For the attention of:

Mr Paul Crowley
Chief Executive Officer
Institute of Arbitrators Mediators Australia
PO Box 1364 Law Courts
Melbourne 8010

Arbitration – Discrimination
In Relation to Alan Smith
Arbitration (1994/95)

Exhibits 40 to 72

Prepared by Alan Smith
Seal Cove 1703 Bridgewater Road
Cape Bridgewater Vic 3305
15th July 2009

Exhibit 40

FAX FROM:	ALAN SMITH C. O. T.	DATE:	5.5.95
FAX NO:	055 267 230		
PHONE NO:	008 816 522	NUMBER OF PAGES (including this page)	

FAX TO: **MR JOHN WYNACK**
INVESTIGATING OFFICER
COMMONWEALTH OMBUDSMAN'S OFFICE
CANBERRA

Dear Mr Wynack,

I refer to your letter dated 1st May, 1995.

Ms Joy Geary, Special Counsel, Dispute Resolution, Telecom, has not completely told the full story in her 21 page letter to the Office of the Commonwealth Ombudsman. Ms Geary has only been in Telecom Resolution for a short time: Telecom have a habit of shifting their staff from position to position. This does not allow those in charge to gain full knowledge of facts or personal connection to a particular customer, hence - Casualties of Telecom and ongoing frustration caused by trying to gain information about our services.

I hope here to clarify, in point form, a section of the letter addressed to your office, however, as Telecom would be fully aware, I have but a few days to finalise the reply to the Resource Team's overview, Fast Track Arbitration.

PAGE 18 PARAGRAPH 4:

* I did not receive ELMI Tapes from the period 13/5/93 to 14/6/93, as mentioned in Ms Geary's letter.

PAGE 19 PARAGRAPH 8:

* I did not receive the Bell Canada testing results in raw data. In fact, I only received National Network investigation work testing sheets. Bell Canada could have only gained information from CCS7 data: I have not received this data. Telecom is, in one way, correct: they may well have provided all FOI that is available.

  Bell Canada did not test the PTARS phone number 267 211 at Cape Bridgewater.

  I have a solution that can overcome the differences of opinion where this FOI data is concerned. I suggest that, if Telecom will do a similar test to that carried out by BELL CANADA I will withdraw all claims regarding non-compliance under the FOI act.

  These BELL CANADA tests show that, from one phone point in South Yarra, Melbourne there were 456 test calls generated to the phone number of 267 211, between 12:45pm and 4:30pm on 5/11/93. There were also 1791 test calls generated to 267 211 from Richmond, Melbourne between 12:45pm and 4:18pm on 5/11/93. The only phone faults registered to 267 211 were one busy call and two switching calls. This means that, from two different locations, 2,247 calls were generated to 267 211. This test required BELL CANADA to allow for a 15 second re-dial between each test.

  My suggestion is that if Telecom, under supervision, can match anywhere near the same results then I will withdraw my request for FOI documents regarding the CCS7 data, which would have registered these calls at the Warrnambool Exchange in Victoria.

I can account for at least four more letters. These were documents from Telecom, explaining faults in my service. Two of these letters were, I believe, of significant value as evidence of RVA (repeated voice announcement) stating that the number my clients were ringing was "not connected".

One of these letters was from the Collingwood Health & Community Centre. It stated that RVA was heard for a period "before August, 1991".

Two other letters were from the Ferry Terminal at Port Melbourne regarding Tasmanian guests who were experiencing a continued voice announcement in or around June or July, 1992.

The fourth letter stated that the phone continually rang out - we never seemed to answer it.

A Telecom memo, gained through my last FOI request, states that Ms Pittard suggested that Telecom charge me for FOI, even though they could not provide the information I sought. I quote from this document: *"Should we make Alan pay, even if we can't provide everything he wants?"*. This FOI request was made in May, 1993. For obvious reasons I did not pursue this request.

I present here, further documentation and fault data, documents which still have not been received under my FOI requests. I mention, just as an example: had Telecom provided indexed E0s for the periods I sought, as mentioned below, I believe I could have proved further misleading and deceptive commercial practices by Telecom employees.

Sincerely,

Alan Smith

cc Ted Benjamin
General Manager
Customer Response Unit, Telecom

Sue Hodgkinson
Ferrier Hodgson, Corporate Advisory

Exhibit 41

Hunt & Hunt
LAWYERS

5 May 1995

Our Ref: GLH
Matter No: 5126886
Your Ref:

Mr Alan Smith
Cape Bridgewater Holiday Camp
RMB 4408
CAPE BRIDGEWATER
Portland Vic 3305

Dear Mr Smith

ARBIRATION - TELECOM

I refer to your telephone message of 4 May and your facsimiles of 4 and 5 May 1995 and advise I do not consider grounds exist for the introduction of new evidence or the convening of a hearing at this stage.

I reiterate that any comments regarding the factual content of the Resource Unit reports must be received by me in writing by 5.00 p.m. on Tuesday 9 May 1995.

Yours sincerely

GORDON HUGHES

cc E Benjamin, W Smith, P Bartlett, J Rundell

L69483

8/2

11459723_ACZF/CF

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.
Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

Exhibit 42

FAX FROM:	ALAN SMITH C. O. T.	DATE:	10.5.95
FAX NO:	055 267 230		
PHONE NO:	008 816 522	NUMBER OF PAGES (including this page)	

FAX TO: **DR GORDON HUGHES**
HUNT & HUNT
LAWYERS
MELBOURNE

Dear Dr Hughes,

As you will see, attached are further examples of how Telecom approaches FOI requests and the Fast Track Arbitration Procedure.

This letter clearly shows that the information received yesterday may well have substantiated evidence to support my claim.

I am aware that you cannot view new material at this stage, however I am forwarding this information to demonstrate to the Resource Team the conduct of Telecom at this late hour.

Sincerely,

Alan Smith

Exhibit 43

(d) in granting extensions of time and permitting amendments and the late submission of supplementary material, I have taken account of a variety of considerations including the fact that:

- the claimant is not legally represented;
- the claimant was for some time during the course of these proceedings pursuing under FOI material allegedly in the possession of Telecom which he considered to be of relevance to the arbitration; and
- neither party appeared to be prejudiced by the extensions;
- I considered it essential that both parties had the opportunity to place all relevant material before me, regardless of the time frame set out in the arbitration agreement;

(e) a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim. Given the amount being claimed, coupled with the fact that the claim documentation had not been prepared with legal assistance, I considered this request to be justified;

(f) because of difficulties experienced by the claimant in complying fully with the request for further particulars and the request for production of documents, a hearing was convened at my office on 11 October 1994 in order to clarify the information being sought and to establish a time frame for its production;

(g) the defence documentation was submitted on ***[date]*** and was subsequently supplemented by additional material;

(h) on 24 January 1995 I received material comprising the claimant's reply to Telecom's defence. This material was the subject of subsequent amendment;

(i) pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit;

(j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed Ferrier Hodgson (and, through them, DMR) to conduct certain inquiries on my behalf;

(k) on 1 May 1995, I received a technical report and on 3 May 1995 a commercial report from the Resource Unit, each of which assisted me

in understanding the bases for dispute between the parties on a range of issues;

(l) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit.

2.2 In all, I have read in excess of 5,000 pages of documentary evidence submitted by the parties.

2.3 Although the time taken for completion of the arbitration may have been longer than initially anticipated, I hold neither party and no other person responsible. Indeed, I consider the matter has proceeded expeditiously in all the circumstances. Both parties have co-operated fully.

3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission in these Reasons of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or evidence into account. This part sets out an overview of the dispute only.

3.2 ***Overview of Claim***

(a) The claimant alleges that defective telecommunications services provided by Telecom have damaged his business and caused his health to suffer.

(b) The claimant, a chef by occupation and now 51 years of age, purchased as a going concern the Cape Bridgewater Holiday Camp in February 1988. The camp included a homestead, old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.

(c) Cape Bridgewater is 20 miles from Portland. The claimant regarded the area as a significant tourist attraction and says there was no documented evidence of any decline or predicted decline in tourism at the time of the purchase.

(d) The former owner of the business now lives in India and has not provided evidence on behalf of either party in these proceedings. I know relatively little about the state of the business or the state of the telephone system used by the business as at the time of the purchase or beforehand. In any event, the claimant says he contemplated improving the existing facilities and hence the quality of clientele, thereby increasing revenue and profits.

(e) The claimant asserts that the ongoing viability of the business was to a significant extent dependent upon his ability to take telephone bookings. He states that he first became aware of a problem with his telephone system about two months after he moved in. He was alerted to the problem by the poor response he received to a vigorous

(b) I have acquiesced in a number of requests for extensions of time for compliance with these deadlines;

(c) the claim documentation was initially submitted on 15 June 1994 and was subsequently supplemented by additional material;

(d) in granting extensions of time and permitting amendments and the late submission of supplementary material, I have taken account of a variety of considerations including the fact that:

- the claimant is not legally represented;
- the claimant was for some time during the course of these proceedings pursuing under FOI material allegedly in the possession of Telecom which he considered to be of relevance to the arbitration;
- neither party appeared to be prejudiced by the extensions; and
- I considered it essential that both parties had every reasonable opportunity to place relevant material before me, regardless of the time frame set out in the arbitration agreement;

(e) a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim. Given the amount being claimed, coupled with the fact that the claim documentation had not been prepared with legal assistance, I considered this request to be justified;

(f) because of difficulties experienced by the claimant in complying fully with the request for further particulars and the request for production of documents, a hearing was convened at my office on 11 October 1994 in order to clarify the information being sought and to establish a time frame for its production;

(g) the defence documentation was submitted on 13 December 1994 and was subsequently supplemented by additional material;

(h) on 24 January 1995 I received material comprising the claimant's reply to Telecom's defence. This material was the subject of subsequent amendment;

(i) pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit. By consent of the parties, the role of DMR Group Australia Pty Ltd was subsequently performed jointly by DMR Group Inc. and Lane Telecommunications Pty Ltd;

(j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquiries on my behalf;

(k) on 30 April 1995, I received a technical report and on 3 May 1995 a financial report from the Resource Unit, each of which furthered my understanding of the issues in dispute;

(l) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit and both availed themselves of that opportunity.

2.2 In all, I have read in excess of 6,000 pages of documentary evidence submitted by the parties.

3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or that evidence into account. This part sets out an overview of the dispute only.

3.2 ***Overview of Claim***

(a) The claimant alleges that defective telecommunications services provided by Telecom have damaged his business and caused his health to suffer.

