

SMITH - REVIEW OF FINANCIAL CLAIM

5.6 Additional Costs of Acquiring Facilities - \$91,000 (\$172,000 revised)

FHCA Recommendation	Claim	Defence
	\$172,000	-

DM Ryan has claimed \$172,000 for the additional cost now suffered by CBHC to purchase and build additional facilities at CBHC.

It is claimed that the cost of these facilities in 1990-91 was \$208,000 and this has now risen in 1994 to \$299,000. This claim was increased to \$172,000 (per letter from DMR dated 21 January 1995). The claim was increased to allow for the tax which will be payable on the claim ($\$172,000 \times 47\% = \$80,840$).

Claim	\$172,000
Tax	<u>\$(80,840)</u>
Net Receipt	<u>\$91,160</u>

Smith had planned in 1990/1991 to acquire, repair and erect buildings at a cost of up to \$208,000 made up as follows:

	\$
• Tender costs of mobile health centre - accommodates 40 Reclad outside to blend in with the other buildings	20,000 15,000
Removal costs	4,000
Plumbing	2,500
Electrical	2,000
• Costs of 3 unit cabins - each cabin accommodates 8-12	63,000
• Cost of 2 unit cabins - each cabin accommodates 8-12	42,000
• Cost of renovation to managers house	25,000
• Cost of repairs to toilets and showers	2,000
• General repairs - say \$5,000 per annum (6.5 years)	<u>32,500</u>
Total	<u>208,000</u>

*I wanted to argue with him - 1990 + by - 1991 for \$208,000.
 But a photo, I see to borrow. Let me know now - \$299,000 - change
 compensate for price has risen - increased cost by \$99,000
 Crappy claim - too remote*

STATE OF NEW YORK

IN SENATE
January 11, 1911.

REPORT
OF THE
COMMISSIONERS OF THE
LAND OFFICE

IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 17, 1909.

11

SMITH - REVIEW OF FINANCIAL CLAIM

see notes

5.7 Loss of Capital Value in the Business - \$447,000

FHCA Recommendation	Claim	Defence
	\$477,000	-

DM Ryan have projected a proforma profit and loss statement with estimated operating expenses and have calculated a maintainable profit figure of \$308,000. Based on this, DMR have valued the business in the range of \$925,000 to \$1,100,000.

DM Ryan state the present valuation of CBHC based purely on land and buildings is \$230,000.

Capital loss calculation:

	DM Ryan Business Valuation	Land and Building Valuation	Capital Loss
Low Range	\$925,000	\$230,000	\$695,00
High Range	\$1,100,000	\$230,000	\$870,000

Alternatively, DM Ryan has argued that this capital loss can be replaced by A Smith retaining the business and rebuilding the business to the level where the capital loss would be diminished or eliminated.

Alternative Capital Loss Claim

DM Ryan have prepared as analysis of the expected income and expenses over the next 2 years and the future profits (losses) which should be earned (incurred) as the business is rebuilt. Throughout 1995 and 1996 (two years) it is assumed that the business will be rebuilt based on 40% (1995) and 60% (1996) occupancy.

Expected losses to 30 June 1995	\$38,089
Expected profit to 30 June 1996	\$308,486
Expected other costs in 1996	<u>\$100,000</u>
	<u>\$446,575</u>

*Ryan says value of business 925 - 1.1 (proforma for \$250)
 Ryan gives alternative - lost profit - \$447,000
 (really re-establishment costs)*

Smith

SMITH - REVIEW OF FINANCIAL CLAIM

5.10 Capital Costs for New Telephone System \$25,000

A new UHF receiver is required to be installed at Cape Bridgewater to overcome the existing service difficulties and faults. The cost is \$25,000.

DTT state that no information has been provided in support nor explained how the receiver will resolve the communication fault.

DM Ryan says in reply, that this is for the Arbitrator to determine.

Smith

Smith has said verbally that given they are now laying optic fibre for the telephone lines, this is no longer required.

D Read said in his opinion, the VHF receiver would not solve any problems.

