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Alan's DCITA Introduction to his Letter of Claim

SECTION 1 – Introduction to Letter of Claim

This brief overview of the attached evidence is submitted in support of my Letter of Claim, and to provide an explanation of my reasons for lodging this submission. Each of the appendix files that follow explains the significance of the document or documents covered by the appendix. Together, these documents demonstrate how badly the telephone faults affected my business, and how badly I was treated, both during and after my arbitration, by the arbitrator, his resource unit, the administrator of the arbitration and the defendants.

If my valid claims had been correctly investigated during my arbitration or, for that matter, in 1995, straight after my arbitration, when I first began to lodge my complaints with John Pinnock, the Telecommunications Industry Ombudsman, I wouldn't be here now, more than ten years later, preparing this submission for assessment.

Back in August 1995, just three months after my arbitration was deemed to be complete, and after constantly complaining to the TIO and the arbitrator that the process had been seriously flawed, the arbitrator's secretary inadvertently provided me with a number of arbitration procedural documents I had not previously seen. It was these particularly alarming papers that finally provided the documented proof I needed to support my claims: they exposed many of the deficiencies in the arbitration process, and provided clear evidence that the arbitrator had allowed a draft report to be submitted both to Telstra and to me, for our official written response, as if it was a final and complete report. Both the draft report, prepared by the TIO-appointed technical consultants, DMR & Lanes, and the final version that was presented to Telstra and me were dated 30th April 1995. An important request made in the draft version however had been removed from the version presented as final – this request by the consultants to the arbitrator was for 'extra weeks' to assess and investigate my billing claim documents. The list of documents assessed to that date, and included with the draft version, did NOT include my billing claim documents so it is clear that, when they prepared the draft version of their report on 30th April, the consultants had NOT yet assessed these billing claim documents. The list of assessed documents included in the version presented as final and complete, also dated 30th April (Appendix 15(g), File one), magically DID include my billing claim documents. In other words, both Telstra and I responded to an incomplete technical report that had been altered to appear complete.

This evidence that had been inadvertently provided to me by the arbitrator's secretary prompted me, in January 1996, to write to Mr Laurie James, then the President the Institute of Arbitrators, and formally register my complaints with them, for their investigation. As I have documented elsewhere in this submission, as a direct result of
interference in the legal process by the arbitrator and the TIO, any investigation that the Institute may have intended to conduct was never carried out. On 15th November 1995, two months before I approached the Institute, Mr Pinnock had already received written advice from John Rundell, the arbitration project manager, that none of my billing claim documents were ever assessed by DMR & Lanes, the technical consultants (Appendix 15(c), File one), but still he failed to advise the President of the Institute of this significant issue.

DCITA – LETTER OF CLAIM

SECTION 2 – Evidence attached to my letter of claim

EVIDENCE ONE
This chronology of events, are dated giving the assessor a brief view of my working life and the matters under investigation including my original 'Letter of Claim' dated 7th June 1994, provided to Dr Hughes, arbitrator.

EVIDENCE TWO
"The Arbitrator", the third draft of an unpublished manuscript that provides a good insight into my matters now being assessed.

EVIDENCE THREE
These four files include a chronology of events, with each point in the chronology supported by documents in an attached appendix. Each document in the appendix is described in detail, the important sections are highlighted and the document's relevance to my claim is discussed clearly, providing irrefutable proof that my arbitration was not conducted or administered either transparently or lawfully, according to the Victorian Arbitration Act.

EVIDENCE FOUR
The summary of file four begins on page 8 of the following introduction.

EVIDENCE FIVE
Verification testing issues including the AUSTEL COT Report dated 13th April 1994, first sent to the then-Communications Minister Michael Lee MP, discusses a number of important issues related directly to my case. I wish to draw the assessor's attention to the statement made in this report regarding verification testing (see page 55, point 3.26): *"AUSTEL also has the power to determine a standard of service against which Telecom's performance may be effectively measured and is developing such a standard in consultation with Telecom. Such a standard together with a service quality verification test which AUSTEL, is also developing in consultation with Telecom so that it may be applied to any case subject to settlement."*

EVIDENCE SIX
A video showing the new wiring at the Holiday Camp, including segments from the Channel Nine programme "A Currant Affair".

EVIDENCE SEVEN
Memorandum of advice by Associate Professor Suzanne McNicol, regarding Telstra's unlawful use of Legal Professional Privilege during the COT arbitrations.

The following information is a brief overview of the matters I wish the assessor to take into account when investigating my claim. The assessor will observe that each of the points raised below is supported in the attached appendices.

1. ARBITRATION TECHNICAL REPORT: The DMR & Lanes final report provided to Telstra and me for our written response was a disguised draft.

2 ARBITRATION DOCUMENTS WITHELD: Numerous procedural documents were knowingly withheld from me during my arbitration.

3. *BILLING CLAIM*: In a letter to John Pinnock (then the TIO and administrator of my arbitration), FHCA admitted that NONE of the billing fault information I submitted as part of my claim was ever investigated or assessed.

4. *INVESTIGATION INTO THE ARBITRATION PROCESS*:

   a. FHCA and their agents went to extreme lengths to stop the Institute of Arbitrators Australia and/or the Australian Securities and Investment Commission from investigating my allegations that my arbitration was not conducted either transparently or lawfully.

   b. The arbitrator, Dr Gordon Hughes, and the new TIO/administrator, John Pinnock, also went to great lengths to hide the truth from Mr Laurie James, then the President of the Institute of Arbitrators Australia.

5. *ARBITRATION DECLARED 'NOT CREDIBLE'*: On 12th May 1995, the day after he had deliberated on the first COT arbitration (mine), the arbitrator wrote to the TIO, Warwick Smith, declaring that the whole arbitration process should be abandoned and a new agreement should be drawn up before proceeding with any more COT arbitrations because the original rules were not credible.

6. *FURTHER COT ARBITRATIONS PROCEEDED*: The arbitrator and the TIO continued to work within the existing arbitration rules for the remaining COT claimants, even though the process had clearly been deemed not to be credible.

7. *TECHNICAL CONSULTANTS REQUEST DENIED*: Before formally submitting the draft of their technical report, the TIO-appointed technical unit of DMR (Canada) and Lanes (Australia) wrote to the arbitrator, asking for extra time to properly investigate all my billing claim documents and warning that the draft of their report was incomplete without this further investigation. The arbitrator refused their request, removed the word 'draft' from the technical report of 30th April 1995, and presented it to my technical advisor, Mr George Close, and Telstra's defence as the finished report, even though it had not been signed off.

8. *DRAFT TECHNICAL REPORT ALTERED*: Fourteen sets of my claim documents, including the billing information that DMR & Lanes never did investigate, were falsely added to the list of alleged investigated documents which was attached to the DMR & Lanes draft report that was masqueraded as the final report.

9. *SETTLEMENT OF 11TH DECEMBER 1992*: Dr Hughes neither addressed Telstra's misconduct during this previous settlement, nor directed the technical consultants to investigate it, even though it was this misconduct that was the very reason that caused AUSTEL, the regulator at the time, to instigate the Fast Track Settlement Proposal that preceded the arbitration process. AUSTEL's COT report of 13th April 1994, which was given to the then-Minister for Communications, confirmed that the COT claimants were seriously dissatisfied with their previous settlements and concluded that the phone faults had continued to occur long after the settlements had been awarded.

10. *TELSTRA MANIPULATION OF THE FIRST SETTLEMENT*:

    a. On 3rd June 1993 the arbitration technical consultants visited my premises and inadvertently left behind one of their briefcases. Information in this

briefcase showed that Telstra had knowingly misled me at my first settlement.

b. AUSTEL wrote to Telstra confirming that they had proof that Telstra had knowingly misled me at my first settlement and that I had accepted the compensation offered by Telstra because I believed Telstra's explanation that the faults had never been as bad as I thought.

c. Telstra documentation proves that the problems were as bad as I thought and the Telstra officials dealing with my settlement knew, even as I agreed to accept their settlement, that the problems were still occurring.

11. *BELL CANADA REPORT*:

a. During the negotiation period to arbitrate the COT cases, Bell Canada Inc carried out testing of the phone lines into Cape Bridgewater on behalf of Telstra. Telstra then provided the arbitrator with Bell Canada's report, which stated that they had made 13,000 successful calls to the Cape Bridgewater exchange over a five-day period. Even while submitting this report to the arbitration, Telstra knew that the test calls had not been conducted at the times or on the dates shown in the Bell Canada report.

b. The same faulty Bell Canada report was also used by Telstra on 12th December 1994, as part of their defence of my arbitration claims, even though Telstra had written to Bell Canada months before, declaring that the tests detailed in the report were 'impracticable'.

12. *VERIFICATION TESTING*: AUSTEL directed Telstra to carry out specific verification transmission testing to show that all my phone lines were working correctly before my arbitration ended. Even though AUSTEL twice advised Telstra that the testing process was deficient, Telstra still provided the arbitrator with a signed witness statement and a signed statutory declaration falsely stating that the verification testing carried out on 29th September 1994 had met and exceeded AUSTEL's requirements.

13. *TF200 REPORT*: Telstra provided the arbitrator with a report titled *"Smith – TF200 Touchphone"* as part of the arbitration process but this was a falsely manufactured document, produced to convince the arbitrator, FHCA and the technical consultants that I had spilled beer into my phone early in April 1994 and that it was this beer – referred to in the report as being 'wet and sticky' – that was causing the phone to lock up and not disconnect correctly. Telstra's laboratory notes and graphs, were not provided to the arbitration and I only received them six months after the arbitrator had completed my case. These documents confirm that someone introduced beer into the phone after Telstra technicians had removed it from my premises.

14. *ONGOING BILLING FAULTS*:

a. From the end of my arbitration until January 1998 I wrote numerous letters to both the TIO and the Minister's office, complaining that the billing faults, often caused by the lock up problem, were still occurring.

b. My complaints led to Telstra visiting my business on 16th January 1998 – thirty-three months after my arbitration had been declared completed. At this visit the Telstra technicians agreed, in front of an independent witness, that my fresh evidence proved that the billing faults raised in my

arbitration claim had indeed continued after my arbitration. The technician suggested I continue to provide Telstra with information regarding these problems and that I do this via the TIO's office.

c. On 4th February 1998 Telstra provided the Minister and the TIO with file notes from the meeting at my premises on 16th January 1998. These notes confirm the technician's acknowledgement that the faults appeared to have continued after my arbitration. The TIO neither provided me with a copy of the file notes nor advised me of Telstra's findings in relation to the continuing phone and fax problems.

d. I continued to complain to the TIO about the same billing, phone and fax problems until late October 1998 but the TIO still allowed Telstra to disconnect my designated fax line in the November. Telstra then refused to reconnect the line until I paid all the billed charges even though their files notes 4th February 1998, (see point c above), confirmed I was still experiencing billing problems. I was then forced to operate the faxing side of my business from my residence next door. Documents provided to John Pinnock and David Hawker MP, after November 1998, confirm the lock-up and billing faults continued at my residence. Please note three fax machines have been purchased since 1994 in an attempt to fix this lock-up billing fault.

e. Telstra disconnected my customer-service Gold Phone in December 1995 and, until I sold the business in December 2001, refused to reconnect it, even though David Hawker MP (my local Member of Parliament) continued to ask for explanations for the disconnection. Documents provided to the TIO after this January 1998 investigation prove that the TIO-appointed arbitration technical consultants DMR & Lanes, stated in their draft report that the system (line) to which this gold phone was connected to suffered numerous problems and faults.

f. Until late 2001 I continued to provide the TIO and the Minister with documents confirming the on-going state of the phone and fax problems that were, in turn, creating serious billing faults because the lines were not disconnecting properly and most of my calls were long-distance, timed calls. These problems continued right up to the night before I sold my business.

g. Correspondence at hand shows that, in February 1999 the Hon Senator Richard Alston, then the Minister for Communications, asked the TIO when the billing problem investigation would be finalised since they had been before the Minister for some years.