(b) The claimant is a chef by occupation and is now 51 years of age. In December 1987 he purchased as a going concern the Cape Bridgewater Holiday Camp, commencing occupancy in February 1988. The camp included a homestead, an old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.

(c) Cape Bridgewater is 20 kilometres from Portland. The claimant regarded the area as a significant tourist attraction and says there was no documented evidence of any decline or predicted decline in tourism at the time of the purchase.

(d) The former owner of the business now lives in India and has not provided evidence on behalf of either party in these proceedings. I know relatively little about the state of the business or the state of the telephone system used by the business as at the time of the purchase or beforehand. In any event, the claimant says he contemplated improving the existing facilities and hence the mix of clientele, thereby increasing revenue and profits.

(e) The claimant asserts that the ongoing viability of the business was to a significant extent dependent upon his ability to take telephone bookings. He states that he first became aware of a problem with his

Exhibit 44

Hunt & Hunt
LAWYERS

12 May 1995

Our Ref: GLH
Matter No:
Your Ref:

BY FAX 277 8797

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

Dear Warwick

FAST-TRACK ARBITRATION PROCEDURE

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

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

In simple terms, my observations are as follows:

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

melbourne
sydney
sydney west
brisbane
canberra
newcastle

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

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

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

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

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

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

Yours sincerely

GORDON HUGHES

Exhibit 45

ATT Lyn
4/8/95.
8/8/95.

Telecom AUSTRALIA

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 9634 2877
Facsimile (03) 9632 3235

24 May 1995

Mr Alan Smith
Cape Bridgewater Holiday Camp
RMB 4408
CAPE BRIDGEWATER VIC 3305

By facsimile: (055) 267 230

Dear Mr Smith

Your FOI Requests of May 1994

Further documents have recently come to light that fall within your FOI requests of 1994.

Copies of these documents are enclosed. At this time a table has not been prepared giving decisions in relation to these documents as it was considered by Telecom more important that you receive copies of the documents now. A table listing Telecom's decisions in relation to all documents shall be forwarded to you in two weeks.

Telecom makes the following comments in relation to the documentation:-

1. At least 50% of the material being forwarded to you has been forwarded to you previously in other files;

2. Telecom's defence team did not have the opportunity to use this information for its defence.

Yours faithfully

Ted Benjamin
Group Manager
Customer Affairs

Encl:

Exhibit 46

FAX FROM: ALAN SMITH
C. O. T.

DATE: 20.6.95

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: **DR GORDON HUGHES**
HUNT & HUNT
LAWYERS
MELBOURNE

Dear Dr Hughes,

Included with this fax are a number of documents:

a. Copy of a letter I wrote to you on 15th August, 1994.
b. Copy of a letter I wrote to Mr Kransnostein of Telecom, dated 28/8/94
c. Copy of a letter from Mr Rumble, Telecom Response Unit, dated 13/9/94

A. Paragraph six of this letter asks you, through the Chair of the Arbitration Procedure, to access Raw data etc. to do with the Bell Canada Testing.

B. This letter asks Mr Kransnostein for assurances that ALL the Bell Canada Testing information which is available has been sent to me under the FOI Act.

C. Paragraph five of Mr Rumble's letter states that it appears that the letter I wrote to Mr Kransnostein relates to my request to Telecom for all the raw data associated with the Bell Canada Testing.

Paragraph six of Mr Rumble's letter states that there has been NO direction from the Arbitrator to supply any Bell Canada International documents to Alan Smith.

Dr Hughes, my letter of the 15/8/94, referred to in point A above, is in fact asking you to access this Bell Canada documentation one month before the letter from Mr Rumble, yet Telecom states that you did not seek a direction from Telecom for access to this information.

Right through the Arbitration procedure I have sought for this information because there has been continual conflict between Telecom and me regarding the validity of this testing, I am now left wondering: did you in fact request this data? If you did, then Telecom has wilfully withheld this information and once again they have lied in the Arbitration Procedure.

As a layman I can only ask a polite question: Did you ask for this Bell Canada information that I sought some 8 months prior to the handing down of the results of the Fast Track Arbitration Procedure?

Also included with this fax are three other documents, marked 1, 2 and 3. I received this information on 26/5/95, after the deliberation and your findings. These are, of course, just a few of the documents that show I was right from the very beginning of the Fast Track Settlement Proposal and Fast Track Arbitration Procedure. I knew all along that the Bell Canada Testing was flawed. Had I received this type of information as a result of my FOI requests, in the

beginning of the procedure, my expenses would have been minimal.

I leave this matter in your hands, with respect for your position. However, the question must be asked again: Did you request this Bell Canada data through the Chair of the Arbitration Procedure?

Respectfully,

Alan Smith

FAX FROM: ALAN SMITH DATE: 15.6.94

C. O. T.

FAX NO: 055 267 230

PHONE NO: 008 816 522 NUMBER OF PAGES (including this page)

FAX TO: DR GORDON HUGHES
HUNT & HUNT
LAWYERS
MELBOURNE
FAST TRACK ARBITRATOR

4

Dear Dr. Hughes,

My submission will be a day late because of a telephone call I had from Paul Rumble's Office. I am now told any information regarding the RCM, numbers of customers will now be forwarded to me early this coming week.

This is too late for my binding and finished process of the final submission. I had hoped for this information by Tuesday of last week, however, this wait for information which never comes from Telecom has put me behind once again.

Thursday, 3 o'clock, at your office is my final dead-line. There will be no more claims for written submissions to be re-introduced.

However, again, I must draw your attention to Telecom's reluctance to forward relevant documentation to produce the evidence. Had I been given my true F.O.I. documentation, much more of this evidence, in support of my allegations of an inadequate phone service over these past years, would have been substantiated. I feel like a blind man without his stick. Telecom has in their favour the fact of what has been supplied.

My claim, as it is produced in this second interim submission, will, I feel sure, show you and your Resource Team many alarming facts.

I am asking, though the Arbitration Chair, for you to direct Telecom to produce the Bell Canada Raw Data. My two interim requests are for Telecom to respond in writing to the Arbitrator showing that there was incorrect documentation: calls which could not have possibly over-dialled other calls connecting to the PTARS at Cape Bridgewater at the time of the Bell Canada testing.

Telecom, likewise, did not test my 008 account at any time during this Bell Canada testing. This must be addressed through the Chair of this Arbitration process. I shall not write a response to their claim. I shall leave this in the hands of the Arbitration team, the Resource Team.

I have forwarded you a letter found by Ann Garms yesterday, while going through her F.O.I. I did not receive this Raw Data, as mentioned by Simon Chalmers. It did exist; I knew it did, but time has beaten my health and patience. Telecom has timed much to suit themselves.

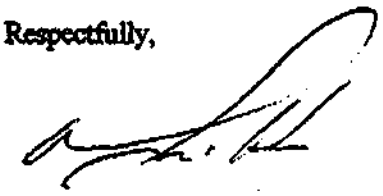
I wish only for the second interim request to be granted: for Telecom to allow C.O.T. to view documentation under the Professional Privilege Act, to be done at their centre. This, of course, will be viewed under the secrecy agreement, the confidential agreement of this Arbitration. No copies will be made for distribution, other than for your perusal, and that of the Resource Team. If you think this information is a valid document then it will be submitted only, without a written submission as to the contents.

I forwarded you a very interesting document last week which was tabled under this Professional Privilege Act. That document was of a network fault. The document has since been viewed by John Wynack, Commonwealth Ombudsman, F.O.I. as being illegal under the Act to be umbrellaed in legal privilege documents.

On Thursday I will present you with my claim, plus a further 8 pages of documents I believe are of importance to my claim (Privilege documents).

I thank you for your time and patience in these trying months.

Respectfully,



Alan Smith.

cc. Mr Paul Rumble
Customer Resource Unit
Telecom fax: (03) 634 8441

FAX FROM: ALAN SMITH DATE: 29.8.94

C. O. T.

FAX NO: 055 267 230

PHONE NO: 008 816 522 NUMBER OF PAGES (including this page)

FAX TO: **MR DAVID KRANSNOSTEIN**
GENERAL COUNSEL
4TH FLOOR, 242 EXHIBITION ST
MELBOURNE 3000

Dear Mr Kransnostein,

In reference to your letter to Gordon Stokes, Portland Exchange, 22nd April, 1994:

This letter was a request for all original documents and records relating to the Cape Bridgewater Holiday Camp, to be sent to Simon Chalmers. These documents include all CCAS Data, Tims or Leopard records, diary notes, log books, records of faults or investigations etc. As this dispute has been over a six year period, the information sent by Portland Exchange would have also included the ARK faults together with all faults, maintenance and repair reports, change over of multiplexers, update maintenance reports etc at the RCM at Cape Bridgewater, up to June 1994.

This is Commercial Documentation which was, and is, part of my F.O.I. request. I am now asking for your personal assurance and guarantee, as the General Counsel Solicitor for Telecom in this dispute, that all the documents mentioned above, together with all other Commercial, Network, NNI, CCAS, Raw Data associated with ELMI monitoring, and ELMI records have been sent to me under the F.O.I. Act.

This assurance and guarantee will prove Telecom's good faith in the due process of this Arbitration Procedure.

I am not asking for your assurance regarding the Raw Data for the Bell Canada Testing. This, I am led to believe, is on its way from Canada.

I await your response.

Sincerely,

Alan Smith

cc. Mr Paul Rumble
Customer Resource Unit
Telecom
fax: (03) 634 8441
AND
Dr Gordon Hughes
Fast Track Arbitrator
Hunt & Hunt
Lawyers
fax (03) 614 8730
AND
Mr John Wynack
Commonwealth Ombudsman
Canberra

File Smith

Telecom AUSTRALIA
Commercial & Consumer
Customer Response Unit
Level 8
242 Exhibition Street
Melbourne Victoria 3000

Telephone (03) 634 5736
Facsimile (03) 634 8441

13 September 1994

Dr Gordon Hughes
Hunt & Hunt

Facsimile No. (03) 614 8730

Dear Sir

Fast Track Arbitration - Smith

I refer to my letter of 25 August 1994 concerning Mr Smith's request for "*all raw data associated with the Bell Canada testing*", and your reply later that day.

Telecom received a letter from Mr Smith on 28 August 1994, which indicates Mr Smith is under the impression that the raw data relating to the Bell Canada testing is "*on its way from Canada*", presumably for release to him. I enclose a copy of Mr Smith's letter and Telecom's reply.

