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Exhibit 522 to 580



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

CASUALTIES OF TELSTRA (COT)
**BACKGROUND AND INFORMATION FOR
MINISTER'S OFFICE**

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Casualties of Telstra (COT)

Background and Information for Minister's Office

1. First Appearance

Ann Garms first approached AUSTEL in July 1992. Other complaints then followed. Most of the complaints had a history. History included: court action, COT members contacting Telecommunications Industry Ombudsman (TIO) and police.

The original 5 COT cases were brought to AUSTEL's attention in August 1992.

Telstra (Telecom) Action

Telstra accepted the recommendations of the Telecommunications Industry Regulator, AUSTEL, to participate in an independent arbitration process administered by the TIO for claims to be assessed.

- ◆ Eight claims cost Telstra \$1.74 million.
- ◆ Telstra agreed to pay an ex gratia reimbursement of claimants' costs in December 1996, at the completion of claim process. This was not a requirement of Telstra.
- ◆ \$1.2 million was provided to the TIO to be distributed among claimants who received compensation.
- ◆ Telstra was investigated by the Commonwealth Ombudsman Office for lack of responsiveness in providing information to COT claimants under the Freedom of Information Act (FOI).

AUSTEL Action

- ◆ The objective of AUSTEL was to determine whether there was any substance to the COT complaints in relation to the service and treatment received from Telstra.
- ◆ In relation to their complaints, AUSTEL was to determine the causes of their problems, nature of problems and to recommend measures to rectify the problems, such as advising ways to gain compensation.
- ◆ See attachment B for "Terms of Reference for an Independent Assessment".

TIO Action

- ◆ ~~The TIO was set up as the administrator for the COT cases.~~
- ◆ ~~The procedures were developed by the TIO in consultation with consumer groups, AUSTEL, Telstra and the COT members.~~
- ◆ The TIO appointed an independent Arbitrator, Dr Gordon Hughes to arbitrate the cases.

Arbitration of AUSTEL

AUSTEL recommendations according to the arbitration processes were to:

- ◆ Ensure that Telstra followed recommendations from the report by Bell Canada.
- ◆ Ensure that restoration times were within reasonable time limits.
- ◆ Implement an arbitration process.
- ◆ Retrain staff to ensure that customers were aware of the *Trade Practices Act 1974* and to also refer customers to the TIO.
- ◆ Provide all new customers with a user friendly summary of terms and conditions regarding the services that Telstra provided.
- ◆ Ensure that all faults were recorded.
- ◆ Retain all records of a customer's history of fault reporting until dispute between customer and Telstra was rectified.
- ◆ Provide the customer with a written report of suspected fault and to include: period of when service was monitored, equipment used, results of monitoring and Telstra conclusion.
- ◆ Retain record of faults for 5 years.
- ◆ Introduce a national system whereby if a fault wasn't rectified at one level within a specified time, it is to be escalated to the next level of management for resolution.
- ◆ Reduce the majority of difficult network faults, that reduced levels of service, within 3-6 months and for it to be completed within 12 months.
- ◆ Devise plans to reduce the timeframes for fixing faults and to inform customers accordingly.
- ◆ Advise customers of outcome of monitoring/testing faults and to state limitations of its monitoring/testing regime.
- ◆ Ensure that staff didn't assume that a customer's problem was unique, before cause of fault was found.
- ◆ Ensure staff did not recommend an upgrade of equipment before identifying fault.
- ◆ Ensure staff gave completed reports to third parties involved in resolution of faults.
- ◆ Provide a more timely response to FOI requests.
- ◆ Retain open levels of communication even if the customer had involved legal representatives.
- ◆ Resolve outstanding compensation claims as quickly as possible.
- ◆ Describe payments made in settlement of claims, by customers with faults, as *compensation*.
- ◆ Apologise to _____ for voice _____ *5.41*
monitoring/recording without consent.
- ◆ Advise all customers by bill insert if voice monitoring was to occur for maintenance of services.
- ◆ Reinforce policies and procedures by specific retraining of relevant staff.

2. Senate Parliamentary Committees

The Senate Committee on Environment, Recreation, Communication and Arts Legislation Committee established a Working Party (WP).

Background of Working Party

Senator Tierney, Chair of the Senate Committee on Environment, Recreation, Communication and Arts Legislation Committee wrote to Telstra on 29 September 1997 concerning evidence provided in two Senate Committee hearings on the issue of matters arising from the Committee's consideration of Telstra's Annual Report (1995-1996), COT cases and related cases.

Senator Tierney advised Telstra of claimants' dissatisfaction with Telstra's provision of information to complainants, both through the arbitration processes and through requests made under Freedom of Information (FOI). Areas of concern identified included:

- ◆ The large amounts of relevant documentation that existed and the difficulty experienced by individuals in identifying specific areas or subjects that would facilitate a search under FOI;
- ◆ The difficulty experienced by laymen in understanding the documents provided and the absence of any summary documents which would facilitate comprehension of documents received; and
- ◆ The difficulties in obtaining required documentation within a reasonable time and without incurring unnecessary expense.

The Committee requested Telstra to develop a list of all documents reviewed in the course of its preparation of its defence in relation to outstanding arbitration cases, responses to requests under FOI, and appeals in respect of cases already decided. The requested documentation was to include Excel files and any other relevant documents that at the time had not been made available to the above parties.

The Committee also asked Telstra to establish a working party, comprising a representative from Telstra, two representatives from COT and a representative from the Commonwealth Ombudsman's office.

Members of Working Party

The WP comprised of two COT representatives, representative, Mr Armstrong, and the Chair, a person nominated by the Commonwealth Ombudsman. The Ombudsman nominated Mr Wynack.

r, a Telstra 5-41

Objective

The WP was established to report to the Committee on specified matters concerning Telstra and COT/related COT cases. The main objectives were to:

1. Develop a list of documents to be sorted into specific categories, and to provide specified information;
2. Investigate whether there were avenues not explored by Telstra to locate documents;
3. Report to the Committee;
 - ◆ To follow 1 and 2 above;
 - ◆ To provide an assessment of the processes used by Telstra in the provision of information to the Parties and to make recommendations as to additional or improved processes which Telstra would adopt;
 - ◆ To make recommendations whether any list should be provided to the Parties;
 - ◆ To decide whether any documents Telstra had claimed privileged or confidential should be provided to the Parties; and
 - ◆ If any of the Telstra documents should be provided and on what terms.

3. Original COT Members Complaint

No ring received – when a caller dialled the number, heard the phone ringing, but at the other end, no ring tone was heard.

Busy when not – when a caller dialled a number, heard a busy tone, but the phone at the premises was not in use.

Call drop out – when a call was successful, but during the call or when the call was first picked up, call was disconnected.

Recorded voice announcement – when the caller received a recorded voice message stating that the number had been disconnected, when the number was still connected.

Rotary problems – businesses that had 2 or 3 phone numbers but only advertised one. If a call was received and the main line was busy the system would search for a free line. With these businesses, the calls were only able to get through if the main line was made busy.

Original Members

Mr Alan Smith, Cape Bridgewater Holiday Camp - Cape Bridgewater, Victoria

Mrs Ann Garms, Tivoli Restaurant - Fortitude Valley, Queensland

S41

History

Alan Smith:

- ◆ Operated the Cape Bridgewater Holiday Camp, in Cape Bridgewater, Victoria.
- ◆ Reported problems with his telephone system from 1992

- ◆ Started the Fast Track Settlement Procedure in 1993, abandoned 6 months later.
- ◆ Entered the Fast Track Arbitration Procedure (FTAP) in November 1994, which was completed and was awarded a settlement in May 1995. Alleged that processes were hampered by delays in FOI compliance by Telstra.
- ◆ Tried to sell his business in mid 1995, but was unable to sell, due to ongoing telephone problems.

Ann Garms:

- ◆ Owned the Tivoli Theatre Restaurant in Fortitude Valley, QLD.
- ◆ Reported telephone problems from 1984. Complaint: no ring received, call drop out, "busy" tone when not busy.
- ◆ Telstra offered 2 ex gratia payments, one in January 1993 and the other June 1993, both were refused.
- ◆ Began Fast Track Settlement Procedure in November 1993 which ceased 6 months later.
- ◆ Entered the FTAP in November 1994.
- ◆ The Commonwealth Ombudsman released a report in May 1996 supporting Ms Garms claims against Telstra's handling of her FOI applications, which included lengthy delays.
- ◆ The Ombudsman made a recommendation that Telstra pay Ms Garms compensation for these delays. Telstra advised the Ombudsman that it would liaise with the Ombudsman regarding the compensation.
- ◆ Ms Garms made a claim for compensation in November 1996.
- ◆ Award determined August 1996.
- ◆ Was awarded \$600,000 (which she appealed to the Supreme Court of Victoria and lost).
- ◆ Was awarded \$237,420.49 from the TIO for 'reasonable costs' – see Attachment A.

- ◆ Owned a courier service called
- ◆ Complained of service difficulties for over six years.
- ◆ Purchased a Flexitel in 1987. He then complained of network and other problems associated with the Flexitel.
- ◆ An extensive network investigation was conducted at the time of complaints (1987-1989). Telstra identified some congestion which was immediately fixed. S 41
- ◆ A claim was made under Trade Practices Act for compensation totalling It was settled by payment into court without admission of liability by Telstra on 30 March 1993. The amount was settled on the advice from
- ◆ The amount was less than the
chose to accept the offer without further negotiation.

- ◆ Owned the business
- ◆ Had problems of connection of calls. S 41

- 8
S 41
- ◆ Owned the _____ in Melbourne.
 - ◆ Had problems with connection of calls.

Later COT Members

Ross Plowman (Bentinck Private

....

4. Internal Action by Telstra

S 41

DC Campbell (Group Managing Director of Commercial and Consumer) wrote to _____ on 16 September 1992. In that letter he stated:

S 41

1. That Telstra needed to move quickly to finalise the problems experienced by the COT members so that the problems could be rectified.
 2. Questioned the possibility of Telstra providing people to work with COT members in their businesses for a period of 10 days to experience the problems first hand.
 3. Questioned the idea of setting up recording equipment on all lines to monitor performance and to carefully monitor the performance of exchange for all numbers.
 4. Telstra would also make test calls from various locations from the businesses to see if the complaints of not receiving ring, false busy tones etc, could be identified and corrected.
 5. Suggested that COT members consider the idea of being reassigned to another exchange with the possibility of another number. This would require the members to sign a waiver of any claim for business losses due to the number change. Telstra would also change the numbers in the Yellow Pages as appropriate. It would also assist financially with advertising as well as establish the necessary voice recording announcing the new number.
 6. Telstra would endeavour to complete all investigations and rectify all problems by 30 October 1992.
 7. ~~If the problems have been identified and resolved by that date, Telstra would enter discussions with the COT members to decide whether compensation would be appropriate.~~
 8. If an agreement could not be reached, Telstra would request Austel to appoint an independent arbitrator to resolve the conflict.
 9. Telstra would aim to have all situations involving all five members resolved completely by 30 November 1992.
- S 41

JR Holmes (Corporate Secretary, from Australian and Overseas Telecommunications Corporation, AOTC) sent a letter on 11 March 1993 to Ms Garms and _____ regarding a proposal for an independent assessment for their loss of business. The letter offered two options, which are:

G:/Communication/Telecommunications/Telecom Competition & Consumer/1cgp/Casualties of Telstra

1. To have an independent assessment conducted. The disadvantage is that the process could take a long time.
2. For Telstra to provide a direct compensation settlement. The advantage is a quick settlement, but no consideration by a third party, nor any guarantee of a mutually satisfactory outcome.

Telstra believed that it had done everything possible for a fair outcome and that Telstra had exhausted all efforts to resolve the situation.

Telstra's Term of Reference for An Independent Assessment

In order to seek resolution in the matter of complaints by two individual members of Casualties of Telstra (COT), being Mrs Garms and Telstra and the Claimants have agreed to refer the complaints to an Independent Assessor for consideration. The Claimant's allegations shall be treated on an individual basis.

S 41

The Independent Assessor to be appointed shall be a person who is acceptable to both AOTC and the Claimants. In this respect, the parties agree to approach the President of the Law Society of Queensland.

The Terms of Reference for the independent assessment are as follows:

- The Independent Assessor shall initially establish whether faults existed in the telephone services provided to the Claimants and whether such faults resulted in losses to their individual businesses, the financial damage (if any) to the businesses caused by those faults and a reasonable amount of compensation for such damage.
- In establishing whether faults existed, the Independent Assessor must also establish the relevant dates at which certain faults are alleged to have occurred.
- The Independent Assessor shall determine the business losses of the Claimants since first reporting telephone faults in their respective businesses in their present locations.
- The Independent Assessor shall then establish what proportion of that business loss is attributable to problems with the telephone service, as distinct from other possible causes of business loss, not otherwise attributable to any act or omission on the part of AOTC.
- In assessing loss and damage, the Independent Assessor must have regard to all relevant circumstances, including factual and legal circumstances. On such circumstance which must be considered is the applicability (if any) of AOTC's statutory immunity and the extent of Telstra's obligations in relation to the operation of the public switched network. Bearing in mind any AOTC statutory immunity, the Independent Assessor shall determine AOTC's legal liability for

any part of the compensation which he or she determines as being attributable to network faults prior to 1 July 1991.

- The assessment should be completed as soon as reasonably practicable as determined by the Independent Assessor. In order to assist in the timely conduct of the assessment, the Independent Assessor may engage, at the cost of AOTC, whatever consultants or other experts are reasonably necessary. However, any consultants or experts shall only be appointed with the approval of the claimants and AOTC.
- The Independent Assessor shall have access to all relevant records upon request, and for this purpose, the Claimants authorise AOTC to make available all information held by AOTC relating to the Claimants. Each party shall comply with all requests by the Independent Assessor with regard to all records and each party shall have the right to put before the Independent Assessor any relevant records. Further, each party shall have the right to call for relevant records from any other party or third parties.
- The costs in relation to the assessment shall be borne by AOTC, however, in the event that the Independent Assessor finds that AOTC is liable to pay an amount of money to the Claimants, not greater than or equal to any sum previously offered by AOTC to the Claimants before 31 January 1993, those amounts shall be applied to the cost of the assessment and paid to the Claimants. In no circumstances shall the Claimants be required to contribute to the costs of the assessment.
- The Independent Assessor must provide full reasons for his/her findings in writing. Such reasons and any subsequent settlement between the parties shall remain confidential between the Independent Assessor and parties.
- The findings of the Independent Assessor shall be recommendatory only so far as they relate to matters of law, or so far as they involve a mixture of fact and law, and shall be binding on the parties as to issues of fact.
- In the event that the parties adopt the findings of the Independent Assessor for the purpose of resolving their dispute, such adoption shall be without any admission of liability whatsoever, any payment of monies to the Claimants shall be on an ex gratia basis and shall be in full discharge of all claims which the Claimants may have against AOTC.
- In the event that the parties cannot reach an agreement based on the findings of the Independent Assessor, there shall be no further negotiations between the parties. However, in relation to the findings of fact, and in so far as they may be admissible in evidence, there shall be no impediment to the Claimants using those findings of fact in any subsequent legal proceedings.

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5. Compensation

Amounts claimed and received:

Claimant	Claim	Settlement/Award
Smith	\$3.4 million	\$320,000

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Garms (Appeal Lodged)	\$8.1 million	\$600,000
Hynninen	\$300,000 plus personal Injuries	\$33,000

As at 12 August 1997 pending claims were:

Plowman	\$1.9 million loss of profits
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S.41

Date of Payment

<u>Name:</u>	<u>Date Received:</u>
Smith	May 1995

S.41

6. Action of the Department

The Department wrote a letter to Alan Smith on 26 May 1997, which said:

"The TIO has advised that he has completed his tasks as the administrator in your claim for compensation as a Casualties of Telstra (COT) case and has fully investigated the concerns you have raised with his office. I understand that the TIO

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has also informed you of appeal rights available to you, should you wish to take further action. The TIO is an independent body, established by the industry to investigate consumer and billing complaints and other matters that fall within its jurisdiction. As such the Minister is unable to direct the TIO in those matters. Thank you for bringing this matter to the Government's attention however, we are unable to provide any further advice on this matter." (Copy of letter page 102, file P970431.)

7. Correspondence From Allan Smith

Alan Smith has written to the Minister on 6 January, 5, 10, 14, 16, 17, 18, 22 and 28 April, 6 and 23 May and 5 and 6 June, 8, 10, 11, 17 and 30 July 2002, 10 and 14 August 2002 regarding his arbitration process.