15. *INFORMATION RECEIVED FROM THE TIO's OFFICE UNDER THE TIO PRIVACY POLICY ACT*: In late 2001/early 2002 I received from the TIO's office a number of documents that the TIO had previously refused to provide to me. Some of these documents confirmed that

a. Telstra admitted to the TIO that they had withheld at least 40% of the documents I requested under FOI during my arbitration until after the arbitrator had handed down his award.

b. In an attempt to stop the Institute of Arbitrators from investigating my complaints about the way my arbitration had been handled, the arbitrator

and the TIO provided to the President of the Institute of Arbitrators with misleading information.

16. *THE DERAILING OF A POSSIBLE INSTITUTE OF ARBITRATORS INVESTIGATION*: Between 23rd January and 15th February 1996 a number of letters were exchanged by the arbitrator, Dr Hughes and the TIO (then John Pinnock), in relation to the possibility of an investigation being carried out by the Institute of Arbitrators. These letters record Dr Hughes's reticence to *'make a full and frank disclosure of the facts'* surrounding my arbitration, in case such a disclosure would jeopardise the rest of the COT arbitrations. Clearly, if the Institute had been provided with a copy of Dr Hughes's letter of 12th May 1995, which labelled the arbitration process as 'not credible', the Institute would have gone ahead with their investigation. Instead, before it even got underway, the Institute's possible investigation was derailed by the provision of false statements and misleading attacks on my character.

17. *THE 'CAN OF WORMS'*: A fax coversheet dated 22nd June 1995, from the TIO's office to Minter Ellison, the TIO's lawyers, confirms the TIO's concerns regarding the Institute's proposed investigation, noting the fear that such an investigation might *"... open the can of worms"*.

18. *TELSTRA'S ILLEGAL ALTERATION OF FOI DOCUMENTS*: A TIO internal document dated 16th May 1994 confirms that I provided that office with proof of the way Telstra arbitration officials were interfering with information legally requested under FOI by changing information on documents before their release. This matter has never been investigated by the TIO.

19. *DOCUMENTS WITHHELD DURING MY ARBITRATION*: Among the documents provided to me IN 2001/2 under the TIO Privacy Policy Act were some of the letters I had written to the TIO over the years, with hand-written notes in the margins referring to my allegations of documents not being correctly supplied to me during my arbitration as being a 'very serious' matter. After my arbitration FHCA wrote to both the arbitrator and the TIO admitting that they had knowingly withheld from me letters from Telstra to the arbitrator in relation to billing faults.

20. *DESTRUCTION OF COT ARBITRATION DOCUMENTATION*: During 1997 the Commonwealth Ombudsman's Office wrote to Telstra a number of times regarding Telstra's admission that, less than two years after my arbitration, they had destroyed COT arbitration documents I had requested without providing me with copies. Evidence provided to me by the Australian Federal Police (AFP) in 2003, confirm these requested arbitration files appear to still exist.

21. *TELSTRA'S REFUSAL TO FULFIL FOI REQUESTS*:

    a. Between May and July 1994, during my arbitration, Telstra discovered that I had passed some FOI documents to the AFP to help with their inquiries into my complaints of illegal voice monitoring of my phone lines. Telstra then threatened to stop supplying me with FOI documents until I agreed to stop forwarding information to the AFP.

    b. Telstra then carried out this threat when they discovered I did continue to respond to official requests from the AFP for more information and I therefore did not receive the majority of my requested documents from

Telstra until 24th December 1994, twelve days after they had submitted their defence of my arbitration claims, on 12th December 1994.

c. There were 24,000 documents in the delivery I received on 24th December 1994.

d. Transcripts from the AFP confirm that they were seriously concerned regarding:

   i. The way Telstra had stopped supplying documents requested under FOI, and

   ii. AUSTEL's advice to the AFP that Telstra had been listening to my phone conversations without my permission.

22. *ALTERATIONS TO FOI DOCUMENTS*: A Telstra whistleblower wrote to the then Minister of Communications, Michael Lee MP, on 13th October 1994, confirming that Telstra officers were altering the information in documents legally requested by the COT claimants. The whistleblower listed the first four COT claimants as the main targets and Telstra's Rod Pollock as the main perpetrator. In a sworn declaration previously provided to the AFP, I had also named the same Rod Pollock as one of the people blanking out or removing information in numerous documents I had requested from Telstra. The whistleblower also recorded Telstra's Steve Black as one of the other people altering FOI documents.

23. *DEFICIENT VERIFICATION TESTING*:

a. AUSTEL wrote to Telstra's Steve Black on 16th November 1994, to notify him that Telstra's arbitration verification testing of my service lines had been deficient and to ask what Telstra intended to do about these deficiencies. Mr Black ignored AUSTEL's letter and then submitted to the arbitration a statement, sworn under oath, in which he alleged that he had read all of Telstra's defence documents (including the verification test results) and that they were all correct according to his knowledge, even though the verification testing results were covered by statements saying that the tests had met and exceeded AUSTEL's requirements.

b. In 1997 Telstra advised the Commonwealth Ombudsman's office that these 'Steve Black' files (see point 20 above), had been destroyed.

24. *SECRET ALTERATION OF ARBITRATION RULES*:

a. Arbitration documents dated 22nd March 1994 show that Steve Black met secretly with the arbitrator (Dr Hughes), the TIO and administrator of the COT arbitrations (then Warwick Smith), the TIO's Legal Counsel (Peter Bartlett) and David Krasnostine from Telstra's legal directorate to discuss altering the arbitration agreement that had already been agreed to by all parties to the arbitration. The minutes of this meeting clearly show that none of the four COT claimants were present or represented and all four claimants have since confirmed that none of us was advised of this meeting, or the changes that were made there to the arbitration rules.

b. The minutes of this secret meeting also record that the TIO was adamant that he would not endorse the arbitration agreement as fair if any changes were made to the wording of clause 10.2.2, which had been taken in full

from clause 2(f) of the original Fast Track Settlement Process (FTSP) rules. The FTSP rules had been agreed to and signed by all parties, including the four main COT claimants, on 23rd November 1993.

c. Clause 10.2.2 was changed however by the removal of the important words *"... each of the Claimants' claims"*.

25. *CONTINUING PHONE AND FAX and BILLING FAULTS*:

a. Throughout my arbitration, both before and after the faulty verification testing process, I continued to complain to Telstra, the TIO, the Minister and AUSTEL that the phone and fax faults were still occurring on my phone lines.

b. During my arbitration AUSTEL wrote to Telstra confirming the ongoing faults and asking what Telstra intended to do about these faults in general and regarding the 008/1800 billing problems in particular. Telstra responded on 11th November 1994, noting that I had raised the billing faults in my claim documents and stating that they would address those faults in their defence of my claims. They did not.

c. Telstra sent a copy of AUSTEL's letter of 11th November 1994 to the arbitrator, suggesting a meeting between Telstra, the arbitrator and me, to discuss and address the issues raised. No such meeting ever took place.

d. On 2nd August 1996, fifteen months later, FHCA admitted to the TIO and the arbitrator that numerous letters including the AUSTEL letter of 11th November 1994 letter had been deliberately withheld from the arbitration.

e. On 3rd October 1995, five months after my arbitration, AUSTEL wrote to Telstra (copied the TIO) notifying them that the billing faults had still not been addressed.

f. On 19th December 1995, as a result of my constant complaints, AUSTEL visited my business and took some of my claim documents back to Melbourne. This visit is confirmed in an internal AUSTEL document dated 26th February 1996, which acknowledges that my evidence and Telstra's own CCAS call monitoring data showed at least 27 instances of my Telstra bills not matching Telstra's records. Other Telstra CCAS (not attached) confirms that, as far back as 1993, at least 80 attempted incoming calls did not reach my business but many of them were charged to my 008/1800 account anyway.

g. Telstra internal fault documentation (attached) shows major 008/1800 billing problems across the country, between 1993 and 1995. Some documents actually question whether or not Telstra should continue to promote such a faulty service.

h. Similar CCAS data from 1993 up to my arbitration (attached) confirms that faxes I sent to the arbitrator's office, but which never arrived there, were still charged as having arrived, even though Telstra's defence documents state that they didn't.

i. An attached document demonstrates the difference between the number of faxes I was charged for and the number that actually reached their destination. A comparison of the list of faxed claim material Telstra

received from the arbitrator with my outgoing fax account shows forty-one faxes charged for but never received. No explanation has been offered for these missing documents, some of which were recorded as taking between 4 and 8 minutes to send (clearly quite long claim documents.

FILE FOUR

This file actual contains 23 Appendices with the following points giving a brief description of fifteen of those appendices attached: Appendix nineteen is most relevant to this assessment as it describes in more detail (in the appendix it self), that in fact I lost two businesses due to this Telstra fiasco.

APENDICES

1. Six letters from among the more than four hundred letters I have written over the years to Senator Alston, David Hawker and John Pinnock, in relation to the phone and fax billing faults that continued to occur long after my arbitration. The remaining letters are available for assessment, if required.
2. Some of the responses to these four hundred letters record advice from various Members of Parliament, sometimes as late as 2001, that Senator Alston intended to address my continuing complaints on behalf of the Coalition Government. This new assessment arranged by Senators Coonan and Senator Joyce is the first instance of Government intervention on my behalf.
3. Letters written during 2003 and 2004 by Darren and Jenny Lewis, the new owners of my business, to David Hawker and the TIO, detailing the Lewis's experience of the same fax lock-up problems I experienced and the same complaints from customers that I had been forced to deal with for so many years. Once Telstra finally rewired the main incoming line, and disconnected a faulty phone alarm bell at the camp however, calls to the camp more than doubled. Clearly the lock-up problems I experienced were not caused by 'beer in the phone' as Telstra insisted, but by faulty telephone lines badly installed in the past by Telstra technicians.
4. The TF200 telephone that remained at the camp after replacing the original 'drunken' TF200, and which was still in use when I sold the camp, was an EXICOM brand phone. Technical consultants have confirmed that the EXICOM company folded as a direct result of problems with this particular phone locking up after a call was disconnected. This faulty phone would have contributed to some of the phone problems experienced at the camp.
5. In the first twelve months after they took over the camp, as well as complaining to Mr Hawker, Mr & Mrs Lewis also complained to Telstra regarding phone problems similar to those I had suffered. These complaints support my complaints and point to problems not only with the wiring at the camp but also with the moisture problem that Telstra FOI document D01026 confirms affected the EXICOM. This lock-up fault not only affected the outcome of a successful incoming call but also affected the billing of the previously locked-up call.
6. Samples of my most recent letters to the Hon Senator Helen Coonan, detailing the proof I have to support some of the disturbing claims I have made regarding the arbitration technical report that was submitted to the arbitrator. In his award the arbitrator names DMR (Canada) and Lanes Telecommunications (Australia) as producing the technical findings in his award but it is now clear that the

flawed technical information recorded in the arbitrator's award was not supplied by DMR & Lanes. Who did provide this information that was used by Dr Hughes in his award? Furthermore, who provided Dr Hughes with incorrect tourism statistics regarding Cape Bridgewater, which directly led to Dr Hughes down-playing the monetary value of my award?

