CAV
CHRONOLOGY
LGE

Exhibit 181 to 233

Hunt & Hunt
LAWYERS

12 May 1995

Our Ref: GLH
Matter No: 5126900
Your Ref:

Mr Graham Schorer
Golden Messenger
493-495 Queensberry Street
NORTH MELBOURNE Vic

Dear Mr Schorer

ARBITRATION - TELECOM

I note I have not heard from you for some time.

I am departing today for two weeks leave. When I return, I intend convening a directions hearing in order to determine whether the parties wish this arbitration to proceed.

I would be interested to receive any written comments from you (or Telecom) in the meantime.

Yours sincerely

GORDON HUGHES

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

11464044_ACZF/CF

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

Telecommunications
Industry
Ombudsman.

John Pinnock
Ombudsman

27 June 1995

Mr William Hunt
Hunts'
358 Lonsdale Street
MELBOURNE VIC 3000

Dear Mr Hunt

Fast-Track Arbitration Procedure - Mr Graham Schorer and Telecom

I understand you act for Mr Graham Schorer and the firm Golden Messenger.

As you may be aware, this arbitration has in effect been in abeyance for some months. This has apparently been due to the Claimant's outstanding requests for documentation, and Mr Schorer's ill health.

We have not heard from Mr Schorer for some time, and would be grateful if you could advise us as to how he intends to proceed.

Yours sincerely

John Pinnock
Ombudsman

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

Box 18098
Collins Street East
Melbourne 3000.

Telephone (03) 9277 8777
Facsimile (03) 9277 8797

ATT. LYN
4/8/95.
8/8/95.

Telecom AUSTRALIA

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

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

24 May 1995

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

By facsimile: (055) 267 230

Dear Mr Smith

Your FOI Requests of May 1994

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

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

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

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

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

Yours faithfully

Ted Benjamin
Group Manager
Customer Affairs

Encl:

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FAXED

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

Telecommunications Industry Ombudsman

Facsimile Cover Sheet

TO: PLB

Company: Minters

Fax: 9674621

FROM: PAD

Company: TIO

Fax: 92778797

Date: 22.6.95

Pages: 1 (including cover sheet)

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

Peter,

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

Regards. Pa.

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TAITS
SOLICITORS - CONSULTANTS

WARRNAMBOOL
121 Kepler Street,
Warrnambool.
P.O. Box 311,
Warrnambool, 3280
DX 28003 Warrnambool
Tel: (055) 61 4111
Fax: (055) 61 4567

PORT FAIRY
6 Princes Street,
Port Fairy.
P.O. Box 121
Port Fairy 3284
Tel: (055) 68 1010
Fax: (055) 68 2731

MORTLAKE
118 Dunlop Street,
Mortlake.
P.O. Box 1
Mortlake, 3272
Tel. (055) 99 2504
Fax (055) 99 2036

PARTNERS
Donald Aitken
[illegible]
Grant Ezzy

ASSOCIATE
Elizabeth Laidlaw

ACCREDITED
SPECIALISTS
James Tait
Business Law;
Wills & Estate Planning;
Local Government,
Planning & Environment.
Grant Ezzy
Family Law;
Commercial Litigation.

Reply to: Warrnambool
Our Ref: Mr. Ezzy:7:18
Your Ref:

June 29, 1995..

Mr. Neil Tuckwell,
Chairman,
Austel,
P.O. Box 7443,
ST. KILDA ROAD,
MELBOURNE. 3004
FAX 03/9820 3021

29/6/95

Dear Sir,

Alan Smith - Cape Bridgewater Holiday Camp

We act for Mr. Alan Smith of Cape Bridgewater Holiday Camp, Portland.

Mr. Smith instructs:

1. He has had recent correspondence with your office and also discussions with Mr. Matherson regarding the testing by Bell Canada International Inc. and Neat during November 1993.

2. From 28.10.93 to 8.11.95 the Neat Testing was being evaluated. To perform the test an Ericsson Neat Network Test Unit was connected to the test number at the Cape Bridgewater RCM 055 267 211 in the same line group as Mr. Smith's number (055 267 267). Mr. Smith has the results of those tests.

3. Over the same period, during the Neat testing, Bell Canada International Inc. performed their tests to the same RCM number at Cape Bridgewater PTARS 055 267 211, from 12.45 p.m. on 5.11.93 until 4.30 p.m. 5.11.93 (from South Yarra 03 867 1234). Also, on the same day, from Richmond (03 428 8974), between 12.45 p.m. and 4.18 p.m. further tests were done to the same PTARS 055 267 211.

4. On 6.11.93 from 054 434 234 to the PTARS 055 267 211 more tests were done to that same number, finishing at 10 a.m. on 8.11.93.

5. Mr. Smith has already refuted the amount of test calls that took place over these days.

Please within 14 days advise our client as to whether or not the NEAT Testing was performed over the same period and time-frame as mentioned (November 5th, 6th and 8th), while Bell Canada International were also performing their own tests.

Yours faithfully,

TAITS SOLICITOR

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AUSTEL
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

5 Queens Road
Melbourne
Victoria 3004
Tel: (03) 9828 7300
Fax: (03) 9820 3021
Free Call: 1800 335 526
TTY: (03) 9829 7490

94/0269 -10

12 July 1995

Taits Solicitors
PO Box 311
WARRNAMBOOL 3280

Facsimile (055) 61 4567

Attn Mr Ezzy

Dear Sir

Re: ALAN SMITH - CAPE BRIDGEWATER HOLIDAY CAMP

This letter responds to your correspondence dated 29 June 1995 (your reference Mr Ezzy:7:18) in relation to your client Mr Alan Smith. Mr N Tuckwell, Chairman, AUSTEL, has requested that I reply on his behalf.

The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the tests should be referred to those who carried them out or claim to have carried them out.

Yours faithfully

Cliff Mathieson
General Manager
Carrier Monitoring Unit

cc Mr A Smith
Facsimile (055) 267 230

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August 7, 1995

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

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

By Facsimile: (055) 267 230

Dear Mr. Smith,

I refer to your recent letters concerning the determination of your claim against Telstra under the Fast Track Arbitration Procedure (FTAP). In these letters you raise a number of complaints.

You have complained that Telstra (formerly Telecom) provided you with approximately 24,000 documents pursuant to Freedom of Information ('FOI') legislation in late December 1994 which was after you had submitted your claim documents, and indeed, after Telstra had lodged its defence.

The Arbitrator made his award on 11 May 1995. I consider that there was sufficient time for you to raise any relevant points arising from the FOI material provided to you prior to the Arbitrator making his award. In any event, the conduct of the Arbitration, including such matters as directions or submissions by the parties, was properly a matter for the Arbitrator.

You have also complained that on 26 May 1995 you received further FOI documents from Telstra which, you state, would have assisted your claim significantly.

In particular, you claim that:

(a) the further FOI documents released confirmed that Telstra internally acknowledged to Bell Canada International Inc.('BCI') that your complaints were correct in suggesting that the BCI testing of your telephone service was "fabricated" as the testing could not and did not take place as reported in the BCI Addendum Report;

(b) Telstra deliberately delayed the release of FOI documents which contained material in support of your claim;

12 187

TIO LTD ACN 057 634 787
National Headquarters
321 Exhibition Street

Box 18098
Collins Street East
Melbourne 3000

CONFIRMATION OF FAX

Telephone (03) 9277 87
Facsimile (03) 9277 87

(c) Telstra was involved in a deliberate misrepresentation to the Arbitrator which has resulted in you failing to receive the benefits and concessions due to you;

(d) Telstra has knowingly presented to the Arbitrator a "fabricated" testing and evaluation report that ".... was allegedly independently and impartially performed and created" by BCI.

(e) The Resource Unit took into account the flawed BCI report.

You claim that the assessment of your case by the Arbitrator would have been materially different if the Arbitrator had been aware of the details set out in the points above.

As Administrator of the FTAP, I have a duty to ensure the integrity of the procedure. Your complaints go to this issue, and accordingly, I would be pleased if you would provide me with:

- all documents supplied to you by Telstra on or after 26 May 1995 together with covering letters, schedules or annexures which may identify those documents.

- a concise explanation of the significance of the further FOI documents released by Telstra; in particular, specific instances which support your contentions in (a) and (e) above.

- any other evidence which supports the above contentions.