Telecom has not received any direction from you to supply any of Bell Canada International's documents to Mr Smith or any other claimant. Telecom requests that you clarify the status of Mr Smith's request.

Yours faithfully

Paul Rumble
NATIONAL MANAGER
CUSTOMER RESPONSE UNIT

L68979

Exhibit 47

Hunt & Hunt
LAWYERS

21 June 1995

Our Ref: GLH
Matter No: 5126886
Your Ref:

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

TB
SB

Dear Mr Pinnock

ARBITRATION - ALAN SMITH

I enclose copy letter from Alan Smith dated 20 June 1995.

As you are aware, Mr Smith's arbitration was completed prior to you taking up your appointment as Telecommunications Industry Ombudsman.

I do not believe I have jurisdiction over this matter any longer, nor do I consider it appropriate for me to enter into correspondence with either of the parties regarding the conduct of the proceedings or matters which may or may not have come to light subsequent to the delivery of my award.

I would, of course, be happy to respond to any queries which you put to me, or which are put to me jointly by the parties. I believe that if Mr Smith has any lingering concerns, however, these should be directed, initially at least, to your office.

melbourne
sydney
perth
canberra
newcastle
represented in
adelaide
darwin

Yours sincerely

GORDON HUGHES

Encl.

cc A Smith, E Benjamin, P Bartlett, J Rundell

11491212_ACZF/ACF

Exhibit 48

FAXED

Telecommunications Industry Ombudsman ACN 057 634 787
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000
Telephone: 61 3 277 8777 Facsimile: 61 3 277 8797

Telecommunication Industry Ombudsman

Facsimile Cover Sheet

TO: PLB

Company: Minters

Fax: 967 4621

FROM: PAD

Company: TIO

Fax: 92778797

Date: 22.6.95

Pages: 1 (including cover sheet)

Comments: Sorry to be so demanding on your first day back :-)

Peter,

could you please have a look at Hughes' letter to Pinnock dated 21 June 95 re Alan Smith. John wants to discuss it on Monday, and what the approach should be re parties seeking to revisit issues post Arb'n. His position is not to open the can of worms, but would like to discuss strategy with you.

Regards. Pa.

Exhibit 49-a
Exhibit 49-b
Exhibit 49-c

Telecom AUSTRALIA

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 9632 7700
Facsimile (03) 9632 3235

21 August 1995

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

FAXED
21/8/95

By facsimile: (03) 9277 8797

Dear Sir

Fast Track Arbitration Procedure - Alan Smith

I refer Dr Hughes' letter to you dated 21 June 1995, which enclosed a copy of a facsimile from Mr Smith to Dr Hughes dated 20 June 1995. Dr Hughes copied his letter to Telstra.

I refer also to our recent telephone conversations on this subject.

As you are aware Mr Smith alleges in the fifth paragraph of his letter of 20 June 1995 to Dr Hughes that "... the Bell Canada Testing was flawed". In support of this allegation Mr Smith refers to a letter from Telstra to Bell Canada International (BCI) dated 6 September 1994. The Telstra letter to BCI refers to the recording of an incorrect date on one test sheet and at no stage suggests or intimates in any way that the BCI results are "flawed".

I enclose a copy of the letter dated 11 August 1995 from Gerald Kealey of Bell Canada International to me which responds to Telstra's letter to BCI of 6 September 1994. That letter makes it clear that there is no question of the BCI results being "flawed" as alleged by Mr Smith.

I will have a copy of this letter forwarded to Mr Smith and trust that this will allay his concerns in relation to the BCI testing.

Yours faithfully

Steve Black
Group General Manager
Customer Affairs

49A

sb-jp001.doc

D M R
CORPORATE

DMR

D M R Corporate Pty Ltd
40 Market Street
Melbourne
Victoria 3000
Australia

A.C.N. 063 584 046
Facsimile (03) 9629 4588
Telephone (03) 9629 4277
Mobile 018 836 107

22 December 1995

Mr J Pinnock
Telecommunications Industry Ombudsman
321 Exhibition Street
Melbourne
VIC 3000

Dear Mr Pinnock,

Re: Alan Smith

Further to your letter dated 20 December 1995 I respond to your request as follows:

1. The Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") report was dated 3 May 1995 and I received a copy of the report on 5 May. After discussions with Alan Smith it was decided that I should reply to the report as soon as possible.

   I worked all day Saturday and Sunday with Alan Smith trying to interpret the FHCA report. After this work I considered that the report was incomplete as the calculations of the FHCA loss figures were not included in their report.

2. On 8 May 1995 I telephoned FHCA and spoke to John Rundell and requested a meeting to discuss how the FHCA loss figures were determined. He was reluctant to talk to me at that time however we set a tentative date of 17 May 1995 for us to discuss this matter again. I have a note in my diary for the 17 May 1995 - John Rundle - Ferriers -604 5188.

   My response to the FHCA report was lodged on 9 May 1995.

3. On 17 May I telephoned John Rundell and he stated that he was unable to discuss anything with me until the appeal period had expired. During that telephone conversation I told him that I was unable to recalculate the FHCA figures and that I felt that the report was deficient in that regard. He then stated that he understood my problems and that FHCA had excluded a large amount of information from their final report at the request of the arbitrator.

To the best of my recollection the above facts are exactly as they occurred.

Yours faithfully

Derek Ryan

498

John W Rundell
95 Dendy Street
BRIGHTON VIC 3186

Private & Confidential

COPY

Mr John Pinnock
Ombudsman
Telecommunications Industry Ombudsman
315 Exhibition Street
Melbourne VIC 3000

13 February 1996

Dear John

Fast Track Arbitration Procedure - Alan Smith

Other matters: D M Ryan letter of 22 December 1995

I acknowledge receipt of your letter of 23 January 1996, enclosing a copy of a letter dated 22 December 1995, which you received from Mr Derek Ryan. I have reviewed his letter and refute that the statement that FHCA had excluded a large amount of information from their final report "at the request of the arbitrator".

I did advise Mr Ryan that the final report did not cover all material and working papers.

The Ferrier Hodgson report was prepared for the arbitrator and was provided as part of the Fast Track Arbitration to Mr Ryan and Mr Smith for comment and they did so in writing to the arbitrator.

I am surprised that it is only now some 8 months since my telephone calls with Mr Ryan that this matter has been raised with you.

Contact with Mr Derek Ryan

For your information, I now outline the details of my limited discussions with Mr Ryan.

1. On 8 May 1995, I received a telephone call from Mr Ryan and at the time Ms Susan Hodgkinson was in my office. The discussion was cautious and I was unwilling to meet with Mr Ryan at that time. I suggested that I would be happy to meet with him after the appeal period for the Smith arbitration had passed, but only to discuss the information required and preferred approach in relation to other claims. I felt this may be useful as Mr Ryan had advised me that he acted for a number of other COT

claimants and also I knew Mr Ryan professionally from his time as a partner of Touche Ross.

2. Further, on Thursday, 18 May (not 17 May 1995, as dated by Mr Ryan) I received two pager messages from Mr Ryan. I then returned his call early afternoon by mobile phone. I do not have a file note record of this call as I was in a car at Tyab on the Mornington Peninsular. I do not believe that I made the statement he has attributed to me. From my recollection of the call, Mr Ryan was attempting to make me commit to statements, which I was unwilling to comment on. Unfortunately, I can provide no further details of this call.

Other Matters

Further, I wish to advise that I am most concerned by the fact that Mr Smith engaged a private investigator, who visited me at my home on 27 December 1995, with the intention of discussing matters associated with the Ferrier Hodgson report. I fund such an intrusion into my privacy and home (and also the tape recording of our discussion without advice) highly unusual and inappropriate.

As you may be aware, I have contacted the Brighton CIB in relation to:

1. damage to property at my home
2. the actions of Mr Smith impersonating me and pursuing me via the use of a private investigator.

You should be aware that the Brighton CIB intend to interview Mr Smith in relation to criminal damage to my property, but regard the matter of his impersonation and tape recording and telephoning me at home as civil matters.

Could you please provide a copy of relevant correspondence sent to Mr Smith advising him not to make contact with members of the resource unit to assist the police in their investigations.

You should also be aware that as a result of the actions by Mr Smith in contacting me at home. I have reluctantly found it necessary to install a private and silent telephone line at home. Although, Telstra offered to provide this without charge, I would not accept that and will be paying the cost on my account.

May I take this opportunity of wishing you and your staff all the best for 1996, and I trust that you will shortly receive resolution of these outstanding fast track arbitration's.

Please do not hesitate to contact me directly at KPMG should you wish to discuss any matters associated with these arbitration's. Mr direct line in 9288 5457.

Yours faithfully

John W Rundell

cc

Ms Susan Hodgkinson
Project Manager
Resource Unit
Ferrier Hodgson Corporate Advisory

Exhibit 50

COPY

Telecommunicatio
Industry
Ombudsman

John Pinnock
Ombudsman

September 12, 1995

Mr. Ted Benjamin
National Manager, Customer
Response Unit
Telstra Corporation
37th Floor, 242 Exhibition Street
MELBOURNE VIC. 3000

By facsimile: (03) 9632 3235

Dear Ted,

Re: Alan Smith : Supply of Documents under FOI

I refer to your letter of 7 September 1995.

I acknowledge your responses to the questions raised at points 1 and 2 of my letter of 25 August. Could you please provide evidence of these release dates?

You have also responded that Documents N00005, N00006 and N00037 were first supplied to Mr. Smith under FOI on 26 May, and that they were not made available prior to that date. Could you please clarify why this is so?

Yours sincerely,

John Pinnock
Ombudsman

Exhibit 51

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:

- *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

Exhibit 52-a

16th December 94 Telstra letter to D Hughes
4th October 94 Telstra letter to AUSTEL
11th November 94 Telstra letter to AUSTEL
1st December 94 AUSTEL letter to Telstra

Exhibit 52-b

Page 37 DMR Lane Report

Exhibit 52-c

Page 9 Telstra's response to DMR & Lane Report

Telecom AUSTRALIA

FAXE
16.12.1994

16 December 1994

Customer Response Unit
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic 3000
Australia

Telephone 03 634 2977
Facsimile 03 632 3235

Dr Gordon Hughes
Hunt & Hunt

By facsimile: (03) 614 8730

Dear Sir,

Fast Track Arbitration Procedure - Smith

Please find enclosed a copy of the following documents:

1. Letter dated 4 October 1994 from Austel to Telecom.
2. Letter dated 11 November 1994 from Telecom to Austel.
3. Letter dated 1 December 1994 from Austel to Telecom.