5.11 Advertising Costs \$72,300

*CBHC for 5 years only
now that PETERS better*

Claim

DM Ryan state that CBHC needs to be re-marketed once the rebuilding and refurbishment programs have been completed. To rebuild CBHC's reputation an advertising campaign will need to be implemented as follows:

*- double dipping - one spend amount for advertising
- should have been*

Quotation received by Smith:

Vic/TV	<i>market contribution for cost of capital bank 7</i>	\$38,000
SES/8		\$11,500
Telemarketing - 250 schools and 150 clubs		\$10,550
Telemarketing to clubs		<u>\$12,500</u>
		<u>\$72,550</u>

Defence

DTT state that to outlay 136% of last years revenue as advertising is not a commercial strategy for a properly managed business.

*16/06/01
Now laying optic fibre so doesn't need to purchase*

*He wants a new place - will this resolve the problems?
- ~~DTT~~ I had say they it
wouldn't solve the problem
- Can't get problems at moment
anyway*

WRONG = 1

ASSUMPTIONS TO BE REVIEWED - LOSS OF OCCUPANCY

FHCA COMMENT	DEFENCE	REPLY
(v) Refer to (iv)	(v) Schools are only prepared to travel 3 hours (max) to a camp.	(v) There are still 375 VIC schools within 3 hours of CBHC and this ignores the South Australian schools.
(vi) Refer to (iv)	(vi) A detailed analysis of CBHC customers from DM Ryan Report, (Appendix 9-1) shows 73% of revenue from customers within 3 hours of CBHC. DTT have produced a schedule of distance travelled by CBHC customers setting out: <ul style="list-style-type: none"> • within 3 hours • outside 3 hours • other - customer not identifiable 	(vi) Noted.
(vii) Schools only account for 53% of CBHC clientele.	(vii) 15.5% of Victorian schools are within 3 hours of Portland (therefore 84.5% are outside 3 hours from Portland).	(vii) Still represents a large number of schools and fails to take into consideration SA schools.
(viii) Noted.	(viii) 80%-90% of camps in CAV directory are within 3 hours of Melbourne.	(viii) Noted.
(ix) School Needs Survey state on average 40% of small and large groups would share camp accommodation. FHCA have done a review of shared camps at CBHC. Less than 10 major shared camps were isolated with on average, less than 80 people. Smith states there are 4 more shared camps and 2 more booked for 1995. FHCA have been unable to confirm Smith's assertions form the records we have in our possession.	(ix) Majority of bookings are for 3-5 days and restrict the ability to have full occupancy as most of the clients, ie. schools do not want to share facilities.	(ix) Incorrect because it does not take into account tourist and family market.
(x) Agreed - only a very small number of camps are in fact accredited.		(x) Taken out of contest as only 15 camps are accredited. Source - DM Ryan - Para 107-108.

Handwritten notes:
 per 11/12/95 for 1995's 9-10 of Ryan's report
 10/11/95

57A

The first part of the paper is devoted to a general discussion of the problem. It is shown that the problem is equivalent to a problem in the theory of differential equations. The second part of the paper is devoted to a detailed study of the problem. It is shown that the problem is equivalent to a problem in the theory of differential equations. The third part of the paper is devoted to a detailed study of the problem. It is shown that the problem is equivalent to a problem in the theory of differential equations.