In order to deal with your complaints expeditiously, I would be pleased if you could provide this material to me within 14 days.

If you have difficulty in providing copies of the material or in otherwise complying with this request, please let me know.

Yours sincerely,

John Pinnock
Ombudsman

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FAX FROM: ALAN SMITH DATE: 9.8.95
C. O. T. (CASUALTIES OF TELSTRA
formerly CASUALTIES OF TELECOM)

FAX NO: 055 267 230

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

FAX TO: **MR TED BENJAMIN**
CUSTOMER AFFAIRS
TELSTRA
EXHIBITION ST
MELBOURNE 3000 By facsimile 03 9632 3225

Dear Sir,

RE YOUR LETTER DATED 3rd AUGUST, 1995
TF200 TELEPHONE

This TF200 telephone report, as I have previously explained to Telstra, was not provided to me before Telstra's defence of 12th December, 1994. You mention in your letter that even so, this report was provided pursuant to the arbitration process. This is incorrect. The Report itself was only forwarded to me after I had asked for relevant material which was associated with this Report.

Telstra's defence documents were the first time I had known of such a Report and it was at this point that I asked Dr Hughes to seek forensic material and copies of original photos through the arbitration process. Dr Hughes chose not to seek this information and it was then that a copy of the Report was delivered to my business.

I am now asking Telstra to supply this TF200 Telephone Report under the FOI Act. I am forwarding an additional $30.00 for this request.

You also mention in your letter that I had not received a copy of the Report because this report was not finished until June 20th, 1994 and my FOI requests after that date were very specific as to which documentation I was seeking. Mr Benjamin, this statement demonstrates that Telstra is 'having two bob each way'. Firstly Telstra has been quoted as saying that I (and other members of COT) are too broad in our FOI requests, and now you state that I am too specific. It appears by your own admission, in your letter dated 3rd August, 1995, that Telstra has only supplied various FOI documents in accordance with Telstra's own views regarding each particular application.

I find this late admission by Telstra of FOI documents most alarming, especially when I have been in a Settlement/Arbitration Procedure for some 15 months and documents have not been provided in accordance with the FOI Act. This state of affairs leaves little doubt as to why it has taken Telstra some 18 months to provide FOI documents - in some cases quite old documents. The concern now held by COT members is: what FOI documentation has not been supplied at all, due to Telstra's screening procedure?

Again it appears that Telstra has not been the model corporate citizen it would like the public to believe it is.

This TF200 Report contains statements that conflict with Telstra's own internal documentation, therefore I am now asking for **ALL** material, including raw working notes written to support the findings as included in this TF200 Report.

If there is still any democratic system in Australia then Telstra, without my knowledge, has allowed this Report to be processed with adverse findings.

I demand that Telstra provide all the documentation associated with this TF200 Report so as to allow me the chance to defend those allegations contained within the Report. I await your response with regard to this

matter.

Also, further to your letter of August 3rd, 1995: I did not receive any raw tape data or ELMI monitoring information for the months of May to August, 1993. An ELMI monitoring device was connected to my 267 267 line at the RCM Cape Bridgewater during that period. If I had not found tapes in a briefcase inadvertently left by a Telstra technician during June, 1993, (where a tape for one 6 day period showed that 29 calls attempting to come to my business were not connected) I would not have been aware of this data at all. For your information, this data also showed incorrect charging.

It would appear, from your letter of August 3rd, 1994, that this reluctance to provide ELMI data is similar to Telstra's attitude to the FOI Act: they seem to think about only what is the very least they can supply, rather than what the Act states that they must supply.

I hope that the result of my request for the supply of original documentation related to the TF200 Report receives a different response from you than that received to my request for this ELMI data.

Sincerely,

Alan Smith

cc Mr John Wynack, Commonwealth Ombudsman's Office, Canberra, ACT.
Mr John Pinnock, Telecommunication Industry Ombudsman, Exhibition St, Melbourne.

Telecom AUSTRALIA

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

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

21 August 1995

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

FAXED
21/8/95

By facsimile: (03) 9277 8797

Dear Sir

Fast Track Arbitration Procedure - Alan Smith

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

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

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

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

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

Yours faithfully

Steve Black
Group General Manager
Customer Affairs

sb-jp001.doc

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11 August 1995

Mr Steve Black
Group General Manager Customer Affairs
Telstra Corporation Limited
37/242 Exhibition Street
Melbourne Victoria 3000
AUSTRALIA

Dear Mr Black

I am sorry for the late reply but I did not receive your correspondence dated September 6, 1994 concerning the anomaly found in the date of the test call records. However, Kevin Dwyer did call me in August 1994. Kevin Dwyer and I discussed the tests performed, equipment used both at the originating and terminating office and the test results. I also reviewed my personal travel log to verify the times and dates of my movements from Melbourne to Portland during the testing period.

I was subsequently provided with a copy of the correspondence on August 7 1995 as well as a copy of my original hand written notes on tests performed and the network failures noted.

Specifically, the anomaly involved the start and finish times for the test run for a small number of test calls from Richmond digital exchange (RCMX), test line 03 428 8974 to Portland exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 267 211 (detailed in Section 15.23 of the report).

Unfortunately, the wrong date was recorded in the handwritten notes which was transcribed to the final report for Telstra. It must be pointed out that, while the actual date was incorrectly recorded, this error does not affect the validity of the testing process or the test results and is not a significant factor in assessing the overall performance of the network.

Yours sincerely

Gerald A. Kealey

Gerald A. Kealey
Bell Canada International

190 A

Bell Canada International Inc.

1 Nicholas Street, Suite 800
Ottawa, Ontario, Canada
K1N 9M1

Tel: (613) 563 1811
Fax: (613) 563 9679
Telex: 053-4849

Mr Alan Humrich
General Manager
Central Area
6th floor, 151 Roma Street
Brisbane

14 December 1993

Subject: (Inter-Exchange) Network Tests

Dear Mr Humrich

Attached are the results of supplementary Inter-Exchange Network tests, which were conducted during the past two weeks.

More specifically, BCI tested four outer Melbourne exchanges namely Werribee - ARE, Thomastown - ARE, Tarneit - ARE and Sunshine - ARE to the 318-6XXX terminating exchange.

The overall test results demonstrated a successful completion level of 99.4%. There were 7,874 calls originated with 45 failures.

In addition, on December 10, 1993, Austel requested that BCI conduct network tests from Thomastown - ARE, Sunshine - ARE, Tullamarine - ARE, Maidstone ARF and Brooklyn - ARE exchanges to the 329-0XXX terminating exchange.

The overall test results for the first Austel series of tests, demonstrated a successful completion level of 98.3%. There were 16,125 analogue calls originated with 267 failures registered during the study. The second series of tests resulted in 98.1% completion level. In this study there were 8109 analogue calls with 155 failures. It should be mentioned that a failure of "first choice trunks" was defective in the North Melbourne exchange, which continuously occurred because of the frequency of the test calls.

Also attached, is a summary report regarding the action taken on the failures identified during the study.

The combined test results for both sets of studies, further confirm the Bell Canada International results described in it's November 1993 study.

We would be pleased to discuss these results further, should additional information be required.

Yours Truly,

M. A. Norman

190 B K47438

Senator SCHACHT—You can show them the *Hansard* of my remarks.

Mr Pinnock—I can do that to them.

Senator SCHACHT—It would be in my view extremely short-sighted of them not to adopt what I think are the minimum changes that you have outlined here to the process. If they do not, I suspect the TIO itself—not you personally—will start to have its own credibility undermined because of the influence on the TIO council of the carriers, which is always an issue.

Mr Pinnock—With the greatest respect, I correct you there. The carriers do not hold sway in the council at all. I report to my council, I am present at every council meeting and I can state categorically that the influence of the carriers in the council is the influence of the membership of the TIO balanced against the interests of consumers represented by independently appointed and consumer and user group representatives who are employed after consultation with the minister.

Senator SCHACHT—I am pleased you put that on the record. I am pleased to hear that again. We have to keep stating that because there is perception that the influence, directly and so on, because of the clout of the carriers—

Mr Pinnock—The perception is wrong.

