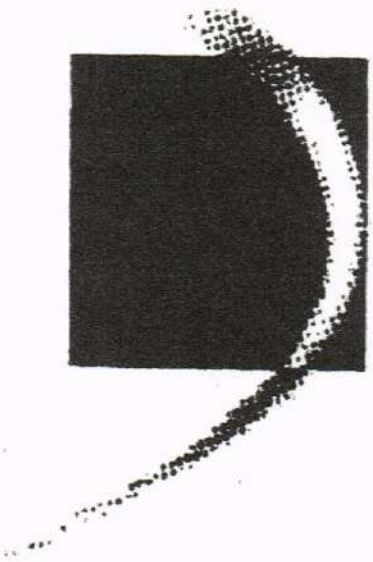

Department of
Communications
Information Technology
and the Arts

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 [redacted] for voice 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, r, a Telstra s. 6-1
representative, Mr Amstrong, and the Chair, a person nominated by the Commonwealth Ombudsman. The Ombudsman nominated Mr Wynack.

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

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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 [illegible] 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 [illegible] chose to accept the offer without further negotiation.

- Owned the business s 41
- Had problems of connection of calls.

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

Later COT Members

Ross Plowman (Bentinck Private

S 41

4. Internal Action by Telstra

DC Campbell (Group Managing Director of Commercial and Consumer) wrote to 116 September 1992. In that letter he stated: S41

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.

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:

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 s 41
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.

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
		s.41
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	s.41

Date of Payment

Name:	Date Received:
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

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. Attachment C: Terms of Reference for an Independent Assessment of Claims Against Telstra by COT

- The group known as the Casualties of Telstra (COT) claim that the individual members of the group ("the Claimants") have suffered loss and damage to their respective businesses as a result of acts or omission by Telstra in relation to the member's telecommunications services. Long running negotiations between Telstra and the members have failed to resolve these issues to the satisfaction of the members.

- In an attempt to avoid litigation, the Claimants and Telstra have agreed, a the request of Austel, to refer each claim to an Inquiry Officer who will act as an independent assessor and will be nominated by Austel in the event that Telstra and each Claimant are unable to agree upon such a person. The inquiry shall produce findings in relation to the legal liability of Telstra in relation to each claim, and the quantum of such liability, if any. The conduct of the inquiry by the Inquiry Officer shall be subject to these Terms of Reference.

- In order to assist in the conduct of the Inquiry, the Inquiry Officer may have reference to such legal, accounting, financial or other advice as he or she deems necessary.

- Each party shall be free to make a written submission to the Inquiry Officer in relation to issues believed to be of relevance to the Inquiry.

- Each finding as to fact of the Inquiry Officer made pursuant to these Terms of Reference shall be binding upon Telstra and the Claimant and all decisions shall remain confidential to Telstra, the relevant Claimant, and Austel. For the avoidance of doubt, neither party shall be bound by any finding or assumption by the Inquiry Officer as to matters of law.

- An acceptance by a Claimant of the Inquiry Officer's decision as to an appropriate sum of compensation shall be subject to the execution of an appropriate Release and shall be without any admission of liability whatsoever on the part of Telstra.

- The costs in relation to the Inquiry shall be borne by Telstra. In the event that the ~~Inquiry Officer finds that Telstra is liable to pay an amount of money to one or~~ more of the Claimants, not greater than any sum previously offered by Telstra in an attempt to settle any claim, the costs of the Inquiry shall be borne by the Claimant up to the value of the claim as determined by the Inquiry.

- The findings of the Inquiry Officer shall be effective to revoke all previous offers not already withdrawn or lapsed.

Documentation of Complaints

- Each Claimant must fully document the particulars of the claim to allow the Inquiry Officer to make full inquiries.

- All financial data related to the alleged losses suffered by the Claimant must be supplied.

- All relevant customer information held by Telstra relating to the claim must be supplied. By agreeing to these Terms of Reference the Claimant hereby authorises Telstra to release such personal information relating to it as is necessary to allow the Inquiry Officer to conduct a full inquiry.