ASSUMPTIONS TO BE REVIEWED - LOSS OF OCCUPANCY

Nov 14 1994
1994
1994

FHCA COMMENT	DEFENCE	REPLY
<ul style="list-style-type: none"> Smith has provided two letters from customers requiring more than 114 beds. The CAV surveys show that the average groups are between 20-60 and CBHC averaged 80 people. This would suggest that 114 beds, the present level of accommodation, would be a reasonable level throughout the period 1988-94. The CAV P&O survey states that camps have lower occupancy primarily in June, July and Aug. This equates to CBHC occupancy levels. CBHC was already effectively utilised from Nov to April so the comment from Portland Tourist Bureau has only limited application. From the cashflows produced by FHCA, and based on the assumption that Smith would have to borrow \$148,000 for the cost of construction, Smith could not afford the interest cost alone. <p>At the time of proposed construction (Aug-Oct 91), Smith was refinancing his loan with Moore Investments and paying out his wife. In fact, Smith borrowed an extra \$15,000 from Moore Investments to meet the first payment (in part) to his wife of \$20,000. The value of CBHC as at Nov 91 is unknown.</p> <p>It is believed that finance was denied for the construction of further rooms due to lack of ability to repay and lack of security.</p>	<ul style="list-style-type: none"> Given the current level of utilisation (occupancy) it would not be prudent to increase capacity (log 9) <p><i>From a previous letter - on camp 12/22/91 - more activity beds</i></p> <ul style="list-style-type: none"> Given 96% of the average size of attendances of CBHC was less than 100 P&Ople, it was not logical to increase the amount of accommodation. * <i>DECIDE - CHECKER HE COULD WORK</i> Estimated cost of construction of the new rooms of \$208,000 would be a gross overcapitalisation of the business <p><i>Smith's profit 145,000-51</i> <i>Revenue 11</i></p>	<p>Smith advised DM Ryan that he loses 2 to 3 camps each year because he does not have the capacity or type of accommodation. <i>(also log 9)</i></p> <p>Portland tourist Bureau have told Smith they could let the self contained cabins from November to April on 100% occupancy [CBHC claim (7.6.94) - document 2065]</p> <p>Actual cost of new buildings was \$148,500 (difference from \$208,000 was renovation costs overall to CBHC)</p> <p><u>DM Ryans Justification of Spending \$148,500</u></p> <ul style="list-style-type: none"> Revenue from 52 beds is in excess of \$182,465. <p>DM Ryan reply para 100-106</p>

114 beds to Moore Investment would be impossible

Revenue 11

Smith's profit 145,000-51

From a previous letter - on camp 12/22/91 - more activity beds

DECIDE - CHECKER HE COULD WORK

Estimated cost of construction of the new rooms of \$208,000 would be a gross overcapitalisation of the business

Smith's profit 145,000-51

Revenue 11

DM Ryans Justification of Spending \$148,500

Revenue from 52 beds is in excess of \$182,465.

DM Ryan reply para 100-106

57A

Chemical Equilibrium

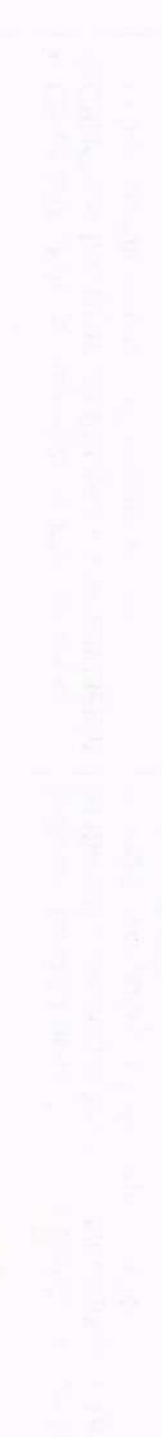
22

Pop 1
Pop 2
Pop 3

Chemical Equilibrium

Chemical Equilibrium is a state where the concentrations of reactants and products remain constant over time. This occurs when the forward and reverse reaction rates are equal.

The equilibrium constant, K_c , is a ratio of the concentrations of products to reactants, each raised to the power of their stoichiometric coefficients. For a general reaction:



the equilibrium constant is given by:

$$K_c = \frac{[C]^c [D]^d}{[A]^a [B]^b}$$

where $[A]$, $[B]$, $[C]$, and $[D]$ are the molar concentrations of the reactants and products, respectively.

The value of K_c is constant for a given reaction at a fixed temperature. It provides a quantitative measure of the extent to which a reaction proceeds.

Le Chatelier's Principle states that if a system at equilibrium is subjected to a change in concentration, temperature, or pressure, the system will adjust itself to counteract the change and re-establish equilibrium.

Chemical Equilibrium is a dynamic process. While the concentrations of reactants and products remain constant, the reactions are still occurring at the molecular level.

The equilibrium constant, K_c , is a function of temperature. For exothermic reactions, K_c decreases as temperature increases. For endothermic reactions, K_c increases as temperature increases.

Chemical Equilibrium is reached when the system has attained its lowest free energy state. At this point, the Gibbs free energy change for the reaction is zero.

The equilibrium constant, K_c , is a measure of the relative stability of the reactants and products. A large K_c value indicates that the products are more stable than the reactants.