Senator SCHACHT—But, being able to hear, I just the same think that this is a test coming up for the council, that these changes if they are not adopted will further increase the perception maybe as wrong as they are now that the influence of the carriers is too strong. I just raise that. I put my hand up back five or six years ago for the TIO to be created and all of that. This is a revolutionary process and with the privatisation of Telstra—the third privatisation under way—the world keeps changing. The state-owned monopoly is now operating in a different area. If further amendments to the Trade Practices Act about unconscionable conduct are strengthened, the officers of Telstra, like any others, are going to have to be witnesses and be available for those actions. That will be an excellent step forward vis-a-vis the power of Telstra versus small business.

Can I now just go to some questions to Telstra. Did Simone Simmons on behalf of Telstra state on Channel 9's *Current Affair* program in August 1996 that the findings of the Bell Canada International report into the performance of the Telstra network substantiate that there were no systematic problems within Telstra's billing system?

Mr Benjamin—I am not aware of that particular statement by Simone Simmons, but I think that would be a reasonable conclusion from the Bell Canada report.

Senator SCHACHT—Since then of course—not in conversations but elsewhere—we now have major litigation running into hundreds of millions of dollars between various

service providers and so on which are complaints about the billing system. Does that indicate that she may have been partly wrong?

Mr Benjamin—From memory, I do not think the Bell Canada inquiry looked at billing systems.

Senator SCHACHT—The claim is that she said that Bell Canada's international report substantiated that there were no systematic problems within Telstra's billing system; that was her claim. I am just saying that, since then, you have got major litigation running into hundreds of millions of dollars between various service providers and other telecommunications providers claiming false overbilling running into hundreds of millions of dollars.

Mr Ward—I cannot comment on the Simone Simmons statement and I guess we will get that checked if it is not with us today.

Senator SCHACHT—So we start at the right place. That is another question being taken on notice.

Mr Ward—No, I did not say that. We will check if we can get the information from the people we have here. The comment I was going to make about billing was that, since that time, the development in the wholesale market of service provision between Telstra and service providers has taken off quite significantly, and that is a wholesale, if you like, billing service based on, at that stage, a retail platform. I suspect—and we will have this checked—that the Bell Canada report would not have looked at that aspect of the billing.

Senator SCHACHT—Has Telstra received any complaints from CoT members and other people about the BCI report findings being flawed or fabricated?

Mr Benjamin—Yes, there have been complaints made—sorry, not fabricated; there have been complaints made by various CoT members about disagreement with aspects of the Bell Canada report.

Mr Armstrong—Can I just add I think one of the CoT members has alleged that the Bell Canada report was fabricated.

Senator SCHACHT—That is what I am saying: there is a pile of stuff there that has come into my office from a range of CoT case people and I am trying to summarise a range of their complaints. They claim it is fabricated. I do not automatically accept that. I want to get them on the record in order to get the cases into the open. I want to get to the bottom of many of those complaints. As a result of those complaints, did you find that Telstra had to take any action in respect of the BCI report to rectify any inaccuracies or shortcomings in the system?

Mr Armstrong—Yes. The basis upon which it was put that the report was fabricated was an apparent clash of dates, as I recall, with two sets of testing. This goes back a couple of years. I believe that claimants raised the matter with the TIO. Telstra went to Bell Canada and raised the clash of dates with it. As I recall, Bell Canada provided a letter saying that there was an error in the report.

Senator SCHACHT—Can you please provide us with a copy of that letter from Bell Canada?

Mr Armstrong—I do not have it with me.

Senator SCHACHT—Can you get it for us?

Mr Armstrong—Yes.

Senator SCHACHT—I will put that question on notice. As to the complaints to Telstra from the CoT cases—Mr Benjamin, you may think that you have drawn the short straw in Telstra, because you have been designated to handle the CoT cases and so on. Are you also a member of the TIO board?

Mr Benjamin—I am a member of the TIO council.

Senator SCHACHT—Were any CoT complaints or issues discussed at the council while you were present?

Mr Benjamin—There are regular reports from the TIO on the progress of the CoT claims.

Senator SCHACHT—Did the council make any decisions about CoT cases or express any opinion?

Mr Benjamin—I might be assisted by Mr Pinnock.

Mr Pinnock—Yes.

Senator SCHACHT—Did it? Mr Benjamin, did you declare your potential conflict of interest at the council meeting, given that as a Telstra employee you were dealing with CoT cases?

Mr Benjamin—My involvement in CoT cases, I believe, was known to the TIO council.

Senator SCHACHT—No, did you declare your interest?

FAX FROM: ALAN SMITH
C. O. T.

DATE: 20.6.95

FAX NO: 055 267 230

PHONE NO:008 816 522

NUMBER OF PAGES (including this page)

FAX TO: DR GORDON HUGHES
HUNT & HUNT
LAWYERS
MELBOURNE

Dear Dr Hughes,

Included with this fax are a number of documents:

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

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

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

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

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

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

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

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

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

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

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

Respectfully,

Alan Smith

FAX FROM:	ALAN SMITH	DATE:	15.6.94
	C. O. T.		
FAX NO:	055 267 230		
PHONE NO:	008 816 522	NUMBER OF PAGES (including this page)	
FAX TO:	DR GORDON HUGHES HUNT & HUNT LAWYERS MELBOURNE FAST TRACK ARBITRATOR		4

Dear Dr. Hughes,

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully,

Alan Smith.

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

FAX FROM: ALAN SMITH DATE: 29.8.94

C. O. T.

FAX NO: 055 267 230

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

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

Dear Mr Kransnostein,

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

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

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

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

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

I await your response.

Sincerely,

Alan Smith

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

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File Strength

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

Telephone (03) 634 5736
Facsimile (03) 634 6441

13 September 1994

Dr Gordon Hughes
Hunt & Hunt

Facsimile No. (03) 614 8730

Dear Sir

Fast Track Arbitration - Smith

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

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

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

Yours faithfully

Paul Rumble
NATIONAL MANAGER
CUSTOMER RESPONSE UNIT

L68979

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FAX FROM: ALAN SMITH
C. O. T. (CASUALTIES OF TELSTRA
formerly CASUALTIES OF TELECOM)

DATE: 8.8.95

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: MR TED BENJAMIN
CUSTOMER AFFAIRS
TELSTRA
EXHIBITION ST
MELBOURNE 3000

By facsimile 03 9632 3225

Dear Mr Benjamin,

I refer to your letter of 3 August 1995.

Because of Telstra's violation of the FOI Act and lack of concern about their difficult network fault customers in dispute, I was disadvantaged by Telstra's conduct in denying me the right to receive the benefits of natural justice during the Fast Track Arbitration Procedure as the following points show.

1. In June 1992, I asked Peter Taylor, Manager of Telstra's Warrnambool exchange, if Telstra fault service (1100) had any known facts which had been logged by customers (myself included) into the leopard data-base etc. In a letter from Mr Taylor I was told that, in relation to my service, **NO DOCUMENTS AT ALL** were in existence prior to 27 June 1991.

In Telstra's defence documents as presented to the Arbitrator, Dr Gordon Hughes, on 12 December 1994 we see that, contrary to Mr Taylor's letter of June 1992, considerable documentation was in fact on record in relation to faults on my phone service. Some of this documentation was dated 1988, 1989 and 1991.

2. In May 1993, I asked Ms Roseanne Pittard, Telstra's Vic/Tas Commercial General Manager, if Telstra had any data associated with customers from the Cape Bridgewater Holiday Camp having registered complaints to the 1100 fault service centre. Ms Pittard replied that **THERE WAS NO DATA**. In my FOI documents, supplied in June 1994, we see the same Ms Pittard suggesting to Jim (surname not known) that Telstra should charge me for FOI documents, even if they could not supply me with all the information I sought. This type of behaviour was not uncommon with regard to Ms Pittard. I also have further information which clearly shows her disregard for protocol.

3. RE: FABRICATED EVIDENCE SUPPLIED TO THE ARBITRATION PROCEDURE:

Mr Benjamin, the Bell Canada International Inc Addendum Report, as viewed by the Arbitration Procedure, is a fabricated set of test results. This Bell Canada testing report, associated with the RCM PTARS 267 211, alleged that some 9000 test calls connected correctly over a particular five day period, with minimum fault loss. This is the same line sequence as the Cape Bridgewater Holiday Camp (267 267). After reading this report, the financial resource team from Ferrier Hodgson would have to assume that may phone problems in late 1993 were not as severe as I imagined.

One example in the report relates to 5 November 1993.

On this day some 2000 test calls were alleged to have successfully connected to the PTARS 267 211 from two separate locations in Richmond and South Yarra, over a 3.5 hour period, with only 2 faults occurring.