You will note from the correspondence that Austel has requested Telecom to provide information relating to charging discrepancies reported by Mr Smith for short duration calls on his 008 service. These issues form part of the subject matter of Mr Smith's claim under the Fast Track Arbitration Procedure.

In light of clauses 16-19 of the arbitration procedure which prohibit the disclosure of confidential information, Telecom is reluctant to provide Austel with this information.

You will note from Austel's letter of 1 December 1994 that Austel still requires Telecom to provide this information and states that "[it] will seek confirmation from the Arbitrator that Mr Smith has raised the issues detailed in [his] letter. Should the Arbitrator confirm that these issues have been raised then Austel will not provide a response to Mr Smith on them...and will inform Mr Smith of Austel's actions in this regard".

L69036

52A

Telecom wishes to comply with Austel's request for information and seeks your views as to whether you would consider the provision of this information to Austel has the potential to breach the Fast Track Arbitration Procedure. The question has also been raised of whether discussion between yourself and Austel on the content of the claim and defence in Mr Smith's arbitration might itself breach the confidentiality rules of the Fast Track Arbitration Procedure.

The simplest way forward may be for Mr Smith and Telecom and yourself to all confirm in writing that this information can be provided to Austel if this meets with your approval.

Yours faithfully,

Ted Benjamin
National Manager
Customer Response Unit

L69037

52A

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

94/0269

4 October 1994

Mr S Black
Group General Manager
Customer Affairs
TELECOM

Facsimile No: (03) 632 3241

Dear Steve

CHARGING DISCREPANCIES REPORTED BY ALAN SMITH AND ISSUES RELATED TO SHORT DURATION CALLS ON 008 SERVICES

Mr Alan Smith of Cape Bridgewater Holiday Camp has recently written to AUSTEL complaining of a number of charging discrepancies occurring on his 008 service. A copy of Mr Smith's letter is attached, as is an accompanying sheet which contains 008 bill data over the period 27 May to 29 May 1994 in comparison with other incoming call monitoring data over the same period.

Mr Smith has previously raised some of the issues identified in his letter with AUSTEL but had requested that AUSTEL not take them up on his behalf as he was concerned they may conflict with his "Fast Track" Arbitration process. AUSTEL seeks a response on the following issues.

(1) Mr Smith states that a caller to his 008 number experienced 3 occurrences of a "not connected" recorded voice announcement (RVA) on 27 May 1994 between 7:51 pm and 7:59 pm. Mr Smith states that "these faults" were reported to Telecom's 1100 number. AUSTEL requests that Telecom provide details on the investigations made into the fault report(s) and any findings made on this issue.

(2) Was Mr Smith informed of the results of any investigations conducted in regard to the RVA report(s) identified in (1)? If not, why not? 52A

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

(3) AUSTEL notes that regardless of Telecom's findings on the RVA issue identified in (1), there appears to be a significant discrepancy between the duration of one call identified on the 008 bill and the duration of that call as identified on the "monitoring data". The relevant call appears on the 008 bill against the code "23-9" and is logged as being of 3 minutes 15 seconds duration. On the "monitoring data" what appears to be the same call, made on 27 May 1994 at 19:58:46, is logged as being of 2 minutes 46 seconds duration. AUSTEL requests that Telecom explain this discrepancy if this issue has not been dealt with in the reply to (1).

(4) Mr Smith's bill for his 008 service details one call (code 23-12) as being of 1 second duration. The call data has no information detailing the origin of the call. AUSTEL requests that Telecom explain the circumstances which may have led to this "short duration" call and why no data is provided on the origin of the call.

(5) AUSTEL is aware of another Telecom customer in the Portland region, Mr Jason Boulter of the Malaleuca Motel (008 034 449), who maintains that many "short duration" calls are occurring on his 008 bills. This customer suspects that these "short duration" calls represent call attempts by potential clients to contact his business which are not received at his premises. AUSTEL requests that Telecom provide a comprehensive explanation of the possible causes of "short duration" calls on 008 services. Telecom's response should specifically address the issue raised by Mr Boulter. AUSTEL is aware that Telecom is currently investigating the general issue of "short duration calls", but is also aware that 008 services are not included in this investigation.

(6) Telecom is requested to respond to Mr Smith's claim that on his 267 230 service he is being charged "on average 11% over charged seconds".

(7) The central issue raised by Mr Smith in his letter is that he is being charged for calls that do not connect to his 008 service. The calls identified in (1) are cited by Mr Smith as instances of

52A

such calls. Telecom is requested to specifically address this issue in its response. 121

For clarification of any of the matters raised in this letter please contact Bruce Matthews on (03) 828 7443.

Yours sincerely

B. D. Matthews

Bruce Matthews
Consumer Protection

52A

FAXED 11/11/94

11 November 1994

Customer Response Unit
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic 3000
Australia

Telephone 03 634 2977
Facsimile 03 632 3235

SB ✓
TB ✓

By facsimile: 820 3021

Mr B Matthews
AUSTEL
PO Box 7443
St Kilda Road
MELBOURNE VIC 3004

Dear Sir,

CHARGING DISCREPANCIES RECORDED BY ALAN SMITH AND ISSUES RELATED TO SHORT DURATION CALLS ON 008 SERVICES

I refer to your letter dated 4 October, 1994 to Mr Steve Black. I am responding to this letter as the Manager responsible for handling Mr Smith's dispute with Telecom.

You have requested Telecom to provide to you information relating to charging discrepancies reported by Mr Smith in relation to short duration calls on his 008 services together with other information.

Each of the questions put by you in your letter of 4 October, 1994 will be answered as part of Telecom's defence to Mr Smith's claims lodged under the Fast Track Arbitration Procedure. As you are aware, information relevant to defence documents are confidential under the procedure and may not be made known to third parties. The Fast Track Arbitration Procedure was established with the input and consent of Austel.

In respect of the confidentiality aspect, the Arbitrator has advised Telecom that he considers that the parties (to the arbitration) must remember at all times that these proceedings are subject to the confidentiality provisions set out in clauses 16-19 of the Fast Track Arbitration proposal. In particular, Telecom has been asked to bear in mind that a breach of confidentiality (even inadvertently) could lead to a dismissal of the claim pursuant to Clause 12 of the proposal.

52A

A56321

Mr Smith himself is obviously concerned about these implications as your letter advises that he has raised this very point with you and was concerned that any action by Austel may conflict with the Fast Track Arbitration process.

If the information requested is provided to you outside of the approved Arbitration Rules, other parties to the Fast Track Arbitration Procedure may also seek other information through you and expect answers in like manner. I believe that this will prove dysfunctional to an orderly and manageable arbitration process and could possibly lead to its breakdown. It would also involve Telecom in breaking its confidentiality undertaking under the Fast Track Arbitration Rules.

Mr Smith, of course, has rights under the Arbitration Rules to request the Arbitrator to provide him with relevant information at any time and Telecom has indicated that it will comply with a directive of the Arbitrator to provide information.

In these circumstances, Telecom finds itself faced with two conflicting obligations; that to Austel and that to the confidentiality requirements of the arbitration process. It is Telecom's view that Mr Smith's interests are more than adequately protected by the Austel approved arbitration process and that the issue should be left in the capable hands of the Arbitrator to determine the appropriate remedy, if any, for Mr Smith.

I would appreciate your comments on how this complaint might be resolved.

Turning from the particular issue of Mr Smith to the general question of the operation of the 008 service, Telecom considers that the 008 service operates satisfactorily and does not raise any issues of concern. If you require specific information on the general principles of operation of the 008 service, Telecom is happy to respond.

Yours faithfully,

Ted Benjamin
National Manager
Customer Response Unit

52A

A56322

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

94/0269

1 December 1994

Mr T Benjamin
National Manager
Customer Response Unit
TELECOM

Facsimile No: (03) 634 8441

Dear Mr Benjamin

CHARGING DISCREPANCIES RECORDED BY ALAN SMITH, SHORT DURATION CALLS ON 008 SERVICES AND ALAN SMITH'S ARBITRATION

This letter is provided in response to your letter dated 11 November 1994 entitled "Charging Discrepancies Recorded by Alan Smith and Issues Related to Short Duration Calls on 008 Services."

I consider that the fundamental issue raised in your letter is your statement:

> *If the information requested is provided to you outside of the approved Arbitration Rules, other parties to the Fast Track Arbitration Procedure may also seek information through you and expect answers in like manner. I believe that this will prove dysfunctional to an orderly and manageable arbitration process and could possibly lead to its breakdown. It would also involve Telecom in breaking its confidentiality undertaking under the Fast Track Arbitration Rules.*

My response to this statement is as follows. AUSTEL can not disregard issues of concern which come to our attention because these **may** be the subject of arbitration. I note that AUSTEL is not a party to the Fast Track Arbitration Procedures and is therefore not aware of the specific issues which have been raised in this process. Furthermore, under the Fast Track Arbitration Procedure there is a mechanism for dealing with the disclosure of confidential information, as follows:

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 829 6700 FACSIMILE: (03) 820 3021

52A

If there is any disclosure of any part of the subject matter or the conduct of the Procedure, the Confidential Information or the Arbitrator's award by either party, then the Arbitrator may take such steps as he thinks appropriate including the dismissal of the claim in the event of a disclosure by the claimant.

If Telecom wishes to take up the issue of any disclosure of confidential information which may have occurred or **which may in the future occur** under the "Fast Track" Arbitration Procedure then this should be taken up with the Arbitrator of this Procedure. The Procedure itself has mechanisms for ensuring an "orderly and manageable arbitration process" is followed. If Telecom has concerns that the Procedure is becoming unmanageable for reasons of disclosure of confidential information then these should be raised with the Arbitrator, not AUSTEL. This general advice also applies to issues of disclosure of confidential information in the Arbitration Procedures for the "COT 12" and the pending General Arbitration Procedures to be administered by the TIO.

AUSTEL still requires an answer to the issues raised in my letter of 4 October 1994, and requests that an answer to all the issues be provided by 15 December 1994.

I note that your letter states that "Each of the questions put by you in your letter of 4 October 1994 will be answered as part of Telecom's defence to Mr Smith's claim lodged under the Fast Track Arbitration Procedure." As AUSTEL has not sought information and is not aware of any of the details of Mr Smith's claims under the Fast Track Arbitration Procedure, I was therefore not aware until I received your letter that Mr Smith has raised all of the specific issues identified in my letter. I suggest that in future Telecom not divulge information of this nature to AUSTEL on any matters raised by AUSTEL which are matters raised in arbitration. This in itself could be regarded as disclosing information which is confidential under the arbitration process.