Main Issues

- That the TIO received documented evidence that the technical resource unit was unlawfully ordered not to investigate the billing faults raised in his claim and that his phone was disconnected after the arbitration process.
- Claims that 85% of his documents prove that the TIO allowed Telstra to disconnect his business phone lines.
- Alleges that Telstra introduced a "sticky" substance to his TF 200 phone as a way to disallow Telstra's involvement in the breakdown of his telephone service and not network problems.
- Believes that there was a problem with his billing in 1995 and also in January 1998 after his arbitration.
- Claims that the Telecommunications Industry Ombudsman, John Pinnock is a liar and claims that he will not receive a fair response with his request for a reassessment.
- Is wishing to put forward \$30,000 for an independent investigation into his evidence to be and the person to be appointed by the Minister's office.
- Believes that Telstra did not provide all documents under the FOI request and that it until the end of the arbitration process held 40% of documents.
- That Telstra fraudulently manufactured the TF200 report, which was used in its defence in the arbitration process.
- Is dissatisfied with the arbitrator Dr Gordon Hughes and believes he was involved in a conspiracy with Telstra and the TIO.

The TIO wrote to the Department on 18 July 2002 advising that it has not been presented with new evidence to support a reassessment for Mr Alan Smith. The matter is now closed.

Correspondence to Treasury

Mr Alan Smith has sent facsimiles to the Treasury Department on 8, 10, 14, 15, 21, 23 and 30 July regarding his concerns with the TIO and Telstra. All his correspondence has been immediately forwarded to our Department. Mr Smith has raised the same issues that he presented to the Minister.

8. Attachment A: Background of COT Cases

The COT cases were a group of small business owners who claimed that inadequacies in their telephone service over a prolonged period led to a decline in their business, resulting in significant financial detriment. While some of the COT cases had experienced faults to their telephone services for longer periods than others, they all fell into the category of customers experiencing long term faults, ranging from three to ten years. The most frequent complaint was that of a calling party receiving a ring tone whilst the complainant who was being called received no indication of the call. Other complaints were that a person who rang the complainant's number would get a busy signal, or a "number disconnected" message, even though the complainant was not on the phone and the phone was still connected.

In response, AUSTEL conducted a thorough investigation and issued a detailed report on 13 April 1994 with 41 recommendations. Telstra implemented most of the significant investigations. Recommendations were: change from analogue to digital; provide a new system of arbitration and compensation; better fault recording; improved monitoring and testing procedures; better complaint handling procedures, and stricter privacy safeguards in relation to voice monitoring and recording.

An FTAP was developed for handling the claims of the original four COTS. As other cases emerged in the course of AUSTEL's investigations, a further procedure was developed to cover those claims. This procedure, termed the 'Special Arbitration Rules', applied to the handling of the later COT cases. A third industry-based procedure was later developed, called the Standard Arbitration Rules.

Telstra agreed to enter the arbitration process with 16 claimants. The TIO administered the arbitration procedures. With agreement from the claimants, the TIO appointed an independent Arbitrator to adjudicate the cases.

The procedures relied on Victorian law in relation to the arbitration of disputes. The procedures allow decisions of the Arbitrator to be registered as an order of the Victorian courts, therefore attaining the standing of a court judgement and enabling enforcement of the arbitration.

The arbitration procedures also provided for appeal to the Supreme Court of Victoria on the grounds that the Arbitrator misdirected him/herself or that evidence presented during arbitration was misleading. Such an appeal had to be lodged within 21 days of decision.

9. Attachment B: Procedure for Assessment of Claimants

1. The TIO acted as the Administrator for the Fast Track and Special Arbitration Procedures. The TIO recognised that claimants incurred costs in excess than originally anticipated.
2. Telstra gave \$1.2 million to the TIO to distribute to the claimants as a contribution to reasonable costs incurred during the arbitration process.
3. The eligible claimants were:
 - ◆ Claimants who obtained an award in their favour
 - ◆ Claimants whose arbitrations were still in process at the time the rules were released.
4. Each claimant had to submit a claim for 'reasonable costs' to the TIO. Claimants whose arbitration hadn't been finalised at the time the rules were released were to submit a claim for costs already incurred and then after the award was received to submit a claim for the total cost.
5. Reasonable costs included:
 - ◆ Legal costs, accounting costs and costs associated with obtaining technical advice
 - ◆ Telephone and fax costs for the preparation of submitting and prosecuting their claim
6. Reasonable costs did not include:
 - ◆ Allowance for claimants own time
 - ◆ Allowance for costs incurred for FOI requests.
7. The claim had to be provided with receipts for the above reasonable costs.
8. The TIO assessed the reasonable costs by:
 - ◆ Regarding the principles relating to party/party costs with no allowance for solicitor/client or solicitor and own client costs.
 - ◆ Ensuring that a total of \$1.2 million was available for distribution to all claimants and the TIO was required to ensure that all claimants received an equitable portion of this sum in relation to their reasonable costs.
 - ◆ Having assistance by a consultant.
9. Payment of reasonable costs was released to the claimant within 14 days of the TIO making the assessment. Payment was only given to claimants who were given an award.

10. The TIO's assessment of reasonable costs was to be the final resolution of the issue of the claimant's request for reasonable costs. No review or appeal from the TIO would be available.



BARNABY JOYCE

The Nationals Senator for Queensland

15 September 2005

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

Dear Mr Smith,

Casualties of Telstra – Independent Assessment

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

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

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

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

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

Kind regards,

Senator Barnaby Joyce
The Nationals Senator for Queensland

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Senator Barnaby Joyce
The Nationals' Senator For Queensland

Mr G. Schorer
PO Box 313
Nth Melbourne VIC 3051

COPY

9th November 2005

Dear Mr Schorer,

Casualties of Telstra – Independent Assessment

I am writing to advise you of progress since my last letter of 15th September 2005. I have received correspondence from Senator the Hon Helen Coonan confirming that she will be appointing an independent assessor.

She is currently considering who will be the most appropriate to conduct the assessment and has advised the Department of Communications, Information Technology and the Arts will write to you directly. The department will be seeking confirmation that you wish to proceed and will provide you with further details of the process.

I will remain in contact with the Minister and continue to represent your concerns during the course of this resolution. I look forward to your continued support.

Kind regards,

Senator Barnaby Joyce
The Nationals Senator for Queensland

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MEMORANDUM

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

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

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

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

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

I have attached copies and extracts of the relevant documents.

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

Regards



Sussan Hodgkinson

cc: Mr Matt Deeble, TIO Ltd

28 Rowe Street
North Fitzroy
Vic 3068
Tel: 9486 3136
Fax: 9489 4452

Dear Sir,

Casualties of Telecom (COT Cases)

I am writing this in support of Mr Alan Smith, who, I believe has a meeting with you during the week beginning 17 July.

I first met the COT Cases in 1992 in my capacity as General Manager, Consumer Affairs at Austel. The "founding" group were Mr Smith, Mrs Ann Garms of the Tivoli Restaurant, Brisbane, Mrs Shiela Hawkins of the Society Restaurant, Melbourne, Mrs Maureen Gillan of Japanese Spare Parts, Brisbane and Mr Graham Schorer of Golden Messenger Couriers, Melbourne. Mrs Hawkins withdrew very early on, and I have had no contact with her since then.

The treatment these individuals have received from Telecom and Commonwealth government agencies has been disgraceful, and I have no doubt that they have all suffered as much through this treatment as they did through the faults on their telephonic services.

One of the most striking things about this group is their persistence and enduring belief that eventually there will be a fair and equitable outcome for them, and they are to be admired for having kept as focused as they have throughout their campaign.

Having said that, I am aware that they have all suffered both physically and in their family relationships. In one case, the partner of the claimant has become quite seriously incapacitated; due, I believe to the way Telecom has dealt with them. The others have all suffered various stress related conditions (such as a minor stroke).

During my time at Austel I pressed as hard as I could for an investigation into the complaints. The resistance to that course of action came from the then Chairman, Mr Robin Davey. He was eventually galvanised into action by ministerial pressure. The Austel report looks good to the casual observer, but it has now become clear that much of the information accepted by Austel was at best inaccurate, and at worst fabricated, and that Austel knew or ought to have known this at the time.

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TEC NO.

16 Jul 95 7:32 P.01

After leaving Austel I continued to lend support to the COT Cases, and was instrumental in helping them negotiate the inappropriately named "Fast Track" Arbitration Agreement. That was over a year ago, and neither the Office of the Commonwealth Ombudsman nor the Arbitrator has been successful in extracting information from Telecom which would equip the claimants to press their claims effectively. Telecom has devoted staggering levels of time, money and resources to defeating the claims, and there is no pretence even that the arbitration process has attempted to produce a contest between equals.

This has increased the stress levels and feeling that there may be no hope of an equitable outcome, and I have observed the general health of all claimants declining noticeably over the last eight or nine months in particular.

Because I'm not aware of the exact circumstances surrounding your meeting with Mr Smith, nor your identity, you can appreciate that I am being fairly circumspect in what I am prepared to commit to writing. Suffice it to say, though, that I am fast coming to share the view that a public inquiry of some description is the only way that the reasons behind the appalling treatment of these people will be brought to the surface.

Even if the remaining claimants receive satisfactory settlements (and I have no reason to think that will be the outcome) it is crucial that the process be investigated in the interests of accountability of public companies and the public servants in other government agencies.

I would be happy to talk to you in more detail if you think that would be useful, and can be reached at the number shown above at any time.

Thank you for your interest in this matter, and for sparing the time to talk to Alan.

Yours sincerely

Amanda E. Davis

Amanda Davis

15 July '95

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FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

BY COURIER

18 April 1995

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

Dear Sir,

RE : Fast Track Arbitration Procedure - Resource Unit
Arbitrations: Smith, Garms, Gillan/Valkobi

I acknowledge receipt of your letter of 23 March 1995. The matters raised in your letter were discussed at a meeting with Sue Hodgkinson and me on Tuesday, 4 April 1995. I now formally reply to your letter and update you on further developments since our meeting.

I note from the tone of your letter that you are somewhat concerned as to the apparent time frames within which you, as Administrator of the Fast Track Arbitrations, can expect finalisation of the above named arbitrations.

You have requested advice as to when, in terms of weeks, the Resource Unit envisages being in a position to provide its integrated financial and technical assessments to the Arbitrator for the above arbitrations. I now respond accordingly in relation to each:

Smith

The Resource Units role is almost complete, but more work is to be done to tidy our reports (both technical and financial) to a form suitable for submission to the parties by the end of April 1995.

The Resource Unit has completed a preliminary review of the financial material contained in the claim, defence and reply. The interim report has been drafted based on the assumption that technical faults did occur.

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD
A.C.N. 052 405 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAE
LEVEL 25 148 WILLIAM STREET MELBOURNE VICTORIA 3000
TELEPHONE 03 629 8091 FACSIMILE 03 629 8561

LICENSED INVESTMENT ADVISER

*Pia
11/4/95
We to discuss*

527



No further questions are anticipated from the Arbitrator. An important meeting took place between the Resource Unit and the Arbitrator on 10 April 1995 over the need to manage the issuance of Resource Unit reports.

Lane Telecommunications have commenced their detailed review in mid March and now have completed their draft interim report (on 6 April 1995). This report is subject to review and amendment by Paul Howell of DMR Inc prior to issuance.

Garms

The Resource Unit has commenced its review of the financial issues. A preliminary report is envisaged to be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they estimate that their preliminary review will be completed within one month (mid to late May) for review by Paul Howell of DMR Inc.

Gillan/Valkobi

The Resource Unit has commenced its review of the financial issues. We envisage that our preliminary report will be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they likewise expect their preliminary review will be completed within one month for review by Paul Howell of DMR Inc.

Resource Unit (including Technical Support)

I note your comment that the Resource Unit reports issued to the Arbitrator must also be provided to the claimant and Telecom for their comment. We agree that this may prolong the process further, but the fact is that this is a requirement of the fast track arbitration. The Smith report will be available imminently and subsequent reports can, with the benefit of experience be expected to proceed more expeditiously.

I also advise that Mr Paul Howell, Director of DMR Inc Canada arrived in Australia on 13 April 1995 and worked over the Easter Holiday period, particularly on the Smith claim. Any technical report prepared in draft by Lanes will be signed off and appear on the letterhead of DMR Inc. Paul Howell anticipates completing the Smith technical report by the end of April.

Further, I advise that additional resources have been applied to the assignments and work on each has been undertaken contemporaneously. We have technical staff and financial support staff working on Garms and Gillan (in parallel) and visits to Brisbane are anticipated by the end of April 1995.



Arbitration

I understand that Dr Hughes will contact you directly (in your capacity as Administrator of the Fast Track Arbitration Procedures) on any legal procedural issues associated with the progress of the Arbitrations.

Conclusion

In conjunction with Dr Gordon Hughes, we are fast tracking the procedure with the aim of achieving a decision that has regard for due process and investigation.

In closing, I hope that it is possible for you (in your capacity as Administrator for the above referred Fast Track Arbitrations) to continue in that position until we can resolve these claims.

It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work. It is only now, following the review and acceptance of our Resource Unit (including acceptance of Lane Telecommunications by the COT claimants), that we are in a position to analyse the merits (including technical aspects) of each claim.

Do not hesitate to contact the writer directly on (03) 629 8855.

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY

JOHN RUNDELL
Project Manager - Resource Unit
Associate Director

Encl.

c.c. Mr Peter Bartlett, Partner, Minter Ellison Morris Fletcher.
Dr Gordon Hughes, Arbitrator, Managing Partner, Hunt & Hunt.

527

16/11



FERRIER HODGSON CORPORATE ADVISORY

BY COURIER

Our Ref: A1.4

15 November 1995

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

Dear Sir,

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

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

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

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

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

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

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD
A.C.N. 052 405 040

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

P:\PHCA\75\LETTERS\LET25.DOC
16 November, 1995

528A



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

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

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

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



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

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY

JOHN RUNDELL
Project Manager
Associate Director

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

DRAFT

2.22 All services for CBHC were lost for 3 hours due to an exchange data programming error. Such major impact due to an operational error is deemed a less than reasonable level of service.

ASSESSMENT - Service was less than reasonable.

2.23 Continued reports of 008 faults up to the present. As the level of disruption to overall CBHC service is not clear, and fault causes have not been diagnosed, a reasonable expectation is that these faults would remain "open".

ASSESSMENT - Indeterminate.

3. About 200 fault reports were made over December 1992 to October 1994. Specific assessment of these reports other than where covered above, has not been attempted.

5 Summary

CBHC telephone services have suffered considerable technical difficulties during the period in question. Telecom, certainly initially fully concentrated on the CAN/CPE elements, and if they were 'intact', faults would be treated as NFF (No Fault Found). As can be seen from the above, faults did exist that affected the CBHC services, causing service to fall below a reasonable level and apart from CPE problems, most of these faults or problems were in the Inter Exchange Network.

528-B

2.22 All services for CBHC were lost for 3 hours due to an exchange data programming error. Such major impact due to an operational error is deemed a less than reasonable level of service.

ASSESSMENT - Service was less than reasonable.

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ASSESSMENT - Indeterminate.

3. About 200 fault reports were made over December 1992 to October 1994. Specific assessment of these reports other than where covered above, has not been attempted.

5 Summary

CBHC telephone services have suffered considerable technical difficulties during the period in question. Telecom, certainly initially fully concentrated on the CAN/CPE elements, and if they were 'intact', faults would be treated as NFF (No Fault Found). As can be seen from the above, faults did exist that affected the CBHC services, causing service to fall below a reasonable level and apart from CPE problems, most of these faults or problems were in the Inter Exchange Network.

528-c

23 January 1996

Our Ref: GLH
Master No:

Mr J Pinnock
Telecommunications Industry Ombudsman
321 Exhibition Street
MELBOURNE Vic 3000

Peter L. Smith
Peter D. Finnick
Joel M. Lightowler
Wayne B. Cahill
Neville G.H. Osbrey
Grant D. Selous
Charles Warren
William P. O'Shea
David G. Watt

Consultants
Kenneth M. Martin
Richard J. Kelloway
Andrew Jenkins

Associates
Stuart C. Hind
John S. Molnar
Malcolm A. Henderson
Francis V. Collicchio
John D.F. Morris
Michael S. Conick

Incorporating
Francis Anagnostis Pty

Dear Mr Pinnock

INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH

I enclose copy letters dated 18 and 19 January 1996 from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters, including:

- (a) the cost of responding to the allegations;
- (b) the implications to the arbitration procedure if I make a full and frank disclosure of the facts to Mr James.