Any reasonable person, including the resource team, on reading these statistics, would have no alternative but to be under the impression that my phone faults were no longer a major problem.

In Telstra's defence document B004, C\B\H\C Service History, on page 8, it is shown that in June 1988 the RAX exchange had 58 customers connected. In the DMR and Lanes report, page 17, it is stated that by the cut-over date to the new exchange (RCM) in August 1991, there were 66 customers connected to the old RAX exchange.

None of this information was made available under FOI.

Had Telstra correctly supplied the above information in accordance to the time period contained in the FOI Act, I would have been in the position to instruct my Resource Team to contact various statisticians to highlight the excessive percentage of calls I would have lost prior to August 1991, eg using 58 resident families connected in 1988 to the RAX exchange we can arrive at the figure of equalling 109 adults, 6 teenagers, including 7 single residents, all using an exchange with very old technology and designed for a very low calling-rate area. This equates to 115 people either making an outgoing call or hoping for an incoming call on only 8 lines - for 3.5 years.

With this information, my Resource Team would have been better able to substantiate the call losses, causal link and the extent of my financial losses during my first 3.5 years of business.

Not included in the above information and extrapolation of figures is the fact that during December to April each year, additional relatives and family friends were staying with the 58 resident families during the summer holiday period, adding to the amount of people requiring access to incoming and outgoing telephone service facilities.

The December to April period these additional people were residing in my area were adding to my lack of access to a reliable telephone service during my busiest booking and trading period.

With the limited examples I have supplied Telstra, not even Telstra can try to suggest, or even contemplate, down playing the consequential loss that has been caused to my business over this 3.5 year period.

The fact that Telstra did not provide this information under my four separate FOI requests DID serve to deny me the substantiating evidence required to allow me to receive the maximum benefit of the natural justice provisions contained in this Arbitration process, thereby severely disadvantaging my right to maximise the amount I was entitled to receive under my claim.

Telstra did (regardless of whether they did knowingly) submit and relied upon a flawed report as part of Telstra's defence in the Arbitration process.

Telstra did supply relevant documentation sought prior to the Arbitration process commencing and after the Arbitration process was finalised, to myself that substantiated Telstra's internal knowledge that the Bell Canada International Addendum report was not a true and correct document.

Sincerely,

Alan Smith

cc Mr J Wynack, Commonwealth Ombudsman's Office
Mr J Pinnock, Telecommunications Industry Ombudsman

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I require that a new series of identical tests be performed by a newly introduced impartial internationally recognised Telecommunication organisation under the same conditions as those run on 5 November 1993 - that is, the 2 same separate locations be used to generate the same number of test calls to a PTARS over a 3.5 hour period.

It should not be forgotten that Telstra was performing NEAT testing to the same PTARS at the same time as these alleged additional test calls were being made, and under that Telstra NEAT testing program, the PTARS were set to allow for a 15 second delay for the test call tear down and network and PTARS resetting.

I know that a new test report, properly and impartially performed, would be in the best interests of all concerned, considering the serious implications associated with Telstra using this flawed report as a defence document.

Telstra should welcome the chance to impartially prove that my allegations (that these test results were incorrect as stated in the Bell Canada International report) are wrong.

4. **RE: TELSTRA WRONGLY WITHHOLDING AND WRONGLY DELAYING THE SUPPLY OF FOI DOCUMENTATION CONTAINING EVIDENCE OF CAUSAL LINK TO CALL LOSSES TO SUBSTANTIATE ALAN SMITH'S CLAIM, INCLUDING DOCUMENTS SUPPLIED AFTER THE ARBITRATION PROCESS WAS COMPLETED, SUBSTANTIATING TELSTRA'S INTERNAL KNOWLEDGE THAT THE BELL CANADA INTERNATIONAL ADDENDUM REPORT WAS WRONG:**

FOI information was drip fed through the Arbitration Procedure in 1994.

I received from Telstra 24,000 additional FOI documents in late December 1994, after I completed my claim\submission and Telstra had delivered their defence to my claim.

In allowing a minimum average of three minutes to read, study and understand the information contained in each document, then sort, file, collate all relevant documents and copy three times the relevant same documents for presentation to the Arbitrator, Resource Unit and Telstra, it would have taken me an additional 1200 working hours minimum which is equal to approximately eight months of a normal employed person's working time to process these documents, while trying to conduct my business of running a holiday camp and participate in an Arbitration process.

Telstra knew of my precarious financial position in November 1993 when I signed the Fast Track Arbitration Proposal. Due to the extensive Telstra created delay in supplying the above documents, I no longer had the financial credit capacity to engage additional professional assistance, sufficient personal health or time to properly process these documents which were supplied nearly twelve months after they were requested.

A second example of how this late FOI documentation severely disadvantaged me in presenting my claim\submission to the Arbitration Procedure comes from the DMR and Lanes technical report. This report states that only 8 'final selectors' were connected to the Cape Bridgewater RAX unmanned exchange, and that this exchange used very old technology, designed in the 1950's for very low calling-rate areas.

This report also shows clearly, on page 17, that if 4 local calls were in progress then only 4 calls to local numbers could be handled from outside the area at the same time. This situation existed for the first 3.5 years after I took over the Cape Bridgewater Holiday Camp in 1988 (that is, up until August 1991).

This information was not made available to me under FOI.

I can only assume that Mr Reid of Lane's Communications accessed this information direct from Telstra. My own Resource Team were restricted in their findings by this information not being made available under FOI, therefore disadvantaging me.

FAXED 24-8-95

Telecom AUSTRALIA

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

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

24 August 1995

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

Dear Mr Smith

I refer to your letter of 8 August 1995.

I refer in particular to the last paragraph of your letter in which you state that Telstra had "*... internal knowledge that the Bell Canada International Addendum report was not a true and correct document*". Telstra rejects outright your claim that it had such internal knowledge. In this regard I enclose a copy of the letter of 21 August 1995 from Mr Steven Black of Telstra to the Telecommunications Industry Ombudsman which responds to the issue raised by you in relation to the BCI testing in your letter of 20 June 1995 to Dr Hughes.

Otherwise, insofar as your letter of 8 August 1995 raises issues which have been dealt with in the arbitration, Telstra will not respond to those issues as the arbitration process was a final and binding method of resolving these matters.

Insofar as your letter raises issues in relation to your previous FOI requests you have made complaints in relation to these matters to the Commonwealth Ombudsman and I do not believe it would be useful to respond further.

Yours faithfully

Ted Benjamin
Group Manager
Customer Affairs

cc: Mr John Pinnock
Telecommunications Industry Ombudsman
321 Exhibition Street
Melbourne VIC 3000

Mr John Wynack
1 Farrell Place
Canberra ACT 2601

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Telstra Corporation Limited
ACN 051 775 556

25/10

BASSETT & SHARKEY

Barristers & Solicitors

25 OCT, 1995

Partners
William Bassett, B.Ec., LL.B.
Graeme Sharkey, LL.B.

Your Ref:

Our Ref: WEB:LM

23rd October, 1995

The Telecommunications Industry Ombudsman,
321 Exhibition Street,
MELBOURNE. VIC. 3000

"WITHOUT PREJUDICE"

Dear Sir,

re: Mr. Alan Smith
Cape Bridgewater Holiday Camp

We advise that we now act on behalf of the abovenamed.

Mr. Smith instructs us that certain documents made available to the arbitrator by Telstra in the arbitration between our client and Telstra were not made available to our client during the course of the arbitration. These documents which came into our client's possession 15 days after the appeal time elapsed include a letter from Telecom to Mr. G. Kealey of Bell Canada dated 6th September, 1994 and a memorandum from K. Dwyer to Alan Humrich dated 23rd August, 1994.

These documents evidence the fact that some three months before lodging its defence Telstra was aware that the Bell Canada Addendum report upon which both Telstra and the arbitration relied was flawed.

Mr. Smith is of the view that the issue of the use of flawed reports in defence of claims against Telstra should be investigated and appropriate action taken. If you require further clarification of our client's concerns please so advise. If not we would appreciate being advised of your proposed course of action in the near future.

Yours faithfully,
BASSETT & SHARKEY

per WM. E. BASSETT.

