourne	0392877099	Afternoon	1:44	0.66*
426	02 Dec	07:46 am	Melbourne	0398761853	Day	0:48	0.41*
443	02 Dec	05:11 pm	Melbourne	0398761254	Afternoon	1:56	0.72*
376	02 Dec	08:30 pm	Scarsdale	0353428591	Economy	8:58	1.61*
387	02 Dec	08:50 pm	Alfredton	0353341229	Economy	9:47	1.74*
388	02 Dec	09:39 pm	Melbourne	0398761254	Economy	8:38	1.55*
369	03 Dec	06:08 am	Melbourne	0398761853	Economy	4:24	0.87*
465	03 Dec	07:21 am	Melbourne	0395538030	Day	5:35	1.97*
422	03 Dec	04:37 pm	Melbourne	0398761254	Afternoon	2:10	0.78*
408	03 Dec	08:30 pm	Melbourne	0395114336	Economy	4:01	0.81*
407	03 Dec	08:38 pm	Melbourne	0393983881	Economy	4:14	0.83*
373	04 Dec	06:05 am	Melbourne	0398761853	Economy	1:31	0.40*
371	04 Dec	01:00 pm	Melbourne	0395681824	Afternoon	4:55	1.59*
360	04 Dec	02:32 pm	Melbourne	0398761254	Afternoon	0:17	0.23*
361	04 Dec	02:48 pm	Melbourne	0398761254	Afternoon	0:33	0.31*
356	04 Dec	03:05 pm	Melbourne	0398761254	Afternoon	13:08	3.99*
458	04 Dec	04:13 pm	Melbourne	0398761254	Afternoon	14:33	4.41*
461	04 Dec	04:28 pm	Melbourne	0398761853	Afternoon	1:24	0.56*
460	04 Dec	04:30 pm	Melbourne	0398761853	Afternoon	1:18	0.53*
459	04 Dec	04:31 pm	Melbourne	0398761254	Afternoon	4:09	1.36*
462	04 Dec	04:51 pm	Melbourne	0398761853	Afternoon	0:36	0.33*
482	04 Dec	07:53 pm	Grovedale	0352414045	Economy	1:09	0.33*
378	04 Dec	07:55 pm	Melbourne	0395538030	Economy	20:43	3.00*
412	05 Dec	08:25 am	Melbourne	0395538030	Economy	0:19	0.20*
414	05 Dec	09:40 am	Melbourne	0395538030	Economy	2:17	0.52*
413	05 Dec	09:43 am	Melbourne	0392877001	Economy	1:37	0.41*
419	05 Dec	10:06 am	Melbourne	0398761853	Economy	1:07	0.33*
415	05 Dec	10:08 am	Melbourne	0398761254	Economy	0:20	0.21*
418	05 Dec	10:08 am	Melbourne	0398761853	Economy	0:46	0.28*
417	05 Dec	10:10 am	Melbourne	0398761853	Economy	0:47	0.27*
416	05 Dec	10:11 am	Melbourne	0398761254	Economy	1:33	0.40*

563

*Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road  
RMC 4403  
Portland 3305  
Victoria, Australia.*

26 April 1998

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

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

Dear Wally,

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

### **THE "BRIEFCASE SAGA"**

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

### **APPENDIX 1:**

**FOI documents C04006, 7 and 8**

I believe that the hand-written comments made by Telecom's Rosanne Pittard on document C04006 were made at the time of settlement. This settlement was reached on 11 December 1992 and, since these comments refer to Telecom being aware of the poor grade of network performance suffered by my business over the previous 3 - 4 years, this proves clearly that Telecom had been aware of my complaints from when I first began to lodge them in April 1988

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

**Letter dated 13/6/96, to Mr John Wynack,  
Commonwealth Ombudaman's Office**

This letter is self-explanatory.

**PART 1A**

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

This document includes the following statement:

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

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

**PART 2**

**Telecom confidential memo dated 17/6/1993,  
from Rosanne Pittard to the Manager, Network Investigations.**

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

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

Ms Pittard further states, in this same memo:

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

**PART 3**

**Letter from Austel.**

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

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

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

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

Thank you for your concern.

Sincerely,

Alan Smith

PS

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

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

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

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

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

**copies to:**

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



Internal Memo



To David Shepherd  
Manager  
Network Investigations

From Rosanne Pittard  
General Manager

Telecon Commerce

Subject Caps Bridgewater Holiday  
Camp

File VSC/14

540 Springvale Road  
Glen Waverley  
Victoria 3150  
Australia

Date 17 June, 1993

Telephone 03-559 75  
Message Bank  
Facsimile 03-562 192

Distr.

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

Please find attached a letter from Austel requesting information regarding that incident. Whilst I can respond to the details regarding the information provided to him at the time of settlement I cannot comment on the variation between what Mr Smith was told and the contents of the Network Investigations files. I need your assistance for this. Can we discuss as soon as possible please?

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

564

K03281

**APPENDIX 4:**

**FOI document R09830**

**23 August 1993**

564

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

The briefcase contained the following papers

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

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

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

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

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

David Shepherd

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

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

Telecom is in receipt of minutes from Austel that suggest that not all documents have been provided as requested. Copies of Austel correspondence is available if required.

Don

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R09830

Darren and Jenny Lewis  
Cape Bridgewater Coastal Camp  
RMB 4408, Cape Bridgewater  
Portland, 3305  
Phone: 03 55 267 267

23<sup>rd</sup> January 2003

Mr John Pinnock  
Telecommunication Industry Ombudsman  
P Box 276  
Collins Street West  
Melbourne 8007

Dear Mr Pinnock,

During a conversation with a representative from David Hawker's office earlier today, I was advised to ask your office to investigate the phone problems my wife and I have continually experienced since we bought our business from Alan Smith in December 2001.

Although these phone problems have decreased dramatically since Telstra rewired the business and disconnected the phone alarm bell recently, we still have problems with the fax line, as was demonstrated when I attempted to send a fax to your office yesterday. I am also concerned that, since the rewiring, Telstra's CCAS data still shows as many as seven incoming calls a day not being answered, even though we are at home at the time.

As well as speaking to David Hawker's representative this morning, I also had a disturbing discussion with Tony Watson, the Telstra fault technician assigned to my case. Mr Watson informed me (in a round-about way) that he is reluctant to supply me with any more information in relation to our phone faults because he knows I am in contact with Alan Smith, the previous owner of the business. Apparently Telstra is afraid that, when talking to Alan, I might bring up the phone problems and therefore provide him with information he could use in an attempt to reopen his arbitration. I am not interested in Alan's past phone problems, or his arbitration, except from the perspective of his obviously blatantly misleading reassurances, when we first bought the business, that Telstra had fixed all the phone faults.

Before we bought this business, my wife and I ran another business of our own for five years, successfully using the telephone, fax and Internet to sell memorabilia. Never before have we experienced phone faults like those we have had to cope with since we moved to Cape Bridgewater.

Since I am certainly *not* working in liaison with Alan Smith (as was suggested this morning by Telstra's Tony Watson), I am therefore now asking your office for advice on this matter in the hope that you will be able to help us to repair the damage that has been done to our business to date.

Will you please assist us in this matter?

Sincerely,

Darren and Jenny Lewis  
Copy to: David Hawker MP, Federal Member for Wannan, 190 Gray St, Hamilton 3300

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**\*\* Telstra Confidential \*\***



**AXE Charge Check  
Customer Report  
Metering Section Report  
Date of Report - 11/12/2006**

Full National Number	0355257267	A-Party Access	NONE
Exchange Code	WBOX	Exchange Service Area	CAPE BRIDGEWATER
Start of Study	31/10/2006 09:43:26	Call Report Start Date	31/10/2006
End of Study	30/11/2006 09:43:12	Call Report End Date	30/11/2006

**Call Details**

Day	Date	Time	Call Type	Number Dialed	Wait Time	Conv Time
FRI	17/11/2006	17:14:42	IA		13	22
FRI	17/11/2006	17:36:55	IA		9	18
FRI	17/11/2006	19:57:45	IA		22	40
FRI	17/11/2006	19:58:04	DCXN	125101	3	40
FRI	17/11/2006	19:58:12			4	0
FRI	17/11/2006	19:58:18			2	0
FRI	17/11/2006	20:23:12	IA		23	51
FRI	17/11/2006	20:23:32	DCXN	125101	3	51
FRI	17/11/2006	20:23:39	DCX	125101	9	85
SAT	18/11/2006	10:15:52	IA		13	930
SUN	19/11/2006	09:38:54			10	0
SUN	19/11/2006	10:10:12	IA		23	39
SUN	19/11/2006	10:10:32	DCXN	125101	3	39
SUN	19/11/2006	11:22:00	IA		13	63
SUN	19/11/2006	11:22:38	DCXN	125101	2	63
SUN	19/11/2006	11:41:42	DCX	112	10	0
SUN	19/11/2006	11:42:00			2	0
SUN	19/11/2006	11:47:40	DCX	125109	9	9