Chemical Equilibrium is a reversible process. The reaction can proceed in either direction, depending on the conditions. The equilibrium constant, K_c , is the same for both directions.

The equilibrium constant, K_c , is a constant for a given reaction at a fixed temperature. It is independent of the initial concentrations of the reactants and products.

Chemical Equilibrium is a state of dynamic balance. The reactions are still occurring, but the concentrations of reactants and products remain constant.

The equilibrium constant, K_c , is a measure of the extent to which a reaction proceeds. It is a constant for a given reaction at a fixed temperature.



Smith has provided numerous examples where large groups have attended CBHC to support the rationale for increasing bed numbers to 166. An analysis of the information provided by Smith in fact shows that the average size of groups is still substantially less than 100 and there is insufficient information to suggest that Smith would have been successful in getting a large number of groups in excess of 100 people to Cape Bridgewater.

From the information provided, FHCA consider that Smith may not have been able to attract large fully catered groups in sufficient quantity to pay for the funding of the additional facilities.

3.0 Three Hour Travel Distance

DTT state that the School Needs survey found that schools generally preferred to travel less than three hours to camp sites. As CBHC was more than three hours from the main metropolitan area of Melbourne, its target market (schools, as assumed by DTT) was reduced accordingly. DTT believe that this reduced market continues to effect CBHC's profitability. DTT calculated the percentage of Victorian schools within three hours of Portland to be as follows:

	% of Victorian Schools	Schools
Government	15.7%	304
Independent	15.0%	102
		<u>406</u>

FHCA believe the School Needs survey (as quoted by DTT) provides limited information. The survey was sent out to 2,651 Victorian primary and secondary schools and only 10% were returned. There are obvious limitations in utilising a survey when only 10% of those surveyed respond. Details of the schools that replied to the survey are as follows:

	% of Victorian Schools
State Schools	74%
Church Schools	20%
Private Schools	6%

↙ An analysis of the clientele of CBHC shows that only 53% were in fact schools. Further, the clientele of CBHC from 1988 to 1994 shows that there are a considerable number of attendees that have travelled more than three hours. FHCA also note that DTT's analysis of schools within three hours excludes those schools from South Australia and particularly schools close to the South Australian/Victorian border, which means that the potential market for CBHC is in fact bigger than the number of Victorian schools mentioned above. ↘

L69460

57B

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

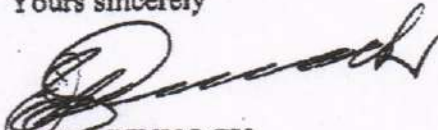
Dear Mr Smith

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

570

"... 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



12 February 1997

The Commonwealth Ombudsman
Commonwealth Ombudsman's Office
GPO Box 442
CANBERRA ACT 2601

John Armstrong
Customer Affairs Counsel
Legal Directorate

Level 38
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 9634 8488
Facsimile (03) 9634 8168

By facsimile: (06) 249 7829

Attn: Mr John Wynack

Dear Sir

Alan Smith - Your reference number C/94/625

I refer to your letters of 3 January and 7 February 1997. I apologise for the delay in replying, however Mr. Black's personal assistant has been on annual leave and consequently I was unable to speak with her in relation to your queries.

Telstra responds to your specific queries as follows:

- It is the case that Mr Black left Telstra's employ in April, 1996;
- You comment that you believe Telstra "should have taken steps to protect documents covered by [Mr Smith's] request while it consulted with Mr Smith in an attempt to scope down the FOI request".

It is the case that Telstra did indeed take such steps, as Telstra wished to retain all of the files created by Mr Black relating to the CoT claims. For that reason Mr Benjamin, Telstra's Director Consumer Affairs, instructed Mr Black's personal assistant to forward all of Mr Black's CoT files to the FOI Unit. As a result a large number of files (86 in all) were forwarded to the FOI Unit. Unfortunately, at that time the files in question were apparently not recognised as files relating to CoT matters, rather they were thought to be simply files of miscellaneous material. I should note that Mr. Black's personal assistant does not specifically recall disposing of the files in contention, rather she believes that they must have not been recognised and disposed of as they are not amongst the files forwarded to the FOI Unit. In this regard there were a number of other files which contained miscellaneous material, none of which related to CoT matters. Mr Benjamin instructed Mr Black's personal assistant that it was in order to dispose of that material as none of it appeared to be relevant to any current or ongoing matters.