198

134 Percy Street, Portland, Vic. 3305.
Telephone (055) 23 3900
DX 30508 Fax (055) 23 5886

97

WFB:LM

26 October 1995

DRAFT

Bassett & Shirkey
Barristers & Solicitors
134 Percy Street
PORTLAND VIC 3305

Dear Sir

Mr Alan Smith

I acknowledge receipt of your letter of 23 October 1995.

I am not aware of any document made available to the Arbitrator by Telstra during the course of the arbitration, which was not made available to your client. In particular, I am not aware that the Arbitrator was aware of or ever saw the letter from Telecom to Mr G Kealey of Bell Canada of 6 September 1994 or a memorandum from K Dwyer to Alan Humrich of 23 August 1994.

Although the Arbitrator had a copy of the Bell Canada Report, it does not appear to have ever formally been put into evidence. The Award would not suggest that the Arbitrator took significant note of the Report.

With respect, it is for you to advise Mr Smith on his legal rights relating to the arbitration process and the Award. I have not seen the claim documents or the defence documents. Mr Smith continually makes allegations questioning the arbitration process and the Award. I am not in a position to know whether any of his claims have merit. or investigate

If Mr Smith feels that the process was flawed or the Award tainted, he has legal avenues available to him. I have pointed this out to Mr Smith on a number of occasions.

Yours faithfully

DRAFT

John Pitcher
Telecommunications Industry Ombudsman

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l/pl\052990l

Telstra

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

22 November, 1995

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

Black
Benjamin
Geary
Evert
Armstrong
Phillips
~~Thompson~~

Haar
Chisholm
Gamble
Levy
Deloittes
~~Sutton~~
Kearney

Freehills
~~Mallesons~~
~~Holding Redlich~~
~~Plummer~~
Fanning
D'Cruz

File Smith

Dear Mr Smith

Your letter of 8 October 1995 to Freehill Hollingdale & Page
Your letter of 8 October 1995 to Telstra

I refer to your letter of 8 October 1995 to Freehill Hollingdale & Page. I believe it is more appropriate that Telstra respond to your letter.

Telstra rejects the allegations set out in your letter, in particular the allegations that it has behaved *"in an unconscionable way"* and that it *"knew the BCI report was flawed"*.

Telstra has previously forwarded to you a copy of its letter to the Telecommunications Industry Ombudsman which responded to the matters you raised with the Ombudsman in relation to the Bell Canada International Report.

I refer also to your letter of 8 October 1995 to Mr Stephen Black of Telstra. Telstra rejects out of hand the inference in your letter that it has, with Bell Canada International, concocted information in the Bell Canada Report.

I note that you raised issues in relation to the Bell Canada International testing results in the arbitration process. As you are aware, the arbitration process dealt with complaints by you in relation to your telephone service. That process has been completed and consequently, Telstra does not propose to comment further or enter into debate with you on these matters.

Yours faithfully

Ted Benjamin
Group Manager
Customer Affairs

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

Mr J Wynack
Director of Investigations
Commonwealth Ombudsman's Office
By facsimile: (06) 249 7829

200

Telstra Corporation Limited
ACN 051 775 556

AUSTEL
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

5 Queens Road
Melbourne
Victoria 3004
Tel: (03) 9828
Fax: (03) 9820 [illegible]
Free Call: 1800 335 526
TTY: (03) 9829 7490

94/269

3 October 1995

Mr Steve Black
Group General Manager
Customer Affairs
Telstra

Facsimile No: (03) 9632 3241

Dear Mr Black

CALL CHARGING AND BILLING ACCURACY OF TELSTRA'S 008/1800 SERVICE

I write concerning charging discrepancies raised in 1994 by Mr Alan Smith of Cape Bridgewater Holiday Camp regarding his 008 service, and the wider issue these discrepancies raise for Telstra's 008/1800 customers. These matters have been the subject of previous letters from AUSTEL to you and to Mr Ted Benjamin, dated 4 October 1994 and 1 December 1994, respectively. The charging discrepancies have again been raised with AUSTEL by Mr Smith following the conclusion of his Fast Track Arbitration Procedure.

As noted in AUSTEL's letter of 1 December 1994 (copy attached), the matters raised by Mr Smith concerned an issue which has the potential to affect a considerable number of Telstra's customers. Specifically, the matters raised issues about the call charging and billing accuracy of Telstra's 008/1800 service.

To date, AUSTEL has not received a response from Telstra which allays AUSTEL's concerns about this issue. Telstra's introduction of a 12 cent flag fall for its 008/1800 service has increased AUSTEL's concerns, given the issues raised by Mr Smith included matters related to short duration calls.

AUSTEL has a responsibility to investigate potential systemic network performance issues which come to its attention. Accordingly, I request that Telstra provide a response to the issues raised in AUSTEL's letter of 4 October 1994 (copy attached) by COB 13 October 1995.

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CMU/08/DK

I note from Mr Benjamin's letter of 16 December 1994 that Telstra was then in the process of preparing a response addressing the issues raised.

Yours sincerely

Cliff Mathieson
General Manager
Carrier Monitoring Unit

cc Mr John Pinnock, TIO

201

COPY

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

9 November 1995

Your Ref: WEB:LM

Bassett & Sharkey
Barristers & Solicitors
134 Percy Street
PORTLAND VIC. 3305

Dear Sir,

Re: Mr. Alan Smith

I acknowledge receipt of your letter of 23 October 1995.

You raise concerns which Mr. Smith has with the arbitration process in which he was a party.

With respect, it is for you to advise Mr. Smith on his legal rights relating to the arbitration process and the Award of the Arbitrator. I have not seen the Claim Documents, Defence Documents, or Reply Documents in this arbitration, nor would I expect to.

If Mr Smith feels the process was flawed or the Award tainted, he has legal avenues available to him. I have pointed this out to Mr Smith on a number of occasions. Perhaps you might explain to Mr Smith what avenues of appeal are available to him. He does not seem to understand that this office cannot provide any such avenue.

Yours sincerely,

John Pinnock
Ombudsman

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TIO LTD ACN 057 634 787
National Headquarters
321 Exhibition Street

Box 18098
Collins Street East
Melbourne 3000

Telephone (03) 9277 8777
Facsimile (03) 9277 8797

CONFIRMATION OF FAX

10 January 1996

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

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

Dear Mr Smith

I refer to your letter of 31 December 1996 in which you seek to access to various correspondence held by the TIO concerning the Fast Track Arbitration Procedure.

The arbitration of your claim was completed when an award was made in your favour more than eighteen months ago and my role as Administrator is over.

I do not propose to provide you with copies of any documents held by this office.

Yours sincerely

JOHN PINNOCK.
OMBUDSMAN

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

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

Box 18098
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Telephone (03) 9277 8777
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Tel. Freecall 1800 062 058
Fax Freecall 1800 630 614

FAX FROM: ALAN SMITH, *Cape Bridgewater Holiday Camp, Portland 3305*	**FAX TO:** MR LAURIE JAMES PRESIDENT INSTITUTE OF ARBITRATORS AUSTRALIA KNOTT GUNNING GPO BOX L890, PERTH, W.A. 6001
FAX NO: 055 267 230	
PHONE NO: 008 816 522	
CONTACT INFORMATION FROM 10 / 2 / 1996 RMB 4409, Cape Bridgewater, Portland, 3305 **FAX NO:** 055 267 204	**DATE:** 18.1.96 **NUMBER OF PAGES** (including this page)

Dear Mr James,

In further response to your letter dated 16th January, 1996 and in addition to my original reply dated 17th January, 1996, I would like to add the following:

The contents of the letter to Senator Gareth Evans, and the attachments forwarded with that letter, do not cover all of the grievances that I have with regards to the manner in which this procedure was conducted by Dr Gordon Hughes. I can provide further evidence which shows that all the information I provided, as a claimant, was not assessed on its full merit. I will be happy to provide this information whenever your Institute should require it.

I consider that a grave injustice was perpetrated by Dr Hughes from the outset. As a legal professional he should not have allowed the Fast Track Settlement Proposal (FTSP) to be abandoned. At the time this FTSP was abandoned, Dr Hughes stated that the four members of the Casualties of Telstra (COT) would be able to access the required Freedom of Information (FOI) documents only through the Fast Track Arbitration Procedure (FTAP). I am sure I don't need to remind you that FOI is part of the Australian (and, indeed, the whole free world's) democracy and is expected to fulfil the right of ordinary citizens to access documents as they are needed.