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**\*\* Telstra Confidential \*\***



**AXE Charge Check  
Customer Report  
Metering Section Report  
Date of Report - 11/12/2006**

Full National Number	0359267267	A-Party Access	NONE
Exchange Code	WBOX	Exchange Service Area	CAPE BRIDGEWATER
Start of Study	30/10/2006 09:43:26	Call Report Start Date	30/10/2006
End of Study	30/11/2006 09:44:12	Call Report End Date	30/11/2006

**Call Details**

Day Date	Time	Call Type	Number Dialed	Wait Time	Conv Time
WED 29/11/2006	10:00:13	OUX	125101	7	0
WED 29/11/2006	10:00:22	OUX	125101	4	0
WED 29/11/2006	10:00:37	ECNR	1109	2	0
WED 29/11/2006	10:00:48			2	0
WED 29/11/2006	10:00:55	DCX	125101	7	81
WED 29/11/2006	10:02:05	OUX	56501095593827	1	0
WED 29/11/2006	10:02:24	DCX	125101	7	42
WED 29/11/2006	10:03:36	DUM	0412463300	25	0
WED 29/11/2006	10:03:55	DCX		0	0
WED 29/11/2006	10:04:14	DCM	0412463047	27	324
WED 29/11/2006	10:22:52	IA		15	59
WED 29/11/2006	11:13:40	DCS	97005548	14	252
WED 29/11/2006	11:26:31	DCXB	125101	3	66
WED 29/11/2006	11:26:39	IA		2	66
WED 29/11/2006	12:04:20	DCS	53502302	7	46
WED 29/11/2006	12:04:32			3	0
WED 29/11/2006	12:04:38	DCX	125101	8	0
WED 29/11/2006	12:06:31	DCS	53502302	17	62



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**\*\* Telstra Confidential \*\***



**AXE Charge Check  
Customer Report  
Metering Section Report  
Date of Report - 11/12/2006**

Full National Number	0395267267	A-Party Access	NONE
Exchange Code	WBO	Exchange Service Area	BRIDGEWATER
Start of Study	31/10/2006 09:43:26	Call Report Start Date	31/10/2006
End of Study	30/11/2006 09:45:12	Call Report End Date	30/11/2006

**Call Details**

Day	Date	Time	Call Type	Number Dialed	Wait Time	Conv Time
MON	27/11/2006	12:54:14	OCS	97005540	14	3085
MON	27/11/2006	14:43:59	ECNR	107	51	0
MON	27/11/2006	15:27:18	IA		18	73
MON	27/11/2006	16:28:21	IU		18	0
MON	27/11/2006	16:30:58	OCX	125101	8	9
MON	27/11/2006	17:27:00	IA		23	46
MON	27/11/2006	17:27:19	OCX	125101	3	48
MON	27/11/2006	17:27:24			16	0
MON	27/11/2006	17:27:54			3	0
MON	27/11/2006	17:28:03	ECNR	107	4	0
MON	27/11/2006	17:28:15	OCX	125101	11	0
MON	27/11/2006	17:28:32	OCX	125101	7	74
MON	27/11/2006	17:54:08	IA		11	15
MON	27/11/2006	19:49:32	IA		21	55
MON	27/11/2006	20:00:07	OCS	98205736	23	38
TUE	28/11/2006	09:31:35	IA		4	15
TUE	28/11/2006	09:52:01	OCX	0406244937	27	0
TUE	28/11/2006	09:55:06	IA		9	63



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**\*\* Telstra Confidential \*\***



**AXE Charge Check  
Customer Report  
Metering Section Report  
Date of Report - 11/12/2006**

Full National Number		A-Party Access	
Exchange Code		Exchange Service Area	
Start of Study		Call Report Start Date	
End of Study		Call Report End Date	

**Call Details**

Day Date	Time	Call Type	Number Dialed	Wait Time	Conv Time

566





# AUSTRALIAN GOVERNMENT SOLICITOR

VICTORIA

ACI House  
200 Queen Street  
Melbourne VIC 3000  
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FAX (03) [REDACTED]

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**AUSTRALIAN CAPITAL TERRITORY**  
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11 Russell Place  
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Canberra City ACT 2600  
(02) 244 1281  
-1688  
+ (02) 244 1271

OUR REF: 90500457/7117.sb

3 March 1992



T

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

A05623

**NEW SOUTH WALES**  
St James Centre  
11 Elizabeth Street  
GPO Box 2727  
Sydney NSW 2000  
(02) 261 7777  
DX 44  
FAX (02) 223 6827

Dear Sirs

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

**QUEENSLAND**  
240 Adelaide Street  
GPO Box 1488  
Brisbane QLD 4000  
(07) 500 3400  
DX 110  
FAX (07) 500 5799  
and other at  
Business Chambers  
12 White Street  
PO Box 1904  
Townsville QLD 4810  
(077) 71 4004  
DX 46432  
FAX (077) 21 2431

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

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

**SOUTH AUSTRALIA**  
Mandell House  
99 Currier Place  
GPO Box 2830  
Adelaide SA 5000  
(08) 265 4211  
DX 188  
+ (08) 265 4499

Yours faithfully  
AUSTRALIAN GOVERNMENT SOLICITOR

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

**SOUTHERN AUSTRALIA**  
251 Adelaide Terrace  
GPO Box 01994  
Perth WA 6001  
(09) 425 7111  
DX 6000 EAST PERTH  
FAX (09) 252 6320

please place green form + send copy letter to nir TBS cl- melinda Hughes

**TASMANIA**  
Commonwealth Law Centre Building  
39-41 Davey Street  
Hobart TAS 7000  
(03) 20 1700  
DX 122  
FAX (03) 23 1185

please type on slip and attach to pay ment as early as possible.

**NORTHERN TERRITORY**  
National Mutual Centre  
11 Crenshaw Street  
Lynch Bay No. 12  
Darwin NT 0801  
(089) 81 4833  
DX 120  
FAX (089) 81 0865

10/3/92

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AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

94/0269

16 November 1994

Mr S Black  
Group General Manager  
Customer Affairs  
TELECOM

Facsimile No: (03) 632 3241

Dear Steve

### SERVICE VERIFICATION TEST ISSUES

The recent SVT results for Mr Alan Smith raise some issues on which AUSTEL requests clarification, as follows.

- The letter provided to Mr Smith informing him of his SVT results notes that the Public Network Call Delivery Tests relevant to his 008 service used a 1-800 number that simulated the routing of his 008 services. AUSTEL is seeking confirmation from Telecom that the network equipment utilised on calls to the 1-800 number is the same as that which would have been used by calls to Mr Smith's 008 service (with the exception of the termination number).
- The Call Distribution Tables on pages 12 and 14 record that the total calls made to each number are in excess of 600. AUSTEL requests that Telecom detail the process which determines the "1st 500" calls under test 6.3, given that a combined total of over 600 calls have been made from multiple origins.

I would also like to take this opportunity to formally confirm three issues raised at our recent meeting of 9 November 1994.

- (1) Telecom will provide AUSTEL with the detailed individual call data (ie. time of day & origin of call) which has been the subject of previous correspondence from AUSTEL. This data was originally requested by AUSTEL on 25 August 1994. As discussed at our meeting, the data is

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required by AUSTEL as part of our review of the SVT, and will be required by the consultant assisting AUSTEL in this review. (Please note that call data for all the test calls is required, not just the data for the first 500 calls). AUSTEL requires this data by 23 November 1994. The provision of this data by this date is essential to the effectiveness of AUSTEL's review of the SVT.

- (2) In the near future Telecom will conduct the "Demonstration Tests" on the services of customers for whom the SVT have been completed. AUSTEL notes that the SVT were conducted a considerable time ago on some of these customer's services. Although these tests are not part of the SVT, this data will be used by AUSTEL in our review of issues related to the SVT. The results from the "Demonstration Tests" will also be provided to our consultant, and AUSTEL requires some of these test results by 23 November 1994.
- (3) That Telecom will shortly provide, as requested in AUSTEL's letter of 11 October 1994, a statement on:

*the deficiency of the current testing process for the "Call Continuity / Dropouts to Neighbouring LIC" test contained in the Service Verification Tests (SVT). This statement should also detail the action Telecom intends to take to address this deficiency.*

This statement will be provided to AUSTEL's consultant as part of the review of the SVT, and is required by 23 November 1994.