Yours sincerely


GORDON HUGHES

Encl.
cc P Bartlett

melbourn
sydney
sydney
brisbane
cumber
newcas
represented in
adelaide
darwin

529

30/2



Hunt & Hunt LAWYERS

Partners
 David M. Scarless
 Edward S. Boyce
 James G.F. Harrowell
 Gordon L. Hughes
 Mark T. Knapman
 David P. Cooper
 Ian S. Craig
 Peter L. Erwin
 Peter D. Francis
 Jenni M. Lightowlers
 Wayne B. Cahill
 Neville G.H. Debney
 Grant D. Selson
 Charles Veevers
 William P. O'Shea
 David G. Watts

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 Andrew Jenkins

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 John S. Molnar
 Melissa A. Henderson
 Francis V. Galichio
 John D.F. Morris
 Michael S. Carrick

Incorporating
 Francis Aboutzick Lighto

15 February 1996

Our Ref: GLH

Matter No: 5122795

Mr John Pinnock
 Telecommunications Industry Ombudsman
 321 Exhibition Street
 MELBOURNE Vic 3000

Dear Mr Pinnock

ALAN SMITH

I enclose a draft letter which I propose forwarding to the Institute of Arbitrators Australia in response to the complaint by Mr Smith.

I would appreciate your confirmation that there is nothing in the proposed letter which would embarrass your office or jeopardise the current arbitrations.

You may consider it appropriate for you to provide an independent letter of support. This is of course a matter for your discretion.

I await your response.

Yours sincerely

Gordon Hughes
GORDON HUGHES

Encl.

*Enc. covered with plea
 To request of Gordon re 3 arbitrations X
 letter in support to be prepared.
 Jda*

melbourne
 sydney
 sydney w
 brisbane
 canberra
 newcastle
 represented in
 adelaide
 darwin

529

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.
 11660442 Facsimile: (61-3) 9617 9299. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.
 Email: Mail/hunt.hunt@interlaw.org

16. AUG. 2001 9:22

SENATE COMMITTEES 610 9779830

VO. 2001



AUSTRALIAN SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS

REFERENCES COMMITTEE
LEGISLATION COMMITTEE

16 August 2001

PARLIAMENT HOUSE
CANBERRA ACT 2600

Telephone: + 61 2 6277 3926

Facsimile: + 61 2 6277 5818

E-mail: ecita.sen@aph.gov.auWebsite: www.aph.gov.au/senate_environment

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

Dear Mr Smith

Casualties of Telstra (COT) Matter

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

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

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

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

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

Yours sincerely

Alan Eggleston
Chair

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AUSTRALIAN SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS

REFERENCES COMMITTEE
LEGISLATION COMMITTEE

6 December 2004

PARLIAMENT HOUSE
CANBERRA ACT 2600
Tel: (02) 6277 3526
Fax: (02) 6277 5818
email: ecita.sen@aph.gov.au
www.aph.gov.au/senate_environment

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

Dear Mr Smith

I write to advise you that your letter dated 17 September 2004 addressed to me as Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee, and your subsequent letters of 19 October, 26 October, 2 and 15 November 2004 addressed to me or to the Secretary of the Environment, Communications, Information Technology and the Arts References Committee, were considered by the Committee during its meeting on 2 December.

As you are aware, the Committee's involvement in the matters you have raised concluded in 1999. Accordingly it considers that the matter is closed. You need to understand that, in the absence of a reference from the Senate, it is not the role of a Senate committee to investigate such matters, as there are established and more appropriate processes in place to enable them to be pursued.

In his letter to you of 6 October 2004 the Committee Secretary outlined the possible legal consequences of any unauthorised publication of in camera evidence. The Committee confirms that advice.

As the Committee has no ongoing inquiries into this matter, I am returning the two manuscripts which you provided with your letters.

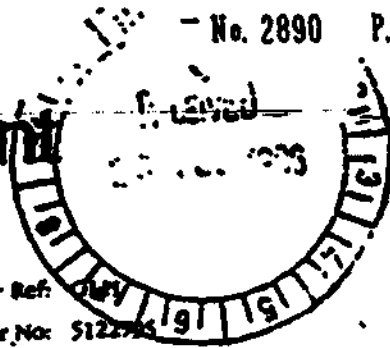
Finally, the Committee has resolved that it does not propose to enter into any further correspondence with you on this issue.

Yours sincerely

Senator Alan Eggleston
Chairman

531

Hunt & Hunt
LAWYERS



Our Ref: 5122795
Matter No: 5122795

Partners
David M. Seaton
Edward S. Bayne
James C.F. Mansour
Gordon L. Hughes
Mark T. Rappaport
David P. Cameron
Ian S. Craig
Peter I. Bain
Peter G. France
Iain M. Ughem
Wayne S. Cahill
Neville C.J. Debon
Grant D. Selton
Charles Vasey
William P. O'Shea
David G. Watt

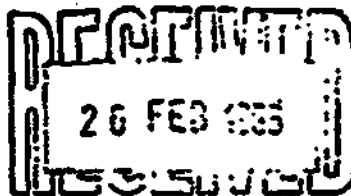
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Frances V. Galbraith
John D.F. Smith
Michael S. Corrie

Incorporating
francs australia

16 February 1996

Mr L E James
President
Institute of Arbitrators Australia
Level 1, 22 William Street
MELBOURNE Vic 3000



Dear Mr James

COMPLAINT - ALAN SMITH

I acknowledge receipt of your letter dated 18 January 1996.

It is difficult for me to comment on a number of the matters raised by Mr Smith because of the confidentiality which surrounds not only his own claim but also numerous related claims which are still current.

Smith's Letter of 15 January 1996

There is no evidence of which I am aware to suggest that the arbitration rules were not followed or that either party was denied natural justice.

Mr Smith's recollection and interpretation of events surrounding the commencement of the arbitration in April 1994 are incorrect. He makes reference to the involvement of Peter Bartlett of Messrs Minter Ellison. I am enclosing a letter from Mr Bartlett to the Telecommunications Industry Ombudsman (the administrator of the arbitration procedure) dated 17 January 1996 which is self explanatory. I do not believe it is necessary for me to add more.

Mr Smith's assertion that the technical report of an expert witness has not been signed is incorrect. A copy of the signed cover letter to the document, dated 30 April 1995, is attached.

The assertion that another expert witness attached to the Resource Unit, John Rundell, deleted material from his report at my request is incorrect and misconceived. The allegation was first raised in a letter from Mr Smith's accountant, Derek Ryan, to the Telecommunications Industry Ombudsman, dated 22 December 1995. In this regard, I enclose copy of a letter from Mr Rundell (now of KPMG) to the Telecommunications Industry Ombudsman dated 13 February 1996 which addresses the allegation. Again I do not believe it is necessary for me to add more.

melb
sydney
sydney
brisb
canber
perth
adelaide

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Document - "One Example of Incorrect Statements"

Mr Smith forwarded you a document headed "One Example of Incorrect Statements Made by the Technical Unit Attached to the FTAP". I am not convinced that this document contains any allegations to which I need respond. I note, nevertheless, some suggestion that evidence was ignored at an oral hearing. If, in paragraph (b), Mr Smith is referring to the oral hearing which took place on 11 October 1994, the transcript reveals no reference to "four exercise books" as he claims. Reference is made to "diaries" which contained evidence of complaints and these were in fact placed into evidence.

D M Ryan Letters

I have noted the two letters from D M Ryan Corporate dated 6 December and 22 December 1995. I have already commented on one of the letters above. Apart from being inaccurate, they reveal a misunderstanding by Mr Ryan of the arbitration agreement. He does not appreciate the unique role given to the "Resource Unit" comprising Ferrier Hodgson Corporate Advisory and DMR Group Inc (Canada). Perhaps Mr Ryan was not adequately briefed by Mr Smith in this regard.

Letter to Senator Evans

Mr Smith provided you with a copy of a letter to Senator Gareth Evans dated 4 January 1996. I presume you require me to comment on those aspects of the letter which reflect upon my conduct as an arbitrator.

The letter to Senator Evans is littered with inaccuracies. Some examples are:

- contrary to Mr Smith's assertion on page 3, his 24,000 (sic) documents were all viewed by me, Ferrier Hodgson Corporate Advisory, DMR Group Inc. (Canada) and Lane Telecommunications Pty Ltd in accordance with the arbitration procedure. Mr Smith was provided with a list of documents in a technical report from the Resource Unit dated 30 April 1995. This list summarised the major documents culled from the 24,000 documents and upon which the findings of the technical experts were based;
- Mr Smith's assertion on page 4 that a technical expert, Mr Read, refused to discuss technical information at his premises on 6 April 1995 is correct - in this regard, Mr Read was acting in accordance with his interpretation of my direction which prohibited him from speaking to one party in the absence of the other party at any site visit;
- if, on page 5, Mr Smith is disputing that I worked in conjunction with the Resource Unit throughout the weekend of 29 to 30 April 1995, he is incorrect;

the remainder of the letter deals with matters which have either been addressed above or which are generalisations of little or no relevance to my conduct as an arbitrator.

Smith's Letter of 18 January 1996

I have noted Mr Smith's letter to you dated 18 January 1996. This does not raise any matter which is not dealt with above.

Comment

I sympathise in many respects with Mr Smith. This level of sympathy was reflected in my award and the reasons which accompanied the award. In essence, Mr Smith suffered financially and emotionally as a result of investing in a business which was in some respects, and to some extent, poorly serviced by Telstra.

Mr Smith was previously awarded a sum of money by Telstra in an out-of-court settlement. Telstra agreed to reopen his claim and submit his grievances to a dispute resolution process which ultimately took the form of an arbitration. I was asked by the Telecommunications Industry Ombudsman if I would act as arbitrator, and both parties subsequently acquiesced. As a result of the arbitration, Mr Smith was awarded further compensation.

I awarded Mr Smith a sum substantially less than the amount he was claiming and substantially less than the amount which Derek Ryan apparently led him to believe he would recover. It was, nevertheless, a sum in excess of the damages recommended by Ferrier Hodgson Corporate Advisory in its capacity as an independent financial expert witness.

It seems Mr Smith can only rationalise the result of the arbitration by retrospectively finding fault with the agreed procedure, by alleging a "conspiracy" between me and Telstra and by asserting that I have overlooked relevant information contained in the 24,000 documents to which he refers. Put simply, he is wrong.

I consent to you disclosing this letter to Mr Smith, save that I do not consent to the disclosure of the attached correspondence from third parties.

Yours sincerely



GORDON HUGHES

Encl.

cc J Pinnock (Telecommunications Industry Ombudsman)



Department of Justice

Civil Law Policy

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

12 OCT 2011

Our ref: CD/11/467259

Mr Alan Smith
Seal Cove
1703 Bridgewater Road
PORTLAND VIC 3305

Dear Mr Smith

Interception of Facsimiles

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

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

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

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

Yours sincerely

Susan Coleman
Acting Director
Civil Law Policy



Department of Justice

Civil Law Policy

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

23 MAR 2012

Our ref: CD/12/126775

Mr Alan Smith
Seal Cove
1703 Bridgewater Road
PORTLAND VIC 3305

Dear Mr Smith

Interception of facsimiles

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

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

Yours sincerely

Chris Humphreys 23/3/12

Chris Humphreys
Director



Office of the Attorney-General

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

2 - JUL 2012

Mr Alan Smith
1703 Bridgewater Road
PORTLAND VIC 3305

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

Dear Mr Smith

INTERCEPTION OF FACSIMILES

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

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

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

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

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

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

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



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

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

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

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

Yours sincerely



PAUL DENHAM
Senior Adviser

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Commonwealth of Australia
STATUTORY DECLARATION

Statutory Declarations Act 1959

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

¹ 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

²In 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 21st April 1994 I received a phone call after business hours when I was working back late in the office. This call was to my unpublished direct number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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 Cheltenham on 7th of July 2011

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

7

Before me,



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
1224 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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FAX FROM: ALAN SMITH
Cape Bridgewater
Holiday Camp
Portland 3305

FAX NO: 055 267 230

PHONE NO: 008 816 522

FAX TO: MR JOHN PINNOCK
TELECOMMUNICATION
INDUSTRY OMBUDSMAN
MELBOURNE

DATE: 20.10.95

NUMBER OF PAGES (including this page)

Dear Mr Pinnock,

I refer to your letter dated 18th October, 1995. In this letter you stated that you do not propose to address any of the specific allegations which I make in the future and that you will not reply to any letter I send which makes defamatory remarks.

Mr Pinnock, from the days of the Pharaohs through to Charles Dickens, and even now, in many Third World Countries, the man in the street has NO rights to challenge the bureaucracy - those in higher positions. I have today checked both the Collins Desk Top Dictionary and the Shorter Oxford English Dictionary to determine the exact meaning of 'defamatory': at NO time in my letter to you dated 18th October, 1995, was I defamatory. Truthful, yes - but not defamatory.

In late 1994 I became quite alarmed after hearing of a conversation Graham Schorer had had the night before with a couple of computer hackers who had broken into the E-mail system at Telstra House in Exhibition Street. The information they passed on concerned me so much that I rang Warrick Smith at the TIO's office as well as a Member of Parliament and an adviser to a Senator. As just one member of COT, I did not want to access or use illegal information gained during the FTAP. It was not what these fellows said on the second contact that alarmed me so much: it was a phrase that these lads used. This phrase has now come home to roost.

I am so disappointed in your attitude. To think that three of the four COT Case members who have presented their claims had come so far and been so close to the finishing line, only to be disqualified by the judge.

It is alarming that you should choose to use the word "defamatory" when I have produced facts to back up every allegation I have made, including:

1. Ferrier Hodgson's four page register of returned documents. Ferrier Hodgson received these documents via DR HUGHES but there were 39 documents missing: 39 letters which had been sent to Dr Hughes during the FTAP as evidence in support of my claim/submission.
2. Showing your office where Dr Hughes again broke his own Rules of Arbitration by not forwarding documents he received from Austel that also supported my claim.

The Technical Resource Team, Lanes Telecommunications and DMR, did not view this evidence which was presented by Austel to Dr Hughes and which validated my claim that others in my region had complained of phone faults similar to my own.

Dr Hughes made strong reference to a technician who had stated that I was the only business in the district that had complained of phone faults that were severe enough to be affecting my business but I proved, beyond all doubt, using Telstra's own Defence Documents together with FOI documents, that this technician lied. Now we see that Austel also supported my claim but Dr Hughes did not circulate this information to all the Parties within the FTAP. My own Resource Team were among those not provided with this evidence and this severely disadvantaged, firstly my claim and secondly my right to amend that claim.

I am enclosing just three letters which supply further information and which compliment the information supplied by Austel when they wrote to Dr Hughes. These three letters were not included in the documents returned to me from the offices of Dr Hughes and Ferrier Hodgson.

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As yet another example of information not circulated correctly: there was evidence of further phone faults on my service in documents which accompanied a bound volume submitted to the FTAP. This information was not shown to the Resource Team either.

As well as all this, I have still not received my promotional video back from Dr Hughes and it is now four months since I originally asked his secretary to arrange its return.

I await your response,
Most respectfully,

Alan Smith

cc Mr John Wynack, Commonwealth Ombudsman's Office, Canberra, ACT

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MATTERS OF PUBLIC INTEREST Telstra

Senator BOSWELL (Queensland--Leader of the National Party of Australia) (1.08 p.m.)-- At the moment there are customers of Telstra who, for many years, have also been casualties of Telstra. For years they have experienced problems with dead lines, lines dropping out, busy signals when it was not busy and many more. They complained, even to the point of not paying their bills and having their phones cut off, which they desperately needed for their business, all in a desperate plea to **Telecom** to fix their lines.

In one member's case, there was acknowledgment of lines being physically removed, with **Telecom** officers stating that there was a prima facie case existing for conviction if the offender could be found. These were all once successful business people, with the type of business that relied on a telephone service fit for their purpose: a service they did not receive. Eleven years after their first complaints to Telstra, where are they now? They are acknowledged as the motivators of **Telecom**'s customer complaints reforms. As a direct result, a telecommunications industry ombudsman has been set up and a complaints resolution process established. But, as individuals, they have been beaten both emotionally and financially through an 11-year battle with Telstra. Now their bankers have lost patience with their lengthy dispute settlement and they are going down fast.

Following an investigation of the initial settlement, accepted under duress, Austel, the industry watchdog, came out with a highly critical report of **Telecom** and the settlement was re-opened. The Austel report concluded that **Telecom** was less than a model corporate citizen--damning words for our nation's monopoly telecommunications provider which, at that stage, was entering a new period of competition. It recognised **Telecom**'s failure to undertake preventative rather than corrective maintenance on its older analog equipment, some dating back 30 years, as a significant cause of persistent, intermittent faults and that **Telecom** had clearly put supply side efficiencies ahead of customer concerns.

There is the admission by **Telecom** to

Austel:

It is of little or no bearing on the case that some of the testing has been purged from the system because we do not require these records to be convinced that this customer has serious concerns with her telephone service.