7. These documents have been taken from among the four hundred or more letters that I have continued to write to various parties, complaining about both the way my arbitration was conducted and the way the phone and fax faults continued to occur. All these letters are available on CD if required.

   a. Letter dated 19th June 2001, to David Hawker MP, my local Federal Member of Parliament and now Speaker in the House of Representatives, plus attachments. This letter exposes the way the COT arbitrations could have been resolved long ago, if only the administrator had declared the process nul and void back on 26th September 1997. The first document attached to this letter is a report prepared by the TIO, John Pinnock on 26th September 1997, for the Senate Environment, Recreation, Communications and the Arts Legislation Committee. This report clearly states that both the COT arbitration agreement and the process itself suffered from serious deficiencies and many problems because: *"... the Arbitrator had no control over the process, because it was conducted outside the ambit of the Arbitration Procedures."* Add this to the letter sent to the first administrator, Warwick Smith, by the arbitrator on 12th May 1995, which declared that the whole arbitration process was not credible and should therefore be abandoned, and the assessor will see how flawed the process was and will surely have to ask why the arbitrator and administrator both chose to continue with the arbitration in its original form.

   b. Agenda for a meeting with David Galbally QC and Allen Bowles on 2nd February 2005, showing how the Deputy TIO (and therefore Deputy Administrator of my arbitration), Grant Campbell, corresponded with Telstra on a number of occasions in his role of Deputy Arbitration Administrator and then, after Telstra had submitted their defence of my claims, defected to Telstra's arbitration defence unit (part of Telstra's National Customer Response Unit) without any of the COT claimants ever being advised that he had jumped ship and joined the other side.

   c. Letter dated 13th February 2005, to Senator Coonan, confirming that John Pinnock wrote to the Hon Tony Staley, Chairman of the TIO Counsel, confirming that COT claimant Brian Purton-Smith could not be arbitrated under the existing COT Arbitration Agreement *"... because of the many problems and deficiencies in the Arbitration process."* Telstra's arbitration liaison officer, Ted Benjamin was a member of the TIO Board and Counsel and would therefore have been aware of this information so why weren't the COT claimants given this same advice?

   d. Letter dated 17th February 2005, to Senator Coonan, confirming that, on at least one occasion on 12th May 1995, the TIO (then Warwick Smith) wrote to Ted Benjamin, Telstra's arbitration liaison officer, at the same time as he (Mr Smith) was forwarding confidential arbitration procedural information in relation to my arbitration to the TIO Board and the TIO

Counsel – while Mr Benjamin was a member of both these groups. This raises questions about how much other confidential information went to Telstra's arbitration liaison officer before it went to the TIO Board and Counsel. In his role as Telstra's arbitration liaison officer, Mr Benjamin was part of Telstra's National Customer Response Unit, which also employed Grant Campbell after he left the TIO's office and his position as Deputy TIO and Deputy Administrator of the COT arbitration. This situation also raises questions in relation to the numerous documents I provided to the TIO during my arbitration which were never returned to me under the TIO Privacy Policy Act. Could that be because the documents jumped ship along with Grant Campbell and found a new home with Telstra?

e. Letter dated 24th May 2005, to the Hon Peter Costello, confirming that the arbitration verification transmission tests were implemented by the telecommunications regulator, AUSTEL, specifically to assure the arbitrator that the phone services to the various COT claimants were operating to network standard. Attachment one to this letter confirms that the previous General Manager of Consumer Affairs at AUSTEL wrote, on 15th July 1995, regarding her concerns at the way the four COT claimants (Ann Garms, Maureen Gillan, Graham Schorer and I) had been treated. This letter clearly explains why these four claimants are in the position they are in today.

These last six documents and their various attachments further corroborate my allegations that my arbitration was not conducted as transparently as it should have been, nor was it conducted according to the Victorian Arbitration Act. They also show that the assessor must find in my favour on all counts regarding the losses I have tabled – which all occurred as a direct result of the disgraceful way my partner and I have been treated.

8. After signing the Fast Track Settlement Proposal (FTSP) on 22nd November 1992, I wrote this letter to Jim Holmes, then Telstra's Corporate Secretary, to officially notify him that: *"I would not sign this agreement if I thought it prevented me from continuing my efforts to have a satisfactory service for my business. It is my clear understanding that nothing in this agreement prevents me from continuing to seek a satisfactory telephone service."* The evidence covered in this document (above under the headings 'Evidence One', 'Evidence Two' and 'Evidence Three'), and the letters from the new owners of my business to the TIO and David Hawker in 2003 (attached to File Four) prove that my letter to Mr Holmes in 1993 had absolutely no effect on my situation. Furthermore, among FOI documents I received in 2001 from the Australian Federal Police (AFP), was an internal Telstra document acknowledging that they shouldn't be settling my case until all the phone problems were fixed.

9. On 9th December 1993, during the FTSP, the then Minister for Communications wrote this letter to Senator Michael Baume, acknowledging that Telstra had *"... not been maintaining telecommunications service at appropriate levels"* and accepting that, *"... in a number of cases, including Alan Smith's, there has been great personal and financial distress."*

10. Also on 9th December 1993, the Hon David Hawker MP (another Federal Member of Parliament) wrote this letter to me, noting that he would *"... like to congratulate* (me) *in* (my) *persistence to bring about improvements to Telecom's country services"* and adding that he regretted that *"... it was at such a high personal cost."*

11. This internal Telstra document dated 12th February 1993 and headed *"Network Service Unit – Network Faults"* refers to Frances Wood who was the AUSTEL manager handling my matters at that time. Please note the section I have marked with an arrow in the left margin. The MELU referred to is a telephone exchange that handled 50% of the calls trying to get through to my business and, as you can see, Telstra admits that this exchange suffered congestion on a daily basis. When that happened, callers trying to reach my business were led to believe that my phones were engaged on other calls. Evidence included in my manuscript *"The Arbitrator"* (Evidence Two), confirms that Ferrier Hodgson Corporate Advisory (FHCA) never provided this valuable document to the TIO-appointed technical consultants (DMR & Lanes), even though it had been included in my submission to DMR & Lanes and listed in the Index of that submission at 1-200 2,001 to 2,158.

12. These six pages, headed *"Country Network Performance – District Analysis"* lists the Telstra exchanges that were suffering from congestion. One hundred and eight of these exchanges, all in Victoria, are included here to provide an indication of the extent of the problems suffered during the 1990s in rural Australia. The Portland exchange is circled – it shows that, as a result of the congestion at the exchange, on average, 20% of calls coming in to the Portland exchange were lost over one twelve month period.

    The Cape Bridgewater exchange is trunked off the Portland exchange and there is much well-documented evidence of even more congestion problems being suffered at Cape Bridgewater. Calls attempting to reach my business had first to go through the congested Portland exchange and then contend with more congestion at Cape Bridgewater – clearly compounding the problem for my business. This document shows that congestion levels in other exchanges around the State ranged from 6% to 45%, even though Telstra's licensing permit allows for no more than 1.5%.

13. These five documents come from among some eighty-six similar testaments from organisations and clients and record various difficulties these people experienced, either when they tried to phone or fax my business or when they attempted to use the phone at the Camp itself. These eighty-six letters of complaint were mischievously withheld from DMR & Lanes during their technical investigations for my arbitration.

14. This important document is one of a number that confirm that local technicians had fault-monitoring equipment connected to my service and that the equipment recorded congestion problems but, when the technicians were contacted by Telstra executives they denied that the equipment was even connected. The photocopies of two ELMI tapes that are included confirm that the equipment registered an incoming call, but the local technician, Gordon Stokes, still denied that the testing equipment was connected. Mr Stokes was a witness for Telstra's defence of my claims and even some sections of his witness statement (signed under oath) can be proved to be incorrect. Other ELMI tapes confirm that other

callers attempting to reach my business reached the Cape Bridgewater Exchange but got no further. In one five-day period in May 1993, I lost twenty-nine incoming calls. I know four of the lost calls were made to my free-call service because they were charged for on my Telstra account. These twenty-nine lost calls and hundreds of other similar pieces of evidence were not provided to DMR & Lanes for assessment during my arbitration.

15. This Telstra document, FOI number 101043, headed *"Can We Fix The Can?"* is particularly disturbing and supports the points raised above regarding the severity of the congestion that has existed at rural telephone exchanges all around Australia. "*CAN*" stands for Customer Access Network. In my case this is the line from the local exchange at Cape Bridgewater to my premises. According to this document: *"Any service connected via a rural distribution cable method has a 70% chance of having DC faults. Almost 100% of rural Elevated joints (EJ) exhibit a multitude of DC faults caused by poor workmanship. There is a zero level of field staff understanding of transmission testing techniques and operating principals. The existing CAN is in very poor shape. The transmission group has not kept to the original plan of specialising in transmission type problems because the number of DC faults has reached epidemic proportions."*

Although not all the specific areas are named in relation to the issues discussed in this four-page document, a 70% level of problems is serious and clearly supports the level of problems being experienced in the 108 exchanges identified in Victoria alone as losing 6% to 45% of calls.

The statement that there is *"... a zero level of field staff understanding of transmission testing ..."* is particularly interesting in relation to the arbitration verification transmission testing carried out on my three phone lines. AUSTEL's criticism about the deficiencies in this testing process include complaints that the testing should have allowed each line to remain open for more than 120 seconds so transmission testing could pick up any problems with the line, but AUSTEL were wrongly informed Telstra technicians only kept the lines open for forty seconds between test calls. I now have Telstra's actual CCAS data report for 29th September 1994, when the deficient verification testing took place, and it confirms that, in 85% of the verification tests, Telstra's field staff actually allowed less than forty seconds per call–in some cases the line was kept open for as little as six seconds. Furthermore, each line should have had a minimum of twenty test calls but this CCAS data confirms that there weren't even thirty calls made overall on the three services. Clearly the *"Can We Fix The Can?"* document is correct – Telstra field staff had no idea how important the transmission (verification) testing was and, even if they had, they had 'zero understanding of transmission testing techniques'.

One of the field staff involved in this testing was Telstra's Peter Gamble. Mr Gamble later signed a witness statement under oath, after the regulator had written both to him and to Telstra's arbitration liaison officer (Steve Black), condemning the verification testing. In his witness statement, Mr Gamble still insisted that his testing had met and exceeded the standards required by the regulator.

The fact that DMR & Lanes did not carry out any further investigation of my complaints after October 1994 is the clear result of Telstra technicians swearing

that their testing had met AUSTEL's standards and leads directly to the whole sorry saga that I have had to endure, along with the new owners of my business.

To understand how seriously the administrator of the COT arbitrations neglected his duty of care, the assessor only has to compare three documents:

A. The TIO's report to the Senate Environment Recreational, Communications and the Arts Legislation Reference Committee on 26th September 1997 (Appendix 7 (a) File four),

B. The quote from Mr Pinnock's letter: *"... because of the many problems and deficiencies in the Arbitration process"* (Appendix 7 c, File four) and

C. The arbitrator's comment in his letter written the day after he handed down my arbitration award that the arbitration process was *"... not credible..."* (Appendix 18 b, File one).