The three matters detailed above have been all been outstanding for some time. I would be grateful if you could address your personal attention to ensuring the required information is provided to AUSTEL by the date requested.

Yours sincerely



Norm O'Doherty  
General Manager  
Consumer Affairs

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28 November 1994

Commercial & Consumer  
Customer Affairs

Engineering and Technical  
Consultancy

8/242 Exhibition St  
Melbourne, Vic  
Australia

Telephone (03) 634 8436  
Facsimile (03) 634 9930

Norm O'Doherty  
General Manager, Customer Affairs  
AUSTEL  
5 Queens Road  
Melbourne, Vic

**Service Verification Tests - Individual Call Data**

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 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.

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. It should be noted that in all cases more than 500 calls are included in the sample. As indicated in Section 6.3.1 of "Service Verification Tests for Telecom's PSTN", the first 500 calls of the sample which fall within the specified time period, but not including the errors and failures mentioned in this section are used.

As 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 is shown on the results sheets), but is unable to confirm that the call has been held past 40 seconds. A more detailed response to your questions on this issue is under preparation.

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The detailed Call Delivery Test report for Dawson's Pest and Weed Control, Maidstone, is still being extracted from the data base and will be forwarded as soon as it is available. The report on Mr Bova's SVT is currently being finalised and will be forwarded as soon as it is available. As you are aware, Telecom is not completing the Service Verification Test for Mr Turner's service at his request. However, a report on that part of the test which has been completed is being prepared.

Also attached is a copy of the latest issue of a Result Summary document that has been prepared to show the key results from each SVT.

Two manual Call Delivery Tests have been carried out to Mr Main's service and to Mr Turner's service. Reports on the results of these tests are currently under preparation and will be forwarded to the customer, with a copy to AUSTEL, as soon as they are available.

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



Peter Gamble

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include the regulator, I believe it is in the interests that these matters are exposed and correctly addressed in the public interest. And my involvement in the current assignment has been assisted by obtaining legal assistance by parties who can identify what is or is not a criminal offence. The documents and reports that Alan is preparing I then give to other parties to vet, and those reports are then refined to make sure that we are only dealing with what we call substance. As part of this exercise, it has been necessary to turn around and have a look at the actual content of the document. So when we talk about what Alan is doing, Alan actually, to my surprise and also to the other person that is helping us, could be best described as an analyst. And while he got very excited here today, he is very good and very patient in looking at a document and analysing it to the point where we can get two documents – allegedly one a copy of the other – and identify the fact that one copy has been interfered with. Now that can mean removing certain words, removing a paragraph or if there has been certain deletions to it, we can identify the fact that the document has really been tampered with because even the type font has been changed. When we talk about interfering with a legal process, because my involvement started with the interference in a legal process in the Federal Court. My original complaint was not only did I have the fault, the problem, it was the denial of the problem and the falsely claiming of legal professional privilege and the falsely claiming of commercial in-confidence. None of it which was factual. Now when we talk about the root of, or the foundation of, our legal system being interfered with and being perpetrated by, not one organisation, but a group of people and that – to have dismissed that as not being in the public interest I find that a government regulator who has had their privilege in the past of having in depth discussions with myself because I was approached by the regulator, Robyn Davey, who was the gentleman who was the major architect of draftsman of the Trades Practices Act and I was referred to him by Mr Alan Fells. I was told by Mr Alan Fells that Robyn Davey wrote most of the Trade Practices Act and to go to him because the matters that we raised with him in '92 and '93, he said, can be addressed by the regulator because Robyn Davey and Austel has the, not only the Telecommunication Act they also have the Trade Practices Act attached to their charter to be able to address these issues. So when I got the phone call from Robyn Davey on 4 August 1973 and he demanded I come down and see him immediately and the subsequent many meetings that took place with him and then I was very fortunate I met a gentleman who I consider a very sincere, genuine, gentleman by the name of Ian Campbell of Telstra, a lot of meaningful discussions took place. But as has been demonstrated here today everybody seems to feel as though, because these matters are a long time ago, that there is no public interest. What I am saying is that the public interest, and I believe that I have become a very good advocate of what is in the public interest as the spokesperson, is that these crimes that have been committed under the veils of secrecy and confidentiality are of public interest and no secret veil of confidentiality covers a criminal offence. So not only are we looking at the technical aspects we are looking at all the parties involved and what role they played to deceive the individual claimants and the public at large. Now my situation of 2007 is dealing with one of those other very interesting issues of how do you prove a point? How do you prove you have got a phone problem when the phone company says you don't have it? How do you prove when they say to you, but we rang you, you didn't

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Facsimile

To	Graham Schorer	From	Peter Gamble Manager, Engineering and Technical Consultancy	Commercial & Consumer Customer Response Unit
Facsimile	(03) 287 7001	File		6242 Exhibition Street Melbourne Vic 3000 Australia
Company	Golden Messenger	Date	22 November, 1994	Telephone (03) 634 6438
Location	483-493 Queensberry Street, Carlton	Total Pages	4	Facsimile (03) 634 6830

### PSTN and ISDN Testing

Dear Mr Schorer

→ 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.

The equipment is the Telephone Quality Measurement System (TQMS) Version 3, manufactured by Sotax Inc. The TQMS will enable the measurement of a number of call set up and transmission parameters. Attached is a copy of some material which describes the system. The equipment has been specifically set up to recognise the tones used within the Australian telephone network.

I am proposing that we use this equipment to carry out some tests on both your PSTN and ISDN services. The PSTN tests will require the use of a line from one of your PSTN rotary groups to receive calls from a second unit, with an additional control line also being required. The ISDN tests will require the allocation of an initial number to the test unit. Given the number of PSTN and ISDN lines you have available, this should have minimal impact on your use of the telephone network. 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 precise duration of the tests, and hence the numbers of tests calls, have not yet been finalised, but it is expected that they will last for about two and a half days. The units are capable of generating calls at an approximate rate of 20 calls per hour. Spread over a full 24 hour period, which will ensure that both high and low traffic periods are encountered, it is expected that approximately 1,000 calls will be generated during the test period.

The cost of any outgoing calls made by this test equipment during this period will be credited to your telephone account.

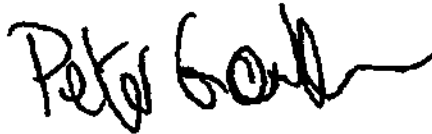
Telecom Corporation Limited  
ACN 001 778 395

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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.

A copy of the results will be forwarded to you after the tests have been completed.

I would like these tests to start as soon as practicable and I will call you tomorrow morning to discuss the details further.



Peter Gamble

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MS JERMEY: Let me just add to that. If you're going to make a policy statement – if you're willing to, or if you are wanting to say, "Well, the only reason they gave them to me was because the tribunal said that they had to give them under public interest considerations," then that's not the issue. The issue is whether you have the documents, because the Freedom of Information Act is about obtaining access to documents. That's what it's about. It's not a basis of saying, "Well, I don't want to do what they want to do, I want to make a public statement, I want a public stand, I want the tribunal to back me up." What you're really asking me to do is to support your view that the documents are in the public interest. That's what you're wanting, isn't it?

MR SMITH: That's right.

MR FRIEDMAN: Yes.

MR SMITH: But the documents they had provided me in the past, under the section, they deleted. They haven't provided all of the documents, and I noticed that on points 4, 5, 6, they were looking at precedence. Until two days ago, and at point 11 and point 13, they raise issues to where precedence had been set in regards to the supply of documents not against the public interest where precedence had been set, and I'm saying, well, why have they come at this late stage, when I have not had the chance to see, or to get legal opinion to how is this disallowed. I have no – again, I'm not a legal person.

MR FRIEDMAN: Yes, but that's not the tribunal's role, Mr Smith. You're asking me to make a policy decision, as such, that these documents are in the public interest, when if you already have the documents, there's no need for you to ask me to do that, and it wouldn't be appropriate for me to do so. Ms Jermey, I'm going to stand the matter down, and I want you to consider what I've just said, and it would seem to me, this tribunal has a requirement under the Act – under its own Act – to be fair, impartial, just, economic and quick. Right? I've got it now – fair, informal, just, economic and quick. Now, if I am told that the documents you are seeking have been given to you, then for me to carry out my functions under the AAT Act, I would not be acting fair, informal, just economic and quick, to continue the hearing when you already have the material that you want.

Now, there is precedent for that – I'm not going to go into it now – but there is precedent, there is court authority, that a person who wants to continue an application where they already have what they want, and there's no material benefit, that's been held on many occasions to be frivolous or vexatious. Let me just say, I don't consider you, personally, to be frivolous or vexatious – far from it.