In the current situation where it is possible that both parties to the Fast Track Arbitration Procedure have divulged information to AUSTEL which details issues raised in this Procedure I propose to take the following course of action. AUSTEL will write to the Arbitrator enclosing copies of correspondence on this matter. AUSTEL will seek confirmation from the Arbitrator that Mr Smith has raised the issues detailed in my letter. Should the Arbitrator confirm that these issues have been raised then AUSTEL will not provide a response to Mr Smith on them, as he will have received this response through the Arbitration Process. AUSTEL will inform Mr Smith of AUSTEL's actions in this regard. Should the Arbitrator fail to provide any information

on whether these issues have been raised under arbitration, or deny that all these issues have been raised by Mr Smith, then AUSTEL will write to Telecom further on this matter. I note that under the Fast Track Arbitration Procedure the Arbitrator does not become involved in assessing the detail of the claimant's submission until Telecom has provided its response to that submission, therefore the Arbitrator may not be in a position to provide a rapid response to AUSTEL's letter.

I must emphasise that AUSTEL is not seeking to prejudice Mr Smith's arbitration. The issues raised by Mr Smith, however, concern matters which potentially affect a considerable number of Telecom's customers and it is on this basis that AUSTEL has taken up these issues. It is also the stated reason why Mr Smith raised these issues with AUSTEL in his 3 October 1994 letter, as he "Thought this information might be of concern to AUSTEL". In this context, I note that my 4 October 1994 letter also raises the concerns of another Telecom customer, Mr Jason Boulter, regarding the operation of his 008 service. In addition, concerns on the general operation of Telecom's 008 service have recently been raised with AUSTEL by the Federal Member for Wannon, Mr David Hawker. The issues raised by Mr Hawker will be the subject of a separate letter to Mr Steve Black, but information you provide in response to my 4 October 1994 letter may well form part of AUSTEL's response to Mr Hawker.

In summary, the issues raised in my 4 October 1994 letter are of concern to AUSTEL, and will remain of concern until Telecom provides a response to AUSTEL which AUSTEL considers allays this concern.

On another matter, thankyou for your offer to provide information on the general principles of the operation of Telecom's 008 service. I would like to take up this offer once you have responded to the issues raised in this letter.

Yours sincerely

B. D. Matthews

Bruce Matthews
Consumer Protection

527

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.

52B

2.17 The Resource Unit concludes that there may have been some peak period congestion over a period of up to 12 months (30 March 1993 to April 1994) between Warrnambool and Portland. The Resource Unit concludes on page 36 of the Technical Report that the extent of the congestion is unknown. It is submitted that any impact on the Claimant's service would have been minimal and then only during periods of peak traffic (see page 61 of the B004 Report and the letter dated 27 April 1995 to the Arbitrator from Ted Benjamin).

2.19 The Resource Unit refers to complaints of call problems between June 1993 and March 1994 for which no faults were found. There is, however, no evidence of "real faults" that may have had an impact on the Claimant's telephone service.

2.20 The Resource Unit refers to complaints of a single caller which were investigated. No fault was found and there is no evidence of any fault that may have had an impact on the Claimant's telephone service.

2.23 The Resource Unit refers to complaints relating to the Claimant's 008 service. Although the Resource Unit would have preferred such complaints to have been left "open", there is no evidence of any "real fault" which may have had an impact on the Claimant's telephone service.

2.24 The Resource Unit notes the number of complaints between December 1992 and October 1994 and states that there were "problems quite evidently caused by mis-operation or misunderstanding of the CPE". Such misoperation or misunderstanding is evidence of an effect on the Claimant's telephone service for which, the Resource Unit recognises, Telecom is not responsible.

A reasonable level of service was provided

2.21 The Resource Unit refers to an intermittent problem with the Claimant's Goldphone for 11 days in March 1994. This would only have had a minimal effect on the Claimant's telephone service and could not have affected his business.

Other

2.11 The Resource Unit refers to cordless telephone difficulties which were outside Telecom's area of responsibility.

Exhibit 53

Hunt & Hunt
LAWYERS

23 January 1996

Our Ref: GLH
Matter No:

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

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

melbourne
sydney
sydney
brisbane
canberra
newcastle
adelaide
darwin

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

Exhibit 54

Hunt & Hunt
LAWYERS

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

Encl.

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

Exhibit 55

Hunt & Hunt
LAWYERS

16 February 1996

Our Ref: [illegible]
Matter No: 5122[illegible]

Mr L E James
President
Institute of Arbitrators Australia
Level 1, 22 William Sreet
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.

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)

Exhibit 56

TP highlighted

Hunt & Hunt
LAWYERS

COPY

14 MAR 1996

8 March 1996

Our Ref: GLH
Matter No: 5126878

Mr E Benjamin
Group Manager
Customer Affairs
Telstra Corporation
Level 37, 242 Exhibition Street
MELBOURNE Vic 3000

Dear Mr Benjamin

ARBITRATION - GILLAN

I refer to my letter of 20 February 1996. Documentation was to be made available to the claimants on or before 6 March 1996. If this has not occurred, could you please advise me when the delivery of that documentation is expected to take place?

Yours sincerely

GORDON HUGHES

cc A Davis, M Gillan, R Huch, J Pinnock, P Bartlett, S Hodgkinson

Exhibit 57

28 Rowe Street
N Fitzroy Vic 3068

27 March 1996

Dr Gordon Hughes
Hunt & Hunt
Lawyers
Level 21
459 Collins Street
Melbourne Vic 3001

BY FACSIMILE: 614 8730

Dear Dr Hughes

JAPANESE SPARE PARTS - ARBITRATION - TELECOM AUSTRALIA

The documents recently provided by Telstra contain new and relevant information which clearly has an impact on the Claimants' position.

That information includes, from Telstra's own records, that Loop Mux problems were recognised as early as 1986 and persisted through at least 1992, and were not confined to the period October 1989 – late 1990 as accepted by the Resource Unit.

Further, there is evidence that the report on the PCM Multiplexor faults was written to a pre-determined outcome.

There are also documents which provide information contrary to that contained in the Statutory Declarations provided by Telstra as part of their defence.

The documents give rise to certain questions which, we believe, ought to be put to Telstra on the matter of records referred to in the documentation recently provided.

In view of this, I request the following:

1. That a period of three weeks from today be allowed for the preparation of a further submission. (This period includes Easter).

2. That arrangements be made for the Resource unit to look at these documents. I would be happy to give them the appropriate document references.

Yours sincerely

Amanda Davis
for M. Gillan

cc T Benjamin J Pinnock

FAXED 25/6/96

Telstra

Regulatory & External Affairs

Level 37
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 9634 2977
Facsimile (03) 9632 3235

25 June, 1996

Mrs Maureen Gillan
19 Carnarvon Court
EVERTON HILLS QLD 4053

By facsimile: (07) 3353 3593

Mr Ron & Mrs Joyce Huch
3 Mayflower Street
WARNER QLD 4500

By Post

Dear Mrs Gillan

Arbitration

I refer to your letter to the Telecommunications Industry Ombudsman of 24 June 1996, a copy of which was forwarded to Telstra by the TIO today.

Telstra advises that pursuant to your instructions the award monies in the sum of $225,000.00 were paid to Valkobi Pty Ltd this afternoon by telegraphic transfer, as follows:-

- Commonwealth Bank, Everton Park, QLD.
- Branch No. 4110
- Account No. 0020 4766

A Copy of the Commonwealth Bank deposit receipt is enclosed for your record.

Yours faithfully

Ted Benjamin
Director
Consumer Affairs

Encl:

cc: Ms Amanda Davis
By facsimile: (03) 9489 4452

Mr John Pinnock
Telecommunications Industry Ombudsman
By facsimile: (03) 9277 8797

Commonwealth Bank
Commonwealth Bank of Australia
ACN 123 123 124

Do not complete deposit receipt if passbook is being presented

Date 25 6 96

Account Identification Number
411 P - 00204766

Account Name
JACKOBI P/L

$ 225000 —

Teller
VT

Deposit Receipt

Proceeds of cheques not available until cleared.
Please retain for statement verification.

Exhibit 58

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 TELECOMMUNICATIONS INDUSTRY OMBUDSMAN MELBOURNE **DATE:** 25.6.96 **NUMBER OF PAGES** (including this page)

If you have received this document in error, please phone us on 008 816 522.

Dear Mr Pinnock,

I am writing today regarding two separate issues:

FIRST ISSUE
Your statement to Mr Laurie James, President of the Institute of Arbitrators, regarding a telephone call to Dr Hughes, Arbitrator of the Fast Track Arbitration Procedure (FTAP).

To date I have had no response from you, personally, as to why you chose to tell Mr James that I phoned Dr Hughes's residence at 2.00 am on 29th November 1995 and that, in making this alleged call, I behaved unethically. John we are still waiting on a response from Gordon on this

I have evidence which proves that your statement is incorrect but you have not had the courage to explain where you gained this incorrect information. I still await clarification of this situation.

SECOND ISSUE
FOI documents I received by courier on 23rd June 1996.

This delivery included letters from Dr Hughes to Telstra and from Telstra to Dr Hughes during the time leading up to the FTAP, and during the Arbitration Procedure.

It is clear from this material that Dr Hughes withheld information from me during the FTAP. This is against the FTAP rules which state that all correspondence sent to Dr Hughes, either by me or by Telstra, must be also forwarded on to the other party. Dr Hughes did not honour his roll as Arbitrator as this material clearly shows.

1. *FOI documents L69036 and L69046*
These are two letters from Telstra, dated 16 December 1994. One is addressed to Mr Bruce Mathews of Austel and the other to Dr Hughes.

These letters refer to correspondence dated 8th December 1994 that Dr Hughes had previously received from Austel. In this earlier correspondence Austel stated that I had raised complaints with them regarding short duration and incorrectly charged calls to my phone service.

The letter to Mr Mathews refers to an attachment which clearly states that Telstra would defend these short duration and incorrectly charged calls, and the Recorded Voice Announcement faults, in their defence of the FTAP.

Telstra did not cover these faults in their Defence of 12 December 1994.

FOI document L69036 is the attachment which was re-sent to Dr Hughes by Telstra on 16 December 1994. This means that Dr Hughes was FULLY AWARE that Telstra had not defended these faults to my service during the FTAP.