When reading these three documents, the assessor should particularly note the arbitrator's reasons for declaring the process 'not credible' (point C above) and the TIO's comment, in his report to the Senate Reference Committee (point A above) that: *"It was necessary for site inspections and other investigations and to prepare Technical and Financial Evaluation Reports, in that order for the Arbitrator. The Arbitrator was required to provide these reports to the parties for comment and submissions"*. What Mr Pinnock omitted from his report, however, was his knowledge that in my case at least, the technicians only ever provided the arbitrator with a draft of their report which included both a request for more time to complete their investigations and clear notification that, as it stood, their report was not yet complete, but the TIO and the arbitrator simply removed the word 'draft', and the need for extra weeks needed to complete the report and any reference to the report being incomplete and submitted the document as a complete report for comment by both Telstra and me. Clearly this means that both Telstra and I responded to an incomplete draft of the report, believing it to be the final, complete document.

During September and October 1995 I provided the TIO with proof of this manipulation of the arbitration technical report but, on 26th September 1997, when he produced his official report to the Minister (point A, above) the TIO deliberately misled the Senate by omitting to include this information in his report. According to Hansard records, this official but entirely misleading report was discussed at length in Parliament, at a meeting attended by Mr Pinnock, but he still chose to keep this damming information from the Senators.

This means that from my perspective, and Telstra's, the whole process was based on a lie – which was that the main technical report was complete when it was actually an draft disguised as a complete document.

Since my arbitration, Mr Pinnock and the members of the TIO Board and Counsel have been made aware that I am not satisfied with the conduct of my arbitration and they have all directed me to appeal the award in the Victorian Supreme Court. In his report to the Senate (point A above) however, Mr Pinnock states that: *"Where the rules of the FTAP were silent, the proceedings were governed by the Victorian Commercial Act 1984. The act confers a limited right of appeal against any award by the Arbitrator"*, thus indicating that the TIO knew I actually didn't have any chance of successfully appealing the award in the Victorian Supreme Court. And if the TIO knew this, then the TIO Board and Counsel all knew it too.

In his report to the Senate, why did Mr Pinnock only note that: *"... the arbitrator had no control over the process because in was conducted outside the ambit of the arbitration procedures"?* Why weren't the COT claimants informed, before we signed the arbitration agreement, that the arbitrator would not have any control over the process? This is yet another example of the way the COT claimants were given incorrect information by the administrator, before we signed for arbitration: in this instance the correct information provided was that the TIO would be the independent umpire. Clearly the TIO never was the independent umpire the government regulator had advised us he would be, even though the Federal Government endorsed the arbitration process. If the TIO had been the independent umpire, he would have informed all the COT claimants, during their respective arbitration appeal periods, that not only had the arbitrator advised him that the process was not credible and should be abandoned, but the whole process had been conducted outside the ambit of the arbitration procedures and the arbitrator had therefore had no control over the process.

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SUMMARY

This document is provided as a guide for the assessor; as an indication of the evidence that is provided in the attached documentation marked (Evidence One to Evidence Eight); which supports my claims that the arbitration procedure failed completely as a direct result of Telstra's unethical conduct, the neglect of the administrator and arbitrator of the process. This submission also proves that the phone and fax problems were never properly investigated, assessed or fixed, resulting in the eventual and most unwilling sale of my business in December 2001.

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At the Senate hearing on 26th September 1997 (refer Hansard) Mr Pinnock did at least advise the meeting that the arbitration agreement contained many deficiencies. Unfortunately, at that Senate hearing, Mr Pinnock failed to advise the Senate:

A. That Mr Pinnock's predecessor, Warwick Smith, had mischievously allowed the agreement to be altered without the four COT claimants being advised of this illegal removal of the previously agreed words *"... each of the Claimants' claims"* from clause 10.2.2 of the agreement.

B. That this change had been made even though Warwick Smith had been adamant that he would not endorse the agreement as fair if clause 10.2.2 did not repeat clause 2(f) of the original Fast Track Settlement Proposal rules (which DID include the words later removed).

C. Of the clandestine nature of the meeting that agreed to alter clause 10.2.2. This meeting was attended by Telstra; the TIO (Warwick Smith); the TIO's Legal Counsel (Peter Bartlett), Telstra's arbitration liaison officer (Steve Black) and a representative of Telstra's Legal Directorate – but no representative of the claimants.

D. That Mr Pinnock had ignored the arbitrator's advice that the arbitration agreement was not credible, and continued to administer more COT arbitrations

using the existing rules, even though he clearly knew those rules were 'not credible'.

E. That, in my case, the arbitrator would not allow the TIO-appointed technical consultants, DMR & Lanes, the extra weeks they had requested, in writing, to enable them to complete their report and the TIO-appoint arbitration project manager, John Rundell of Ferrier Hodgson Corporate Advisory, later wrote to Mr Pinnock. On 15th November 1995, confirming that NONE of my billing claim documents were ever investigated or addressed.

Although Mr Pinnock DID tell the Senate hearing that the arbitration technical consultant was Mr Paul Howell of DMR (Canada), and the conflicting DMR & Lanes technical reports have been explained above, it is important to highlight the fact that Mr Pinnock failed to explain to the Senate how I had been inadvertently provided with a copy of the DMR & Lanes draft report by the arbitrators secretary, after my arbitration and how that led to the discovery that both Telstra and I had been provided with the draft report, mischievously represented to us as the final version, with no formal explanation for this deception ever being offered. The version alleged to be the final report was dated 30th April 1995, as was the draft version (supplied by the arbitrator's secretary), and they were almost exactly the same, except for billing issues shown on page 2 and following sentence, on page 3 of the draft version (but nowhere to be found in the final version): *"One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about the billing problems."* Mr Pinnock also failed to mention to the Senate that the alleged final report was not signed off and it took him fourteen months to produce a covering letter, stating that the report was complete, which was supposedly written by Paul Howell of DMR (Canada) on 30th April 1995. These issues raise a number of questions including: how can a report be complete on 30th April; when the consultants needed extra weeks to finalise their work on 30th April; why did it take the fourteen months to produce the covering letter for the report when it was apparently written on the same day as both the draft and incomplete final report? The information Mr Pinnock provided to the Senate in relation to the DMR & Lanes technical reports was seriously lacking, particularly since he had been officially notified 15th November 1995, see point E above, that NONE of the billing faults I raised in my claim had been addressed by DMR & Lanes.

Clearly Mr Pinnock chose to withhold from the Senate a number of disturbing facts in relation to the unethical way in which some of the COT arbitrations were conducted.

Finally, this document provides only a brief summary of the information and evidence I have. The sample information included in Evidence one to Evidence eight, and particularly the chronology of events included in Evidence one and two, provide a much more detailed description of the events related to my dealings with Telstra over the years since 1988.

One of the two letters I wish to draw the assessors attention to enclosed in File four appendix 3, is a letter from Mr and Mrs Lewis to David Hawker MP, now Speaker in the House of Representatives dated 19th January 2003, (although eleven page long) this letter must be read by the assessor to give a greater understanding of what I must have gone through since 1988.

CCAS equipment attached to the Lewises phone line for a full month before and three weeks after they rewired the main phone line into the Holiday Camp and removed a faulty alarm bell they had incorrectly installed in 1990. This CCAS data confirms that the number of incoming calls answered at the Camp after the rewiring had been carried out increased by 284%.

After the Lewises took over the camp they discovered some documents I had left in the office. These documents confirmed that I had been complaining about the phone and fax faults at the Camp while I was negotiating to sell the business to them. On 21st March 2003, the Lewises spoke to Harwood Andrews, Lawyers, in Geelong, regarding the likely cost of suing me for misleading and deceptive conduct.

Since then we have had discussions with local Solicitors, Howman & Harris where I provided a copy of a letter I had written to the Australian Federal Police (AFP) on 23rd March 2003, explaining that I was now likely to be sued by the Lewises. This letter also reminded the AFP that I had previously supplied them with documented proof of 'bugging' of my private and business calls; suspected surveillance of my premises; daily monitoring of my phone calls with a list of people I spoke to being given to a local Telstra technician by someone called 'Micky'; illegal alteration of evidence in FOI documents; the likelihood that many of the ongoing phone problems were due to harassment as much as actual phone faults; and many other unsavoury incidents related to my battles with Telstra. I then explained to the Lewises that, as a result of my experiences with Telstra, I truly believed that the harassment was directed at me personally and that once I was no longer involved in the business, the faults would disappear and the harassment of the business at least, would stop. The Lewises understood my position and accepted my explanation.

Back on 4th February 1998, Telstra had advised Mr Pinnock that it appeared that the phone and fax problems suffered by my business had indeed continued after my arbitration. If only Mr Pinnock had followed this up and immediately instigated a full investigation into the problems that were still occurring (as he later did for the Lewises), I would still own the business and we would not be selling the Seal Cove Guest House because of this continuing, appalling saga.

I believe this submission clearly proves the losses my business has suffered since 1988, as documented by my accountant. I also believe the assessor will see the need to award punitive damages for the appalling treatment Cathy and I have received over the years.

The evidence is overwhelming. The majority of the phone and fax problems and faults that sent me to the negotiation table in 1994 – for the second time – were still not investigated or addressed at all by the arbitration. The proof is in the evidence I supplied to the administrator immediately after my arbitration; the letter the administrator received from his own arbitration project manager admitting that NONE of the billing faults were investigated during my arbitration; and the arbitrator's denial of the extra weeks formally requested by DMR & Lanes to enable them to complete their technical report. We also now know that the arbitrator was aware that the draft technical report he provided for Telstra and my technical advisor to respond to was only the draft, with the request for extra weeks removed,

If all the matters I raised in my arbitration had been properly investigated during my arbitration, then all the telephone and fax faults would have been fixed and I would not be here today, TEN YEARS LATER, heading back to the negotiation table – for the third time.

And as we face this third investigation, I would ask that the assessor particularly consider a statement made by John Pinnock to the Senate and recorded in the Senate Hansard of 26th September 1997. Mr Pinnock's official report to the Senate Environment, Recreation, Communications and the Arts Legislation Committee was made in relation to deficiencies in the COT arbitration process (see page 9, point 7a, above

The evidence attached here however clearly proves that not only was I not provided with FOI documents by Telstra under the agreed process but, at least in my case, Telstra deliberately withheld documents from me until after they had submitted their defence. Telstra's apparent reason for withholding these documents was that after the Australian Federal Police (AFP) had officially requested copies of some of these FOI documents from me, I refused Telstra's request to stop passing the documents on. At the time, the AFP was carrying out an official investigation into allegations that Telstra was illegally voice monitoring (bugging) my phone calls. In other words, Telstra's withholding of FOI documents contributed to the situation in which the arbitrator was operating outside the ambit of the arbitration procedures. If Telstra had supplied the documents as they had agreed to FOI Act, the claimants would have received all the appropriate documents within an appropriate time frame.

Mr Pinnock was fully aware of the AFP investigation, and also knew of Telstra's retaliation tactics (withholding documents), so why didn't he provide the Senate with ALL the facts surrounding this situation? Why didn't Mr Pinnock explain that I provided the documents to the AFP because I was complying with an official request from the AFP? Why didn't Mr Pinnock advise the Senate of Telstra's correspondence to him admitting they had knowingly withheld at least 40% on my FOI documents until after the arbitrator had deliberated on my claim? Why didn't Mr Pinnock explain to the Senate that, on 16th May 1994, on the advice of the AFP, I had provided his predecessor, Warwick Smith, with evidence of Telstra defacing and/or altering FOI documents in an attempt to minimize their liability?