MR SMITH: Yes.

MR FRIEDMAN: But what I'm saying to you is, if you have the documents, then for you to continue to use public money to run this hearing, for me to go away and write a learned decision, is not in the public interest, and I would be very seriously

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will be sufficient for you. During that time, Ms Jerney, you will have an opportunity to make whatever deletions you believe appropriate, and to then give the documents to Mr Smith. And Mr Smith, at the telephone directions hearing, assuming you've received the documents, I'll then be asking you which of the options you wish to pursue, and hopefully, the matter can be resolved one way or another.

MR SMITH: Right.

MR FRIEDMAN: Do you follow all that?

MR SMITH: I do. I do.

MR FRIEDMAN: Yes. I suppose all that remains for me to say, Mr Smith, is that you obviously are very tenacious and persistent in pursuing the – not this matter before me, but the whole – the whole question of what you see as a grave injustice, and I can only applaud people who have persistence and the determination to see things through when they believe it's important enough.

MR SMITH: Well, thank you for that.

MR FRIEDMAN: At the same time, I'm just a tribunal member, and there are no media here, and it's rather – what I can do, if I were minded to do it anyway, is rather limited. So, I just don't want you to think that I'm discounting what you've done, far from it. But on the other hand, this tribunal is really just a matter for sorting out rather narrow - - -

MR SMITH: I do understand that.

MR FRIEDMAN: - - - legal questions, and so, whatever I might say or might not say is not going to carry a lot of weight in the wider community, much as I might want it to.

MR SMITH: Right.

MR FRIEDMAN: All right?

MR SMITH: Okay.

MR FRIEDMAN: So, I'll now adjourn the matter. Both parties will be notified of that telephone directions hearing before me, and hopefully, we can sort it out then.

**MATTER ADJOURNED at 12.41pm ACCORDINGLY**

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94/0269

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2 February 1995

The Hon Michael Lee MP  
Minister for Communications and the Arts  
Parliament House  
Canberra ACT. 2600

Dear Mr Lee

**QUARTERLY REPORT ON PROGRESS OF TELECOM'S  
IMPLEMENTATION OF RECOMMENDATIONS OF AUSTEL'S COT CASES  
REPORT**

I am pleased to provide our third quarterly report on Telstra's progress in implementing the recommendations of AUSTEL's COT Cases report.

Our quarterly report consists of two parts: a summary of significant developments to date; and a more detailed commentary on the status of implementation of each recommendation.

AUSTEL considers that in general terms Telstra has demonstrated its commitment to implementing the outcomes of the COT Cases report. The major area requiring further action on the part of Telstra concerns Telstra's representation of its liability. An important recent development in this respect is Telstra's confirmation that it proposes to lodge a revised clause 8.1 of its Basic Carriage Services tariff by 6 February 1995, clause 8.1 being a statement of Telstra's liability. AUSTEL sees no reason why Telstra cannot now move to rapidly finalise the relevant COT Cases report recommendations concerning Telstra's representation of its liability. I note that your statement to the Parliament of 21 September 1994 requested that Telstra expedite its implementation of these recommendations.

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As foreshadowed in AUSTEL's previous quarterly report, AUSTEL engaged a consultant in November 1994 to review Telstra's Service Verification Tests. The consultant's report has now been completed, and detailed discussions on the recommendations of his report have been scheduled with Telstra for late February 1995. AUSTEL will provide you with a separate report on the recommendations of the consultant's report and the outcome of discussions with Telstra in terms of Telstra adopting its recommendations. It is expected that this report will be provided within the first quarter of 1995.

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Yours sincerely

  
Sue Harlow  
Member

Attachment. *Status of Implementation of the Recommendations of AUSTEL's COT Cases report*

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**STATUS OF TELSTRA'S  
IMPLEMENTATION OF  
THE RECOMMENDATIONS OF  
AUSTEL'S COT  
CASES REPORT**

**AUSTEL'S THIRD QUARTERLY  
REPORT**

**2 FEBRUARY 1995**

*573*

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

**Telecom Update - 31 December 1994**

*Telecom is currently carrying out Service Verification Tests for DNF customers to objectively confirm that their services meet an appropriate performance standard.*

*See recommendation 26 regarding progress in conducting SVT's for first the 16 cases.*

*Seven SVT tests have now been completed on telephones service provided to DNF customers and in no case has the level of service provided been below the level of service established in consultation with AUSTEL.*

**TIMETABLE**

*Telecom agrees to resolve the majority of DNF's within six months and the balance within twelve months.*

**AUSTEL Comment**

Comment on Telstra's progress in conducting the Service Verification Tests is provided under recommendation 26.

**Recommendation 26:** Telecom devise plans with time-frames for resolving difficult network faults which reduce the level of service below a level determined by AUSTEL and inform its customers accordingly (cf: Coopers & Lybrand Recommendation 24, Bell Canada International's Rotary Hunting Group Study Recommendation 8.2).

**Telecom Update - 31 December 1994**

*Service Verification Tests have been completed for seven customers. Reports have been completed and forwarded to six of the customers, and the seventh report is in preparation. All six of the telephone services subjected to the Service Verification Tests have met or exceeded the requirements established.*

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

29<sup>th</sup> April 2006

The Hon David Hawker  
Speaker in the House of Representatives  
Parliament House  
Canberra 2600

Dear Mr Hawker,

At the beginning of the current DCITA process I was advised in writing that the Department would call for more information if they believed it was warranted. I believe you will be interested to know that I have not been asked for any more information, indicating that all the evidence I have forwarded to DCITA regarding my assessment claim has been accepted.

Over the years however I have explained to you some of the problems I have encountered with faxes and emails that 'go missing' or arrive late or faulty. The enclosed email from Sandra Wolfe is another demonstration of the kinds of problems I have had to deal with, although the recent, different email problems have only arisen since the DCITA process began. These new problems have so far taken a number of different forms from, as Ms Wolfe has complained, various people not being able to send emails to me at all, to emails arriving days after being sent. This apparent interference in my emails has now forced me to arrange for Ronda Fienberg, my Melbourne editing service ([rondagt@optusnet.com.au](mailto:rondagt@optusnet.com.au)), to send emails out on my behalf, from her computer and email address, because emails often don't arrive at their correct destination when I attempt to send them from my email address.

During the preparation and follow-up work for the current claim process I have also had other problems, particularly when attempting to receive emails from Ronda and in an attempt to overcome these problems we have been forced to devise a system of code names for people in DCITA, the Minister, Senator Joyce, and even you. While we were still using your real names in the subject line of emails sent to me from Ronda's office we frequently found that an email would take days to arrive and then, even more mysterious, if we were working on another letter to the same person later, the days-old email, which had already arrived on my computer, been opened, printed and sent through Australia Post, would arrive a second time on my computer, rather than the newest email that should have come through. So, in a valiant attempt to save our collective sanity, we have resorted to humorous aliases - I think you and your staff would enjoy the joke but I don't feel safe to reveal you alias (or anyone else's) at this stage! Since we began to use these substitute names, emails have returned to arriving within minutes of being sent. As a result of this experience, Ms Wolfe's email is therefore not a surprise (we will have to pass on the aliases list to her!).

During the Victoria Police Major Fraud Group inquiry I had problems with lost faxes and Neil Jepson, the Fraud Group's Barrister, was one person who maintained that he had not received several faxes I sent to him, even though both my Telstra account and fax journal printouts confirm that the faxes definitely left my fax machine and were correctly directed to his fax number. As my DCITA claim proves, these same privacy issues first began occurring during my arbitration in 1994 and were still occurring as recently as 2002 because my faxes were being intercepted by Telstra's fax stream system even though I had never requested such a service.

As I explained to the Australian Federal Police in March 2003, my primary reason for selling my business to the Lewises was because I believed that Telstra's protective services had chosen to harass me personally (and therefore my business) and this was why the phone and fax problems were still occurring.

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As it turned out of course, at least some of the problems were as a result of the faulty wiring and telephone alarm bell that Telstra had installed years before. I am now wondering however why I am having so many email problems now.

We are now in the situation where Cathy will not use our email address for bookings, both because of the risk of those emails vanishing, and for reasons of privacy for our clients, and I know of at least one professional who became so afraid of the repercussions of doing work for us that he refused to even bill us for the what work he had done on valuing the Camp in 2001 and, every time I rang his office to ask when the valuation would be finished, he made yet another excuse. When I finally managed to corner him and ask if he would prefer not to finish the job he admitted that that was the case, even though he had already spent a day and half on the job. Cathy and I have been pushed to breaking point, not only by the chaos this confusion causes our business, but also by the constant stress of not knowing who is watching and listening, or when.