Backing up the Austel inquiry were critical reports by Coopers and Lybrand, describing **Telecom**'s complaints handling as not meeting the minimum requirements of 'adequacy, reasonableness and fairness', and a technical review by Bell (Canada) of **Telecom**'s testing and fault-finding techniques for network faults. Then followed the Federal Police investigation into **Telecom**'s monitoring of COT case services. The Federal Police also found there was a prima facie case to institute proceedings against **Telecom** but the DPP, in a terse advice, recommended against proceeding.

To this day the parties of the parliament have been denied any access to the Federal Police inquiry or advice from the DPP on the matter--despite persistent demands not only from the coalition but from the Democrats--or matters of the DPP wrongly advising the Federal Police that **Telecom** was protected by the shield of the Crown and that they could not execute a search warrant against **Telecom** in their investigations of alleged phone monitoring and tapping.

Once again, the only relief COT members received was to become the catalyst for **Telecom** to introduce a revised privacy and protection policy. Despite the strong evidence against **Telecom**, they still received no justice at all. Meanwhile, COT members were still experiencing poor telephone services, their businesses were continuing to suffer and they had been forced to enter the exhausting and expensive process of involvement in all these major inquiries into **Telecom**.

A Senate inquiry began to be mentioned by senators on this side and the Democrats. In late 1993, Senator Alston and I, at a meeting in Senator Alston's Parliament House offices, were given an assurance by senior **Telecom** officers that a Senate inquiry would not be necessary--that a fast track, non-legalistic process could be set up, that it would facilitate

FOI access to [redacted]'s documents and that it would be all over by April 1994. That process was to be overseen by the Telecommunications Industry Ombudsman. FOI documents from [redacted] show that [redacted] certainly did not want a Senate inquiry when they refer to:

... walking away, but I do not believe this option would suit [redacted]'s wider strategy in that it would appear to lead directly to a Senate inquiry.

My course therefore is to force Gordon Hughes--

the arbitrator--

to rule on our preferred rules of arbitration.

A fast track settlement proposal was signed by the four COT members in November 1993 and the fast track arbitration procedure on 24 April 1994, involving a confidentiality clause forbidding COT members any further public comment on [redacted]. Even during this period of negotiations on the arbitration rules, FOI was being held up by [redacted]. One Commonwealth Ombudsman's report on delays in FOI information condemns Telecom's denial of documents in the following words:

It was unreasonable for [redacted] to require the participants to make further assurances while [redacted] was considering the arbitration agreement and thereby denying participants the opportunity to consider the rules that Telecom wished to have included in the agreement.

I ask the Minister representing the Minister for Communications and the Arts (Senator McMullan): is this fair play on the part of Telecom? The report goes on:

There is no provision in the FOI Act which would permit Telecom to impose such conditions on applicants prior to granting access to documents--access under the FOI Act is public access.

These COT members have been forced to go to the Commonwealth Ombudsman to force [redacted] to comply with the law. Not only were they being denied all necessary documents to mount their case against [redacted], causing much delay, but they were denied access to documents that could have influenced them when negotiating the arbitration rules, and even in whether to enter arbitration at all.

This is an arbitration process not only far exceeding the four-month period, but one which has become so legalistic that it has forced members to borrow hundreds of thousands just to take part in it. It has become a process far beyond the one represented when

they agreed to enter into it, and one which professionals involved in the arbitration agree can never deliver as intended and never give them justice.

Firstly, it was represented to members that it would be fast. It was called a 'fast track arbitration process'. There were many documented assurances given to the COT members on timing and a quick resolution. The assurance was given by [redacted] to the deputy Liberal Party Senate leader, Senator Alston, and to me, the leader of the National Party in the Senate, late in 1993 that it would be fast track and non-legalistic and would facilitate FOI documents.

There is the letter from Peter Bartlett, special counsel to the TIO, on 25 February 1994 saying:

The emphasis is on "fast track" resolution of these claims.

It stated also:

With this in mind the arbitration is likely to commence this week and will be completed at the shortest possible time frame.

There is the detailed timetable from the TIO scheduling the final report after four months. Then there have been the delays caused by [redacted]'s FOI documents. The Commonwealth Ombudsman has twice reviewed [redacted] FOI delays and has been very critical of, in her words, 'Telecom's defective administration'.

There have been further delays, referred to by the ombudsman as 'unreasonable', because [redacted] sent FOI documents to be vetted by their lawyers before release to members, and delays caused by the destruction of documentation--in the case of the Tivoli Restaurant, all [redacted]'s raw data on testing from 1989 to July 1993. What this has meant is that the COT members, as [redacted] has drip-fed their FOI, have had to resubmit their statements to the arbitrator to include the delayed information.

To give an example of the experience of COT member Ann Garms with FOI documents, she applied to Telecom for FOI in December 1993. In February she received approximately 10,000 documents. In April the arbitration procedure was signed; then in May 20,000 more documents turned up. From May to December 10,000 more documents were drip-fed, continuing till June this year--all for a process promised to be completed within four

months.

This is a situation of the might of a monopoly like [redacted], with all the resources behind it--said to add up already to millions of dollars--which has to be countered by four struggling business people. And now, despite assurances of fast track, which bankers and other supporters were reassured was the guiding principle of the arbitration, 18 months later the four suffering COT members are left with only one COT case settled and [redacted] has made the non-legalistic arbitration process so legalistic that it has cost one COT member nearly \$300,000 to answer [redacted]'s protracted process.

There have been many scathing reports of [redacted]'s defective behaviour by Austel, Coopers and Lybrand, the TIO and the Commonwealth Ombudsman. A second Commonwealth Ombudsman report is due out any day--with the first going so far as recommending compensation from [redacted] for any costs unnecessarily incurred because of the defective administration by [redacted], which ironically now involves another costly mediation process for the COT members involved. The TIO, in his annual report, described the whole process as:

... clearly the low water mark of effective customer relations, regulatory agency response and questionable direction from past management.

He continues:

Regrettable reliance on excessive legalism and failure to meet freedom of information requirements in a timely fashion has led in my view to an unnecessary prolongation of a process which was intended to be speedy.

The expense these COT members have been put to, arising from the so-called fast track arbitration process, has seen several go to the wall.

I regard it as a grave matter that a government instrumentality like Telstra can give assurances to Senate leaders that it will fast track a process and then turn it into an expensive legalistic process, making a farce of the promise given to COT members and the inducement to go into arbitration. The process has failed these people and can never give them justice--a point confirmed by professionals deeply involved in the arbitration process itself and by the TIO's annual report, where conclusion is described as 'if that is ever achievable'.

The COT members would never have opted for arbitration had they known it would go on so long at a cost of hundreds of thousands of dollars in legal and other expenses. Here are people who [redacted] knows are on their knees, and the system becomes so legalistic that, to answer two [redacted] requests for further particulars, it requires an additional \$45,000. These people have had their lives ruined by the process that has followed from daring to take on [redacted]. It does not stop there. Many people have lent COT members funds to see them through the process based on assurances given by [redacted] to Senator Alston and I and written assurances from the TIO that disputes would be settled within months, also risking their houses and businesses because of the outrageous delays.

[redacted] has treated the Parliament with contempt. No government monopoly should be allowed to trample over the rights of individual Australians, such as has happened here. It brings me no joy to bring this matter before the Senate. I would rather be here praising Telstra, an Australian icon. But they are not bigger than the Australian people and, through them, the parliament. [redacted] has been highly criticised by many government watchdogs all through the process, yet sadly, it is the poor struggling Telstra customers who are having to bear the ultimate burden of financial ruin.

Motion (by Senator Sherry)--by leave--agreed to:

That the sitting of the Senate be suspended till 2.00 p.m.

Sitting suspended from 1.21 to 2.00 p.m.

ERC&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. ↙

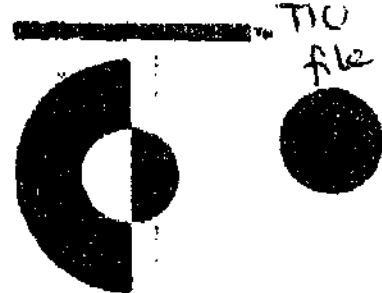
Senator O'CHEE—So when you were told to do a document better, that meant to do a better job of stopping them at all costs?

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.

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G7.

2 June, 1999

The Hon. Tony Staley
Chairman of Council
Telecommunications Industry Ombudsman
PO Box 14
LANCEFIELD 3435

Telecommunications
Industry
Ombudsman

John Finnock
Ombudsman

Dear Tony

Mr Brian Purton-Smith

I realised after our discussion yesterday and after checking the file that this is not the first time Mr Purton-Smith has written to you about his claim.

For your information I enclose copies of:

- (i) letter from Mr Purton-Smith to you of 28 December 1996, attaching a letter to the Minister of 3 December 1996 and other attachments
- (ii) your letter to me of 30 January 1997
- (iii) my response to you of 13 February 1997

So far as any personal claim which Mr Purton-Smith may have, it appears that he has taken no steps at all to prosecute the matter since he last wrote to you.

Both before and at the time when the Enfield Peak Pty Ltd (Salome Party Hire) matter was settled, the former Deputy Ombudsman and I made it clear that the TIO could do little to assist him with his personal claim which I understand is, in effect, a personal injury claim for pain and suffering.

Both the Deputy Ombudsman and I were of the view that it was not a claim which was suitable to be submitted to the Arbitration process which Telstra had established.

I am even more strongly of that view today. In part my position has hardened because of the many problems and deficiencies in the Arbitration process. Secondly, my recollection is that in a judgement in 1998 concerning an Appeal brought against an Arbitrator's Award by one COT claimant, Mr Justice Hooper of the Victorian Supreme Court cast doubt on whether the Arbitrator had any power to consider a 'pain and suffering' claim under the Arbitration procedure.

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In my opinion, the only avenue open to Mr Purton-Smith to pursue his claim is through litigation.

I also enclose copies of a letter dated 21 April 1999 from Mr Purton-Smith and of my reply.

Yours sincerely



JOHN PINNOCK
OMBUDSMAN

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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.



Hunt & Hunt LAWYERS

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 Edward S Boyca
 James G.F. Harrowell
 Christine A. Galey
 Gordon L. Hughes
 Mark T. Knapman
 Ian S. Craig
 Peter J. Ewin
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 Lindsay L. Morgan
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 Charles Veivers
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Consultants
 Kenneth M. Martin
 Richard J. Kellaway

Associates
 Peter A. Cornish
 Shane D. Hird
 John S. Molnar
 Melissa A. Handerson
 Francis V. Galichio
 Roy Selt

18 January 1994

Our Ref: GLH

Matter No:

Your Ref:

BY FAX: 287 7001

Mr Graham Schorer
PO Box 318
North Melbourne VIC 3051

Dear Sir

"COT CASES"

I confirm I have been appointed by the Telecommunications Industry Ombudsman (TIO) as assessor under the terms of the agreement entitled "Fast Track Settlement Proposal".

I will be assisted by a project team under the direction of John Rundell of Ferrier Hodgson. The project team will include Mr Jan Blaha of DMR Group Australia Pty Ltd.

I am aware the parties are anxious for early resolution. My first priority will be to establish the process and procedure for conducting the assessment. In this regard I note paragraph 2(e) of the "Fast Track Settlement Proposal" provides that:

"The review will be primarily based on documents and written submissions. Each party will have access to the other party's submissions and have the opportunity to respond.

The assessor may, however, call for oral presentations by either party. Such presentations will not include cross-examination, and would not be open to the public or third parties. Representations of the parties will be at the assessor's discretion."

I have been provided by the TIO with a document entitled "Telstra Corporation Limited - 'Fast Track' Proposed Rules of Arbitration". I have not yet formed a view as to the suitability of this proposal. I would be happy to receive an alternative submission on behalf of the COT Cases but it might be more practical to await my comments on the Telecom proposal. Naturally I am anxious to establish a procedure which is acceptable to all parties.

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

11183278_GLH/RS

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

Facsimile: (61-3) 614 8730. G.P.O. Box 1593N, Melbourne 3001. DX 252, Melbourne.

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When I have formulated my views as to the appropriate procedure for conducting the assessment, I intend to meet formally with a representative of Telecom and a single representative of the four nominated COT Cases in order to finalise arrangements.

In the meantime I shall meet as soon as possible with Mr Rundell and Mr Blaha to discuss the roles of their respective organisations.

I consider it to be inappropriate for me to discuss the merits of the four actions with any involved party except in accordance with the agreed assessment procedure. I nevertheless wish to remain as accessible to the parties as possible. It may be necessary for a party to contact me personally from time to time for reasons unconnected with the merits of the actions. In such circumstances, I nevertheless reserve the right to provide any other party with a memorandum regarding the contact and the issues discussed.

At this stage I have no information at all regarding any of the claims. While the assessment procedure will of course provide for the formal presentation of material, it may be useful if the parties could informally provide me with any material which they jointly agree might be of assistance to me and the project team by way of background.

Yours sincerely


GORDON HUGHES

- CC. S Black
- J Rundell
- J Blaha
- W Smith
- P Bartlett

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

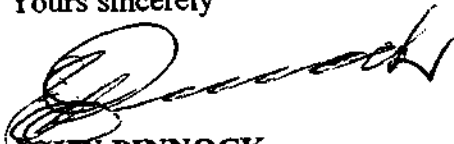
Dear Mr Smith

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

FAXED



Telecommunications
Industry
Ombudsman

Facsimile Cover Sheet

File No: _____

To: Mr Warwick Smith
Company: _____
Phone: _____
Fax: 003 442660

From: Grant Campbell
Company: _____
Phone: _____
Fax: _____

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

Comments:

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

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*Faxed
details to
Vic/Tas Region*



Telecommunications
Industry
Ombudsman

February 9, 1994

Warwick L. Smith U.S.
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."

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Facsimile Cover Sheet

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

From: Grant Campbell
Company:
Phone:
Fax: 03 834 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 8 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 refute 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

54.6

000027

Internal Memo



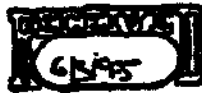
To Garry Moriarty
Managing Director, Network Products
From Steve Monro
Manager
Subject Customer Complaint

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.

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.

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.

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.

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.

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

546
H36279

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 venetious Bigant 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. As 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

546

H36280



MINTER ELLISON

LAWYERS

L

DAVID A. CANNON
 JOHN W. CRANFIELD
 JAMES G. DUNN
 DAVID E. GIBSON
 JOHN G. HANCOCK
 JAMES H. JONES
 DAVID A. KERR
 JOHN L. LINDSAY
 JAMES M. McLEOD
 JOHN R. MORGAN
 DAVID A. NEWBOLD
 JOHN P. O'NEILL
 JAMES R. PEARSON
 JOHN Q. REID
 DAVID S. SANDS
 JOHN T. SIMPSON
 JAMES W. SMITH
 JOHN Y. TAYLOR
 DAVID Z. WATSON

ANDREW W. BARRON
 DAVID I. COCHRANE
 JOHN M. FLEMING
 DAVID G. GIBSON
 JOHN H. HANCOCK
 JAMES J. JONES
 DAVID K. KERR
 JOHN L. LINDSAY
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 JAMES W. SMITH
 JOHN Y. TAYLOR
 DAVID Z. WATSON

40 MARKET STREET
MELBOURNE VIC 3000

FRANKLIN AVENUE
CAPE TOWN 8001
MELBOURNE VIC 3001
AUSTRALIA

BOX 204 MELBOURNE

TELEPHONE (03) 617 4617
INTERNATIONAL (61) 3 617 4617
FACSIMILE (03) 617 4666

PLB 928549

(03) 617 4623
28 April 1995

STRICTLY CONFIDENTIAL

Mr Warwick I. Smith
Telecommunications
Industry Ombudsman
Box 18098
Collins Street East
MELBOURNE 3000

Dear Warwick

Fast Track Arbitration - Smith

Further to our recent discussion, it seems to me that we should put to Gordon Hughes that we expect his Award to be made prior to his departure on 12 May 1995.

Attached is a draft letter to Gordon. It is in reasonably harsh terms.

Could you please consider whether a letter in this form or an amended form, should go to Gordon.

Regards

Peter L Bartlett

enc.

547

1/p10511804

↑

DRAFT

28 April 1995

Dr Gordon Hughes
Hunt & Hunt
Solicitors
GPO Box 1533N
MELBOURNE VIC 3000

By Facsimile: 614 8730

Dear Gordon

Fast Track Arbitration - Smith

I am becoming increasingly concerned at the delays in the finalisation of this matter.

The Resource Unit tells me that it expects its technical and financial reports to the Arbitrator will be released today to the parties. The parties will then of course have the right to a reasonable period within which to comment on these reports. The extent of this period would of course be in your discretion.

However, I understand you are to present a paper in Greece in mid May.

I would expect the Award would be delivered prior to your departure.

It would be unacceptable to contemplate the delivery of the Award being delayed until after your return.