The last paragraph of FOI-document L69046 (letter from Telstra to Dr Hughes) states:

> *"The simplest way forward may be for Mr Smith and Telecom and yourself to all confirm in writing that this information can be provided to Austel if this meets with your approval."*

The author of this document was Ted Benjamin.

This paragraph raises two issues:

A. Dr Hughes did not write to me with regard to this issue during the FTAP.

and

B. Dr Hughes did not forward a copy of this letter to me during the FTAP.

I raised these major faults during the FTAP and again after the FTAP and there has still been NO RESPONSE from Dr Hughes. Dr Hughes violated my rights under the rules of the FTAP (clause 6) by not providing me with a copy of this very important letter.

Evidence at hand also shows that Dr Hughes instructed DMR and Lanes to omit a proposed Addendum Report on some of these issues which had been raised through Austel.

I appeal to you, as Administrator of the FTAP, to ask Dr Hughes why he conducted the FTAP in this manner.

2. *FOI document L69398, from Dr Hughes to Ted Benjamin of Telstra, dated 1st May 1995.*

This document refers to an attached document numbered L69399 to L69449, the Technical Evaluation Report. There is NO signed letter from either Paul Howell of DMR or David Read of Lanes, even though your office had stated that Paul Howell would sign this report. I have not seen such a signature to this Report.

I appeal to your office to have this signature provided by Paul Howell. Evidence indicates that Telstra has not seen a signature to this Report either.

3. *FOI document A63178, from Ted Benjamin of Telstra, dated 27th April 1995.*

This document clearly shows that Dr Hughes was given historic information relating to the old RAX exchange at Cape Bridgewater. A copy of this letter was not forwarded to me by Dr Hughes - another violation of my rights under the rules of the FTAP (clause 6).

4. *FOI documents A63339 to A63368, from Ted Benjamin of Telstra to Dr Hughes, dated 12th April 1995, regarding the TF200 Touch Phone Report.*

The office of the TIO is aware of my request to Dr Hughes, covered by a Forensic Document Researcher, Paul Westward. Mr Westward is qualified to confirm the facts contained in the laboratory tests which were performed on the TF200 Touch Phone and on which the final Report was based. Dr Hughes refused my request.

In this letter (A63339 to A63368), Mr Benjamin states that each of the two authors of the TF200 Report would sign a Statutory Declaration covering the Report. Telstra also stated that they would return the TF200 Phone itself, for Dr Hughes to view.

This letter, dated 12th April 1995, is another document which I did not see: once again Dr Hughes violated my rights under the rules of the FTAP (clause 6).

Because this particular letter from Mr Benjamin mentioned two Statutory Declarations it may well have swayed Dr Hughes in favour of Telstra. I was severely disadvantaged, again, because Dr Hughes did not allow me the opportunity to lodge a counter claim against this Technical Report, under the FTAP.

I have since proved that Telstra are nothing less than criminals who poured beer into my phone and then submitted this as defence material, stating that I had spilled the beer into the phone. Dr Hughes was wrong in not allowing me access to this information.

5. ***FOI documents L69356 to L69086, from Ted Benjamin of Telstra to Dr Hughes, dated 9th May 1995: two responses from Telstra, one regarding the Technical Evaluation Report by DMR and Lanes and the other regarding the Financial Evaluation Report by Ferrier Hodgson Corporate Advisory.***

I did not see this letter, or the attachments, during the FTAP: once again Dr Hughes violated my rights under the rules of the FTAP (clause 6).

6. ***FOI documents L69485 to L69537, a letter (and attachment) from Dr Hughes to Ted Benjamin, dated 9th May, 1995, regarding my response to the DMR/Lanes and FIICA Reports.***

In relation to these two reports, it is clear that Dr Hughes provided Telstra with copies of documents from me, but he did not supply me with copies of documents from Telstra.

7. ***Further letters forwarded to Dr Hughes by Telstra but not forwarded on to me, by either Telstra or Dr Hughes, during the FTAP. These include FOI documents:***

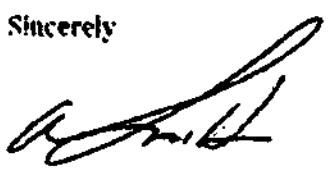
L68983 & 84	*16/9/94*	L63369	*23/12/95*	LG3339	*12/4/94*
L68989 & 90	*23/9/94*	L63820	*6/1/95*	L69036 & 37	*16/12/94*
L68995	*3/10/94*	L63898	*22/12/94*	L69046	*16/12/94*
L63861	*12/4/95*	L69028	*6/12/94*		

Once again I appeal to the office of the TIO, as Administrator of the FTAP, to state what your office intends to do regarding these serious breaches of the rules of the FTAP (clause 6). I also make it known that FOI documents received on 23rd June, 1996, also show that Dr Hughes did not supply Telstra with all my information.

The evidence listed above includes only those FOI documents that I HAVE received from Telstra, under this FOI request. I have also notified Mr John Wynack of the Commonwealth Ombudsman's Office that Telstra still has not provided all the FOI documents which I requested. How many documents have I not yet seen?

I await your response.

Sincerely



Alan Smith

copies to:

Senator Richard Alston, Minister for Communications and the Arts, Canberra
Mr Daryl Williams, Minister for Justice and Attorney General, Canberra
Mr John Wynack, Commonwealth Ombudsman's Office, Canberra
Mr Peter Bartlett, Minter Ellison Morris Fletcher
Mr Laurie James, President, Institute of Arbitrators, Perth

Exhibit 59

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 TELECOMMUNICATIONS INDUSTRY OMBUDSMAN MELBOURNE **DATE:** 26.6.96 **NUMBER OF PAGES** (including this page) /

If you have received this document in error, please phone us on 008 816 522.

Dear Mr Pinnock,

Please note: Letter date 25/6/96, page 3 - FOI document referred to as A63681, date 12/4/95 should read A63658 dated 27/2/95.

I find it very sad to be in possession of so many FOI documents which support my allegations that many, many copies of internal correspondence I forwarded to Dr Hughes during the FTAP was never seen by the Resource Unit or Telstra.

It is equally sad that copies of Telstra letters, which were also part of the FTAP, were not forwarded to me.

This FTAP was a demonstration of what happens in Australia today when a small business like mine, with limited finances and other resources, attempts to secure justice from large corporations with unlimited financial backing and resources, like Ferrier Hodgson Corporate Advisory, Lanes Telecommunications, Hunt & Hunt, and Telstra.

No-one that I know; friends, the co-author of my forthcoming publication and others, can understand how I keep going in this battle, with the knowledge I have of the unethical behaviour I have been forced to contend with.

In the name of Australian justice there must be some way to 'overhaul' the FTAP saga.

Sincerely,

Alan Smith

There are quite serious allegations. We need to respond to specific letters Smith says weren't forwarded & reviewed and provide answers on each. Before we

Exhibit 60

Ann Garms OAM
The Tivoli Theatre
48-52 Costin Street
Fortitude Valley
BRISBANE
Qld 4006

Ph: [07] 32571288
Fax: [07] 32571583

27 June 1996

The Hon Daryl Williams AM, QC, MP
Attorney General and Minister for Justice
Parliament House
CANBERRA ACT

Dear Minister,

Re: Defective Administration and unlawful corporate conduct by TELSTRA Corporation. - "*TELSTRA senior technical officers have made statements under oath which are known to them to be untrue*"

I wish to submit a formal complaint concerning Defective Administration and unlawful conduct by TELSTRA Corporation. I am in Arbitration with TELSTRA. The Arbitration is known as the "*Fast Track Arbitration Procedure.*"

The Arbitration was negotiated by AUSTEL on behalf of four small business customers of whom I am one. We are commonly referred to as the CoT Cases "*Casualties of* TELSTRA."

The Rules of the FTAP "*Arbitration Proceedings*" stipulate that "*the arbitration will be on documents and written submissions only*" In TELSTRA's Defence TELSTRA Corporation submitted as "evidence" Statutory Declarations by TELSTRA personnel. In these Statutory Declarations TELSTRA senior technical officers have made statements under oath which are known to them to be untrue.

I am informed that it is a crime under the *Crimes Act of 1914* to provide false testimony under oath. The unlawful conduct adopted by TELSTRA Corporation has severely disadvantaged us in the arbitration process.

TELSTRA is reliant upon the Statutory Declarations as evidence because TELSTRA states that the majority of historic documents which they base their Defence on have either disappeared or have been destroyed. It is therefore absolutely crucial to the process of Natural Justice that TELSTRA's Statutory Declarations be incontestable.

Subsequent to my complaint concerning the validity of TELSTRA's Defence to the Arbitrator, Mr Ted Benjamin - National Manager Customer Response Unit TELSTRA wrote on the 9 June, 1995:

"The BOO1 Report is itself not evidence (hearsay or otherwise). The question of admissibility of the Report would therefore not seem to arise".....

"Telecom has provided the evidence upon which the BOO1 Report was based separately in the various appendices and Statutory Declarations."

I am in possession of documents which validate my assertions that the testimony sworn was known to the declarant to be untrue. Accompanying this complaint I enclose the Statutory Declarations of GEORGE SZYLKARSKI, LESLIE CHAMBERLAIN - 1989-1991 Area Manager (North) for Telecom Business Services ("TBS"). 1991- Telecom Manager, Network Operations, and PAUL HOWARD MIDDLEDITCH together with copies of the documentary evidence which disproves the sworn declarations. I will forward the Attachments with the bound copy of this complaint.

I will provide you with additional submissions next week on other statements submitted by TELSTRA Officers under oath and which were known to the declarants to be untrue.

There is now conclusive documentary evidence that TELSTRA misled *AUSTEL, Bell Canada International* and *Coopers and Lybrand* during their Inquiries. The subsequent "Reports" published by the above are in the most important areas incorrect and therefore defamatory and have caused damage to our credibility. I will today be lodging a formal complaint with AUSTEL in this regard.

The Commonwealth Ombudsman Ms Phillipa Smith has just completed an inquiry into my complaint concerning the conduct of TELSTRA in the provision of documents under FOI including the withholding and alleged destruction of documents by TELSTRA. *"TELSTRA & FOI - Report of an investigation into a complaint by Mrs Ann Garms May 1996 - Report under section 35A of the Ombudsman Act 1976."*

I will forward a copy of the Commonwealth Ombudsmans Report with the original of this complaint.