These privacy issues must be of serious concern to the Government since they are now interfering in an official Government investigation into the very unresolved Telstra matters that put me in the situation I am in today and because they also raise major questions regarding whether or not DCITA and I have been receiving all the official procedural correspondence that we believe we have exchanged during this process. One very recent example of problems experienced with emails occurred when my editor emailed a document on my behalf to the Treasurer's email address and received an email receipt notice advising that the email and its attachment had been deleted without even being read. I hope this is an isolated case, but, as you are aware, previous experience indicates that it may not be. I have included in my DCITA claim, some examples of faxes sent to various official destinations that were received correctly but when faxed elsewhere, either arrived damaged or illegible, or didn't arrive at all. If emails clearly marked as part of the DCITA assessment process have been deleted, unread, from the Treasurer's inbox, then I have good reason to suspect that some of the documents I have sent to DCITA as part of the current official DCITA process, either by email, fax or mail, may also have 'gone astray'. Alternately, could it be that my claim is being censored before it reaches the assessors perhaps?

I would be most grateful if you would provide a copy of this letter to the Hon Senator Helen Coonan, as soon as possible, as a testament to serious breaches privacy that have occurred since the DCITA independent assessment process began and before.

Sincerely,



Alan Smith.

**Footnote from Ronda Fienberg:**

*Mr Hawker, I feel obliged to add to the information Alan has provided here. I have run a small editing and admin support business from my home since 1991 and first began assisting Alan in mid-1994. Until then I had never had a problem receiving or sending faxes for myself, or on behalf of my clients, to anywhere in the world, but I continually (still) have problems with Alan's faxes which often come through with the words drawn out down the page and therefore unreadable, or with the page cut off half way down. Since I first began to use email, in August 1998, I have also never had problems with emails, either sending or receiving, except for those going to Alan. Emails that don't get to him don't 'bounce' as they would if I had attempted to send them to an incorrect email address, they simply vanish into the ether for days at a time, before finally finding him! I find it difficult to believe that this is all simply coincidence or that nothing can be done to either prove that someone is interfering in the transfer of faxes and emails between his office and mine, or to stop it occurring.*

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5th June 2006.

CATHY EZARD  
c/ BURSWOOD HOMESTEAD  
P.O. Box 1144  
PORTLAND 3305

DAVID HAWKER MP  
SPEAKER OF THE HOUSE  
MEMBER FOR LEANING.

Dear Mr Hawker,

I am writing to you to voice my current unease due to information Alan Smith has forwarded to the OCITA claim process.

As you are aware our Emails have been going missing throughout the above process.

Mail and faxes have gone missing at other times when the Telstra matters have been under scrutiny by various sources in the past. Our phones have also been monitored.

As you are aware I was also followed by a Telstra vehicle from Portland to Ballarat several years ago. It was made obvious that I was being followed. As soon as I allowed to let the vehicle pass it dropped back and when I stopped at Dunkeld, it also stopped.

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2/

Due to what has been happening with our Emails I have now virtually closed my business. I only now take the occasional off road client as most people now pay via credit card for deposits + payments.

I do not feel comfortable taking credit card details by phone, fax or Email as I cannot guarantee details will remain confidential.

I am also concerned about our personal safety as Alan has no doubt rattled a few cages and there have been some elements involved in Alan's case which have been quite unethical.

All we want is for closure so we can make decisions and get on with our lives. This is not too much to ask for after all this time

Yours Sincerely

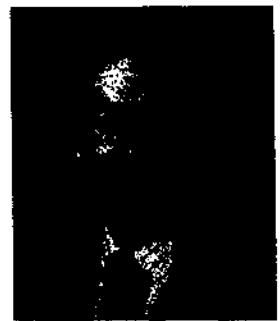
Cathy Ezard  
CATHY EZARD

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**THE HON DAVID HAWKER MP**

SPEAKER OF THE HOUSE OF REPRESENTATIVES  
FEDERAL MEMBER FOR WANNON



13 June 2006

Ms Kathy Ezard  
C/- Burswood Homestead  
PO Box 1144  
PORTLAND VIC 3305

Dear Kathy

Thank you for your letter of 5 June 2006. I suspect my recent letter back to Alan and you, containing replies from Minister Coonan, has crossed paths with your recent correspondence.

Whilst I sympathise with your ongoing concerns relating to your phone, fax and email services, it is difficult for me to offer any fresh suggestions those we have already canvassed in previous letters.

As you would be aware there are avenues of recourse, including the Commonwealth Ombudsman, Telecommunications Industry Ombudsman and in respect of your qualms about personal safety, the police. Your Internet Service Producer also may be able to assist with secure connections to enable you take commercial transactions over the internet.

I'm planning to be in Portland next month, so if you feel there is anything else I can do to assist please contact my office and I'll endeavour to catch up with you in person.

Kind regards

**THE HON DAVID HAWKER, MP**  
Speaker of the House of Representatives  
Member for Wannon

Ref: cbr-cdb/dh:mc

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

23<sup>rd</sup> August 2006

The Hon David Hawker  
Speaker in the House of Representatives  
Parliament House, Canberra 2600

Dear Mr Hawker,

At our last meeting in Portland it seemed to me that you were finding it hard to comprehend all that Cathy and I have had to deal with over the past years, in relation to our claims against Telstra and their Protective Services division. I believe you will therefore be interested to know that, since our meeting, I have been provided with two witness depositions, the first from an ex-Telstra Senior Protective Services officer, confirming that not only were my telephone conversations listened to by Telstra employees over an extended period, but the Portland Exchange log book that included records of the dates and times that this occurred had mysteriously disappeared when this Protective Services officer asked to see it as part of his investigation. The second deposition has been provided by the Senior Government Executive who witnessed the deposition sworn out by the Protective Services officer. The experiences recorded in both depositions are similar and support my complaints to you in 1999 and 2001 concerning problems with faxes and other privacy issues.

You will find attached a section of a recent fax journal printout from my fax machine. This is the third fax machine I have installed at my business since my arbitration – each one purchased in a futile attempt to improve the fax service. As I have explained to you, I still have problems receiving and sending faxes from my residence, even during my recent DCITA Independent Assessment Process during February to May this year. The attached fax printout demonstrates one of the problems I deal with when attempting to send Telstra related faxes to certain people in particular. It shows that, on 16<sup>th</sup> of this month, an eight-page document faxed to my legal advisor on 9~~555 555 555~~ took 12.16 minutes to send, with the last page completed at 17:28, but the same document faxed to my secretarial service in Melbourne on 9~~555 555 555~~, one minute later at 17:29, went in only 5.02 minutes. My legal advisor and secretarial service have retained the faxes they received which will confirm that they are identical documents.

The Minister's office, and you, know that I have been constantly complaining to the TIO and Telstra since 1995, that these exact fax faults continue to occur, but there has never been a proper investigation into my complaints and, as you also know, Cathy and I had to sell the Holiday Camp in December 2001 plus, more recently, still because of all the fax faults that occur, we have also had to stop using our fax machine for advertising, or for sending information to prospective clients of our Seal Cove Guest House.

The information in the two signed depositions referred to in paragraph one (above), added to all the other evidence I can provide regarding fax and privacy issues related directly to Telstra's use of fax screening of my service, without my permission and/or legal warrant, supports all that I related to you in Portland – and these are the same issues I raised in my arbitration in 1995 and again in my DCITA assessment claim. The latest information indicates that either my faxes are still being systematically, electronically and illegally intercepted or Telstra's network continues to incorrectly charge Telstra customers for faxes. Either way, the problem needs attention that it is not yet getting.

Cathy has previously provided both you and the Australian Federal Police with statutory declarations detailing how the invasion of our privacy has ruined our lives. The depositions referred to above validate

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our claims because they explain how the same issues have affected at least one other Australian citizen. Both the TIO's office, and yours, have received information from Cathy and my Melbourne secretarial service which details how, even after we have disconnected an outgoing telephone call in our office, and returned the handset to the telephone cradle, the phone will often ring again and we discover we are still connected. On one occasion in particular this same event occurred when we had been talking on our house phone (rather than the office phone) and my secretary could hear Cathy and me talking in our bedroom (although, thankfully, not when were being intimate!). Along with the new depositions, I also have another witness statement, signed by a Telstra employee, who admits that he listened into my telephone conversations for several months. I am sure you can understand how this invasion of privacy plays on our minds and I wonder how you would feel if your wife glanced at the fire alarm in the ceiling above your bed, after you had made love, and asked aloud "Did you get that, Telstra?" But this is how we live - every day.