Could you please contact me to discuss.

Yours sincerely

Warwick L Smith
Ombudsman

DRAFT

548



Australian Government

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

our reference

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

Dear Mr Smith

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

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

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

Yours sincerely

David Lever

David Lever
Manager, Consumer Section
Telecommunications Division

17 March 2006

549

Vajrabukka, Nikki

From: Vajrabukka, Nikki
Sent: Friday, 3 March 2006 12:04 PM
To: Lever, David
Cc: Lilley, Rachel
Subject: FW: Independent assessment process - notification of further claimant name and request for information

DL - fyi - sent to David Quilty, as Athol is on leave for the next week or so.

DQ questioned why we accepted [redacted] case for inclusion in the assessment process, since the deadline of 3 February had already passed - I indicated that there was some to-ing and fro-ing to attempt to clarify [redacted] intentions as he appeared to have misunderstood issues associated with the process. DQ accepted this, and indicated that Telstra would try to get the requested info to us as soon as possible.

cheers,
- Nikki

From: Vajrabukka, Nikki
Sent: Friday, 3 March 2006 11:52 AM
To: 'david.quilty@team.telstra.com'
Subject: Independent assessment process - notification of further claimant name and request for information
Importance: High

Hi David

As discussed, we have received notification from [redacted] that he wishes to have his case included in the independent assessment process being conducted by the Department.

To assist the Department in its examination of issues relevant to [redacted] case, we would appreciate Telstra providing information in relation to the following issues:

- the claim (a brief description of [redacted] dispute with Telstra and the outcome he sought);
- Telstra's response to the claim, including any action taken;
- Telstra's current position in response to the claim;
- compensation paid to [redacted] if any) and, if applicable, the conditions that applied to that compensation;
- any dispute resolution mechanisms used by Telstra; and
- the current status of the dispute, including whether there are any Court proceedings pending.

Telstra's advice would be appreciated as soon as possible, to enable to the Department to meet the reporting deadline.

Please don't hesitate to contact me if you have any queries.

cheers,

Nikki

NIKKI VAJRABUKKA
Telecommunications Consumer Policy
Department of Communications, IT and the Arts

13/04/2006

550-A
PTO

2

Vajrabukka, Nikki

From: Vajrabukka, Nikki
 Sent: Friday, 3 March 2006 12:04 PM
 To: Lever, David
 Cc: Lilley, Rachel
 Subject: FW: Independent assessment process - notification of further claimant name and request for information

DL - fyi - sent to [redacted] is on leave for the next week or so.

questioned why we accepted Alan Smith's case for inclusion in the assessment process, since the deadline of 3 February had already passed - I indicated that there was some to-ing and fro-ing to attempt to clarify Mr Smith's intentions as he appeared to have misunderstood issues associated with the process. [redacted] accepted this, and indicated that Telstra would try to get the requested info to us as soon as possible.

cheers,
 Nikki

From: Vajrabukka, Nikki
 Sent: Friday, 3 March 2006 11:52 AM
 To: [redacted]@team.telstra.com
 Subject: Independent assessment process - notification of further claimant name and request for information
 Importance: High

Hi

As discussed, we have received notification from Mr Alan Smith that he wishes to have his case included in the independent assessment process being conducted by the Department.

To assist the Department in its examination of issues relevant to Mr Smith's case, we would appreciate Telstra providing information in relation to the following issues:

- the claim (a brief description of Mr Smith's dispute with Telstra and the outcome he sought);
- Telstra's response to the claim, including any action taken;
- Telstra's current position in response to the claim;
- compensation paid to Mr Smith (if any) and, if applicable, the conditions that applied to that compensation;
- any dispute resolution mechanisms used by Telstra; and
- the current status of the dispute, including whether there are any Court proceedings pending.

Telstra's advice would be appreciated as soon as possible, to enable to the Department to meet the reporting deadline.

Please don't hesitate to contact me if you have any queries.

cheers,

Nikki

NIKKI VAIRABUKKA
 Telecommunications Consumer Policy
 Department of Communications, IT and the Arts

550-A

13/04/2006



OFFICE OF THE TREASURER

112058

- 3 DEC 1997

Mr David Quilty
 Chief of Staff
 Office of Senator the Hon. Richard Alston
 Minister for Communications, Information Economy and the Arts
 MG 70
 Parliament House
 CANBERRA ACT 2600

RECEIVED
 - 4 DEC 1997

Dear David

Attached please find correspondence from Mr Alan Smith in relation to his claims as a Casualty of Telstra member.

As this matter falls within the portfolio responsibility of your Minister I would be grateful if you would respond to Mr Smith directly as appropriate.

I have also copied this material to the Minister for Justice, Senator the Hon. Amanda Vanstone.

Yours sincerely

Philip Gaetjens
 Principal Adviser

RECEIVED ON
6 DEC 1997
 P.L.S.

Minister
.....
- 5 DEC 97	
Reference No:	
<input type="checkbox"/>	Urgent by
<input type="checkbox"/>	Acknowledge by
<input type="checkbox"/>	Reply by
	Minister <input type="checkbox"/>
	Chief of Staff <input type="checkbox"/>
	Adviser <input type="checkbox"/>
	Department <input type="checkbox"/>
<input checked="" type="checkbox"/>	Appropriate Action
<input type="checkbox"/>
Cc: <i>PF</i>	

550B



SENATOR THE HON HELEN COONAN

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

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

17 MAY 2007

Dear Mr Smith

Outcome of representations to Telstra

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

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

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

Yours sincerely

HELEN COONAN

551



BARNABY JOYCE
The Nationals Senator for Queensland

15 September 2005

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

Dear Mr Smith,

Casualties of Telstra – Independent Assessment

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

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

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

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

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

Kind regards,

Senator Barnaby Joyce
The Nationals Senator for Queensland

552

Murdoch, Wally

From: Lever, David
Sent: Wednesday, 19 October 2005 5:07 PM
To: Bryant, Simon; Madsen, Andrew
Cc: Murdoch, Wally
Subject: RE: outstanding claims against telstra

Yes, but I sent her the minutes with letters attached, so she shouldn't be confused.

DL

From: Bryant, Simon
Sent: Wednesday, 19 October 2005 5:06 PM
To: Lever, David; Madsen, Andrew
Cc: Murdoch, Wally
Subject: RE: outstanding claims against telstra

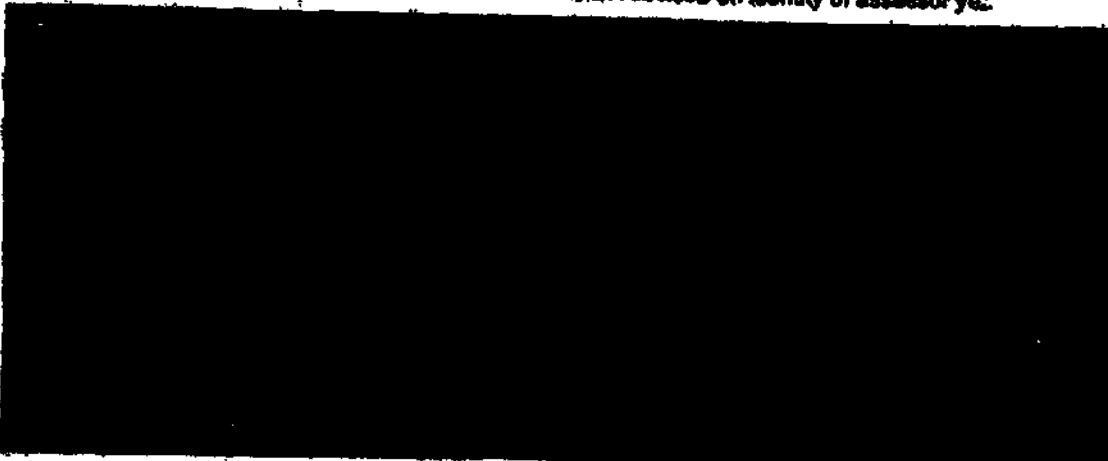
I think Jodi may be getting confused about what the assessment is meant to do (or at least what we are recommending) is an assessment of process and what other resolution channels may be available to people. We are arguing strongly that the assessment should not be about the merits of each case.

SB

From: Lever, David
Sent: Wednesday, 19 October 2005 4:58 PM
To: Madsen, Andrew; Bryant, Simon
Cc: Murdoch, Wally
Subject: RE: outstanding claims against telstra

As discussed with Andrew yesterday, the minister has signed and sent a letter to Bernely Joyce that deals with the above and local presence plan issues. We have not yet seen it but I made comments on the draft sent yesterday afternoon by matt, seeking to retain the tight constraints on the scope of the assessment, which he had relaxed.

She did not sign the letter to ACMA and said that she hadn't decided on identity of assessors yet.



DL

553

57



Senator Barnaby Joyce
The Nationals' Senator for Queensland

Mr A. Smith
Seal Cove Guest House
1703 Bridgewater Rd
Cape Bridgewater VIC 3305

9th November 2005

Dear Mr Smith,

Casualties of Telstra – Independent Assessment

I am writing to advise you of progress since my last letter of 15th September 2005. I have received correspondence from Senator the Hon Helen Coonan confirming that she will be appointing an independent assessor.

She is currently considering who will be the most appropriate to conduct the assessment and has advised the Department of Communications, Information Technology and the Arts will write to you directly. The department will be seeking confirmation that you wish to proceed and will provide you with further details of the process.

I will remain in contact with the Minister and continue to represent your concerns during the course of this resolution. I look forward to your continued support.

Kind regards,

Senator Barnaby Joyce
The Nationals Senator for Queensland

554



MINISTER FOR COMMUNICATIONS,
INFORMATION TECHNOLOGY
AND THE ARTS

Senator the Hon Helen Coonan

PARLIAMENT HOUSE
CANBERRA ACT 2600

Telephone: (02) 6277 7480
Facsimile: (02) 6273 4154

www.minister.dcita.gov.au

10 MAR 2006

Senator Barnaby Joyce
The Nationals Senator for Queensland
90 The Terrace
ST GEORGE QLD 4487


Dear Senator Joyce

Outstanding claims against Telstra

Thank you for your letter of 3 March 2006, repeating your request for me to appoint an external assessor in relation to these outstanding claims. I also note our recent meeting.

While I understand your position and appreciate your offer to work with me on the appointment of such a person, I remain of the view that the Department of Communications, Information Technology and the Arts is able to provide a balanced and impartial assessment of these cases, particularly given the focus of the assessment is on 'due process', rather than the merits of the parties' claims and the difficult task of quantification.

While a small number of Departmental staff involved with the current assessment process have some knowledge of the history of the 'Casualties of Telstra' cases and other disputes that are the subject of the assessment, the Department is independent of the claimants and Telstra, in that the Commonwealth has not been a party to the disputes.

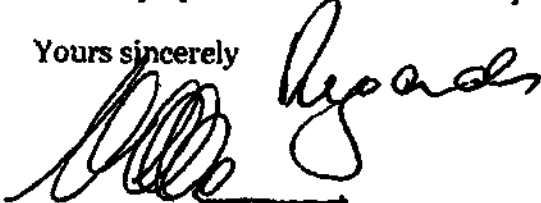
Oversight of the assessment process by a high-level Steering Group, comprising the Deputy Secretary, Communications, Chief General Manager, Telecommunications and General Manager, Telecommunications Competition and Consumer is an additional safeguard to ensure the assessment is carried out properly. I have asked the Steering Group to have particular regard to this aspect of the process.

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I do not believe that additional oversight by a person from outside the Department is necessary or appropriate to advise the respondents of the accuracy of the assessment process undergone or that such a person would be in a better position to provide advice on any other process that may be readily available to the claimants. My view is fortified by the fact that an attempt at getting a resolution by an independent assessor has already been tried and was unsuccessful.

I value your commitment to assisting the claimants and your input into the process and acknowledged your concern. These are sentiments that I share with you and I will keep up the momentum to complete the process I started.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Helen Coonan', written over a horizontal line.

HELEN COONAN

555

NOV 16 2006 2:09

SENATOR B JOYCE

NO. 5537



Senator Barnaby Joyce
The Nationals' Senator for Queensland

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

16 November 2006

Dear Senator ~~Coonan~~ *Helen,*

CoTs cases and related disputes

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

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

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

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

Yours sincerely

Senator Barnaby Joyce
The Nationals Senator for Queensland

556



DEPARTMENT OF
COMMUNICATIONS
AND THE ARTS

Our Reference

FACSIMILE

To:	John Pinnock
Organisation:	Telecommunications Industry Ombudsman
Phone number:	03 9277 8777
Facsimile number:	03 9277 8797

From:	Lori Catelli
Phone number:	02 6279 1225
Facsimile number:	02 6279 1555
Date:	6 November 1997
Number of pages:	8

GPO Box 2154 Canberra ACT 2601 Australia. Telephone (06) 279 1000 Facsimile (06) 279 1901 Email dca@dca.gov.au

Rc: Ministerial Number 97101006 - Mr Alan Smith

John

Can you please urgently provide me with advice for our response to Mr Smith. I have also faxed Telstra for input as well. Thanks.

Lori

557



DEPARTMENT OF
COMMUNICATIONS
AND THE ARTS

Our Reference

23 JAN 1998

FACSIMILE

To: Mr John Pinnock
Telecommunications Industry Ombudsman
Phone number: 1800-062-058
Facsimile number: 1800-630-614

From: Toni Ahkin
Phone number: (02) 6271 1509
Facsimile number: (02) 6271 1850
Date: 23 January 1998
Number of pages: Cover + 3

(GPO Box 2154 Canberra ACT 2601 Australia. Telephone (02) 6271 1000 Facsimile (02) 6271 1901 Email dca@dca.gov.au

Mr Pinnock

Alan SMITH - Proposed replies for Senator Alston's signature

I am forwarding copies of our proposed replies (that will be sent to the Minister's office today) to David Hawker and Alan Smith in response to recent Min Rep's concerning the arbitration process and overcharging on Mr Smith's 1800 number.

*Don't seem to want specific comment from TO.
Noted:*

[Handwritten signature]



558

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Prudential Building, 100 London Circuit & University Avenue, Canberra City
GPO Box 442, Canberra, A.C.T. 2601, Australia
Tel: (06) 276 0111; Fax: (06) 249 7222; Int. Fax: + 61 6 249 7222

10 November 1994

C/94/225

Mr Frank Blount
Chief Executive Officer
Telstra Corporation Ltd
38th floor, 242 Exhibition Street
MELBOURNE VIC 3000

Attention: Ms Joy Geary

Dear Mr Blount

At the request of Ms Geary, I am notifying you of the details of the complaints made to the Ombudsman by Mr Alan Smith.

20.1.94 Telecom unreasonably has decided to apply charges to his FOI request and has stated that the charges will be considerable.

2.3.94 Telecom has delayed providing access to documents.

2.3.94 Deletions from documents provided and exemptions were not explained.

24.3.94 Telecom claimed that documents given to Telecom by Mr Smith in 1992 had been destroyed or lost.

Telecom unreasonably refused to give any further documents to Mr Smith.

Telecom has lost or destroyed a number of files relating to his contacts with Telecom prior to 1991.

14.4.94 Telecom unreasonably refused to provide documents allegedly referring to discussions Mr Smith had with three Telecom officers concerning a discussion Mr Smith had with Mr Malcolm Fraser.

Telecom unreasonably deleted information from documents released.

Telecom unreasonably denied Mr Smith access to 460 documents. (letters of 14.4.94 and 15.4.94 from Mr Smith to Mr Black refer)

5.5.94 Telecom unreasonably delaying providing access to many documents.

559

Telecom denied access to ELMI tapes for 21, 22, and 23 October 1992.

Telecom imposed unreasonable charges for access to documents sought under the FOI Act.

23.5.94 Telecom failed to provide fault reports for the period after 22/6/93, particularly from 9/8/93 to November 1993.

14.9.94 Telecom refused access to documents relating to voice monitoring for fault finding during 1993.

18.9.94 Telecom acting unreasonably in refusing to provide access to 'Bell Canada Raw Data'.

2.10.94 Telecom delayed providing access to documents under the FOI Act while Telecom's solicitors examined the documents.

23.10.94 Telecom unreasonably refused access to 'ELMI Smart 10 tapes' for the period May to July 1993. (Mr Smith's letter to Mr Benjamin on 23.10.94 refers).


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

26.10.94 Telecom incorrectly informed Mr Smith that Telecom did not have in their possession 'any of the raw data and working papers to do with the Bell Canada testing and report.'

7.11.94 Telecom unreasonably refused to provide the 'Portland/Cape Bridgewater Log Book associated with the RCM at Cape Bridgewater' for the period 2 June 1993 to 6 March 1994.

I think the above is comprehensive; but I have sent a copy of this letter to Mr Smith and invited him to apprise me of any complaints he has made which I may have omitted inadvertently.