Mr Pinnock did, however, acknowledge a number of important facts concerning the various deficiencies in my arbitration when, as part of his presentation, he advised the Senate Committee, that: *"Experience has shown us that not all these benefits have materialised. In my view however, one of the potential deficiencies should have been obvious from the outset. The deficiency revolves around the vexed question of the best method of enabling the Claimants to obtain documents from Telstra. In the process leading up to the development of the Arbitration procedures, the Claimants were told that documents would be made available under the Freedom of Information Act."*

Furthermore, why didn't Mr Pinnock inform the Senate that, on 22nd and 23rd November 1993, long before the arbitration procedure was mischievously brought into play, the first four COT claimants (and I was one of them) had already signed a special commercial binding agreement with Telstra (which Telstra had signed a few

days earlier, on 18th November 1993)? It should have been explained to the Senate that this commercial binding agreement *"... constituted an offer open to all or any of the COT Cases referred to in Clause (1), which will lapse at 5pm on Tuesday 23rd November 1993. This offer must be accepted by signatures below and sending advice of such signatures to AUSTEL or the Telstra Corporate Secretary before that time"* and, if the then-TIO, Warwick Smith, had allowed this commercial government-endorsed Fast Track Settlement Proposal to procedure to its proper conclusion under the agreed and signed-for rules, all our claims would have been finalised without the deficiencies Mr Pinnock referred to in his Senate Report every materialising.

In Appendix 23 File four), evidence confirms that before the arbitration process was literally forced upon the COT four claimants, Telstra, Warwick Smith, Dr Hughes, the COT 'four' members and AUSTEL wrote eleven separate letters between them – and each of those letters agreed that the COT claimants were to be commercially assessed by an independent assessor under the already-signed Fast Track Settlement Proposal. Why didn't Mr Pinnock inform the Senate that all the deficiencies and problems that appeared during our arbitrations arose as a direct result of his office and Telstra together forcing the four COT claimants to accept the decision to change from the commercial process to the arbitration process, using rules that had been designed for a commercial assessment process, NOT an arbitration? Any problems with the release of FOI documents could have been dealt with by the TIO during the commercial assessment process (if only it had gone ahead) without his hands being tied by the legal wrangles that were created by the arbitration procedure. As it is, not only did the TIO neglect to tell the Senate that his office had continued to administer an arbitration process that the arbitrator himself had officially declared was not credible, neither did he tell them that it was also a process that was operating under a set of rules originally drafted (by AUSTEL) for a commercial process, not a legal arbitration; that the most important part of the most important clause in those rules had been secretly removed; and, although the defendants (Telstra) had been notified of this alteration, none of the four COT claimants were provided with this information. In other words, the system failed because of the way the TIO administered it. What would the Senate have done with this information?

In 1998, a Senate Working Party was formed to investigate COT matters. The material provided here, in Appendix 21, proves that I was on the list for investigation and that the many problems with provision of FOI documents to me was on the agenda for scrutiny by that Working Party but still no investigation was ever carried out on my behalf.

John Wynack, Senior Investigator of the Commonwealth Ombudsman's office who assisted the Senate Working Party to assess the validity of the COT five cases on the Schedule 'A' list, has since advised me that the five cases were only the litmus test. The other 16 COT cases shown on the Schedule 'B' list (Appendix 21, File four), would follow those five cases once their FOI claims had been assessed. The COT five on the 'A' list did receive a dollar amount as part payment of the losses associated with the FOI matters investigated by the Senate.

In the first paragraph on page 33 of the in-Camera Senate Hansard report of these FOI matters (Appendix 21, File four) Senator Schacht, made it quite clear that to only settle with the COT five would be an injustice for the remaining 16 on 'B' list.

Imagine what the outcome of my arbitration might have been, if I had received the evidence reported in files one to four when I first requested it under FOI, when that evidence confirmed that the verification tests carried out at my business on 29th September 1994 were actually deficient. If this evidence had been presented to the arbitrator during my arbitration, how could the arbitrator have argued against it? He couldn't have! He would have had to order Telstra to repeat the tests, this time under the scrutiny of the TIO-appointed technical consultants who either had already asked the arbitrator for more time, or were about to. If these technical consultants had detected the deficiencies in the testing they could have used this information to present a much stronger case for a time extension and the arbitrator would surely have had to grant that request and allow them further time to investigate all my claim material.

The AUSTEL COT report of 13th April 1994 (which was provided to the then-Minister of Communications, the Hon Michael Lee MP, during the FTSP) confirms that this verification testing was put in place by AUSTEL with the aim of producing a report that would prove whether or not the telephone faults had been rectified. This would then have provided a basis from which to determine actual fault losses for the various COT claimants. AUSTEL were adamant that this verification testing process had to be performed (refer Appendix 3, file three and File five) as part of the assessment process, and later as part of the arbitration process, because AUSTEL knew that, during their previous settlements (my settlement occurred on 11th December 1992), Telstra had deliberately misled the four COT claimants into believing their phone services had been fully repaired and were then working correctly. We now know that Telstra's own records show otherwise.

Numerous documents attached to (Files one to four) confirm that, just weeks after my arbitration, I was once again complaining that the arbitration process had not fixed the problems. Finally, on 16th January 1998 – THIRTY-THREE MONTHS AFTER my arbitration – Telstra visited my premises and confirmed, in front of an independent witness, that it did seem that the problems I had raised in my arbitration had continued after the arbitration. This further proves the serious problems that existed with Telstra's deficient verification testing process.

Then, on 4th February (Appendix 6 (d) file three), Telstra provided John Pinnock with file notes from their 16th January investigation, confirming that it 'appeared' that the billing faults I had raised in my arbitration had continued after the end of the arbitration. Still neither the TIO nor Telstra did anything to repair the faults, thereby leading directly to the damage suffered by my business.

The assessor will see why I was finally forced to sell my business in December 2001 when this visit by Telstra to my premises is looked at in the context of the numerous other shortcomings in the arbitration process, including:

a. The arbitration Project Manager's advice to the TIO (15th November 1995) that I was right all along – NONE of the billing faults I raised in my claim were ever investigated;
b. The arbitration Project Manager's advice to the TIO (2nd August 1996) that Telstra had written to the arbitrator asking for a meeting with the arbitrator and me to facilitate the proper investigation of the billing faults I had

submitted to arbitration, and that this information had been withheld from me during my arbitration;

c. The arbitrator's refusal to allow the TIO-appointed technical consultants, DMR & Lanes, as officially requested in their draft report, the extra weeks they needed to investigate my billing faults claim;

d. The arbitrator's blatant disregard for the truth when he allowed alterations to be made to the technical consultants' draft report, specifically the removal of the consultants' request for extra time (point c, above), so the draft report could be presented as if it was a final and full report;

e. The arbitrator's blatant disregard for the truth in his letter to Telstra and my technical consultant, announcing that we both had to respond to this so-called 'final' report, when he knew we would therefore be responding to an incomplete draft report;

f. The arbitrator's reluctance to investigate complaints lodged by my partner and me, including two statutory declarations regarding our belief that the arbitration verification tests had not been performed as they should have been, according to the agreed process;

g. The TIO's reluctance to correctly investigate Telstra's written advice (4th February 1998) that it appeared as if the billing faults I raised in my arbitration had continued after the arbitration;

h. The misleading information provided to David Hawker by the TIO (28th March 1996), when the TIO stated that all the billing faults I raised in my arbitration had been addressed, even though he had already been advised by his own Project Manager (point a, above) that NONE of the billing faults had been addressed at all;

i. The misleading information provided to the Hon Senator Richard Alston by the TIO that, at least until February 1999, the TIO was still investigating claims that the billing faults had either continued or been addressed during the arbitration, when he already knew that the faults:
   - Had NOT been addressed (point a, above) and,
   - HAD continued after the arbitration (point g, above);

j. The TIO's reluctance, from 1998 to 2001, to correctly investigate my complaints that Telstra had mischievously disconnected two of my business phone lines (the customer, coin-operated Gold Phone and the fax/phone line), because I refused to pay the disputed and incorrect bills, when Telstra had already advised him (point g, above) that it appeared the billing faults had indeed continued after the arbitration;

k. Telstra's visit to the new owners of the business, twelve months after Mr and Mrs Lewis took over.

I also ask that the assessor take into account the letters and faxes attached in (Appendix 23 (a) file four) from the office of the Minister for Communications, Information Technology and the Arts. Particularly the two faxes from that office to John Pinnock TIO, dated 6th November 1997, and 11th November 1998, in regards to the overcharging on my telephone account. The first fax to John Pinnock from the Ministers advisor (lori Catelli) on 6th November 1997, asks for advice regarding matters I had raised with the Minister. This advice was intended for use in the Minister's response to me and the advisor also notes: *I have also faxed Telstra for input as well."* Clearly the Minister's office is not only asking the TIO how to respond to my billing complaints, but they are also asking the defendants (Telstra) for

'input'! This behind the scene clandestine arrangement between the defendants and the allegedly independent administrator (the TIO), as well as the Minister's staff, fuelled the situation I find myself in today. From the lack of response from the Ministers office, it is evident both Telstra and the TIO did not disclose the evidence confirming there were still major network problems at my business.

The second fax dated 11th November 1998 (twelve months after document one) was sent from the Minister's office to the TIO asking for advice regarding *"... a likely time-frame for finalising Mr Smith's claims of overcharging on his 1800 number"* and notes that *"A meeting has been proposed between Mr Smith and Senator Ian Campbell and your response will form the basis for the proposed meeting."* No such meeting ever took place however, even though, on 4th February 1998 (twelve months before the letter of 11th November) Telstra had advised Mr Pinnock that the billing faults raised in my arbitration appeared to continue after my arbitration. I can only assume that Mr Pinnock misled the Minister's office regarding the existence (or not) of the billing faults, just as he misled David Hawker on 28th March 1996, (point h, above).

The Hon Senator Ian Campbell clearly intended to meet me to discuss my allegations that the billing faults continued long after my arbitration, why then did no such meeting ever take place? As explained in (Appendix 15 (d) file one), the TIO-appointed Project Managers admitted 2nd August 1996, they knowingly withheld from me procedural letters from Telstra to the arbitrator during December 1994. One of these letters dated 16th December 1994 (Appendix 15 (b) file one), confirms Telstra requested a meeting with the arbitrator and me so that these billing issues could be addressed in my arbitration. Telstra had previously written to AUSTEL 11th November 1994 (Appendix 15 (b) file one) confirming these billing faults would be addressed. Although the Ministers office 11th November 1998, was asking for a similar meeting FOUR YEARS LATER, to discuss these same billing faults, I was never approached for the second time.

When we compare these two similar billing scenarios with the denial by the arbitrator 30th April 1995 (Appendix 11 (a) file two), to allow the TIO-appointed technical consultants DMR & Lanes, the extra weeks they had requested so they could formally investigate and/or address my billing claim documents a sinister pattern of events is revealed. Place these three billing events with the letter from the TIO-project manager dated 15th November 1995 (Appendix 15 (c) file one) to John Pinnock, which clearly confirms that DMR & Lanes did not address any of my billing claim documents it becomes evident the TIO has not been impartial concerning my matters.