Establishing Grounds for a Claim

The Inquiry Officer must establish whether or not the matters put by the Claimant give rise to a question of legal liability on behalf of Telstra. In establishing this threshold question of liability, the Inquiry Officer must have regard to well established concepts relating to liability, such as the following:

- Is there contractual liability: Is there a contractual relationship between Telstra and the Claimant? Has Telstra breached the terms and conditions upon which the product or service was supplied?

- Is there tortious liability: for example in negligence?

  The basic components of any action in negligence are:

  - the existence of a duty of care;

  - breach of that duty, and

  - damage as a result of the breach.

In considering the question of liability for negligence, the following issues must be considered:

- There must be a relationship of "proximity" between Telstra and the Claimant before a duty of care can arise.

- Was the alleged damage to the Claimant reasonably foreseeable by Telstra, that is, could the Claimant's situation have been in the contemplation of Telstra at the time of the act or omission which is alleged to have caused damage?

- Was the damage suffered too remote?

Legislative Background: Telstra's Immunity From Suit

If the Inquiry Officer finds that a question of Telstra's liability does arise, a decision as to the extent of that liability must be made within the context of the legislative immunities which have been in place at the various stages of Telstra's development. Regardless of the findings of fact made, Telstra's liability in relation to current events may be affected by the conditions of the Tariff, and requirements of relevant State and Commonwealth legislation. Close attention shall be paid to the dates to which the particular claims relate, so that the liability of Telstra for any damage is assessed within the context of its legal obligations at the time, and more particularly, any legislative immunity afforded to Telstra.

- Until the introduction of the *Australian Telecommunications Corporation Act 1989*, Telstra as both the Commission and in the early days of the Corporation, was given a blanket immunity from liability regarding acts or omissions in relation to its products or services by Section 101 of the *Telecommunications Act 1975*. This immunity applied to both monopoly and competitive products, and was fortified by the various By-Laws which outlined the way in which the immunity applied to specific products or services.

- These immunities were replaced on 1 July 1989, with the commencement of the *Australian Telecommunications Corporation Act 1989*, and the introduction of Section 30 which maintained such immunities but only in relation to monopoly products and services. The By-Laws were replaced by the Standard Terms and Conditions which again specified how the immunity applied to particular products and services.

- The 1989 Act, and accordingly Section 30 ceased to exist on 1 July 1992 with the introduction of the *Telecommunications Act 1991*, which did not contain any such immunities, but provided that all carriers must file a Tariff with Austel. However, while the old Act was repealed, the SCACs were amended to include the Section 30 immunity, and they continued in force until the filing of the Tariff on 16 December 1991.

Quantum of Damages

In assessing the quantum of damages, the Inquiry Officer shall have regard to:

- The duty of each Claimant to mitigate any loss; and
- The impact of supervening factors such as:
  - (i) the general economic environment upon businesses similar to that of each Claimant:
  - (ii) local circumstances such as increased or new competition to the Claimant's business by similar businesses;
  - (iii) any efforts of Telstra directed at minimising the alleged loss of the Claimant; and
  - (iv) any other factors considered by the Inquiry Officer to be relevant to an accurate and fair assessment of the circumstances.

- The need to apportion damages between causes, which result in loss or damage and between different periods where one period might be subject to an immunity in favour of Telstra;

And shall report on these matters.

Report of Inquiry Officer

- The Inquiry Officer shall present his or her findings to both parties and Austel by way of a report.

- The Report shall detail the following:

  - The Inquiry Officer's findings as to the facts of the matter;

  - The Inquiry Officer's findings as to the liability of Telstra, if any in relation to the factual situation;

  - If Telstra has been found to have a liability to the Complainant, the quantum of compensation for which Telstra shall be liable to the Complainant;

  - The breakdown of the categories of compensation for which Telstra is liable.

Any documents or information produced to or by the Inquiry or findings of the Inquiry shall be without prejudice to either party for any subsequent purpose or transaction.