I would appreciate your advice as a matter of urgency as to what action you will be taking in this matter. Your officer asked me if I had lodged a complaint with the Australian Federal Police? Could you please advise me whether I or your office should lodge the complaint.

I would appreciate an acknowledgment of receipt of this complaint.

Yours sincerely

Ann Garms

CC	Mr Neil Tuckwell Chairman	AUSTEL
	Senator Ronald Boswell	National Party leader in the Senate
	Senator the Hon Richard Alston	Minister for Communications and the Arts
	The Hon Warwick Smith	Minister for Sport, Territories and Local Government
	The Hon Peter Costello MP	Treasurer
	The Hon Peter Reith MP	Minister for Industrial Relations
	Senator the Hon Robert Hill	Minister for the Environment
	Senator Vicki Bourne	Australian Democrats
	Ms Phillipa Smith	Commonwealth Ombudsman
	Dr Gordon Hughes	Hunt and Hunt Lawyers
	Mr John Pinnock	Telecommunications Industry Ombudsman
	Mr Peter Bartlett	Minter Ellison - legal adviser to the TIO

FAXED 28-6-96

Ann Garms

Exhibit 61

AUSTEL
AUSTRALIAN
TELECOMMUNICATIONS
AUTHORITY

5 Queens Road
Melbourne
Victoria 3004
Tel: (03) 9828 7300
Fax: (03) 9820 3021
Free Call: 1800 335 526
TTY: (03) 9828 7490

11 July 1996

Senator The Hon Richard Alston
Minister for Communications & the Arts
Parliament House
CANBERRA 2600

Dear Senator Alston

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

I am pleased to provide AUSTEL's sixth status report on Telstra's progress in implementing the recommendations of AUSTEL's April 1994 *The COT Cases* Report.

This report consists of two parts: a summary of significant developments to date; and a more detailed commentary on the implementation of outstanding recommendations.

Telstra has now implemented most of the recommendations of *The COT Cases* Report. However, some significant recommendations remain to be implemented, and Telstra's progress in relation to these is of concern to AUSTEL. Of particular concern is Telstra's failure to introduce its enhanced fault management support system. Telstra continues to utilise the LEOPARD fault management system, which was identified by its consultants Coopers & Lybrand in November 1993 as being urgently in need of replacement.

On a more positive note, Telstra has now fully implemented recommendation 1 of the Bell Canada International *Network Consulting Study*, so that greater information is now available on reasons for call failure, thus allowing improved network fault identification. Telstra has also decided to adopt a universal complaint management system, known as CICERO. AUSTEL understands that Telstra is already deriving considerable benefit from its analysis of the complaint data produced by CICERO, and that this will lead to customer benefits.

Also included in AUSTEL's report is a report by the Telecommunications Industry Ombudsman (TIO) on the *Status and Progress of the Fast Track, Special and Standard Arbitration Procedures*. The TIO is critical of Telstra's behaviour and attitude in relation to these arbitrations.

Yours sincerely

Sue Harlow
Member

Exhibit 62

FERRIER HODGSON
CORPORATE ADVISORY

COPY

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 Smiths 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 Telsta 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 Abritration 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

Exhibit 63

arbitration procedures provided that where their rules were otherwise silent the proceedings were to be governed by the Commercial Arbitration Act of Victoria. Significantly, that provides that an award by the arbitrator is registrable as an order of the Victorian Supreme Court, and the act confers basically what is a limited right of appeal against any award by the arbitrator. If we look——

Senator SCHACHT—Victoria?

Mr Pinnock—Yes, Victoria. We know that the arbitration procedures were intended to be non-legalistic. Much time has been spent talking about that point. They were also required to operate in accordance with the principles of natural justice but, significantly, they also allowed the arbitrator to relax certain rules of law or evidence which might otherwise prevent a fair determination of the claims. Essentially, the procedure required the claimant to lodge a written claim, Telstra to lodge a written defence and then, in turn, the claimant had an opportunity to lodge a written reply to that defence. The procedures set down time limits for each of those steps, but these could be varied, and often were, by the direction of the arbitrator or upon request of either party. A fairly significant aspect of the procedures was that they provided the arbitrator with a specific power to order a party to produce documents to the other party upon that party's request. The evidence was and is to be supported by statutory declaration. Although there was a provision for evidence to be given on oath during an oral hearing at the discretion of the arbitrator, cross-examination was not to be permitted.

When the essential documents supporting the claim and defence were lodged, the arbitrator could then make a decision as to whether the resource unit should be brought in. Its formal appointment gave it the opportunity to review all of the technical and financial issues, carry out any necessary site inspections and, ultimately, prepare separate technical and financial evaluation reports which were to be sent to the arbitrator. The arbitrator was, in turn, bound to provide copies of those documents to all of the parties. At the completion of an opportunity to make submissions on those reports, the arbitrator was then in a position to make a determination and an award, if appropriate.

There is no doubt that there were a number of benefits both for the claimants and Telstra, at least as envisaged in those procedures, which were vast non-legalistic procedures operating in accordance with natural justice to produce a fair outcome—the primary benefit envisaged for the claimants. The administrative costs were to be borne by Telstra, and the committee was provided on the last occasion with the details of the costs of the total process, of which a significant portion, but certainly not the major portion, related to the actual costs of the resource unit, the arbitrators, et cetera.

As I will mention in a moment in more detail, the relaxation of the strict rules of evidence and law was something that was certainly in favour of the claimants. There are two primary benefits, it seems to me, for Telstra. The first is finality and certainty in the determination of claims, as opposed to the uncertainties of other methods, such as

resolution by mediation or negotiation. In several cases settlements had already occurred in the past with some of the CoT claimants, but had not achieved finality. The second benefit was the confidentiality of the process as opposed to, for instance, litigation in open court. The experience has shown that not all of these benefits have emerged or materialised.

In my view, there was one potential difficulty that should have been obvious from the outset. I do not make any apology for coming along to this committee and saying that outright, because it should have been obvious, in my view, to the parties and everyone involved from the beginning. This deficiency revolves around the vexed question of how the claimants were to obtain, and the best method of obtaining, documents from Telstra which were to assist them in the process. In the process leading up to the development of the arbitration procedures—and I was not a party to that, but I know enough about it to be able to say this—the claimants were told clearly that documents were to be made available to them under the FOI Act. The Commonwealth Ombudsman has already reported on the problems encountered by the claimants in that process, and I do not propose to reiterate her findings.

Senator SCHACHT—Do you disagree with her findings?

Mr Pinnock—No. For present purposes, though, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over that process, because it was a process conducted entirely outside the ambit of the arbitration procedures. Secondly, in providing documents Telstra was entitled to rely on whatever exemptions it might be entitled to under the FOI Act, and this often resulted in claimants receiving documents, the flow of which made them very difficult to understand. In some cases, there were obviously excisions of information. In contrast to this, the claimants could have sought access to documents on a regular basis under the arbitration procedures. Provided that those documents were relevant, the arbitrator could have directed Telstra to produce those documents without any deletions. If there was any argument as to the relevance of documents, the arbitrator would have had the power to require their production and inspection by him to make that determination in the first place. Thirdly, we know that the FOI process as administered was extremely slow, and this contributed to much, but certainly not all, of the delay which the claimants encountered in prosecuting their claims through the arbitration procedures.

With the benefit of hindsight, I will turn now to the lessons that are learnt from experience of the process. Firstly, arbitration is inherently a legalistic or quasi-legalistic procedure. It does not really matter how you might finetune any particular arbitration. It has the normal attributes of a quasi-legal procedure, where you have parties opposing each other with someone in the middle having to make a determination. Even having said that, I am on record as saying that Telstra's approach to the arbitrations was clearly one which was excessively legalistic. For instance, in many instances it made voluminous requests for

further and better particulars of the legal basis of claimants' cases when in fact it was probably in a much better position to judge those issues than almost any or all of the claimants.

I am on record as making some general remarks about that issue, both in the reports through the TIO and through the medium of Austel's quarterly reports on Telstra's implementation of its recommendations flowing from its original CoT report. One consequence of Telstra's approach was that the claimants tried not only to match their opponent's legal resources, but also felt it necessary to engage their own technical and financial experts. This was a significant expense for the claimants because those costs were not administrative costs of the arbitration procedures. Those procedures, as we know, made no provision for the payment of a claimant's legal or other costs when the claimant received an award in his or her favour. Although this deficiency has now largely been remedied by Telstra agreeing to contribute to a successful claimant's reasonable costs by way of its ex gratia payment agreement which Mr Ward referred to, the absence in my view of such a guarantee in the arbitration procedures at the outset was a deficiency.

Next, there have been significant delays over and above those delays associated with the FOI process and, in some of those cases, some of those delays have been due not to Telstra but to claimants being unable to provide the sort of information that was required to substantiate their business losses. Those delays have also been exacerbated by extensive arguments by both sides, but particularly by the claimants, as to the accuracy and merits of the technical evaluation and financial evaluation of reports produced by the resource unit, so much so, I might say, that the resource unit has almost been in danger of being dragged into the fray when the original intention of that process was for it to be exclusively and really a matter for advice to the arbitrator. However, perhaps the most difficult issue, and one that has bedevilled the arbitrations almost from the beginning, was the inability of the parties to treat these disputes as matters of a purely commercial nature. They simply were unable to put behind them the attitude of mutual suspicion and mistrust that had built up over those years. It is natural but, nevertheless, it has been an issue which has turned these arbitrations into mini-battles.

On an objective and dispassionate analysis in my view of the procedures, there are nevertheless benefits that have been derived, particularly for the claimants, although I am the first to admit that they do not necessarily agree with my view on these matters. I should interpolate there that when we talk of the CoT payments it is a self-descriptor, and beyond those common features that I mentioned earlier, in my view one cannot talk of the claimants as a homogeneous group. They have very many different views on a whole range of issues, although I suppose the CoT four—the original claimants with perhaps the exception of one—do tend to feel some common cause. I simply put that on record to indicate that, with any proposition that is put forward by anyone who says, 'Well the CoTs say this', I deal almost on a daily basis with various claimants saying to me, 'We do not agree with this; we do agree with that.'

Exhibit 64

Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

March 9, 1995

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

By facsimile: (055) 267 230

Dear Alan,

Re: Resource Unit - Technical Support

As the executive of DMR Group Australia Pty. Ltd. is unavailable to provide locally based technical assistance, I propose to utilise the services of Mr. David Read and Mr. Chris Soutter of Lane Telecommunications (based in Adelaide) who are suitably qualified and independent.