The assessor will also be astounded at the connotations of a more recent letter from the Ministers FOI division to me dated 13th October 2005, also enclosed in (Appendix 23 (a) file four). This letter was sent in response to an FOI request I made on 21st September 2005, for a copy of a report by John Pinnock, the Telecommunications Industry Ombudsman, to the Senate Environment, Recreation, Communications and the Arts Legislation Committee on 26th September 1997, in relation to COT matters. This letter from the Minister's office states that the report I requested either does not exist or is in the Department's possession, but cannot be found. I managed, however to locate a copy myself, thereby proving that the report does in deed exist (see

Appendix 7(a) file four). As explained previously, Mr Pinnock names two very important facts in this report to why he believed the COT arbitrations were deficient:

(1) The arbitrator had no control over the arbitration process because it was conducted outside the ambit of the arbitrations procedures' and
(2) In the process leading up to the development of the Arbitration procedures, the Claimants were told that documents would be made available under the Freedom of Information Act.

Another similar more recent letter from the Minister's FOI division to me dated 28th October 2005, also enclosed in (Appendix 23 (a) File four), is in response to another FOI request, made on 25th September 2005. I this request, I asked for all correspondence sent from the Minister's office to the TIO's office between August 1997 and December 2002, in relation to the continuation of billing faults and matters arising as a result of these faults which were not addressed during my arbitration, including information that supports Telstra agreeing to address the billing faults that continued after my arbitration. Again I received the same response from the Minister's office – that the documents do not exist or could not be found. The attachments in my evidence files confirm these documents do exist. I believe many of these documents are locatable and could be easily found and that, along with other documents included elsewhere in this submission, they would prove that the Minister had intended addressing these outstanding issues since 1996, but nothing has ever materialised. I wonder if both the previous and currant Minister are actually aware that their officers have been so reluctant to correctly investigate my allegations and/or search for the truth.

The evidence provided in this brief summary of events, and the attached information, proves that I have a legitimate claim against Telstra. I also have a legitimate claim against the arbitrator and the TIO and his appointed arbitration resource unit, firstly, because they did not follow their duty of care as arbitrator and as administrator's of my arbitration and secondly because of their reluctance to correctly investigate my on going complaints. I ask the assessor to take particular note to the statement made by DMR & Lanes in the first paragraph on page five in their draft report dated 30th April 1995, (Appendix 11, file two) provided to Telstra and my technical advisors disguised as the final report. "*Telecom recorded and responded to Mr Smith's complaints in a variety of ways. But Mr Smith did not express his satisfaction – in fact, in his claim of June 1994, he states {p3} to 'the continuing problems that I am experiencing' and states that 'my phone service is still operating at a totally deficient level.' The alleged faults were not rectified up to the dated of the claim.*" I also ask the assessor to take note of one of the two only statements which were removed from this draft report before it was disguised as the finished report. In the fourth paragraph on page 3 (Appendix 11, file two) DMR & Lanes state: "*One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems. Otherwise, the Technical Report on Cape Bridgewater is complete.*"

I ask the assessor to also take on board the statement made in the working draft technical report prepared by David Read, Lanes Telecommunications dated 6th April 1995 (Appendix 11 (a) file two). *The report cover incidents and events potentially affecting the telephone service provided to the Cape Bridgewater Holiday Camp during the period February 1988 and August 1994.*" Compare this statement which

confirms none of the faults and problems that affected my business after August 1994 with the statement made in the disguised draft (final) DMR & Lanes report on page one, which confirms DMR & Lanes never investigated any of the problems and faults that went past October 1994. These two statements further confirm NONE of the vital technical information submitted by me after October 1994 which proved the continuation of these problems and faults were ever investigated with the resultant affect being the reason the assessor is now assessing these matters TEN YEARS later.

I believe the assessor will have to determine that because the final and draft reports are both dated 30th April 1995, the draft report still remained 'open' and DMR & Lanes were denied the extra weeks they needed to resolve these outstanding issues my arbitration claim was never finalised.

I ask that the assessor carefully read my chronology of events as well as the draft copy of my manuscript "The Arbitrator". I am sure once these two documents have been assessed along with all my other attached evidence the assessor will believe, as I do, that I have more than just a legitimate claim.

In Appendix 25 File three, I have provided only a few documents to confirm my privacy has been invaded by Telstra from at least June 1993. Further examples are attached to support Telstra was still intercepting my faxes as late as 2002. More documents can be provided to the assessor which confirms this invasion of my private matters up and until at least 2002 were not isolated incidences.

Appendix 11, File three includes a TIO media release dated 12th May 1995, the day the day the arbitrator handed down his award in relation to the first of the COT arbitrations (mine). This document states: *"While not identifying the claimant or quantum of the Award, the administrator* (the TIO) *noted that the findings of the Resource Unit, the specialist technical advisors to the Arbitrator, indicated that the claimant had suffered considerable technical difficulties during the period in question. It found that the faults did exist which caused the service to fall below a reasonable level, and that apart from some customer premises equipment (which includes telephone cabling, phones, answering machines or facsimile connected within the customer premises) most of the problems were in the Inter Exchange Network."* This statement is particular interesting in light of the findings included in the Resource Unit's technical arbitration report which stated: *"Continued reports of 008 faults up to the present. As the level of disruption tom overall Cape Bridgewater Holiday Camp (CBHC) service is not clear, and the fault causes have not been diagnosed, a reasonable expectation is that these faults would remain 'open'* Since this technical report was prepared in the latter stages of my arbitration it provides proof that, even as the arbitration was drawing to a close, faults complaints were still occurring – and the technical consultants admit that not only did they not investigate these faults I had included in my claim, but they expected them to continue.

My 008 service was connected through my incoming 55 267 267 service line, which suffered numerous problems both during and after my arbitration. Appendix 3, File four confirms that these faults continued to occur until, twelve months after I sold my business, Telstra finally replaced wiring and a telephone alarm bell that faced directly out to sea, that had been incorrectly installed by Telstra technicians in 1991.

Appendix 3, File four includes a letter dated 28th February 2003, from the TIO, which acknowledges that I had provided the new owners of the business with proof *"...confirming that Telstra Corporation did all the cabling and wiring in questions."* This is the same cabling and wiring that my 55 267 267 and 008 services were connected to – the same service that the arbitration technical consultants admit they didn't investigate and the same service faults that they expected to 'remain open'.

In this letter of 28th February 2003, the TIO's office advises Telstra, that the new owners had states that: *"... the phone problems have decreased dramatically since Telstra Corporation rewired the business on 9 December 2002 and disconnected the phone alarm bell."*

So first we have the TIO/administrator's media release announcing that my business had experienced numerous phone problems and that most of them occurred in the Inter Exchange Network, and then we have the arbitration technical consultants, who were appointed by the same TIO/administrator, admitting that they didn't investigate those identified problems because *"... the level of disruption to overall Cape Bridgewater Holiday Camp (CBHC) service is not clear and the fault causes have not been diagnosed."*

A draft of the arbitration technical consultants report is included in Appendix 11, File three. In this draft the consultants confirm they need 'extra weeks' to correctly investigate and address my claims in relation to the billing faults, which are directly related to the phone and fax faults that were never investigated. The arbitrator and/or the TIO, however, would not allow those extra weeks even though I had signed a legally binding arbitration agreement that directed that all my claims would be assessed.

The technical consultants clearly state that my fault complaints continued right up to the day they finalised their report (30th April 1995) and the TIO's media release acknowledges many problems in the Inter exchange Network; does the TIO really believe that all the faults that the consultants had not been able to investigate magically disappeared in the twelve days between the finalisation of the technical report on 30th April and the Arbitrator's award being handed down on 11th May 1995?

In Appendix 26 File three, I have also attached a number of documents to the TIO Board and TIO Counsel and their responses to those letters. These documents show the assessor the continued denial by those parties that anything was wrong with the way the TIO's office administered my arbitration when it is blatantly obvious from this submission that the reason I am here today is due to the unprofessional and unlawful way in which my arbitration was administered.

I believe my accountant's calculations regarding my financial losses since this fiasco started in April 1988 will be accepted by the assessor. I am sure the assessor will also see a need to award damages as compensation to my partner and myself, for the lost productive years that have gone into the battle to have these matters finally assessed. I believe the assessor will also see a need to award compensation for pain and suffering for the disastrous effect this fight for justice has had on my health, and on the health of my partner, Cathy.

Even before I signed the arbitration agreement I encountered many problems with the arbitration process. Details of these problems are explained in the attached document *"Five very important issues raised in this letter of claim"*.

Section 1 in this attached document relates how five very important words were mischievously removed from the previously agreed and accepted rules of my arbitration but, even on the day I signed this changed agreement, no-one informed me of this alteration.

In Appendix 19, File four, I describe how, along with the Holiday Camp, I also lost a second business – the Singles Club venture, as a direct result of the continuing phone and fax problems. If the five important words had not been removed from clause 10.2.2 of the arbitration rules (Section 1, attached) then the issues raised in Appendix 19, File four in relation to the loss of the second business would have been investigated by the arbitrator and his financial advisors, and I would have been compensated for both businesses, quite independently of each other.

My diary notes (Appendix 8, File three) describe the faults experienced not only in relation to enquiries for the week-day school camps, but also from individuals hoping to join the Singles Club weekends.

Some of the issues discussed in the letter covering my submission are also covered elsewhere in the submission itself, in the introduction to the submission, or one of the appendices to the submission. This duplication is necessary because many of the issues are so complex and entangled. The TIO-appointed technical consultants arbitration report is an example of one of these complex issues because the report depended on the consultants having enough time to properly investigate, and being provided with accurate information. For instance, if Telstra had acknowledged the deficiencies in their arbitration verification testing, during my arbitration, then the technical consultants would have had clear grounds to insist that the arbitrator allow them the extra weeks they requested in their report, so they could properly address all my claim documents. And if the technical consultants had been allowed the time they requested, as well as getting the truth about the deficient verification tests, then they would have discovered that the faults were still affecting my business, even as the arbitrator was deliberating on my claim. **In this instance the overlapping matters are the issue of faulty verification testing and the way the technical consultants' findings were based on their belief that Telstra had carried out the arbitration verification testing process correctly.**

A second instance of separate issues overlapping arises from a comment on page two of the same technical report, where the consultants state that: *"A comprehensive log of Mr Smith's complaints does not appear to exist"*. Information included this submission proves, however, that my advisors and I supplied both Telstra and the arbitrator with clear directions (see Appendix 7, File three, pages 11,12,13 & 21 of the arbitration interrogatories) to the location of comprehensive fault documentation in my arbitration claim (see Appendix 7, File three). The list of claim documents assessed by the technical consultants (Appendix 11 b & c) proves that they were not supplied with that information. **In this instance the overlapping matters are the technical consultants report and the actual administration of the arbitration in the form of information that was withheld from the technical consultants.**

Another example of how the faulty arbitration verification testing impacted on so many other areas is documented in Evidence five, File five. The evidence for this instance includes a sworn witness statement as well as a separate statutory declaration from Peter Gamble, Telstra's senior technical engineer during my arbitration. In his witness statement, Mr Gamble unlawfully specifies that his arbitration verification testing at my business had met and exceeded all the regulator's requirements (the regulator being AUSTEL). As is shown in Evidence five however, AUSTEL had not accepted that the verification testing had come anywhere near their specifications and had alerted both Mr Gamble and Telstra's arbitration liaison officer, Steve Black, that the tests had actually been deficient. In his own statutory declaration, covering all of Telstra's defence, Steve Black noted that he had read the entire defence document, B004 (which included statements that the verification tests had met and exceeded AUSTEL's requirements) and *found the report to be true and correct.* Other documents at Evidence five show that, during my arbitration, I constantly complained to the arbitrator that Mr Gamble's tests had NOT met the standards set by AUSTEL before I signed for arbitration, and that Telstra's own CCAS data also confirmed that the testing was deficient.