On 6<sup>th</sup> September, at 3 pm, along with other Telstra claimants, I am meeting with the Hon Helen Coonan and Senator Barnaby Joyce in Canberra. I would appreciate it if you could raise these privacy issues with Senator Coonan before then, so she has time to assess the validity of my complaints, before the meeting.

The Commonwealth Ombudsman's Office officially handed these privacy issues over to the TIO, John Pinnock, 14<sup>th</sup> August of 2003 but Mr Pinnock refused to investigate. On 6<sup>th</sup> September I hope the Minister will see the need for an investigation, particularly since they were not addressed during my arbitration - twelve years ago - even though Telstra advised the TIO 17<sup>th</sup> October 1994, that the voice monitoring of my phone calls would be addressed under the agreed arbitration process.

I would be grateful if you could let me know when you have drawn these matters to Senator Coonan's attention.

Sincerely,



Alan Smith



**THE HON DAVID HAWKER MP**

SPEAKER OF THE HOUSE OF REPRESENTATIVES

FEDERAL MEMBER FOR WANNON



Thursday, 31 August 2006



Mr Alan Smith  
1703 Bridgewater Rd  
CAPE BRIDGEWATER VIC 3305

Dear Alan

I acknowledge receipt of your correspondence dated 23 August 2006 received 30 August 2006.

Many thanks for keeping me informed. As requested, issues concerning privacy breaching have been raised with Senator Coonan's office for your meeting with the Minister set for 6 September 2006.

Thank you for bringing this to my attention.

Yours sincerely

**THE HON. DAVID HAWKER, MP**  
Speaker of the House of Representatives  
Federal Member for Wannon

Ref. fb/dh:lh

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

24<sup>th</sup> February 2008

Ms Alison Jermey  
Senior Lawyer  
Legal Service Division (Melbourne)  
Australian Communications & Media Authority  
P O Box 13112  
Law Courts  
Melbourne  
Vic 8010

Dear Ms Jermey,

**RE:- Telephone Junction Box**

I reported the damage to the Telephone Junction Box in front of our premises in April 2007. The junction box was initially damaged when local council contractors built a footpath adjacent to our property. The box was inspected on April 4<sup>th</sup> 2007, by Telstra technician (Steve). The box has been further damaged and is now a public safety issues in spite of follow up letters dated 3<sup>rd</sup> December 2007, in which I was given a fault reference number 1-120114744, I followed up with a further letter 4<sup>th</sup> February 2008.

Over the years I have experienced many Telstra related issues – continuous complaints from customers unable to connect, faxes stopping half way through, transmission (3 fax machines – same problem) line drop-outs, dead lines, weird noises and music on lines.

Letters written to the TIO have been ignored during period 1995 to 2001 when I was Alan Smith's partner in the Cape Bridgewater Holiday Camp.

I hope the Junction Box issue is a isolated incident and not a follow on from lack of co-operation due to our previous experience with Telstra.

Yours sincerely



Cathy Ezard

PS: Please find attached a copy of a similar photo of the damaged Junction Box, which I provided Telstra in my 4<sup>th</sup> February, 2008 letter.

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↑ OUR  
PROPERTY

PUBLIC  
← FOOT PATH →

DAMAGED ↑  
JUNCTION BOX







Commonwealth of Australia  
STATUTORY DECLARATION

*Statutory Declarations Act 1959*

1 Insert the name, address and occupation of person making the declaration

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

2 Set out matter declared to in numbered paragraphs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

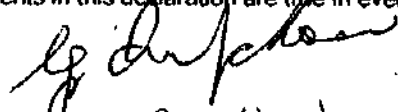
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about the information I had given him about the hackers. He told me that they had been caught and charged.

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

3 Signature of person making the declaration

3



4 Place

5 Day

6 Month and year

Declared at <sup>4</sup> Cheltenham on <sup>5</sup> 7<sup>th</sup> of <sup>6</sup> July 2011

Before me,

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

7



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

8

**Brett WALKER**  
Senior Constable 32031

CHELTENHAM POLICE STATION  
1200 NEPEAN HIGHWAY  
CHELTENHAM 3192  
DX 211453

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

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

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

29<sup>th</sup> December 2008

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

Re Graham Schorer & Alan Smith, COT

Dear Ms O'Donnell,

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

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

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

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

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

Thank you

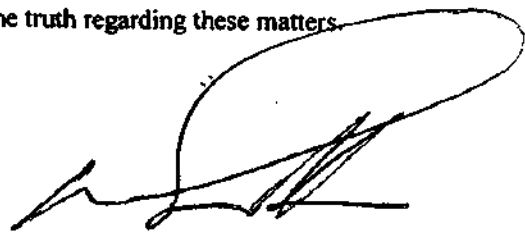


Graham Schorer

Copies

Mr Peter Bartlett and Dr Gordon Hughes (Melbourne)

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



Alan Smith

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*Cape Bridgewater Holiday Camp and Convention Centre  
Portland, Victoria, 3305*

Dr. Gordon Hughes  
Hunt & Hunt  
Lawyers  
Melbourne

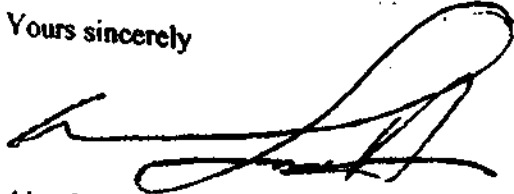
24th March, 1995

Dear Dr. Hughes,

I have included a six testimonials from various Social Club patrons dated from 22nd March 1991 to 13th April 1994 confirming that not only have we been catering for schools at the lower end of the market where the tariff is much lower we have created a venue where our facilities provided for Social Clubs and large family groups where our profit margin is three-fold comparable to the rates charged for schools.

You will note from page 22 in our response to Telstra's interrogatories that various social club venues and their patrons have had trouble contacting our venue. While this was conveyed by me during the time Ms Sue Hodgekinson was at the Holiday Camp I did not provided the attached material to support this matter although, there are many references in my letter of claim and supporting documents confirming we are a convention centre as well as a school camp.

Yours sincerely



Alan Smith

SRI-LANKAN CHRISTIAN FELLOWSHIP

1 Nevin Parade  
View Bank 3084  
22.3.91

To whom this may concern

This is to state that our 1991 Annual Deeper life camp was held at The Cape Bridgewater. Holiday camp during the Australia day weekend. This was our fourth such camp in Australia and without any exaggeration we could witness it as the best of the lot.

A total strength of 150 of us including children were catered to with excellent Srilankan cusaine. The mixed fried rice and the variety of meat curry preparations were appreciated by many.

We did enjoy the the hospitality of Alan and his team to the utmost, not forgetting the escorted outings to the Seal colony and the Salt water lakes.

Please feel free to contact me or any one of our organisers listed below for further reference if required.

Yours Sincerely



Reg Jeganathan

Contact Telephone Numbers

Reg Jeganathan	AH (03) 459 6189
	BH (03) 555 0000
Inpa Eliezer	AH (03) 563 1489
	BH (03) 651 5414
Michael Devadason	AH (03) 720 3862
	BH (03) 428 3174

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*Capers*

SOCIAL CLUB

200

3rd July, 1991

Mr Alan Smith  
Cape Bridgewater Holiday Camp  
RMB 4408  
Cape Bridgewater Vic 3306

Dear Alan

I want to thank both Karen and yourself for making Capers' weekend so enjoyable. The feedback from the members was excellent.

Your excellent low key organisation was much appreciated. We arrange at least one weekend every month away and so have visited many locations such as your own, but seldom have we received the warm welcome and the wonderful attention as we did at Cape Bridgewater. It really is a fabulous part of Victoria. I envy you your scenery. My members have requested that we return and we will be planning another weekend before too long.

I will have no hesitation in recommending your camp to many of my friends as an excellent and economical way to have a wonderful break.

My son, Cameron, co-ordinates the Capers Twenties group, and he will be in touch with you shortly with regard to booking a similar weekend for his group.

Yours sincerely

*Jill McKinnon*  
JILL MCKINNON  
Manager

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**AUSTRALIAN SINGLES CENTRE**  
1143 Toorak Rd, Camberwell 3124 Ph 8896659 Fx 8893129

12<sup>th</sup> April 1992

Mr. Alan Smith  
RMB 4408  
Cape Bridgewater Holiday Camp  
Via Portland 3306

Dear Alan Smith

Thank you for looking after my singles club member's on their recent visit to your holiday camp.

I am told your hospitality was first class as were your lunches and dinners.

Wish you well with Unemployed and Underprivileged Group's you are sponsoring for the Environment Program for these kids.

Our Members would always be interested in coming back to another weekend.