The fact is that we four COT members were subjected to ***BLACKMAIL***: sign the FTAP or you will not receive your FOI documents and so will not be able to finalise your FTSP claims.

Dr Hughes and the Office of the Telecommunications Industry Ombudsman (TIO) forced four Australian citizens, with duress, to abandon a Commercial Settlement Agreement, by dangling the carrot of FOI access. I consider that this situation devalued our rights to such FOI material. We should have had rights to this material under the existing Fast Track Settlement Proposal anyway, according to the FOI Act. My application for FOI had been lodged with Telstra six months previously. Dr Hughes, with his legal knowledge and experience, should have come out in defence of the 4 COT members and stated that Telstra was wrong to put us under such duress and then to badger us to abandon a non-legalistic, commercial settlement proposal in favour of a legalistic minefield.

Mr James, the FTAP was wrongly conducted from the very beginning.

Respectfully,

A Smith

cc Mr John Wynack
Commonwealth Ombudsman's Office
Canberra

Mr John Pinnock
Telecommunications Industry Ombudsman
Melbourne

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Hunt & Hunt
LAWYERS

23 January 1996

Our Ref: GLH
Matter No:

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

Dear Mr Pinnock

INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH

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

(a) the cost of responding to the allegations;

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

Yours sincerely

GORDON HUGHES

Encl.
cc P Bartlett

205

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

Hunt & Hunt
LAWYERS

15 February 1996

Our Ref: GLH
Matter No: 5122795

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

Dear Mr Pinnock

ALAN SMITH

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

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

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

I await your response.

Yours sincerely

GORDON HUGHES

Encl.

discussed with Rod
To speak to Gordon re 3 matters X
Letter in support to be prepared.
2/2

206

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

DOCUMENTS REVIEWED

Document entuled "Cape Bridgewater Part 2"

A bundle of untitled documents (which Gordon Hughes designated "AS documents 6")

Copy of a memo to Gordon Hughes and the resource team to which Gordon Hughes has added the date "25/8/94"

Statutory Declaration dated "27/08/94"

Further and Better Particulars dated "21/09/94"
1. Copy of Income Tax Return 1990/1991
2. Copy of Income Tax Return 1992/1993
3. Application for Planning Permit 24 February 1994
4. Wall Planner for the year 1993

Additional material submitted by Smith
Letter from Gordon Hughes "31/10/94" enclosing Smith response to RFP:

A.	RFP Schedule 1, No.3(a)	Austel letter "7/9/93"
B.	RFP Schedule 2, No.15	Timberset Homes "14/10/94"
		Abbott Constructions "17/10/94"
C.	RFP Schedule 2, No.11	Derek Ryan letter "12/10/94"
	RFP Schedule 2, No.14	Derek Ryan letter "12/10/94"
		Food Shop Price Guide
D.	RFP Schedule 2, No.14	Menu - Food Shop Journal
	RFP Schedule 2, No.13	Hand Written Fax CD Bank
	RFP Schedule 1, No.1	Letter "29/3/88" from Solicitors including "6/4/88" Mortgage and Contract of Sale
E.	RFP Schedule 2, No.3	Smith fax "13/10/94" re Bank Statements and Deposit Books
F.	RFP Schedule 2, No.6	Fax Brett Bowden "13/10/94" re Sale of Property
G.	RFP Schedule 2, No.9	Fax Plummer & Pullinger enclosing CAV Report
H.	RFP Schedule 1, No.3(a)	Smith fax 1410
	RFP Schedule 1, No.3(c)	
	RFP Schedule 1, No.3(e)	
I.	RFP Schedule 1, No.1	Statutory Declaration K. Gladman
	RFP Schedule 2, No.15	Timberset Homes letter "3/6/94" Plans & Quotes
J.	RFP Schedule 2, No.15	Smith Fax "17/10/94" Abbott Constructions
		Telecom memo "14/1/94" & Diary Note
K.	RFP Schedule 1, No.4	Smith fax "18/10/94" enclosing Telecom documents
L.	RFP Schedule 2, No.6	Client bookings - future
	RFP Schedule 2, No.7	Hand written summaries of wall planners
M.	RFP Schedule 2, No.4	Tax returns and 1988 - 1993
	RFP Schedule 2, No.7	Tax returns and bookings 1988 - 1993
N.	Smith fax "20/10/94" re FOI request	
O.	Smith fax "23/10/94" re 1100 complaints	
P.	RFP Schedule 2, No.3	Smith Commonwealth Bank Statements - cheque account

Smith Diaries -1990/1991

Smith Diaries - 1994

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DOCUMENTS REVIEWED

Smith Diaries - 1990

Smith Diaries - 19921/1993

RFP Schedule 15

RFP Schedule 2. No 3(a) - Bank Statements

Information relating to RFP Schedules 1 and 2

Smith advertising/promotional material

RFP Schedule 2. No 7 - quotes for re-advertising

RFP Schedule 2. No 18

RFP Schedule 2. No 15 - Tea Rooms

RFP Schedule 4. Section 111

Bank Statements

RFP Schedule 2. No 21 - Travel Costs

RFP Schedule 2. No 19 - Advertisements and Invoices

FOI Material - 19 December 1994

Smith Reply - Additional Information

Smith Reply - Bell Canada International Inc

Smith Reply - TF200 - Smiths Summary

Smith Reply - Appendix C - Additional Evidence of Incorrect Monitoring

Smith Reply - Samples of FOI Telecom documents - known AXE Faults Phone Problems

Smith Reply - George Close & Associates Report 20/1/95

Smith Reply - DM Ryan Corporate Report 23/1/95

Smith Reply - DM Ryan Corporate Report 23/1/95

Smith Reply - Main Document

Camping Association of Victoria

	Date of Survey
- Prices and Occupancy Survey	February 1991
	February 1992
	December 1992
	December 1993
	December 1994
- Trends and Marketing Survey	May 1993
- Understanding School Needs	February 1994

Documentation from the Glenelg Shire

Documentation from Bureau of Tourism Research

Documentation - Regional Profile - Great Ocean Road

Australia Bureau of Statistics - Tourist Accommodation March 1988 - September 1994

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DOCUMENTS REVIEWED

Letter of Claim

Seven volumes of supporting documentation, submitted 15 June 1994, containing documents numbered as follows:

1 - 200	800 - 1000
200 - 400	1001 - 1289
400 - 600	2001 - 2158
600 - 800	

Statutory declaration dated 15 June 1994 (3 pages)

Statutory declaration dated 15 June 1994 (1 page)

Report of D.M. Ryan Corporate dated 21 June 1994

Video containing a statement by the claimant ("video 1")

Letter from claimant to Gordon Hughes dated 21 June 1994

Report of George Close & Associates Pty Ltd dated 5 July 1994

Report of George Close & Associates Pty Ltd dated August 1994

Promotional video regarding Cape Bridgewater Holiday Camp ("video 2")

Memo to resource team (undated), forwarded to John Rundell on 19 August 1994

Promotional pamphlet, Bayview Estate, Bridgewater

Copy facsimile, Bowden to Smith, dated 7 July 1994

Copy letter, Telecom to Bowden, dated 13 July 1994

Document (untitled) containing fault reports, forwarded to John Rundell on 19 August 1994 in the form of a photocopy of a computer printout

Document entitled "further examples of additional evidence of these types of faults are presented here without being appendixed" (two volumes)

Folder containing material disclosed under FOI, forwarded to John Rundell on 19 August 1994, numbered pages 1 - 155 *(in reverse order)*

Folder containing material disclosed under FOI, forwarded to John Rundell on 19 August 1994, numbered pages B74 - B39 (the order of documents within the volume is mixed up)

Folder containing summary of material covering fault reports. *obtained under FOI.*

Document entitled "Cape Bridgewater Part 1"

FAX FROM:	*ALAN SMITH,Cape Bridgewater Holiday Camp, Portland 3305*	**FAX TO:**	**SENATOR GARETH EVANS MINISTER FOR FOREIGN AFFAIRS AND TRADE PARLIAMENT HOUSE CANBERRA**
FAX NO:	055 267 230		
PHONE NO:	008 816 522		
CONTACT INFORMATION FROM 10 / 2 / 1996	**RMB 4409, Cape Bridgewater, Portland, 3305**	**DATE:**	4.1.96
FAX NO:	**055 267 204**	**NUMBER OF PAGES**	(including this page)
PHONE NO:	**055 267 204**		

Dear Senator Evans,

Your platform, for all Australians and all nations alike, is reform. Part of your portfolio is to represent human rights and offer the opportunity for those who have been wronged to speak out, without fear.