As you will see from the above these files were inadvertently disposed of. It was Telstra's intention to retain all files held by Mr Black relating to the CoT matters. It is unfortunate that these files were disposed of, however I reiterate that that was not Telstra's intention. I point out also that, happily, this ought not limit the documents available to Mr Smith pursuant to his

57D

FOI request. In this regard I note that:

- As my letter to you of 20th December 1996 noted, the files maintained by Mr Black of each piece of outward correspondence dispatched by him on any matter whilst he was at Telstra were retained and were inspected pursuant to the request from your office. As a result, three further pieces of correspondence were identified which fell within the scope of Mr Smith's FOI request. Consequently, I am satisfied that Telstra has completed as full a search as it is able for copies of correspondence from Mr Black to Dr Hughes for the period in question;
- In the three pieces of further correspondence located on Mr Black's files, reference is made to a letter from Dr Hughes to Mr Black dated 18th January 1994. Telstra has been unable to locate a copy of that letter on its files. Consequently I have written to Dr Hughes asking him to provide a copy of same to Telstra and will then pass that document on to Mr Smith.

As noted above I believe Telstra has completed as full a search as it is able for correspondence from Mr Black to Dr Hughes. As I noted in my letter of 20th December 1996 to you, if Mr Smith believes there is correspondence between Telstra and Hunt and Hunt which he has not received then Telstra would raise no objection if he chose to approach Hunt and Hunt directly or the Telecommunications Industry Ombudsman to request them to search their files.

On a separate matter I note that Mrs Garms has written to Telstra quoting from my letter to you of 20th December 1996. Whilst it is a matter for you as to how you deal with Telstra's responses, it was not my understanding that they were being passed on to Mrs Garms. If that is, in fact, the case I would appreciate the courtesy of being advised of that in advance.

I trust that the above responds to your queries. However if you require any further information please do not hesitate to contact me.

R. W. Watters

Yours faithfully

John Armstrong
Consumer Affairs Counsel

Per: Robyn Watters

Ref No: C/94/225

// March 1997



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

ADDRESS:
6TH FLOOR
1 FARRELL PLACE
CANBERRA ACT 2601

POSTAL:
GPO BOX 442
CANBERRA ACT 2601
AUSTRALIA

TELEPHONE:
(06) 276 0111

TOLL FREE:
1800 13 3257

FACSIMILE:
(06) 249 7329

INTERNATIONAL
FACSIMILE:
61-6-249 7329

Dear Mr Armstrong

I refer to previous communications concerning our investigation of complaints by Mr Alan Smith. In particular I refer to our investigation of the complaint alleging that Telstra unreasonably delayed providing documents requested in his October 1995 FOI application - Telstra was notified of the complaint on 19 June 1996. On 7 March 1997 I sought information from three Telstra officers about one aspect of your response to that complaint viz the disposal of some of Mr Black's papers after Mr Black left the employ of Telstra.

The Ombudsman's office will soon respond to the statement read to Mr Wynack prior to Mr Wynack interviewing Ms Gill.

Attached is a copy of a letter I received from Mr Smith today. Mr Smith informed me that document number L68994 was included among documents he received in June 1996 pursuant to his FOI application of October 1995. Mr Smith stated that he did not receive a copy of the letter referred to in Mr Black's letter viz the letter from Mr Hughes dated 28 September 1994.

I should be grateful to receive your comments on Mr Smith's statement. In providing your comments, please advise me whether document L68994 was sourced from Mr Black's files. If not, please inform me of the source of the document ie from which Telstra file was document L68994 extracted.

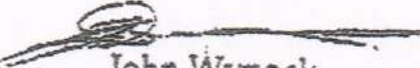
I am not inquiring about document L69202.

571

My inquiries in this letter relate to the complaint I notified to Telstra on 19 June 1996.

Given that this inquiry is very specific, I should be grateful to receive a reply within 14 days.