Keep in touch and please visit our centre when next in Melbourne.

All the best

Kind Regards

*Pete*

Peter Turner

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**AUSTRALIAN SINGLES CENTRE**  
1143 Toorak Rd, Camberwell 3124 Ph 8896659 Fx 8893129

2011

5th July 1992

Mr Alan Smith  
RMB 4408  
Cape Bridgewater  
Portland 3306

Dear Alan

Futher to my previous letter in February.

On the 26th of June I rang you at about 9pm and spoke to you, this was not my first attempt as on my previous attempts I received a recorded message as I have in the past. Because I knew of your problem I persisted until I got you, however had I been a new enquiry you would have lost business on this occasion.

Kind Regards

  
Peter Turner

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## Haddon & District Community House Ltd

R.S.D. H1531 Haddon 3352. Ph. (053) 424 675

6<sup>th</sup> April 1993

Allan Smith  
Manager  
Cape Bridgewater Holiday Camp  
Portland  
3305

Dear Allan

Our former Youth Worker, Gladys Crittenden, has commented on a number of occasions on the success of the family group holiday she coordinated on behalf of the Haddon & District Community House.

Had it not been for your professional approach and kindness to the participants who attended this five night stay at Cape Bridgewater it would not have been the success it was.

I am told the meals at lunch and for the evening meal were first class hotel style with your own fun thrown in. I am now looking at a similar five night family group for later in the year and I am asking for up date prices and available times for January 1994 around 40/50 persons including children.

Would you kindly send me this information to the above address as soon as you have time.

Again thank you for your personnel touch and friendly manner to some of the tiresome kids.

Yours sincerely

*Cathy Lindsey*

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Cathy Lindsey  
Coordinator.

Jenny Phillips  
Durdidwarra Road  
Anakie  
3221

13<sup>th</sup> April 1994

Alan Smith  
Cape Bridgewater Holiday Camp  
RMB 4409  
Cape Bridgewater  
PORTLAND 3305

Dear Alan

Just a few words from me in regards to the feedback I had from your guests on my way back to Geelong.

They could not believe the food and the way in which you presented your self as host and organizer. For 46 people all saying the same thing I just had to write a let you know.

I would be more than happy to co-host and coordinate with you your next over 40s week-end together or four day camp.

Once again a great job, Maureen and Joanne Biggs informed me they were at your last three night four day over 40s and they will be back for a third with at least a third of the coach saying the same thing.

Good-on-ya mate from the gang.

Yours sincerely  
Jenny Phillips

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**File note**  
**Telecom Arbitration**

**Date:** 18 February 1994

**Matter no:** 1673136

On 17 February 1994, between the hours of 9:00 a.m. and 1:00 p.m., I attended the offices of Hunt & Hunt for the purpose of having a discussion in relation to the arbitration rules prepared by Hunt & Hunt (the "Rules").

The meeting started at 9:30 a.m. and in attendance were Gordon Hughes, Peter Bartlett, Ann Garms, Graham Schorer and myself.

**Record of Meeting**

Ann Garms started by attempting to read from a letter by R Davey (Austel) but was interrupted.

The history of the negotiations leading up to the fast track settlement procedure ("FTSP") was discussed.

Ms Garms stated that all the Cot Claimants wanted was a commercial settlement of the matter, not an arbitration. The FTSP came out of a proposal put by Mr Schorer to John Holmes and I Campbell.

Mr Schorer stated that the Cot Cases had wanted a loss assessor and not an assessment procedure prone to "fine print". The proposal put forward by the Cot Cases was not backed by Telecom and subsequently negotiations got off the rails. Then the Austel investigation began and the media became involved. R Davey acted as a facilitator between Telecom and the Cot Cases. Previously, a draft agreement had been put to the Cot Cases which Telecom had stated would not be changed (which turned out to be incorrect).

The FTSP came out of several meetings and was put forward by R Davey.

Mr Schorer and Ms Garms agreed that the FTSP was the agreed way to resolve the dispute between Telecom and the Cot Cases.

Mr Schorer advocated that instead of having a claim, a break and then a defence being filed, both parties ie. the Cot Case and Telecom should do their presentation at the same time to the assessor. Mr Schorer did not like the arbitration procedure and the procedure he advocated was consistent with his understanding of the FTSP.

It should be noted that the FTSP does not refer to an arbitrator but an "assessor".

Mr Hughes expressed his view that the powers of an arbitrator under the Commercial Arbitration Act made an arbitration a more effective way of determining the issues in dispute between the parties.

Mr Hughes stated the problems with an "assessor" were that it was a toothless position and that he was not convinced that it could guarantee the result as either party could withdraw or would not be bound by the result.

Mr Schorer asked if he could pull out of an "assessment" during the process if he did not like the way it was going. Mr Hughes and Mr Bartlett advised that this was not the case as he was contractually bound by whatever the terms of the assessment were.

Mr Hughes stated that an arbitrator had more powers and considering the current facts surrounding the Cot Cases ie. suspicions and the long period of antagonistic negotiations, the adjudicating party would need powers to ensure that all material relevant for the decision was obtained.

Mr Bartlett stated that Telecom and the Cot Cases wanted a method of resolution as a final settlement of the problem - no right of appeal, no resource to the Courts.

Ms Garms agreed with this conclusion.

Mr Schorer stated that he needed documents from Telecom to prepare his case and without this material, he could not go to arbitration. Mr Schorer had raised the issue of documents with Austel and was unsatisfied with Telecom's response.

Mr Schorer stated that there was nothing in the Rules which provided that the Cot Cases were to get the relevant documents. Mr Schorer was disappointed at this stage that since 18 November 1993 2 of the Cot Cases did not have any documents.

Mr Bartlett stated that this was a reason for starting the arbitration as the arbitrator could order the production of documents.

Mr Hughes stated that he was aware of the dispute between the parties but did not have any idea as to the nature and indicated that from this point in time, there were two ways to proceed in relation to the problem of outstanding documents:

- (1) the procedure is put on hold until all the documents are exchanged in accordance with the FOI procedure; or
- (2) the arbitration procedure commences and then the arbitrator gives appropriate directions for the production of documents.

FOI REGISTER  
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Mr Hughes indicated that one party can ask for documents once the arbitration has commenced. Mr Hughes advocated this course of action as more effective and that as arbitrator, he would not make a determination on incomplete information.

Mr Schorer asked Mr Bartlett why the FOI law was not as broad as the discovery procedure.

Mr Bartlett did not answer this question directly but confirmed that he believed it was wider and that documents would not be partially deleted as was claimed by Mr Schorer.

Ms Garms stated she had three concerns about the Rules as drafted:

- (1) causal link;
- (2) flow on effects of treatment by Telecom - adequately compensated; and
- (3) Telecom's liability amended to give assessor the right to make recommendations.

#### Causal Link

In relation to this matter, Ms Garms stated that it was agreed that there would not be a strict application of legal burdens of proof, etc., in relation to the proving of the loss suffered by the Cot Claimants. Reference was made to discussions with Ian Campbell and two Senators. Ian Campbell admitted that Telecom had been remiss. Ms Garms stated that Telecom was in a difficult position and queried the current drafting of the Rules in relation to a requirement that the strict causal approach be applied.

Mr Schorer stated that Telecom was in a difficult position because a lot of the relevant documents either did not exist or had been destroyed.

Mr Bartlett referred to clause 2(c), (f), and (g) of the FTSP in relation to the causal connection. Ms Garms had received advice from R Davey that there was a difference between the FTSP and the old rules that had previously been prepared by Telecom, (not the Hunt & Hunt Rules).

Mr Schorer accepted that W Smith had been appointed as administrator. W Smith had invited the Cot Cases to talk to the TIO and had requested input in relation to the rules beforehand. Mr Schorer was disturbed that once Mr W Smith was in place, there was a document prepared by Telecom of proposed rules for the arbitration. Mr Schorer considered Telecom was already moving away from the spirit of the FTSP.

Mr Bartlett and Mr Hughes both stated that they had not received this document and had not read it and that it was irrelevant.

Ms Garms returned to discussion about causation which was her point no. 1.

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*David,  
Relevant correspondence  
as discussed yesterday/this day.  
Simon.*



23 February 1994

COMMERCIAL AND CONSUMER  
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET  
MELBOURNE  
VICTORIA 3000  
Australia

Telephone (03) 632 7700  
Facsimile (03) 632 3241

Mr Gordon Hughes  
Hunt & Hunt  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

Dear Mr Hughes

**"Fast Track" Arbitration Procedure**

I refer to your letter dated 21 February 1994 setting out your recommended amendments to the proposed procedure.