Yours sincerely


John Wynack
Director of Investigations

559

STATEMENT

Of Des DIREEN

NAME:	Des DIREEN
ADDRESS:	
OCCUPATION :	
TELEPHONE :	

1. My name is Des DIREEN and my address and contact details are known to Mr Bob Hynninen.
2. In September 1955 I commenced employment with Telecom Australia which later changed its business name to the Telstra Corporation. I was originally employed as an investigator attached to the Special Services Unit within Telecom Investigations which was later to become Telstra Protective Services. Over the next twelve years i was promoted to the roles of Senior Investigator and then Principal Investigator.
3. My duties over the years included initiating and conducting investigations involving all types of fraudulent activity against Telecom/Telstra as well as the unlawful use of the Telephone network. I was also very heavily involving in assisting Law Enforcement Agencies such as the Victorian, NSW and Queensland Police Task forces set up to investigate SP Bookmaking throughout those states which involved the use of Telephone Landlines as well as the Mobile phone network.
4. In April 1997 Telstra was downsizing its staff and offering redundancy packages. I applied and was granted a package leaving the company after completing just short of twelve years service. .
5. After leaving Telstra, I am not sure of actual dates but it was either late 1997 or early 1998, I received a call from a person who I know as Rod KUERIS. Rod was working as a Detective Sergeant at the Victoria Police Fraud Squad, St. Kilda Road, Melbourne. I can recall that at the time, Rod was investigating criminal behaviour allegations directed against Telstra. The allegations, which related to 'Perverting the Course of Justice', were initiated by a group of complainants who called themselves Casualties of Telstra (COT Cases).



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6. At the time when Rod called me, I had left Telstra. He called me and asked me to meet him at his private address in Coburg, Victoria. He told me at the time that he was reading reports submitted by Telstra that related to his investigation. He had trouble deciphering the acronyms, abbreviations etc. that were in the report. He knew of my background as an investigator with Telstra and that I could assist him.
7. I attended at his house in Coburg. It was either on a Saturday or a Sunday. I can remember that it was on a weekend.
8. When I got there and during general talk, he stated that he believed that his phones were being 'bugged'. He seemed to be quite distressed at the time. He said that his phone was making clicking noises, the same noises that were occurring on the phones at the Fraud Squad.
9. I said to him that we should do a quick drive around to find out where the nearest pillar or telephone line pit was to his home because if what he was telling me, was true, it was possible that his telephone line could be being tapped from that location and his telephone conversations monitored. He told me that he thought there was pillar down on a corner about two hundred (200) metres away. We left together and when we got to the corner, a plain van was present and a male person was replacing the cover to the pillar. The male then got into his van and left.
10. We then drove to the main exchange in Sydney Road, Brunswick. There were two other vehicles at the exchange as well as the same van. These vehicles were in behind the exchange compound and were not marked with the company logo which indicated that they were not technician's vehicles.
11. It was unusual to have any vehicles at exchanges on weekends unless there was repair work being conducted by technical crews, but as I said all these vehicles were ^{not} marked with the Telstra logo.
12. From what I observed on this day, and applying the knowledge that I gained during my twelve years at Telstra, I have no doubt in my mind that the phones at Rod KUERIS's home address were possibly being interfered with.
13. Rod had also informed me that he believed that the phones at the Fraud Squad were also being monitored. He stated that the clicking noises were constantly being heard while using the phones.



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Statement by Des DREEN
Page 3 of 4

14. Rod also stated that he believed that all of his actions and meetings were pre-empted by Telstra. He stated that he thought it was possible that someone from Telstra was monitoring his calls.
15. This belief was later reinforced by what happened after this event.
16. A few weeks later on a Saturday morning Rod had to go to Tullamarine Airport to meet one of the complainants in his investigations, Anne GARMES. He called me early on this day and stated that he believed that he was being followed and wanted me to help him verify this.
17. Rod was going to meet Anne GARMES at Tullamarine Airport in the Ansett Departure area on the 1st floor. He was driving his private car to the airport. I arranged to meet Rod at Keilor Park Drive, East Keilor. I sat off his car as he drove past. I then followed him at a reasonable distance to the Ansett Departure Area Cafeteria on the 1st floor.
18. I met him outside the Cafeteria, and he pointed out Anne GARMES and her husband who were already there and then pointed out a male person sitting near them who he said he recognised as being a person who was following him around Melbourne. This guy was reading the paper. When this person realised that we had noticed him, he left. Rod appeared angry and distressed by this.
19. I also know that these occurrences were causing problems with Rod's family life. I believe that Rod left the police force not long after these events.
20. Finally, I would like to say that while I was working at Telstra and it would have been the early nineties I had cause to travel to Portland in western Victoria in relation to a complaint involving suspected illegal interference to telephone lines at the Portland telephone exchange.
21. As part of my investigation, I first attended at the exchange to speak to staff and check the exchange log book which was a record of all visitors to the exchange and a record of work conducted by the technical officers.
22. When I attended at the exchange, I found that the log book was missing and could not be located. I was informed at the time by the local staff that a customer from the Cape Bridgewater area south of Portland was also complaining about his phone service and that the log book could have been removed as part of that investigation. I was not told about this complaint prior to travelling to Portland and when I made inquiries by telephone back to



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Melbourne I was told not to get involved and that it was being handled by another area of Telstra. I later found out that the Cape Brigewater complaintant was a part of the COT cases.

Signature: [Signature]

Date: 10/08/06

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

Signature: [Signature]

Date: 10/08/06

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

Signature: [Signature]

Name: P. J. SPENCE

Title: SENIOR INVESTIGATOR

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Senator ALSTON—So Bell Canada made a contribution to that, presumably, but you are able to go further, are you?

Mr Davey—Yes.

Senator ALSTON—Is that proposition something that you have taken directly into account? I presume you have seen the minute, have you?

Mr Davey—Quite frankly, I cannot recall seeing that precise minute.

Senator ALSTON—Perhaps you might come back to me on any action that has been taken in response to this, if you have indeed previously seen it. If not, you might indicate what action you think should be taken as a result of seeing it. Can you do that?

Mr Davey—Certainly.

Senator ALSTON—You said that you hoped to be able to complete and presumably release your report in March.

Mr Davey—Mid-March, we are aiming for at this point.

Senator ALSTON—At that time, could you also include the total cost to Austel of the investigation; in other words, the amount of resources, human and financial, that has been absorbed by this exercise?

Mr Davey—I see no reason not to. I do not know whether we can give an accurate estimate—we have not until more recently kept it. It has been absorbed in our usual functions. We have not set aside specific resources until more recently.

Senator ALSTON—But it has been a major project.

Mr Davey—Yes. There is no doubt about it.

Senator ALSTON—It ought to be desirable to try to quantify the cost?

Mr Davey—Yes.

Senator ALSTON—Are you developing indicative performance standards to ensure that carriers provide an adequate phone service?

Mr Davey—Yes, indeed. In the context of the COT cases we are working specifically to get an agreement on a standard upon which we can sign off that the complainants, if they

settle with Telecom, are receiving an adequate standard of telephone service at the time.

Senator ALSTON—Will that be backed up by direction?

Mr Davey—If necessary, yes.

Senator ALSTON—What about in relation to others, apart from the top eight?

Mr Davey—It would apply in relation to all of them. What we are aiming to do is to get an across-the-board standard that people can sign off and know these sorts of things.

Senator ALSTON—Meaning both carriers or the three carriers?

Mr Davey—It will apply principally to Telecom as the provider of the local loop.

Senator ALSTON—Very well. Have you issued any directives to Telecom in relation to COT matters?

Mr Davey—Yes. They are published in the 1992-93 annual report, I think.

Senator ALSTON—In relation to COT?

Mr Davey—I think it is. Do not hold me to it but we do publish our directions in the annual report.

Senator ALSTON—Have any directions been issued since that time?

Mr Davey—It has not been necessary to issue further directions.

Senator ALSTON—Of the 257 consumer complaints that Austel received in 1992-93, approximately 91, according to the report, were referred to other agencies. Does that sound right?

Mr Davey—It sounds right.

Senator ALSTON—Why did not Austel immediately refer COT's allegations of voice recording to the federal police instead of waiting for the minister to refer the matter to the Attorney-General and then on to the federal police?

Mr Davey—That is a question that I think I need some further detail on.

CHAIRMAN—Minister, we might confirm that you have accepted the questions from Senator Alston and Senator Tierney.

Senator McMullan—Yes, I accept.

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capescalcove

From: "Ronda Fienberg" <rondagf@optusnet.com.au>
To: "Smith, Alan" <capescove12@bigpond.com>
Sent: Saturday, 2 February 2008 10:52 AM

Well, here's a couple of interesting emails that landed in my email inbox this afternoon! As you can see, Senator Coonan's office must be having a big clean up of their emails and these two emails I've sent on your behalf back in 2006 have just been deleted -- today! Can a Senator legally delete correspondence from a citizen without reading it?

Ronda

MESSAGES RECEIVED THIS AFTERNOON ARE:

Your message

To: Coonan, Helen (Senator)
Cc: Lever, David; Smith, Alan
Subject: ATTENTION MR JEREMY FIELDS, ASSISTANT ADVISOR
Sent: Sun, 23 Apr 2006 17:31:41 +1100

was deleted without being read on Fri, 1 Feb 2008 16:56:36 +1100

Your message

To: Coonan, Helen (Senator)
Cc: Smith, Alan
Subject: Alan Smith, unresolved Telstra matters
Sent: Tue, 25 Jul 2006 00:00:42 +1100

was deleted without being read on Fri, 1 Feb 2008 16:56:23 +1100

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2/02/2008



AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

JUN 10 1994 15:30

*cc R. W. ...
for ...*

10 June 1994

Mr S Black
Group General Manager
Customer Affairs
TELECOM.

*1. ...
Cliff Matheson ...
at ...
Devlin Bridge ...*

Facsimile No: (03) 632 3241

Dear Mr Black

COT CASES

AUSTEL is continuing to receive complaints as to the quality of service from a number of the COT Cases

- Mr [redacted] at Cape Bridgewater continues to express concern about his ability to receive and send facsimiles
- Mr Schorer at North Melbourne continues to claim that customers are reporting an inability to make a successful phone call to his business
- Mr [redacted] is likewise claiming that he is not receiving calls on his business number and that he is at times still being subjected to drop out; he also claims problems in receiving calls via the mobile service as well as false busy. Additionally, he is still receiving calls meant for other customers.

In these circumstances, and given your apparent advice to Mr Schorer that his service is operating satisfactorily, AUSTEL considers there is a need for objective data as soon as possible and accordingly, if it has not commenced, you are asked to apply the service verification tests to these services immediately. AUSTEL's Chief Operating Officer has confirmed that the detail negotiated with Mr Matheson is accepted.

Please comment on the service claims made above.

Your comment on the further points raised by Mr [redacted] is also requested

- is a pre-fab replacement or substitute exchange being installed at Devlin's Bridge?
- if so please provide detail and rationale and date of

A32874

563-A

commissioning

• have complaints been received from customers at Glenburn that their last account is 2 or 3 times the normal level and if so what is the cause?

Finally, in the course of the COT inquiry Telecom undertook to standardise a form of words to be used in advising customers about liability. The attached letter dated 31 May 1994 from Sheridan Bailey does not use the wording advised to AUSTEL and remains a misleading and incomplete statement. Your comment is sought as well as an assurance as to how staff are being made aware of Telecom's obligation to cease this practice.

Yours sincerely



John MacMahon
General Manager
Consumer Affairs

Encl:

563A
A32875



Australian Government
Australian Communications
and Media Authority

Level 44 Melbourne Centre Tower
150 Elizabeth Street Melbourne VIC

Tel: 03 996 36987
Fax: 03 996 36988

PO Box 25117
Melb Centre Melbourne VIC 3022

www.acma.gov.au

ACMA file reference: ACMA2008/1346

8 July 2008

Mr Graham Schorer
Managing Director
Golden Messenger
PO Box 313
North Melbourne VIC 3051

Dear Mr Schorer

Freedom of Information Act 1982 application - Notice under section 24(6)

I refer to your request for access to documents under the *Freedom of Information Act* (FOI Act) as set out in your letter to Ms Alison Jerney dated 2 July 2008 and received by ACMA on 4 July 2008.

In paragraph 2 of that letter you stated:

Alan [Smith] recently provided me with a document entitled Alan Smith draft - Bruce Matthews Printed: 3 March 1994. This document was prepared during the period Alan Smith and I was [sic] involved in the AUSTEL COI Cases enquiry, and therefore a similar draft report on Graham Schorer would also have been prepared either by Bruce Matthews or another AUSTEL representative.

You also stated that you had attached "...some attachments as a guide to the information I am seeking". The mentioned attachments were not included with the letter received by ACMA.

Section 15(2)(b) of the FOI Act states that a request must provide such information concerning the document sought as is reasonably necessary to enable a responsible officer of the agency to identify it. If a request is not confined to clearly identified documents, an agency may refuse to process the request.

563B

In accordance with section 24(6) of the FOI Act I advise that your request does not comply with section 15(2)(b) of the FOI Act as it does not provide enough information to enable me to identify the documents to which you seek access.

To assist you to make valid request I provide the following information.

In paragraph 2 of your letter you appear to be seeking access to a draft report about yourself similar to a document which you have said is entitled "Alan Smith draft - Bruce Matthews Printed, 1 March 1994". However, you have said in paragraph 3 of your request you refer to attachments "as a guide to information you are seeking". Without seeing the attachments to which you refer it is not possible for an FOI decision maker to know with any certainty which documents or information you are seeking.

It may be the case that you are only seeking access to a draft report about yourself as described above (noting that we have not yet conducted any searches of ACMA's records to confirm if ACMA has such a document). If that is the case, please confirm or confine your request to clearly identified documents. In addition, if the attachments to which you refer are useful in describing the documents or information you are seeking, I ask that you attach those to your request and indicate how they are useful in identifying the document or documents you request.

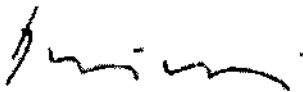
Processing your request

You may wish to telephone ACMA's FOI Coordinator (Paul Miczalski) on (03) 9963 6963 to discuss making your request in a form which removes the grounds for refusal. Please note, that following any consultation you will be required to send an amended request to ACMA. If you consider that consultation is not necessary, you may simply forward an amended request.

As a general rule, a request must be processed within 30 days. However, please note that in accordance with section 24(7) of the FOI Act, the time for processing your request is suspended from the day that you receive this letter and ends of the day ACMA receives from you an amended request in writing which contains sufficient information to identify the documents required.

Please also note that although ACMA received a cheque in the amount of \$30.00 with your letter dated 2 July 2008, that cheque has not yet been processed. ACMA will defer processing that cheque until we have received a valid request.

Yours sincerely,



Natalina Velardi
Deputy General Manager
Legal Services Division

Authorised decision maker pursuant to section 23(1) of the FOI Act

563 B

Graham Schorer
Manager Director
GOLDEN
493-495 Queensbury Street
North Melbourne Victoria 3051
P.O. Box 313 North Melbourne 3051

26th September 2008

Ms Regina Perton
Conference Registrar
Administrative Appeals Tribunal
Level 16, HWT Tower, Southgate
40 City Road -Southbank Vic 3006

COMPLAINT NO: 2008/1836

Dear Ms Perton,

I have been called upon to act as a witness on behalf of Alan Smith, during a hearing before the Administrative Appeals Tribunal on 3rd October 2008 in the complaint matter No 2008/1836. The following information is the material I will be utilising during my presentation. If the AAT or ACMA require a copy of this information prior to 3rd October 2008, please contact Alan Smith at Seal Cove Guest House 1703 Bridgewater Road, Portland 3305. Phone 55 267 230 or email sealcove12@optusnet.com.au thank you.

- i. Mr Schorer's Evidence:
- a. Commonwealth Ombudsman's report regarding FOI issues (November 1994);
 - b. Commonwealth Ombudsman's report regarding FOI issues (May 1996);
 - c. Hansard records of Senate Estimates Committee meetings on 24th June and 26th September 1997;
 - d. Extracts from a report prepared by John Wynack, Commonwealth Ombudsman's Office, during a Senate Estimates investigation into COT FOI matters in 1998/99, including comments taken from Senate Hansard discussing the same
 - e. A sixteen-page statutory declaration dated 22nd November 1999, regarding Mr Schorer's conversation with a senior Telstra executive directly involved in the administration of the COT arbitrations
 - f. Mr Schorer's diary notes recalling discussions regarding COT/FOI matters, before the signing of the COT arbitration agreement, with Robin Davey, Chairman of AUSTEL.