Yours sincerely


John Wynack
Director of Investigations

571

Ref No: C/94/625

March 1997



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

ADDRESS:
6TH FLOOR
1 FARRELL PLACE
CANBERRA ACT 2601

POSTAL:
GPO BOX 442
CANBERRA ACT 2601
AUSTRALIA

TELEPHONE:
(06) 276 0111

TOLL FREE:
1800 11 3057

FACSIMILE:
(06) 249 7829

INTERNATIONAL
FACSIMILE:
61-6-249 7829

Dear Mr Armstrong

I refer to previous correspondence and discussions concerning the complaint by Mr Alan Smith, which on 19 June 1996 in a letter to Telstra, I summarised as alleging '...that Telstra unreasonably has delayed providing documents requested under the FOI application.' (the FOI application was dated 18 October 1995)

On 20 December 1996 you informed the Ombudsman :
'Telstra has been unable to locate Mr Black's further general files which include copies of the correspondence received from Hunt & Hunt in relation to the development of the Fast Track Arbitration Process and I am advised that these files, along with other documents, were disposed off by his personal assistant sometime after he left Telstra's employ.'

On 12 February 1997, in response to queries I raised in a letter of 3 January 1997, you qualified your statement of 20 December 1996 with the following:

'Unfortunately, at that time the files in question were apparently not recognised as files relating to CoT matters, rather she believes that they must not been recognised and disposed of as they are not amongst the files forwarded to the FOI Unit.'

On 7 March 1997, I interviewed Ms Gill, Mr Benjamin and Mr Kearney in an attempt to obtain information about the alleged disposal of the documents to assist the Ombudsman to form a view as to whether Telstra had acted unreasonably in failing to provide documents to Mr Smith pursuant to his October 1995 FOI application.

571

During the course of her interview, Ms Gill informed me that the papers dealing with Mr Black's role in establishing the Fast Track Arbitration Procedure were on an 'arbitration file' and that that file is one that is missing. Ms Gill said that *'.. I don't recall having sent it to anybody and I don't recall having put it in the bin..'* Ms Gill said that the 'arbitration file' was a manilla folder *'..but a fairly thick one.'*

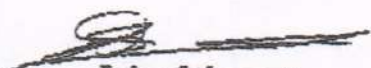
Mr Benjamin had no recollection of such a file being in existence or among those he sighted after Mr Black's departure. Mr Benjamin said that *'Mr Black himself would have removed files from the office, I understand, on his departure but I presume they are personal files.'*

On the basis of the information given to me by Mr Benjamin and Ms Gill, it is extremely improbable that Ms Gill disposed of the documents in the 'arbitration file', or indeed any other documents from Mr Black's office which would have been included in Mr Smith's FOI application of 18 October 1995.

Please inform me of the actions Telstra has taken to ascertain the whereabouts of the specific file which Ms Gill described as the 'arbitration file'. Has Telstra asked Mr Black whether he has any knowledge of the whereabouts of the file? I would appreciate receiving your response to this letter within seven days of the date of this letter.

The Ombudsman will write soon about the statement read by the lawyer from Malleson's prior to my interview of Ms Gill, and the opinion that the section 9 notices, issued to Messrs Benjamin and Kearney and to Ms Gill, were invalid.

Yours sincerely


John Wynack
Director of Investigations

C/94/195

122

4 October 1997

*Faced at 3.25
4/10*



Commonwealth
Ombudsman

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

ADDRESS:
6 TH FLOOR
1 FARRELL PLACE
CANBERRA ACT 2601

POSTAL:
PO BOX 442
CANBERRA ACT 2601

TELEPHONE
(06) 276 0111

TOLL FREE:
1 800 133 057

FACSIMILE:
(06) 249 7829


INTERNATIONAL
FACSIMILE:
61-6-249 7829

Dear Mr Armstrong

I refer to my letter to Telstra dated 13 March 1997 (copy attached for your convenience) in which I asked you to inform me of the actions which Telstra has taken to ascertain the whereabouts of the specific file which Ms Gill described as the 'arbitration file', and whether Telstra asked Mr Black whether he has any knowledge of the whereabouts of the file.

I have no record of receiving a response to my inquiries. Please inform me when I might expect to receive a reply

Yours sincerely


John Wynack
Director of Investigations

57D