Appendix 16 in Evidence 5, File three includes a copy of a letter dated 13th February 2006, from David L Bailey, Barrister at Law, which includes Mr Bailey's legal advice regarding (page 4) *"... a false statement in a voluntary statutory declaration"* and his opinion regarding Victorian Law in relation to (page 3) a *"... specific provision relating to statutory declarations..."* in *"Section 107 of the* ***Evidence Act 1958(Vic)B"***. Mr Bailey specifically cites the matter of, ***R v Vreones* [1891] 1 QB 360** *where a contract for the purchase of a cargo of wheat contained an arbitration clause in respect of dealing with disputes that might arise in the course of the contract"* and how *"The defendant tampered with the content of the sample bags"* but, although *"... No arbitration ever took place..."* the *"... defendant was convicted of attempting to pervert the due course of law and justice."* In my battle with Telstra, this example relates directly to what has become known as *"The beer in the phone saga"* (see pagers 62 to64 of my manuscript *"The Arbitrator"*). It has now been clearly proved that, in relation to this particular event, Telstra tampered with my telephone after it had left my office to be examined by Telstra technicians and Telstra then submitted false information which stated that the telephone had left my premises in a very dirty condition (not true) and that the laboratory technicians had found a 'sticky beer substance' inside the telephone, which would have cause the phone to lock-up (also not true). Telstra's own records, including photographs, prove that the dirt on the outside and the so-called 'beer residue' on the inside of the telephone were both added after the phone left my office. In other words, just as the defendants in ***R v Vreones*** tampered with 'sample bags', in my case, the defendants – Telstra – tampered with my phone.

This unlawful interference with arbitration documents also extended to Telstra knowingly using false and deficient test results under oath, in their defence of my claims (as discussed above, and in Evidence 5, File three). Since the arbitration proposed in ***R v Vreones*** did not go ahead, neither should my arbitration have gone ahead.

SECTION 3 – Secret changes to clause 10.2.2 (Appendix 4(d), File one)

1. On 22nd and 23rd November 1993, the four COT claimants signed an agreement to use a particular set of rules for the then forthcoming 'Fast Track Settlement Proposal' or FTSP. These rules were designed to guide an official assessor regarding how to value each of our cases against Telstra (Appendix 23, File four, document 15). The administrator appointed to oversee the process was Warwick Smith, then the Telecommunications Industry Ombudsman (TIO).
2. The FTSP was later changed into a "Fast Track Arbitration Procedure" or FTAP, at which time Warwick Smith (the TIO and administrator of the arbitration) and his Legal Counsel, Peter Bartlett, assured the claimants that clause 2(f) of the original FTSP agreement would be included, without any changes, as a basis for the rules that were to be drawn up for the new, more legalistic, FTAP.
3. Telstra minutes dated 22nd March 1994 record a secret meeting that COT claimants were neither informed about, invited to attend nor offered the opportunity to be represented at. This meeting was attended by Dr Gordon Hughes (the arbitrator of the FTAP), Telstra's Legal Directorate, Warwick Smith and Peter Bartlett, and the minutes confirm that Warwick Smith insisted that he would **not** endorse the proposed FTAP agreement as fair unless it included a clause which repeated clause 2(f) of the previous FTSP (signed) agreement, word for word (Appendix 4(d), File one).
4. Clause 2(f) of the original FTSP included the words *"... each of the Claimants claims"*. These words were also included in the draft of the new agreement, in the relevant clause (now clause 10.2.2). The arbitrator then provided each of the COT claimants with a copy of this draft of the rules, to enable us to obtain our own advice regarding the suitability of the rules. On 15th February 1994, the arbitrator also wrote to the project manager of his arbitration resource unit, Mr John Rundell, advising him that clause 10.2.2 would remain intact in the final version of the rules.
5. By the time the COT claimants signed for arbitration on 21st April 1994 however, five important words (*... each of the Claimants claims)* had been secretly removed from clause 10.2.2, without any of the claimants being advised of this major change.
6. It would appear that the administrator was not told that these words had been removed and so the arbitration proceeded, using the secretly altered rules. If the TIO/administrator had been advised of the removal of these words he would not have endorsed the process (see point 3, above) until the words were replaced.
7. After my arbitration was deemed to be complete I discovered that Telstra had prepared their own 'Preferred Rules of Arbitration', dated10th January 1994. Warwick Smith refused to supply a copy of this document to any of the COT claimants, although a copy was given to the arbitrator. These rules included, at clause (ii) on page 4, the statement: *"... will make a finding on reasonable grounds as to the causal link between each of the claimant's claims"* (my emphasis) – so even these suggested rules accepted that the original FTSP rules provided the fairest way to assess our claims.
8. Removing the words ... *each of the Claimants claims* meant that the arbitrator then only had to make a single overall written finding on each of the claims

submitted by the claimants, instead of producing a written finding on each section of each claim. For example, in some cases the claimants lodged different claims for different years because their losses differed from year to year, but other claimants lodged claims divided up into sections covering billing losses, issues with phone bugging etc.

9. If the correct and complete wording had remained in the new clause 10.2.2 of the arbitration rules, each of the claimants would have had a much better chance of successfully appealing at least some of the areas of their respective awards, instead of being forced to appeal the WHOLE award.

10. The removal of the words ... *each of the Claimants claims* signalled the start of a contamination that spread throughout the whole arbitration process and finally led to the arbitrations being conducted outside the rules of the original agreement (see Section 4, below). In the end, after the completion of the first arbitration (mine), even the arbitrator himself saw the need to warn the administrator (on 12th May 1995) that the arbitration agreement was 'not credible' and needed to be abandoned while a new agreement was drawn up for the remaining claimants (Appendix 18(b), File one).

11. When Telstra submitted their defence document to the arbitrator on 12th December 1994, the words *"... each of the Claimants claims"* were not included, proving that Telstra knew about the changes, although none of the four COT claimants had ever been made aware of the removal of these vital words.

12. When DMR & Lanes, the arbitration technical consultants, submitted their *"Technical Evaluation Report"* dated 30th April 1995 to the arbitrator, they made it quite clear (at their point 2.23) that they did NOT investigate my complaints in relation to my 008/1800 number (Appendix 11d, File three). They also referred to *"About 200 fault reports ..."* that were *"... made over December 1992 to October 1994"*, adding that *"Specific assessments of these reports other than where covered above* (in their report) *has not been attempted."* The report notes that twenty-three of the fault claim documents I submitted to arbitration had actually been examined, but I submitted two hundred separate documents. Obviously only about 10% of my claim documents were assessed during the arbitration. If the arbitrator and the TIO had not allowed the removal of the words *"... each of the Claimants claims"* from clause 10.2.2 then DMR & Lanes would have had to investigate all two hundred of the documents I submitted.

SECTION 3 QUESTIONS

A. If the arbitration agreement had been abandoned as the arbitrator suggested, and a new agreement had been drawn up for the remaining claimants, would the administrator have then demanded that the original wording *... each of the Claimants claims* be replaced, since it should never have been removed in the first place?

B. The minutes of the meeting discussed at point 3 (above) are headed *"Meeting to Discuss Fast Track Rules of Arbitration"*. Such an important meeting should never have taken place without any of the claimants in attendance.

C. Did this secret meeting agree to remove the *words "... each of the Claimants claims"*, but not record that decision in the Minutes?

D. Since the TIO of the day had so clearly stressed that he would not endorse the arbitration agreement as fair unless all the words in clause 10.2.2 of the arbitration agreement repeated clause 2(f) of the FTSP word for word, but the clause was altered anyway, surely the present TIO should honour his predecessor's statement and advise the Minister and the Government that our arbitrations were therefore not administered fairly.

E. If clause 10.2.2 had included the words *"... each of the Claimants claims"* as was intended, and DMR & Lanes had been allowed to properly complete their investigation, I would have had good grounds on which to base an appeal against the arbitrator's award – for not addressing *"... each of the Claimants claims"*.

SECTION 4 – TIO's report to the Senate (Appendix 7 (a), File four)

1. On 26th September 1997, John Pinnock, the current TIO, provided the Senate Environment, Recreation, Communication and the Arts Legislation Committee with a report on the COT arbitrations. This report included the statement:

   "The Arbitrator had no control over the process because it was conducted outside the ambit of the Arbitration Procedures."

   In his speech when presenting his report to this Senate Committee, Mr Pinnock damned the COT arbitration process even further by stating:

   "The process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over the process because it was a process conducted entirely outside of the arbitration procedures." (my emphasis).

2. Neither in his report nor in his speech to the Senate, did Mr Pinnock disclose the fact that, even after the arbitrator had alerted Mr Pinnock's predecessor that the arbitration agreement should be abandoned and a new agreement drawn up for the remaining claimants, both Mr Pinnock (TIO) and his predecessor continued to administer the process under a set of rules they each knew were not credible.

SECTION 4 QUESTIONS

A. Did Warwick Smith, John Pinnock and Gordon Hughes all decide to continue to use the tainted arbitration rules because it meant that the arbitrator would have *"no control over the process"* and therefore the process would **not be conducted under the Victorian Arbitration Act**?

B. During their respective appeal times, why weren't any of the claimants advised that the arbitrator *"had no control over the process"* because the arbitration procedures were being conducted *"entirely outside the arbitration procedures"*?

C. MOST SIGNIFICANTLY, the claimants were advised that, if they signed for arbitration under the Victorian Arbitration Act, the arbitrator would have full control over the process. Why was this false information used to coerce them into abandoning the already signed Commercial FTSP Agreement and enter into arbitration, when it is now clear that the arbitrator did NOT have 'full control over the process' from the beginning?

D. Mr Pinnock's report to the Minister's office on 26th September 1997, and his speech to the Senate that same day, should have included advice that:

- The COT arbitration agreement be abandoned and revised before any other COT claimant was assessed under this deficient agreement.
- Regardless of the arbitrator's advice that the arbitration process was 'not credible', both Mr Pinnock and his predecessor continued to administer the process for the remaining claimants using both the same arbitrator and the same deficient rules.

SECTION 5 – Disguised Technical Report (Appendix 11, File three)

1. Three months after my arbitration, when my claim documents were returned to me, I discovered that the arbitrator's secretary had inadvertently included arbitration procedural documents I had not seen before, even though, under the rules of the Victorian Arbitration Act, and under section 6 of the FTAP rules, I should have been provided with copies during my arbitration. Some of these documents – letters that had been exchanged between the arbitrator and the defendants (Telstra) during November and December 1994 – confirm that Telstra had provided the arbitrator with vital information that would have had to be addressed if only that important part of clause 10.2.2 of the FTAP (Section 3, point 3) had not been secretly removed.