I feel I have been wronge in my situation and wish to explain why I have continually sought to have the Fast Track Arbitration Procedure (FTAP) of Smith versus Telstra viewed by an independent panel appointed by the Senate.

As a Senator, you will be aware that an unsatisfactoy situation has existed for a long time, but you are probably not up to date with the various claims that have been made by small business people in the Telecommunications area, so I will summarise, as briefly as I can, the current situation.

A number of small businesses have complained about the way the Government has handled their claims against Telstra for not supplying a telephone service comparable to their competitors. I would ask that your office contact the office of the Hon. Michael Lee for a more detailed history of this situation. Senator Lee (and various Ministers who held this position before him) have been aware of my allegations with regards to my own business - Cape Bridgewater Holiday Camp.

The Arbitration procedure that I have been involved in, included a confidentiality clause which prohibits me from speaking on various matters. I believe, however, that the ink on my signature to this agreement has just about faded by now!

I can prove, without a shadow of a doubt, that - right under the nose of your Governmen - the Telecommunications Industry Ombudsman (TIO) is knowingly allowing a miscarriage of Natural Justice to take place - without even one challenge from his office. I have evidence of massive corruption in the handling of my Arbitration procedure (Fast Track Arbitration Procedure: Casualties of Telstra) and I have brought this to the attention of Mr John Pinnock, the TIO. This evidence ranges from Telstra using lies to cover their Defence of the Arbitration, Telstra-Smith, Cape Bridgewater Holiday Camp to the Arbitrator, Dr Gordon Hughes, himself.

I can prove, again without a shadow of a doubt, that two (supposedly) independent resource teams, commissioned by the TIO, conspired to pervert the true findings as they appeared in their individual Reports. This was either done with the knowledge of the Arbitrator, or of their own volition. These actions resulted in denial of Natural Justice for me: denial of my rights to appeal on the grounds that the contents of these reports are incorrect.

The following information is a condensed version of the evidence I have; evidence which proves my case All these allegations can be substantiated by a wide array of documentation.

I should warn you, however, that denials will be forthcoming from a number of sources: Dr Gordon Hughes (the Arbitrator), Telstra themselves, Mr Pinnock (TIO) and others. I would like to make it clear that it is not Telstra that I am challenging here, it is the actual administrators of the so-called "Natural Justice Process" that was set up to assess the cases of four members of the Casualties of Telstra (COT) organisation: Ms Ann Garms, Ms Maureen Gillen, Mr Graham Schorer and myself. The team of Administrators of the FTAP stopped the process towards Justice in its tracks. Telstra's misleading and deceptive conduct in the FTAP is just a part of the over-all cover-up. ***It should also be noted here that I have provided the Board of Telstra***

with seven separate letters which clearly outline the evidence proving that Telstra Management allowed this misleading and deceptive conduct to cover their Defense of the FTAP. No acknowledgement of these letters has ever been received.

Please note the following basic information regarding the FTAP:

1. the ***Arbitrator*** for the FTAP was Dr Gordon Hughes of Hunt and Hunt, Melbourne. Dr Hughes was appointed by the Telecommunications Industry Ombudsman's office (TIO).
2. the ***Financial Report*** on the Cape Bridgewater Holiday Camp was prepared by Ferrier Hodgson Corporate Advisory (FHCA) who were also appointed by the TIO.
3. the ***Technical Evaluation Report*** was prepared by DMR Group, Canada and Lanes Telecommunciations of Adelaide. These independent Technical Units were also appointed by the TIO.

I believe that the following documents will further clarify the situation. These documents are:

A. D M Ryan Corporate's challenge to the improprieties of Ferrier Hodgson Corporate Advisory (FHCA) during the completion of their financial report on the Cape Bridgewater Holiday Camp (CBHC) (no. 2, above).

B. My condensed version of the facts regarding what transpired during the FTAP; April 21st 1994 to May 11th 1995 (below)

SUMMARY OF EVENTS
FAST TRACK ARBITRATION PROCEDURE
SMITH - TELSTRA

PLEASE NOTE: Every statement made in this document can be substantiated with documentation.

Also note:

(i) ***The Award*** was handed down by Dr Gordon Hughes, May 11th 1995.

(ii) ***The Technical Evaluation Report*** was commissioned to value the evidence I presented to the FTAP regarding my substantiation, through FIO documentations, of my alleged phone faults and also to value Telstra's Defence of these allegations. This Report was received at Cape Bridgewater Holiday Camp, May 2nd 1995, by mail (refer point 3 above).

(iii) ***The Financial Report*** was commissioned to independently value the monetary losses as well as the consequential and flow-on losses associated with the inadequate phone service provided to CBHC (if proven).

In November, 1993, four "Casualties of Telstra" (COT) members agreed to enter into a Commercial Settlement Proposal with Telstra. By April 21st, 1994 (six months later) Telstra had not honoured this Fast Track *SETTLEMENT* Proposal (FTSP): only limited FOI documents had been supplied to the four members of COT.

We were assured by Dr Hughes that, if we were prepared to abandon this FTSP in favour of the Fast Track *ARBITRATION* Procedure, it would mean that we would not only receive the Natural Justice we were seeking, but it would also mean that we would be able to obtain Freedom of Information (FIO) documents from Telstra, through Dr Hughes himself and this would speed up the process considerably. At this point Dr Hughes also clearly stated that this was to be a non-legalistic process. It was at this time that the Technical Evaluation Unit and the Financial Team were appointed (see points (i) and (ii), above).

Under extreme duress, and because, under the FTSP, all four COT members had not been able to access the FOI documents they needed, we agreed to these changes. I would like to repeat here: We were also under the clear impression that:

1. This was to be a NON-LEGALISTIC ARBITRATION PROCEDURE
2. The process would be FAST TRACKED

and

3. It would allow us to access, through the Arbitrator, all the FOI documents we needed to

support our claims.

AND SO WE ENTERED THE FAST TRACK ARBITRATION PROCESS, 21st April, 1994

I submitted my claim on June 15th, 1994, after being "badgered" to complete the FTAP, with letters from both Telstra and Dr Hughes. At that time 90% of my claim consisted of FOI documents that had been heavily censored and which were supplied WITHOUT ANY INDEXES, TABLES OR SCHEDULES. This meant that my claim had to be presented based on only the very limited information that had been supplied between February and May, 1994. I was told, however, that "all would be well".

It took me a further ten months and four separate FOI requests to acquire the FOI material I needed to further this claim. NOT ONCE did the Arbitrator supply me data through HIS FTAP. NOT ONE document was provided, even after I had applied for twenty-four points of clarification.

On the other hand, Dr Hughes sought an extra thirty-four points of clarification from me through the FTAP, at the request of Telstra. This information was supplied at enormous extra cost to me personally. In summary: Telstra received thirty-four further items, and I received NONE.

In January, 1995 a Forensic Document Researcher asked me to supply him information, through the FTAP, that was needed to substantiate the authenticity of a Report supplied by Telstra, illegally, under the Rules of the FTAP, yet still allowed by the Arbitrator. My request for this material was DENIED. One week later, the Arbitrator ordered me to release five personal diaries to be Forensically tested by Telstra's legal team, Freehill Hollingdale & Page. I supplied the diaries.

Between June 15th 1994 and May 11th 1995, the Arbitrator ignored all my requests for information.

Telstra presented their defence on 12th December 1994. At this time I was still waiting for FOI documents to be supplied. Eleven days after Telstra presented their Defence I was finally supplied with 24,000 plus documents. The first notification I had of these documents arriving was a phone call from Kendall Airways on 23rd December 1994, announcing that 72-74 kilograms of documents, addressed to me, had arrived at the Portland Airport.

I can substantiate the fact that none of the selected extracts from these 24,000 documents were ever assessed by the Arbitrator, even though they were presented in bound volumes. I can also substantiate the fact that the documentation presented by my own technical advisor, George Close, was the last to be viewed or evaluated by the FTAP Technical Resource Team of DMR/Lanes. None of the documentation I submitted after that date was assessed. In their report, NO reference at all was made to any of these later documents. What is more, the Report was not even signed by either Paul Howell of DMR Group Canada or by David Read of Lanes Telecommunications Adelaide. This Report was therefore incomplete.