Sincerely,



Graham Schorer

Copies to

Ms Alison Jeremy, Senior Lawyer ACMA, P.O. Box 13, 11 Law Courts Melbourne Vic 3010

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- CONFIDENTIAL -

- I believe that the most effective way to deal with these is for me to appoint an independent assessor to review the status of all outstanding claims and to provide a basis for any sustainable claims that have not been resolved through earlier processes to negotiate a possible settlement with Telstra - see below

Independent assessor

- Who? TIO? Need to be careful - and Ivory each engaged their own 'independent assessor' to provide support for their respective cases.

According to Minister's undertaking, assessor to:

- review the status of all outstanding claims and
- provide a basis for any sustainable claims that have not been resolved through earlier processes to negotiate a possible settlement with Telstra

Possible loopholes

- 'sustainable claims not resolved through earlier processes' - on the basis that information provided by the claimants raises no new issues, particularly regulatory issues that require addressing by the Minister or the ACA/ACMA.
- If concerns relate to conduct of Telstra, then these should be raised with the Commonwealth Ombudsman?
- If the CoTS have evidence of unlawful activities, these should be brought to the attention of the police or relevant law enforcement authorities.
- If CoTS believe that they are entitled to receive compensation or damages under statute law or common law, they have the option of taking legal action through the courts.

What the Minister can and can't do
atw advice from Legal

NI's notes, pending Legal advice.

Can Minister direct TIO to re-open investigation? Don't think so - "The TIO is an independent body, established by the industry to investigate consumer and billing complaint and other matters that fall within its jurisdiction. As such the Minister is unable to direct the TIO in those matters."

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2012-11-21

Re: Telecom/Telstra Dispute, 1986 – present date

To whom it may concern -

In mid 1986, Golden Messenger's mild telephone problems became major problems.

Max Oates, who was then the State Manager of Telecom of Victoria, was originally assigned to remedy Golden's unresolved telephony issues. When he could not resolve the issue, the matter was taken to Stan Moon, the Telecom Corporate Secretary.

Mr Moon personally advised me, by phone, that I should issue a writ against Telecom for the express purpose of uniting all Telecom departments to think, focus and act as one.

I was referred to Gordon Hughes by a suburban solicitor. Mr Hughes recommended that I retain the law firm Landers & Rogers, which he was a partner of, as they were experienced in the relevant area of law.

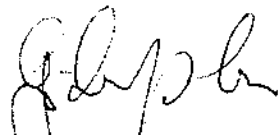
During the period that I retained Landers & Rogers, at no stage was I informed by Gordon Hughes or any other member of Landers & Rogers staff, that Telecom or the Australian Government Solicitor contacted them with information regarding the North Melbourne exchange.

Had I known of this letter, I would have been in the position to use it to convince the judge in my Federal court case to force Telecom to provide the documentation required.

By not showing me the letter, they allowed Telecom to effectively manipulate the information that I could be provided under FOI and/or during the court discovery process.

Furthermore, had I known that Gordon Hughes had concealed knowledge of such an important document from me, I would not have accepted his appointment as the arbitrator in my arbitration process.

Had he not been arbitrator, there may not have been a repeat circumstance of Telecom/Telstra influencing the material that I was able to obtain.



Graham Schorer
Managing Director

565

Graham Schorer

From: Chu, Stephanie [STEPHANIE.CHU@team.telstra.com]
Sent: Thursday, 15 December 2005 2:39 PM
To: grahams@goldenmessenger.com.au
Subject: Kolly Kramer's response

Importance: High

Hi Graham

Please refer to below for an update on your query regarding contact Holly Kramer.

Kind Regards
Stephanie Chu
Account Executive
Ph: (03) 8661 2165
Fax: (03) 8600 9877

From: Smyth, Belen M On Behalf Of Kramer, Holly S
Sent: Thursday, 15 December 2005 2:11 PM
To: Chu, Stephanie
Cc: Kramer, Holly S
Subject: RE: Customer query
Importance: High

Hi Stephanie,

FYI, Holly and Graham have been playing telephone tag . . . Also, Holly has had to travel to NZ/Canberra at the last minute.

Holly has therefore requested Moses Samaha, our GM for Strategy and Business Development, to contact Graham to progress this asap.

Kind regards,
Belen

From: Chu, Stephanie
Sent: Thursday, 15 December 2005 2:10 PM
To: Kramer, Holly S
Subject: Customer query

Hi Holly

My customer Graham Schorer, owner of GM Holdings, would like to speak with you regarding Wireless Technology and has been given your details by Sol Trujillo, our CEO, at a Breakfast Presentation.

He mentioned to me that he had been trying to contact you but could not get in touch with you. He has asked me to ask you if you would please contact him on (03) 9287 7090.

Kind Regards
Stephanie Chu
Account Executive

566

jasonh

From: Baker, Bec [Rebecca.Baker@team.telstra.com]
Sent: Friday, December 07, 2007 2:38 PM
To: Jason Horvath
Subject: RE: Telstra SIM Settings

Hi Jason,

As re: our discussion a few minutes ago i have added the GPTCOMB3 & GPWAPB3 codes which will provide internet access. You will need GPCORPB3 codes to be added to all these sim cards to work the way you require them to. This needs to be done by your Account Executive, i have checked this with my supervisor at the end of our call.

The GPCORPB3 code should be the only thing that you need to get these devices working for you. Hope this helps.

Regards

BEC BAKER
Consultant
Wireless Data Customer Support
TELSTRAONE-SUPPORT
PH:1300131816
FX:0892149040

From: Jason Horvath [mailto:jasonh@goldenmessenger.com.au]
Sent: Friday, 7 December 2007 12:35 PM
To: Baker, Bec
Subject: FW: Telstra SIM Settings

Hi Rebecca,

Thanks for your help, as per our phone conversation can you please confirm what further action is required in order to make the Sim's operational.

Regards,

Jason Horvath

Operations Supervisor
Golden Messenger
(03) 9286 0055

From: Chu, Stephanie [mailto:STEPHANIE.CHU@team.telstra.com]

3/16/2010

567

From: David Lee [mailto:david@transcom.com.au]
Sent: Friday, 7 December 2007 11:33 AM
To: 'Jason Horvath'
Cc: David Forshaw; Frank McQuillin; Mike Fugi; Quentin Oliver
Subject: Telstra SIM Settings

Jason,

If you cannot get the SIM to connect to Telstra (TPIPS) ask Telstra to remove the SIM from the Gateway and Network (remove and reapply the APN on the SIM). Make sure that they know it is a Telstra.corp SIM card. As a backup get them to check the settings of a SIM that you have that is working and use that as a template. The changes should come through in about 15 minutes.

Regards,

David Lee,
Service Manager
Transcom Communications Systems Pty Ltd
Head Office: Ground Floor, Atlas Building
8-10 The Esplanade, Perth Western Australia 6000
Tel: (+618) 9218 9900 Fax: (+618) 9218 9911

The contents of our email and its attachments are confidential and may be subject to legal professional privilege and copyright. It is aimed solely for the intended addressee. Access to our email and its attachments by anyone else is unauthorised. No representation is made that our email or its attachments are free of viri or other defects. Virus scanning is recommended and is the responsibility of the recipient. If you are not the intended addressee, any disclosure, usage, copying, distribution, or any action taken or omitted to be taken in reliance on it, is prohibited. If you have received our email in error, please advise us immediately by reply email and delete the message from your computer.

3/16/2010

568

jasonh

From: Jason Horvath [jasonh@goldenmessenger.com.au]
Sent: Friday, December 07, 2007 2:35 PM
To: 'rebecca.baker@team.telstra.com'
Subject: FW: Telstra SIM Settings

Hi Rebecca,

Thanks for your help, as per our phone conversation can you please confirm what further action is required in order to make the Sim's operational.

Regards,

Jason Horvath

Operations Supervisor
Golden Messenger
(03) 9286 0055

From: Chu, Stephanie [mailto:STEPHANIE.CHU@team.telstra.com]
Sent: Friday, 7 December 2007 12:27 PM
To: Jason Horvath
Cc: Graham Schorer; Rodneyo
Subject: RE: Telstra SIM Settings

Hi Jason

Please call 1300 131 816.

Regards
Stephanie Chu
Account Executive
Telstra Business
Ph: (03) 8661 2165
Fax: (03) 8600 9877
Email: stephanie.chu@team.telstra.com

From: Jason Horvath [mailto:jasonh@goldenmessenger.com.au]
Sent: Friday, 7 December 2007 11:49 AM
To: Chu, Stephanie
Cc: 'Graham Schorer'; 'Rodneyo'
Subject: FW: Telstra SIM Settings

Stephanie,

Stephanie we are still having problems with our sim's not connecting to our network. Can you please read below and act accordingly asap.

Regards,
Jason

3/16/2010

569

Sent: Friday, 7 December 2007 12:27 PM
To: Jason Horvath
Cc: Graham Schorer; Rodneyo
Subject: RE: Telstra SIM Settings

Hi Jason

Please call 1300 131 816.

Regards
Stephanie Chu
Account Executive
Telstra Business
Ph: (03) 8661 2165
Fax: (03) 8600 9877
Email: stephanie.chu@team.telstra.com

From: Jason Horvath [mailto:jasonh@goldenmessenger.com.au]
Sent: Friday, 7 December 2007 11:49 AM
To: Chu, Stephanie
Cc: 'Graham Schorer'; 'Rodneyo'
Subject: FW: Telstra SIM Settings

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Regards,
Jason

From: David Lee [mailto:davidl@transcom.com.au]
Sent: Friday, 7 December 2007 11:33 AM
To: 'Jason Horvath'
Cc: David Forshaw; Frank McQuillin; Mike Fugl; Quentin Oliver
Subject: Telstra SIM Settings

Jason,

If you cannot get the SIM to connect to Telstra (TPIPS) ask Telstra to remove the SIM from the Gateway and Network (remove and reapply the APN on the SIM). Make sure that they know it is a Telstra.corp SIM card. As a backup get them to check the settings of a SIM that you have that is working and use that as a template. The changes should come through in about 15 minutes.

Regards,

3/16/2010

570

From: Graham Schorer [grahams@goldenmessenger.com.au]
Sent: Wednesday, 14 March 2007 6:00 PM
To: Chris Chapman (Amanda.Walsh@acma.gov.au)
Subject: Telstra's Wireless Data Network and Conduct

Importance: High
To: Mr Chris Chapman
Chairman of the Board
Australian Communications and Media Authority

I formally request a meeting with the Chairman of the ACMA for the purpose of formally establishing whether the ACMA, as the Regulator of The Telecommunications Act, will investigate our company's two related Telstra complaints.

Our company is involved in an unresolved "dispute" with Telstra.

Our company's complaints against Telstra are:

1. Inconsistent access to Telstra's Wireless Data Platform;
2. Billing for service not provided;
3. Conduct.

Please note that from June 1993 to 1997, on three separate occasions, twice with Professor Alan Fels, and once with the TPC's senior investigating officer, I, in conjunction with others, sought the Trade Practices Commission's intervention/investigation of complaints re Telstra's conduct.

On all three occasions, we were advised by the Trade Practices Commission to lodge our complaint with the Telecommunications Industry Regulator, AUSTEL.

In January 2007 whilst overseas and when back in Australia, I made numerous attempts to make an appointment with the Telecommunications Industry Ombudsman, the Deputy Ombudsman or the Administration Manager.

On my last attempt, the TIO Office informed me the TIO does not intend to return my phone calls or make an appointment for me to meet with the Telecommunications Industry Ombudsman or the Deputy Ombudsman or the TIO's Administration Manager.

At 4:55 p.m. on the 7th of March 2007, we received by courier, correspondence from Telstra's solicitor, Arnold Bloch Leibler, notifying our company that Telstra intend to disconnect services and cancel the agreement for supply if we do not pay within 30 days the disputed portion of our Telstra account re the provision of a Wireless Data Network.

Mr Chairman, should you and/or the Board decree that the ACMA will not intervene in our dispute with Telstra, it would be appreciated to receive the ACMA's written notification supported by the explanation for the refusal.

Yours sincerely

Graham Schorer
Managing Director
Phn: (03) 9287 7099
Fax: (03) 9286 0066
Email: grahams@goldenmessenger.com.au

Note: We continue to experience service difficulty, problems and faults with our access/data transmissions.

The information contained in this email communication may be confidential and is aimed solely for the intended recipient. You should only disclose, re-transmit, copy, distribute, act in reliance on or commercialise the information if you are authorised to do so. No representation is made that this email communication has been maintained nor that the communication is free of errors, virus or interference. If you have received this email in error, please advise the sender immediately by reply email and delete the message from your computer.

571

From: Chris Chapman [Chris.Chapman@acma.gov.au]
Sent: Tuesday, 27 March 2007 10:53 AM
To: grahams@goldenmessenger.com.au
Cc: Paul White; Amanda Walsh
Subject: Response to your email [SEC=UNCLASSIFIED]

Dear Mr.Schorer,

I am conscious that I owe you a response to your email dated 14 March seeking a meeting with me.

I have indeed sought advice on the matters outlined in your email and, on the information before me, do not consider it likely that ACMA will have jurisdiction over the matters you have raised. I discern that that conclusion will disappoint you.

The complaints appear more likely to fall into the jurisdiction of the Telecommunications Industry Ombudsman and/or the ACCC. I note your statements that the Ombudsman and his senior officers have not agreed to meet with you. As your complaints appear to relate to a new dispute, I suggest you do write to the Ombudsman now, along the lines of your note to me, in order for that Office to consider whether it is appropriate to investigate your concerns. Finally, it did not seem to me that you are alleging breach by Telstra of any regulatory obligations or registered Code, which might fall into ACMA's purview. However, should you want to discuss these issues in more detail, please call Paul White, Executive Manager-Industry Performance Branch (refer contact details below). Paul has been providing the abovementioned advice to me. This would allow you to discuss any further details if you maintain the view that ACMA does indeed have jurisdiction over these matters.

If you do write to the TIO, perhaps you might copy me on that correspondence as we have an excellent relationship with the TIO and Paul could follow-up with them.

Yours sincerely

Chris Chapman
Chairman

Contact details:
Paul White
Executive Manager - Industry Performance Branch
Australian Communications and Media Authority
L43 The Tower, 360 Elizabeth St
Melbourne VIC 3000
03 9963 6939 (Ph)
03 9963 6983 (Fax)
paul.white@acma.gov.au

572



ALDERUCCIO
s o l i c i t o r s

Our Ref: JA:br: 70115
Contact: John Alderuccio

29 October 2008

Arnold Bloch Leibler
DX 38455
MELBOURNE

Dear Sir

Golden Messenger and Telstra

We refer to previous correspondence and note that to date we have not had a response to our letters dated 16 October 2008, 30 September 2008 and 23 September 2008.

In relation to paragraph number five of your letter of 29 June 2007 we are instructed as follows:

1. Our client refute Telstra and ABL's assertion there can be no utility in assessing whether any meeting should be held between the parties until our client has provided the required information, where the assertion was accompanied by the statement "In any event there is no basis for Consumer Affairs Victoria to attend any meeting".
2. Both the Chairman of the ACMA and a Deputy Director of the ACCC have advised Golden Messenger's Managing Director to seek assistance of Consumer Affairs Victoria to resolve these issues.

Our client has prudently acted upon the advice provided by the Chairman of the ACA and Deputy Director of the ACCC when seeking a face-to-face meeting with Telstra in the presence of a member of Consumer Affairs Victoria.

Given Consumer Affairs Victoria's charter and experience in resolving disputes between major national corporations and small business, our client consider it is in the interest of both Telstra and Golden Messenger to participate in such meeting.

Our client does not consider Telstra has advance the prospect of achieving a common sense resolution by Telstra action of resorting to the use of high handed legal practices

MELBOURNE OFFICE

Level 3

552 Lonsdale Street

Melbourne 3000

Victoria Australia

DK 38217 Flagstaff

Ph (613) 9670 7440

Fax (613) 9670 7116

Email network@aldersol.com.au

<http://www.aldersol.com.au>

which include the engagement of ABL which is equivalent of using a sledge hammer to open a walnut.

Our client formally request Telstra reconsider the merits of a face-to-face meeting with our client in the presence of a member of Consumer Affairs Victoria.

We await your reply.

Yours faithfully,

A handwritten signature in cursive script, appearing to read "Alderuccio Solicitors". The signature is written in black ink and is positioned above the printed name of the firm.

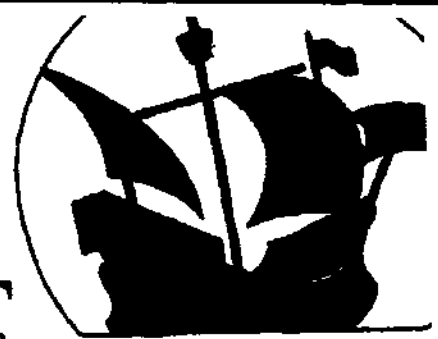
ALDERUCCIO SOLICITORS

Cape Bridgewater Camp

PORTLAND - Phone (055) 267 267

Victoria's Birthplace 1834.