   The material I received inadvertently also included copies of the TIO-appointed technical consultant's draft Technical Evaluation Report. This draft of the report, dated 30th April 1995, clearly requests 'extra weeks' to complete investigations and finalise the report (Appendix 11 File three). The 'final' report, the version that the arbitrator provided to both Telstra and me for our official comment, was amazingly also dated 30th April 1995. How could a final – allegedly completed – report be prepared on the same day as a draft that still needs 'extra weeks' to complete, particularly when the only difference between the draft and the final versions is that the draft version includes the statement: *"One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing..."*, but this statement is missing from the so-called 'final' version (Appendix 11 File three)? This must lead us to ask how many of the technical reports presented as final and complete to other COT claimants were also actually incomplete?

2. After receiving the inadvertently supplied document, I wrote to John Pinnock a number of times between August and December 1995, but did not receive a satisfactory reply. On 18th January 1996 (Appendix 25 File one), I finally wrote to the President of the Institute of Arbitrators Australia, Mr Laurie James, detailing how the four COT claimants had first been forced, under false pretences, into abandoning the FTSP, and second, how I had suffered through an arbitration that was conducted entirely unprofessionally.

3. On 23rd January 1996, in relation to questions he had received from Mr James about my arbitration, the arbitrator wrote to John Pinnock (Appendix ten) to ask for advice regarding a number of the issues raised by Mr James's questions, including *"(a) the cost of responding to the allegations"* and *"(b) the implications to the arbitration procedure..."* if the arbitrator was to *"... make a full and frank disclosure of the facts to Mr James."*

4. On 15th February 1996, the arbitrator sent Mr Pinnock (Appendix 25 File one) a draft of the letter he intended to send to Mr James, asking for Mr Pinnock's input. This letter makes it even more obvious that the arbitrator was afraid of

jeopardising the current arbitrations – those he had already advised Mr Pinnock's predecessor should be abandoned because the process was not credible.

5. The arbitrator's letter was finally sent, dated 16th February 1996 (Appendix 25 File one), but it included incorrect assertions and misleading statements that have been addressed separately in my submission to the new assessor. One statement on the first page of this letter however, is relevant to the issues raised in this document: *"There is no evidence of which I am aware to suggest that the arbitration rules were not followed."*

SECTION 5 QUESTIONS

A. *When he wrote to Mr Pinnock (Section 3, above, points 3 & 4), why didn't the arbitrator demand that the Institute of Arbitrators immediately be alerted to his lack of control over both my arbitration and the arbitrations then being deliberated on (Garms & Schorer and others) because they were being conducted 'entirely outside the arbitration procedures'?*

F. *Why didn't the arbitrator demand that Mr Pinnock join him in frankly admitting to Mr James that they were using arbitration rules they both knew were not credible?*

SECTION 6 – Documents not discovered and/or not provided during the course of the Arbitration

A meeting held on 17th February 1994 (Appendix 4 d File one) was attended by Telstra, the then-assessor (Dr Gordon Hughes), the TIO's Legal Counsel (Peter Bartlett), and two COT representatives (Ann Garms and Graham Schorer). Page 2 of the official minutes of that meeting report Dr Hughes as stating that, because the COT claimants had still not received documents from Telstra under the commercial claim process, *"... an arbitrator had more powers and the adjudicating party would need powers to ensure that all material relevant for the decision was obtained..."* to which Mr Bartlett responded by noting that this was the reason for instigating the arbitration, because any arbitrator appointed to the process would have the power to order the production of documents. Dr Hughes then noted that *"... there were two ways to proceed in relation to the problems of outstanding documents.*

1. *The procedure is put on hold until all the documents are exchanged in accordance with the FOI procedures; or*

2. *The arbitration procedure commences and then the arbitrator gives appropriate directions for the production of documents."*

On page 3 of these same minutes, Dr Hughes is further recorded as noting that *"... one party can ask for documents once the arbitration had commenced, this course of action is more effective and as arbitrator* (he) *would not make a determination on incomplete information."* (my emphasis)

Procedural documents Ann Garms and I have, prove that Dr Hughes did, however, make a determination on incomplete information when he handed down his awards. Furthermore, he was fully aware that he was doing so, and noted this in his letter to the TIO, Warwick Smith, on 12th May 1995, when he wrote (his point 3) that one of the main reasons that the arbitration process needed to be abandoned in favour of a new set of rules was that, *"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."

Even after making this astonishing admission, particularly in relation to the undertaking he had previously given – NOT to *"... make a determination on incomplete information"* – Dr Hughes still proceeded to arbitrate on all COT claims before him, AND HAND DOWN AWARDS BASED ON INCOMPLETE INFORMATION! This becomes even more amazing when we read Dr Hughes's further statement, in this same letter of 12th May 1995, that *"... in summary, it is my view, if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than contained in the Arbitration Agreement."* This confirms three things:

(A) By 11th May 1995 at least, Dr Hughes was fully aware that, in my case, he was handing down his award based on incomplete information and using an arbitration agreement that had not allowed enough time *"... for the production of documents, obtaining further particulars and the preparation of technical reports."* The draft/final technical report discussed in Appendix seven (above) is a good example of one event that occurred because the agreement did not allow enough time for *"... the preparation of technical reports."*

(B) Dr Hughes chose to continue to arbitrate on the following COT claims even though he knew the agreement was not credible

(C) Dr Hughes chose to continue to arbitrate on the following COT claims even though he knew he was breaking his commitment to those claimants – that he would not hand down a determination on incomplete information.

SECTION 7 – Claim documents not examined by technical resource team

Appendix 11 File three) is a list of all the documents the technical resource team assessed before they produced their draft technical report for my arbitration.

Appendix 11 File three) is a list of all the documents the technical resource team assessed before they produced their so-called 'final' version of the technical report. Both versions of the report were dated 30th April 1995.

PLEASE NOTE: Appendix 11 (b) – from the 'final' version – lists fourteen more documents than Appendix 11 (a) – the draft version. The fourteen 'documents' NOT listed in the draft version were bound volumes containing over 2,600 pages in all.

SECTION 7 QUESTIONS

A. *Both the draft and final versions of this report have the same date (see also Section 7, point 1), so how is it that the 'final' version includes fourteen MORE documents than the draft version?*

B. *The draft version clearly states – on 30th April 1995 – that the consultants needed 'extra weeks' to finish examining all the submitted claim documents. How could these 14 volumes, containing 2,600 separate documents, all be examined on that same day – 30th April 1995 – between the submission of the technical team's draft of their report, needing 'weeks' to complete, and the submission of the so-called 'final' version, also dated 30th April 1995?*

C. *When I alerted Mr Pinnock to the discrepancy between the two versions of the report, why didn't Mr Pinnock (as the administrator of the arbitrations) immediately demand that this misleading and deceptive conduct be investigated, and the missing volumes (all related to billing issues) be properly examined by the technical team?*

D. *The differences between the two lists of documents 'assessed' prove that less than 30% of my technical documents were ever examined. Why then did Dr Hughes and Mr Pinnock tell the Institute of Arbitrators that ALL the documents had been examined?*

SECTION 8 – Verification testing for COT arbitrations

1. On 13th April 1994 the Chairman of the Australian Communication Authority (AUSTEL), Mr Robin Davey, provided the then Minister for Communications, the Hon Michael Lee MP, with a report called *"The COT Cases"*. This report strongly criticises the way Telstra handled fault complaints; raises a number of particularly important issues; and proves that the COT claimants were still complaining about phone problems when the report was produced.

2. Appendix Evidence five, File five is AUSTEL's Arbitration Verification Testing report from the COT report (point 1, above), which proves that, as part of the COT settlement/arbitration process, AUSTEL directed that Telstra carry out these particular tests at the various COT businesses to determine the actual performance of Telstra's services at those locations.

3. On page 20 of this report, under the heading *"Standard of Service"*, AUSTEL states: *"Telecom, in consultation with AUSTEL, developed by May 1994,* a standard of service against which Telecom's performance may be effectively measured* a relevant service quality verification test for that purpose."*

4. On pages 22 and 23, AUSTEL further confirms the relevance of these verification tests when they state: *"This standard will be finalised in time to be applied to any settlement resulting from the Fast Track Settlement or the proposed arbitration procedures canvassed in this report."* My business was one of those 'canvassed' in the report.

5. On page 44, at point 3.26, it is noted that AUSTEL *"... also has the power to determine a standard of service against which Telecom's performance may be effectively measured and is developing such a standard in consultation with Telecom. Such a standard, together with a service quality verification test which AUSTEL is also developing in consultation with Telecom so that it may be applied to any case subject to settlement is, as observed elsewhere in this report, essential."*

6. Evidence Five, File five and Appendix 3 a, File three confirm that I wrote to the arbitrator, Telstra and AUSTEL, confirming that, in my opinion, Telstra did not carry out the arbitration verification tests at my business on 29th September 1994 in accordance with the specifications laid down by AUSTEL. My partner and I each submitted to the arbitration signed and witnessed Statutory Declarations listing the problems with this testing process.

7. On 11th October 1994, and again on 16th November 1994, AUSTEL wrote to Telstra condemning the verification tests at my business as deficient and asking

what Telstra intended to do about these deficiencies (see Appendix 3, File three).

8. On 12th December 1994, covered by two statements made under oath, Telstra STILL submitted the faulty verification test results to my arbitration, stating that they had not found any problems with the telephone service at my business and the testing had met and exceeded AUSTEL's specifications.

9. From 12th December 1994 until 11th May 1995 (when the arbitrator handed down his award in my case) I continued to register complaints with the TIO and the arbitrator because none of the faults that had driven me to arbitration had been either located or fixed. One of these letters included the following: *"I refer to my copied letters to you dated 2nd and 10th October 1994, with regards to my complaints against Telstra's verification tests carried out on my service 29th September 1994 last. In her statutory declaration Ms Cathy Ezard complained that she believed Mr Gamble did not correctly test the supposed test calls which should have connected to both our fax line and our incoming service line. My own statutory declaration of these complaints was also forwarded to your office including my concern that my kiosk phone was not correctly tested as well as my Gold Phone. My records show your office has yet to respond to these complaints. My previous letters to you January 22nd and 26th also confirmed we were still experiencing problems with our service lines."*

10. Appendix 11, File three, includes information relating to the report submitted to my arbitration by the TIO-appointed technical consultants on 30th April 1995. At point 2.23 the consultants record: *"Continued reports of 008 faults up to the present. As the level of disruption to the overall Cape Bridgewater Holiday Camp (CBHC) service is not clear, and the fault causes have not been diagnosed a reasonable expectation is that these faults would remain 'open'."* This statement by the TIO's own technical consultants further supports my contention that the faults continued past the end of my arbitration – the very reason why I am still here, complaining, in 2006.

11. So, on 30th April 1995, we have the technical consultants noting that the faults were likely to continue after they had completed their report, thereby supporting my letter of 15th February 1995, complaining that the faults had at least continued to occur after the verification testing. If the TIO and the arbitrator had allowed the technical consultants to properly investigate my complaints, before the end of my arbitration, and Telstra had correctly carried out the AUSTEL-instigated verification testing instead of submitting false information under oath to the arbitration in a (successful!) attempt to hide the ongoing phone problems, I would still own my business today. When the TIO and the arbitrator decided to allow my arbitration to be deemed complete under these circumstances, they created a situation that can only be called a national disgrace!

VERIFICATION TEST CONCLUSION

The AUSTEL COT Report submitted on 13th April 1994 to Minister Lee was an official, Government-funded report. It clearly confirms that Telstra had to perform a recognised and specified series of tests. In the case of my business, this never occurred and I can only guess at why. Perhaps the arbitrator and his technical