Messrs. Read and Soutter will assist Mr. Paul Howell of DMR Group Inc. (Canada) in the technical assessment under the Fast Track Arbitration Procedure. Mr. Howell the principal technical advisor to the Resource Unit will be in Australia within two weeks. The technical enquiries will commence on Thursday 16th March, 1995.

Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith.

Yours faithfully,

Warwick L. Smith
Ombudsman

64

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

Box 18098
Collins Street East
Melbourne 3000

CONFIRMATION OF FAX

Telephone (03) 277 8777
Facsimile (03) 277 8797
Mobile 018 591 208

Exhibit 65

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.

65

Exhibit 66

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN - FAST TRACK ARBITRATION PROCEDURE

The following documents for the "Smith" Arbitration were sent by courier to Mr Paul Howell of DMR Group Inc. (Canada) on 21 March 1995:

Letter of Claim (SM1)
George Close Report dated 5/7/94 (SM8)
George Close Report dated August 1994 (SM9)
Telecom Defence Witness Statements
Telecom Defence B004 Service History
Telecom Defence B004 Appendix File 1
Telecom Defence B004 Appendix File 2
Telecom Defence B004 Appendix File 3
Telecom Defence B004 Appendix File 4
Telecom Defence B004 Appendix File 5
Telecom Australia
REF 1 - Statutory Declaration of Ross Marshall
REF 2 - An Introduction to Telecomunications in Australia
REF 3 - Telecom Australia's Network Management Philosophy
REF 4 - Glossary of Terms

I hereby acknowledge receipt of the above documents.

.....
Paul Howell
DMR Group Inc.

.....
Date

66

Exhibit 67

FERRIER HODGSON CORPORATE ADVISORY

By Facsimile: 0015 1 514 866 0423

10 APR 1995

5 April 1995

COPY

Mr Paul Howell
Director & Vice President
DMR Inc (Canada)
1910 Clinton Avenue
MONTREAL H3S1L1
CANADA

Dear Sir,

RE : **Telecommunications Industry Ombudsman - Fast Track Arbitration - Resources Unit**

I acknowledge receipt of your facsimile dated 3 April 1995. I now comment in relation to your facsimile accordingly:

1. Cape Bridgewater - Smith

I note that you are currently reviewing the documents. Time is of the essence in relation to the Smith arbitration, and Mr David Read of Lane Telecommunications Pty Ltd ("Lanes") has been undertaking a detailed review of the documentation. It is envisaged that he will have a draft report completed by Friday, 7 April 1995. I propose that he should fax this report to you for your review. (1)

We are under extreme pressure by the Telecommunications Industry Ombudsman and the Arbitrator to have a decision completed on Smith by Easter (14 April 1995). Accordingly, when you visit our office on 13 April 1995, it would be appreciated if you could review and sign off the Smith technical report on that day.

To expedite matters, I enclose a copy of a draft memo prepared by David Read from Lanes, which has been presented informally to the Ombudsman and to the Arbitrator to provide an outline of the technical report that is being prepared. This document will form the basis of the draft report of which will be faxed to you by Friday, 7 April 1995. (2)

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD
A.C.N. 052 403 040
EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SBLAX
LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000
TELEPHONE 03 629 8855 FACSIMILE 03 629 8361
LICENSED INVESTMENT ADVISER

67

Exhibit 68

(d) in granting extensions of time and permitting amendments and the late submission of supplementary material, I have taken account of a variety of considerations including the fact that:

- the claimant is not legally represented;
- the claimant was for some time during the course of these proceedings pursuing under FOI material allegedly in the possession of Telecom which he considered to be of relevance to the arbitration; and
- neither party appeared to be prejudiced by the extensions;
- I considered it essential that both parties had the opportunity to place all relevant material before me, regardless of the time frame set out in the arbitration agreement;

(e) a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim. Given the amount being claimed, coupled with the fact that the claim documentation had not been prepared with legal assistance, I considered this request to be justified;

(f) because of difficulties experienced by the claimant in complying fully with the request for further particulars and the request for production of documents, a hearing was convened at my office on 11 October 1994 in order to clarify the information being sought and to establish a time frame for its production;

(g) the defence documentation was submitted on ***[date]*** and was subsequently supplemented by additional material;

(h) on 24 January 1995 I received material comprising the claimant's reply to Telecom's defence. This material was the subject of subsequent amendment;

(i) pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit;

(j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed Ferrier Hodgson (and, through them, DMR) to conduct certain inquiries on my behalf;

(k) on 1 May 1995, I received a technical report and on 3 May 1995 a commercial report from the Resource Unit, each of which assisted me

Exhibit 69

(b) I have acquiesced in a number of requests for extensions of time for compliance with these deadlines;

(c) the claim documentation was initially submitted on 15 June 1994 and was subsequently supplemented by additional material;

(d) in granting extensions of time and permitting amendments and the late submission of supplementary material, I have taken account of a variety of considerations including the fact that:

- the claimant is not legally represented;
- the claimant was for some time during the course of these proceedings pursuing under FOI material allegedly in the possession of Telecom which he considered to be of relevance to the arbitration;
- neither party appeared to be prejudiced by the extensions; and
- I considered it essential that both parties had every reasonable opportunity to place relevant material before me, regardless of the time frame set out in the arbitration agreement;

(e) a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim. Given the amount being claimed, coupled with the fact that the claim documentation had not been prepared with legal assistance, I considered this request to be justified;

(f) because of difficulties experienced by the claimant in complying fully with the request for further particulars and the request for production of documents, a hearing was convened at my office on 11 October 1994 in order to clarify the information being sought and to establish a time frame for its production;

(g) the defence documentation was submitted on 13 December 1994 and was subsequently supplemented by additional material;

(h) on 24 January 1995 I received material comprising the claimant's reply to Telecom's defence. This material was the subject of subsequent amendment;

(i) pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit. By consent of the parties, the role of DMR Group Australia Pty Ltd was subsequently performed jointly by DMR Group Inc. and Lane Telecommunications Pty Ltd;

(j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquiries on my behalf;

(k) on 30 April 1995, I received a technical report and on 3 May 1995 a financial report from the Resource Unit, each of which furthered my understanding of the issues in dispute;

(l) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit and both availed themselves of that opportunity.

2.2 In all, I have read in excess of 6,000 pages of documentary evidence submitted by the parties.

3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or that evidence into account. This part sets out an overview of the dispute only.

3.2 ***Overview of Claim***

(a) The claimant alleges that defective telecommunications services provided by Telecom have damaged his business and caused his health to suffer.

(b) The claimant is a chef by occupation and is now 51 years of age. In December 1987 he purchased as a going concern the Cape Bridgewater Holiday Camp, commencing occupancy in February 1988. The camp included a homestead, an old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.

(c) Cape Bridgewater is 20 kilometres from Portland. The claimant regarded the area as a significant tourist attraction and says there was no documented evidence of any decline or predicted decline in tourism at the time of the purchase.

(d) The former owner of the business now lives in India and has not provided evidence on behalf of either party in these proceedings. I know relatively little about the state of the business or the state of the telephone system used by the business as at the time of the purchase or beforehand. In any event, the claimant says he contemplated improving the existing facilities and hence the mix of clientele, thereby increasing revenue and profits.

(e) The claimant asserts that the ongoing viability of the business was to a significant extent dependent upon his ability to take telephone bookings. He states that he first became aware of a problem with his

Exhibit 70

Sources of Information

The information provided in this report has been derived and interpreted from the following documents:

- Smith - Letter of Claim (SM1)
- Smith - George Close Report dated 5/7/94 (SM8)
- Smith - George Close Report dated August 1994 (SM9)
- Smith - Telecom Defence Witness Statements
- Smith - Telecom Defence B004 Service History
- Smith - Telecom Defence B004 Appendix File 1
- Smith - Telecom Defence B004 Appendix File 2
- Smith - Telecom Defence B004 Appendix File 3
- Smith - Telecom Defence B004 Appendix File 4
- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
- Smith - FOI Material 19 December 1994 (SM44)
- Smith - George Close & Associates Report 20 January 1995 - Reply to Telecom's Defence (SM50)
- Smith - Samples of FOI Telecom Documents (SM49)
- Smith - Appendix C Additional evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc. Further information (SM46)
- Smith - Additional information (SM45)

A site visit was conducted on Wednesday 4th April 1995 covering:

- inspection of the Cape Bridgewater RCM exchange
- inspection of the CPE at the Cape Bridgewater Holiday Camp
- inspection of the exchange equipment at Portland (RCM, AXE 104, ARF)
- discussions with Mr Alan Smith, accompanied by Mr Peter Gamble of Telecom Australia.

Exhibit 71

Sources of Information

The information provided in this report has been derived and interpreted from the following documents:

- Smith - Letter of Claim (SM1)
- Smith - George Close Report dated 5/7/94 (SM8)
- Smith - George Close Report dated August 1994 (SM9)
- Smith - FOI Material 1994 (SM44)
- Smith - George Close & Associates Report 20 January 1995 - Reply to Telecom's Defence (SM50)
- Smith - Samples of FOI Telecom Documents (SM49)
- Smith - Appendix C Additional evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc. Further information (SM46)
- Smith - Assessment Submission (SM2)
    - 1-200
    - 200 - 400
    - 400 - 600
    - 600 - 800
    - 800 - 1,000
    - 1,000 - 1,289
    - 2,001 - 2,158
- Smith - Reply 18 January 1995 (SM53)
- Smith - Reply - Brief Summary January 1995
- Smith - Further Examples of Additional Evidence Two Volumes (SM16)
- Smith - Further FOI Material (SM17)
- Smith - Cape Bridgewater Par 1 & 2 (SM 20 & 21)
- Smith - Additional information (SM45)
- Smith - Telecom Defence Witness Statements
- Smith - Telecom Defence B004 Service History
- Smith - Telecom Defence B004 Appendix File 1
- Smith - Telecom Defence B004 Appendix File 2
- Smith - Telecom Defence B004 Appendix File 3
- Smith - Telecom Defence B004 Appendix File 4
- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
- Smith - Telecom Defence Principal Submission
- Smith - Telecom Defence Legal Submission
- Smith - Telecom Supplement to Defence Documents

Exhibit 72

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

GPO Box 2154 Canberra ACT 2601 Australia • telephone 02 6271 1000 • facsimile 02 6271 1901
email dcita.mail@dcita.gov.au • website http://www.dcita.gov.au