S Chalices
E Black
F Smith



Part of

THE SHIPWRECK COAST

Mr Paul Rumble
General Manager
Customer Response Unit
Commercial & Consumer
Telecom.

47/94

Dear Mr Rumble,

Further to your telephone conversation with me on the evening of Friday 31/06/94. The discussion was associated with concern about certain confidential matters, which I firmly believe Telecom has breached, by allowing its personnel access to my private phone conversations, Monitoring without my consent. Checking up on who I might decide to ring. Example hand written, names of the people I have spoken to at the side of the data, telephone numbers. I thought this type of invasion of privacy, only happened in a un-democratic country.

Mr Rumble, I gave you my word on Friday night, that I would not go running off to the Federal Police etc, I shall honour that statement, and wait for your response to the following questions I ask of Telecom below. As we are in an Arbitration Process I shall only send a copy of this letter, to the associated incorporated within this process. These questions are in point form, with copies of the information FOI extracts accompanied with this letter.

(1) re: letter addressed to Mark Ross from myself. This letter, as you can see, was confidential. I was asking Telecom for only a Guarantee that my phone service was at an acceptable level, not for them to look into my private business matters. (Question) I had tendered for a quote with a bus company to accommodate persons at the Cape Bridgewater Holiday Camp. How come Mr Rumble, that the name of this company appears hand written at the top right hand corner of a copy of the letter sent to Mr Ross. This copy was obtained from the FOI request.

I make this very clear, at no time did I discuss the name of this company, other than with Mr Pat MacNamara's Office then Opposition Minister for Tourism. It was unlikely his office would have had access to Telecom correspondence from me.

(2) My telephone calls to various locations. Why has Telecom found it necessary to hand write the names of the people I have spoken to at the side of each column.

(Example) What would Telecom have to gain from knowing who I am speaking to on a daily basis. I find the name of my ex-wife hand written at the side of her phone number that I have rung. My son also happens to live there, I guess however you already know that. (Question) Why has Telecom not only wrote my ex-wife's name in these columns, but also, the name of the Telecommunication Ombudsmens Office, Graham Schorer, and other private persons who I have rung? How was this done to fix my phone faults?

(3) We have a letter addressed to a David, Telecom document. I assume this David is Mr Stockdale. Seeing this letter is dated the 7/4/94, 2.05pm. I am bewildered to read this letter to David. I ask the writer, Mr Bruce Pendelbury, how come? from this letter. Mr Smith is absent from his premises from the 5/8/94 to 8/8/94.

My first question is: Can Mr Pendelbury read into the future, I don't even know if I will even be at these premises in 1994. Much of Mr Pendelbury's future remarks about my phone service being up to network standard, has not borne out. Perhaps he may have got the dates wrong, or is it another typist's error, similar to perhaps the Bell Canada Reply. The only conclusion associated with these dates, is maybe he meant the 05/05/94. When talking on the phone to Mr Scott, I made mention I could be coming to Melbourne then. However, I had a school group coming in on the 5th of August, it was not appropriate to rely on friends to run this camp at that particular time, I cannot afford to be away for three months. I opted to stay here at the last moment. (Question) tongue in cheek, what day, what time, what place was I talking about.

000609 574

(4) Again my friend Mr Pendelbury, how come he has written a letter to Simon Chalmers. Telecom's outside Solicitor, informing him I had spoke to him some twelve months prior, regarding a telephone conversation I had, with the former Prime Minister Malcolm Fraser.

I look at the date of this letter, dated the 14th April 1994, and view the article re: Herald Sun dated 15th April 1994, I think back to a recorded statement by a Mr. Steve Black, Telecom Group Manager, he informed me, documented. That there were Telecom internal documents, three in fact. That stated three Telecom employees were known to have heard me say I had rung Mr Fraser. I know what really happened. What say Telecom give a statement on this issue raised.

(5) I have a Telecom internal letter, please read. You will see that it refers to my staff leaving the Camp unattended when they were paid to stay the night.

Who is the author of this document, he has not only attacked my staff, but showed his contempt, and disregard for others at this fabrication.

Because I did not have a lot of money during these past two years, I used to give two days off in lieu of staying at the Camp overnight. I have questioned the two staff members who this has affected. Telecom can speak to these persons at will.

(6) (Question) Could Telecom please explain the following Telecom minute. I quote from this document.

To check that incoming calls to the Portland Exchange were successfully connected through Mr. Smith, the investigating Technical officer at Portland Exchange set up equipment which trapped data on those calls, then sounded an alarm. At this point the Technical Officer would check to see if the call had been connected by the monitoring line. This process was established from approx. June 1993 to August 1993, however the equipment was only set up to trap data while this particular officer was available.

(a) If this was only set up for one Officer to listen to my calls, then it was not much of a testing procedure. A waste of time. What about the early morning calls, the late night calls. Or was it just open slather to Micro my calls in the Telephone Exchange for entertainment.

Telecom is well aware, that this technical monitoring should have customer approval. You have gone outside the rules of common decency.

I make this known now Mr Rumble. I have friends now saying is it okay to talk to you now Alan, this may be in jest, but not that way with a female friend of mine in Portland. To think that our private conversations have been listened to by local people, people my friend and I see at various times in Portland. You, telecom have left us with very little dignity. I cannot even feel safe now to make just the every day acceptance of a common phone call, without wondering, perhaps Telecom is listening.

If Telecom had approached me, and requested to use this device to monitor, listen to the calls, this would have been different. My private conversations, intimate female and male simple talk, with my lady partner has been violated.

I now ask one more question from Telecom. I quote from this Telecom internal document.

Caller usually from this number, but supposedly somewhere near Adelaide, on this occasion.

How did Telecom know that the person from that particular number usually rang from that particular location? How did they know who this person was?

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The information regarding the phone numbers called by this customer following this incident, are available from Network Investigation, and my information was verbal from? The name of that person has been blanked out.

How in the bloody hell was Telecom going to fix my phones, by the things I have mentioned in this letter, was or is this Telecom standard practice to go about their communication programmes in this manner?

I await your answer,

Sincerely,


Alan Smith.

C.C. Mr Warwick Smith. Telecommunications Industry Ombudsman.
Dr. Gordon Hughes. Fast Track Arbitrator.

000610

574

Cape Bridgewater Camp

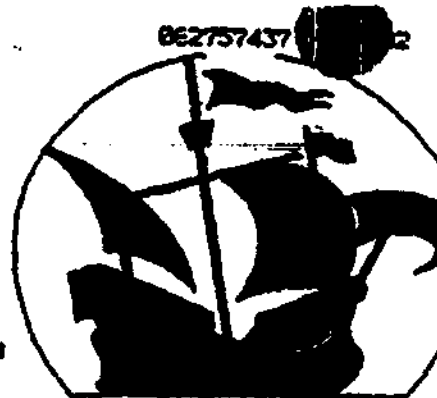
PORTLAND - Phone (055) 267 267

A^c

Victoria's Birthplace 1834.

Part of

THE SHIPWRECK COAST



Mr Paul Rumble
General Manager
Customer Response Unit
Commercial & Consumer
Telecom.

47194

Dear Mr Rumble,

Further to your telephone conversation with me on the evening of Friday 31/06/94. The discussion was associated with my concern about certain confidential matters, which I firmly believe Telecom has breached, by allowing its personnel access to my private phone conversations, Monitoring without my consent. Checking up on who I might decide to ring. Example, re: hand written, names of the people I have spoken to at the side of the data, telephone numbers. I thought this type of invasion of privacy, only happened in a un-democratic country.

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575

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Dr. Gordon Hughes, Fast Track Arbitrator.

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RECORD OF CONVERSATION BETWEEN CONSTABLE TIMOTHY DAHLSTROM AND
MR ALAN SMITH (CONTINUED) PAGE 12

- Q54. Just one last thing Alan that I've got, there's a letter here that you've written to Mr Paul RUMBLE of Telecom? *
- A. Right.
- Q55. And it relates to a conversation that you had on the 31st of June with him?
- A. Mmhuh.
- Q56. And I believe it also relates to the bus?
- A. Right, it does yes.
- Q57. Company matters etcetera. The thing that I'm intrigued by is the statement here that you've given Mr RUMBLE your word that you would not go running off to the Federal Police etcetera? *
- A. Mmhuh.
- Q58. Can you tell me what he background of that is?
- A. Well I rang Paul RUMBLE up and I said look, I want some sort of clarification with all these, I said we, we get people saying that my staff no longer, as soon as I leave, that they, turn me back they're away. I said we get people that are saying that this person no longer here, and I went through all this, what you've got there. And I said, now I come up with the documentation, I said with Malcolm FRASER that I spoke to Malcolm FRASER and I know damn well I didn't tell anybody. I said I come up with this document and I said and there's no, nobody, nobody's given me any information to, to, where you got all this information from. And he said well look I'll, I said my.. the one thing I want to know I said, how the bloody hell did you, or what made you fella's write this notifications at the side of these columns of people I've rang. I said I want to know. And he said look, well I'd do anything, he said, just don't go running off to the Federal Police. I said I won't go, I said, tell you what, you do the right thing by me, when I return, you give me some a letter back on this, when I said, I won't go off to the Federal Police. I said I've sent letters regarding that, and I gave you each a letter Warwick SMITH too. *
- Q59. And that, I mean that relates directly to the monitoring of your service where, it would

FREEDOM OF INFORMATION ACT 1982
DOCUMENT HAS BEEN RELEASED
UNDER THE PROVISIONS OF
THE AUSTRALIAN FEDERAL POLICE

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RECORD OF CONVERSATION BETWEEN CONSTABLE TIMOTHY DAHLSTROM AND
MR ALAN SMITH (CONTINUED) PAGE 13

indicate that monitoring was taking place without your consent? *

A. That was before I found the other document under malicious call trace, on my 267230, as I said they haven't got back to me since.

Q60. And you know what Mr RUMBLE's position is in Telecom?

A. Yes. He's Customer Response Unit, which would be sort of number, number one underneath Mr BLACK.

Q61. And he is fully aware of our investigation in relation to monitoring of telephone services? *

A. Oh yeah sure.

DAHLSTROM Okay. Superintendent PENROSE have you got any questions.

PENROSE
Q62.

Thanks Tim. The information that John McMAHON passed on you from Austel about live monitoring. Do you know where he got that information from? *

A. No, but it, it is in an Austel document, I can't find it but it wouldn't be that hard to find. At a, it's amazing because I wanted to put it into my, my own submission but it's a document saying Mr SMITH was one of two people that were, the lines were in, and it's really to that, very similar to that one that it's in the Telecom stuff. So it did mention Glen Waters being John MAIN and it mentioned me but it did say that the certain times of 1993 that Mr SMITH's lines was, you know was monitored. And that's when I first knew right. And then I come across me FOI and of course that, that clarified it.

PENROSE Do we have that document.

DAHLSTROM Yeah I think I've seen it somewhere before, which is virtually a mirror of the document we spoke about earlier.

A. Yeah it's very close to that.

DAHLSTROM Where, it's an internal report stating the monitoring did take place.

PENROSE
Q63.

And live monitoring as far as he was was aural *

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

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PARLIAMENT OF AUSTRALIA · THE SENATE

SENATOR RON BOSWELL

LEADER OF THE NATIONAL PARTY IN THE SENATE

SENATOR FOR QUEENSLAND

SHADOW MINISTER FOR CONSUMER AFFAIRS

DATE: Nov 5/12

Please deliver the following message to:

Name: G. Schorer

Fax No: 03) 287 7501

From: Ron Boswell

Fax No: 06) 277 3246

Number of Pages (incl cover) 7

Message: _____

577



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

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

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

Senator BOSWELL—I would hope so.

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



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

Ms Geary—Could you please repeat that?

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

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

Senator BOSWELL—Mr Krasnostein would probably be able to—

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

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

Mr Krasnostein—Could you ask that question again?

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

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

Senator BOSWELL—Thank you very much.

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

concernir South W technical day unde The servi This is Wales.

... is tota records be being top is to trans zero level transmits principles adequaci staff...

I will b about th various of all, I internal relation standard training service? southern

Ms V there h: Telecom acknow that the areas. A being a operatic and dig program of that

Many digitise the 199 the rare we wor very ha up to st improv it is at

Some that w: though: pretty and the

577



24

**Telecommunications
Industry
Ombudsman**

**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

I am enclosing a complaint received from Mr A Smith, proprietor of the Cape Bridgewater Holiday Camp. Mr Smith believes there is some fault(s) with his service which has resulted in callers reporting to him they have had difficulty in contacting him on his service number. He has also cited an example where facsimile transmissions have been sent but not apparently received by the recipient even though his facsimile machine report shows a successful transmission.

I would be grateful if you would investigate his complaint under the agreed complaint handling procedures and provide me with a prompt response on your findings.

Yours sincerely

**Grant Campbell
Manager, Enquiries and Complaints**

gc0046:cc

M34363

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

578

: - DOES NOT EXIST
:CUS - CUSTOMER

SOLUTION = 10/05/94 CSR: ZV333FIELD EMPLOYER: E767 TONY WATSON
IN HAND TONY WATSON
10/05/94 I reported this incident in LEOPARD on 055217777 and notified Chris Doody. We were able to duplicate the incident during testing; 217777 was diverted to 236101 with easycall and when 236101 was busy, a call to 217777 would return one burst of ring then busy.
11/05/94 Chris Doody called me this morning and said the incident is caused by AXE104 system limitation, that is the incident is normal and the customer is aware of that.
11/05/94 09:25, Mr Alan Smith was notified of the result.
Tony Watson.....

SOLUTION = 11/05/94 10:33 ZV333
Chris Doody is sending a report on the incident.
Tony Watson.....

DATE	START	END	SYMPT	CAUSE	ACT'N	EMP
10/05/94	13.47	13.48	NP	WJ	YT	E767
***** NO PART DETAIL *****						

ORDER = 86701981 STATUS = CL
 CUSTOMER = 259289 TELEPHONE = 055 267267
 CAPE BRIDGEWATER HOL. CAMP ALAN SMITH
 BLOWHOLE RD
 CAPE BOWTR VIC 3306

CALLER IN = 04/05/94 14.03
 CLOSED = 04/05/94 14.04
 DESCRIPTION = 27/04/94 13:30 VISIT TO ALAN SMITH'S PREMISES.....
 NARRATIVE = 4/05/94 13:48 ZV333
 27/04/94 13:30 Appointment for Ross Anderson to visit Alan Smith to investigate the report of 267230 possibly holding up, after the phone was hung up.
 :BNJ - BUSY NOT IN USE
 : - DOES NOT EXIST
 :CUS - CUSTOMER

SOLUTION = 4/05/94 CSR: ZV333FIELD EMPLOYER: E767 TONY WATSON
 This fault report was initiated by Peter Gamble. Peter was doing some testing with Alan Smith and apparently they were able to hang up Smith's phone and while Peter was still listening at his phone he could hear Mr Smith talking in his office. In fact Mr Smith counted to 10 then picked up his phone again and Peter had been able to hear the count to 10. On the 27/04/94 at 13:30 Ross Anderson visited the premises to investigate these claims. Ross called Peter Raphael on 03 5507309 and made 10 test calls, Ross was hanging up then counting to 10 and picking the phone up again, each test call was released (that is line was heard to drop out) at

SOLUTION = 5/05/94 9:10 ZV333
 within 1 second of hanging up. Peter was able to hear Ross count 1 then the line released.
 I spoke to Ross whilst he was on site and we made further test call (18 calls of which 2 were from 267267), during these test calls we obtained the same result as previous, that is the line released within 1 second. We also tried the T200 from 267267 on 267230 and it released immediately on hanging up. We then tested the suspect T200 on 267267 and it displayed the same symptom on this different line. This T200 is an EXICOM and the other T200 is an ALCATEL, we thought that this may be a design "fault???" with the EXICOM so Ross

SOLUTION = 5/05/94 9:27 ZV333
 tried a new EXICOM from his car and it worked perfectly, that is, released the line immediately on hanging up. We decided to leave the new phone and the old phone was marked and tagged, Ross forwarded the phone to F&ED.
 I was speaking to Mr Smith the next day (28/04/94) and he said he has witnesses to prove that his phone used to hold up for over 10 seconds. He wants a letter to say nothing else has been fixed prior to the visit by Ross that could

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RECEIVED FROM	Mr Alan Justice
	55 26 170
THE SUM OF	fyng Jock Stall ID 471
BEING FOR	EXCOM 550-117 phone
\$ 50. -	SIGN <i>[Signature]</i> Mark Ward

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