Subject to the following amendments and our agreement to the final wording of the procedure, Telecom is prepared to submit to the proposed procedure in respect of the "Fast Track" claims.

**Clause 6**

In relation to Ferrier Hodgson's suggestion that they be permitted as of right to be present at an oral hearing, if this suggestion is accepted then Telecom would also require its accountants to be present at such hearings. In the normal course of Telecom's business, accounting issues would be addressed by qualified accountants and therefore it is appropriate that, if Ferrier Hodgson are to be present to deal with accounting matters, then Telecom's accountants should also be present.

**Clause 8**

In relation to Ferrier Hodgson's suggested rewording of clause 8.2, the parties should retain the right to be able to make submissions in relation to any evidence considered at any inspection, and any findings of fact arising out of an inspection or other enquiry reached by the Resource Unit, and the wording of the clause should reflect this.

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Telecom Corporation Limited  
ACN 051 775 556



**Clause 9**

Telecom agrees to your recommendation on the understanding that findings of fact will only be considered common between the cases with the agreement of all the parties concerned. However, Telecom reiterates that the disputes are independent and concern different customers operating different telephone equipment from different parts of the telephone network, and running different businesses. It is considered unlikely that findings of fact will be common between any of the cases.

**Clause 10**

- (a) Telecom agrees to the insertion of a reference to Clause 2(g) of the Fast Track Settlement proposal in the opening lines of Clause 10, conditional on a reference to Clause 2(f) also being included in that clause.
- (b) In respect of Clause 10.2.2, Telecom notes that this clause does not fully reflect Clause 2(f) of the Fast Track Settlement Proposal as the COT claimants have suggested. The words "unless the assessor is able to conclude that Telecom caused the loss claimed there will exist no basis for a claim against Telecom" should be inserted in Clause 10.2.2.

Clause 2(f) of the Fast Track Settlement Proposal was intended by the parties to evidence an agreement that the standard of proof for determining the extent of call loss would be based on reasonable inferences drawn from the existing evidence. Telecom agreed with the COT claimants that, because not all call losses and other problems reported by the claimants are documented, they should not have to be put to strict proof of each and every call loss. However, clause 2(f) does not imply, and Telecom did not agree that any relaxation of other general principles of law (including causation) would apply. This position is supported by Austel and the surrounding correspondence. In order to clarify this, clause 10.2.2 should be amended to reflect the above position.

- (c) In respect of Clause 10.2.3, I would appreciate your advice on what standards you intend to apply in relation to the arbitrations if this Clause is omitted.

In Telecom's view, generally accepted accounting principles, Australian accounting standards (to the extent they are applicable) and general principles of law (other than in relation to the issue of burden of proof as discussed above) must apply. Accordingly clause 10.2.3 should either be amended to reflect the parties' agreement in relation to burden of proof as discussed in this letter, or incorporated with clause 10.2.2.

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**Clases 16 and 17**

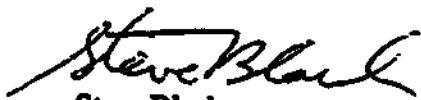
I note that the objection to Clause 16 has been withdrawn and no side agreement with Mr Bartlett or the arbitrator is proposed. Confidentiality is an essential requirement of the arbitrations. In order to ensure confidentiality is maintained, Telecom requires the following amendments to be made:

- (a) The words ", existence or subject matter" added after the word "conduct" in line 2 of Clause 16; and
- (b) The words "and any other documents provided in, or oral evidence given in, the arbitrations by either party" added after the word "Documents" in line 3 of Clause 17.

**Clause 24**

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.

Yours sincerely

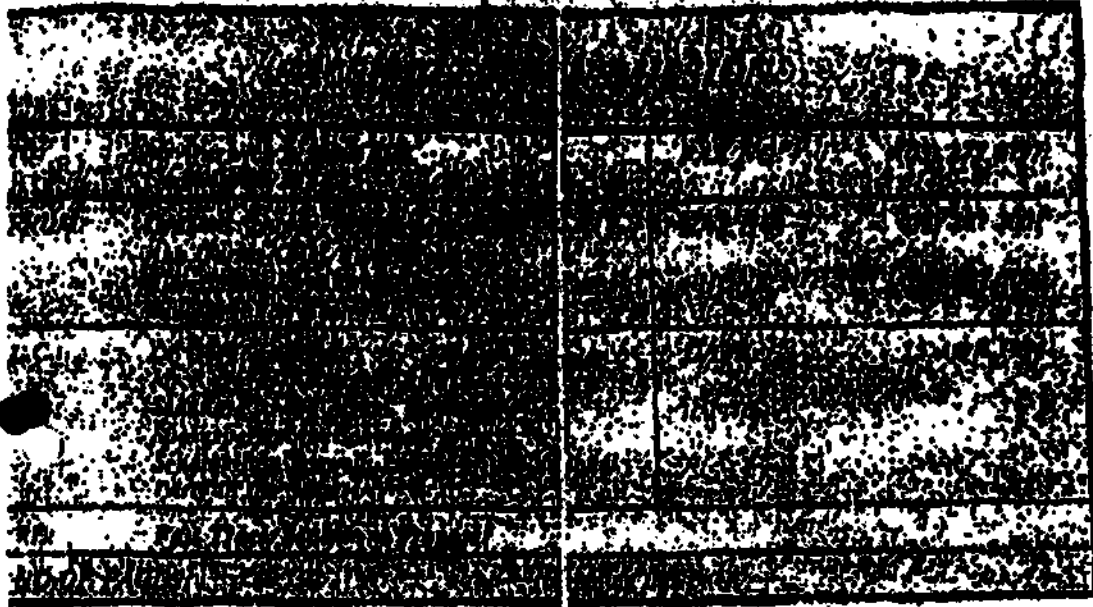


Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

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Dear Mr Smith

Re: Fast Track Settlement Proposal and the Assessment of COT in Relation to that Proposal

We are all in agreement that we wish to be assisted by Dr Gordon Hughes under the Fast Track Settlement Proposal authored by AUSTEL and signed by Mr Jim Holmes, Corporate Secretary of Telecom on 18 November 1993, and by COT members on 23 November 1993.

We acknowledge the confirmation by AUSTEL on 14 April 1994, that the Fast Track Settlement Proposal confirms the assessment process for COT members. (Copy enclosed.)

Thanking you,

Yours sincerely

Graham Schirer

Alan Gerns OAM

Alan Smith

*[Handwritten signatures and initials, including what appears to be 'G.S.', 'A.G.', and 'A.S.']*

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April 14, 1994

Telecommunications  
Industry  
Ombudsman

**STRICTLY CONFIDENTIAL**

Mrs. Ann Garms  
65 King Arthur Terrace  
TENNYSON QLD. 4105

Warwick L. Smith LLB  
Ombudsman

By Facsimile: (07) 892 3739

Dear Mrs. Garms,

Thank you for your fax of today. Apart from my briefing yesterday from Rob Davey, I have not spoken to him about the matter you raised on the Procedure. Gordon Hughes is in Port Moresby. I hope to see Peter Bartlett tonight if he is available.

I am not sure where Alan Smith or Graham Schorer are with regard to proceeding. They have been in regular contact with Peter Bartlett, but I still hope the matter can proceed and am of the view the Procedure endorses the "Fast Track" Agreement and is important for the arbitrator in his role. Let me come back to you as I take it from your letter that you are not now proceeding at present.

Yours sincerely,

Warwick L. Smith  
Ombudsman

c.c. Peter Bartlett

"... providing independent, just, informal, speed, resolution of complaints."

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1000  
1000  
1000

Box 18088  
Central Street  
Melbourne 3000

Telephone 031 277 8777  
Facsimile 031 277 8797  
Telex 018 991 206

Mar. 10 1998 12:48PM PS

PHONE NO. : 07 32571583

FROM : TJUDI CABRET AND BRR



Telecommunications  
Industry  
Ombudsman

Warwick L Smith LLB  
Ombudsman

April 15, 1994

**STRICTLY CONFIDENTIAL**

Mr. Graham Schorer  
Golden Messenger  
493-495 Queensberry Street  
NORTH MELBOURNE VIC. 3051

By Facsimile: (03) 287 7001

Dear Graham,

I met with Mr. Bartlett last evening. He will arrange a meeting with Dr. Hughes on his return to seek his position on what I understand to be the desire of 'COTS' on the Procedure and "Fast Track Settlement". There are apparently several.

Mr. Bartlett will arrange a time on Tuesday for me to meet with him and Mr. Schorer spokesman for 'COT' to review the current position.

Yours sincerely,

  
Warwick L. Smith  
Ombudsman

cc. Mr. Peter Bartlett  
Dr. Gordon Hughes

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