I contacted both the Arbitrator and the Technical Resource Team regarding this incomplete Report but received no response. I then requested that Dr Hughes's office return my submission/claim documents. Both my requests were made after the Award was handed down on May 11th 1995.

From 23rd December 1994 to April 1995 I had worked 18-20 hour days to view, collate, evaluate and select information from the 24,000 documents and put them into some sort of order so as to finally produce my claim. The Technical Report produced by DMR and Lanes only assessed the information I presented in my letter of claim dated 15th June 1994 and the Report by George Close dated August 1994. I am disgusted that this further information, on which I worked for so long and under such duress, could be completely ignored.

I believe that this supposedly non-legalistic FTAP was quietly converted into a very legal process, to the detriment of the members of COT. The Austel Chairman, Robin Davey and the legal counsel for the TIO, Peter Bartlett, both stated that consequential losses would be considered as part of my claim. I have a letter to support this statement. This letter states that the flow-on loss would also be viewed by the Arbitrator, if my case was proved. Robin Davey went so far as to state that as long as Legal Counsel was not included as part of the flow-on-losses as preparation claim, then the preparation of my claim would be considered a

flow-on loss. His statement was "a loss is a loss is a loss".

I am now advised that, by using legal terminology, and stating to the Arbitration that I should "amend my claim under clause such and such" then I was obliged to respond under the legal process of the arbitration procedure. As I didn't have legal counsel to advise me however, I lost out again. Remember: this FTAP was supposed to be a Non-legalistic Process towards Natural Justice.

As a result of viewing the previously referred to 24,000 late FOI documents and sorting them into bound volumes it became apparent that there were still many areas I could not include in my written submission since I did not have enough technical knowledge. I approached Dr Hughes's secretary (Caroline) and requested an oral hearing regarding these technical matters. Dr Hughes rang me in late March and advised me to keep researching so that I could discuss the situation with the Technical Unit when they came to Cape Bridgewater.

David Read of Lanes Telecommunications arrived at my business on 6th April 1995, representing the Technical Unit. I now state, on oath, that the following is correct: Mr Read said that he could not view any information I might have since he was only there to discuss the submission I had already presented and TELSTRA'S DEFENCE. These words of David Read's further support the fact that Dr Hughes and the Technical Evaluation Team did not take into account any of the late presented FOI documents (how could they?). Telstra had responded to my claim on 12th December 1994 (before I received these late documents).

I believe that Telstra forced Dr Hughes into an exceedingly technical and legalistic role by claiming that I didn't use the correct terminology when I submitted my late claim (based on the late FOI documents), ie because I didn't refer to it as *an amendment to the original claim.* The whole exercise of Telstra supplying FOI AFTER their Defence was a ruse. They knew I didn't have legal counsel.

After the award was handed down in May 1995 I was taken to hospital in an ambulance. I spent four days there, diagnosed as suffering from stress. I returned to my business and then received two phone calls: the first from John Rundell, Project Manager, FTAP, Ferrier Hodgson and, a few days later, a call from Paul Howell of DMR Group Canada.

John Rundell stated, and I have a witness who was at my bedside at the time, that "things" may not have gone my way, but "... Alan, get on with your life and show THEM what you can do" (my emphasis). I am left wondering what "things" and who "them" referred to. Was this Mr Rundell's conscience speaking?

When Paul Howell rang he used words to the effect that it was a 'disgusting' process - this would never have happened in North America. Again I wonder what he actually meant - what was 'disgusting' and what would 'never have happened in North America'?

When I collected documents from Dr Hughes I discovered that a number of extra documents had been inadvertently included in the four boxes of my claim/submission. These included, in particular:

1. Two letters addressed to Austel from Telstra which acknowledge two faults on my service and which state that the faults would be addressed in their Defence of the FTAP. *These two faults were not covered in Telstra's Defence.*
2. One letter to Telstra from Austel and
3. One letter to Dr Hughes from Austel, dated 8th December 1994 and which states that the attached two letters from Telstra acknowledge that they would address these two faults in their Defence. Dr Hughes, therefore, must have been aware - after assessing Telstra's Defence Documents, that these two faults had not been covered.

Was I supposed to turn the other cheek and allow these documents to go unchallenged because of the confidentiality agreement both parties signed? The fact is that copies of these letters should have been provided to me by the Arbitrator under clause 6 of the FTAP agreement. This clause states that all

correspondence associated with the FTAP was to be circulated to all persons involved in the FTAP.

Also included in the four boxes from Dr Hughes's office, were:

a. A draft copy of the Technical Evaluation Report produced by David Read of Lanes Telecommunciations and dated 6 April 1995.
b. A completed copy of the DMR & Lanes Technical Evaluation Report dated 30 April 1995.

Both these reports show that the information sourced to produce the report included ALL of Telstra's Defence Documents but ONLY 25% of my submitted material.

This is an alarming fact on its own but there was also further acknowledgement in the Report dated 30 April 1995 that DMR/Lanes were to supply an Addendum Report within a couple of weeks. This Addendum Report was to cover incorrect charging - one of the faults that Telstra had previously acknowledged to Austel that they would address in their Defence.

Mr Pinnock of the TIO's office has recently acknowledged that Ferrier Hodgson, David Read and Gordon Hughes did not tell me about this proposed Addendum Report because Dr Hughes allowed an offset in his award for over-charging on my 055 267 230 phone account. What Mr Pinnock did not acknowledge is that ***all three*** of my phone lines have massive incorrect charging over many years. I have evidence of short-duration calls that was also not assessed by Telstra, Dr Hughes or the Technical Evaluation Unit.

On top of all this, when Dr Hughes's copy of this Technical Evaluation Report and my copy of the same report are compared there are five variations - and each difference supports Telstra. In one instance there is reference to a fault lasting for ***five months*** when, in fact, it lasted for ***three and a half YEARS*** (believe it or not!).

Mr Pinnock has now suggested that this second version of the Report, which is dated the same as my version (delivered to me on 2nd May 1995), is actually 'another' draft copy. So now we have two draft copies, one dated 6th April 1995 with David Read as the only researcher, and a second 'draft' dated 30th April 1995, with both Paul Howell of DMR Group and David Read of Lanes Telecommunications as researchers.

Mr Pinnock also informs me that this second draft was not the one Dr Hughes deliberated on. Since April 30th 1995 was a Sunday and mail takes a full day to reach Portland, and I received my copy of the report on Tuesday 2nd May, it appears that Dr Hughes must have worked with Paul Howell of DMR and David Read of Lanes on a Sunday (30th April) in order to correctly assess this Draft and produce the finished report by the next morning (Monday 1st May). Who's kidding who here?

Even if we were to believe this Report of 30th April was, in fact, another draft copy, the fact still remains that ALL THREE VERSIONS OF THE REPORT ARE BASED ON 26 POINTS TAKEN BEFORE TELSTRA'S DEFENCE WAS LODGED: my extra information was not taken into account.

The Technical Resource Unit did not view all my submitted evidence. DMR & Lanes have acknowledged that the material that was assessed came from only a very limited source. Even my first claim/submission of 15th June, 1994 was not fully assessed: six volumes of this claim/submission were not viewed at all. Surely this makes the bias of the Resource Unit quite plain?
In conclusion: we now have two Reports

- one Technical Report, not signed by either of the people that are supposed to have produced it and
- one Financial Report, not signed by John Rundell, who was the Project Manager and who has now left FHCA, but signed by another person who was not the person designated.

I assure you, Senator, that I can produce documentation to support these allegations; information taken from Telstra's Defence Documents, which prove that much of what the Arbitrator's Award was based on was lies and misleading, deceptive material. When these Defence Documents are compared with Telstra's FOI documents it is clear that Telstra based much of their defence on this type of material. THERE IS NO DOUBT AND THERE CAN BE NO MISTAKE - I can show those who are concerned

about the conduct of this FTAP that Telstra's Defence could only have been produced in this way if those involved in the FTAP were prepared to turn a blind eye to the quality (or rather, lack of quality) of the information Telstra was using.

MY CLAIM WAS NEVER VIEWED under a true arbitration procedure, yet I supposedly had to abide by the arbitration rules. I believe it would probably take only two days for a team of three people, appointed by the Senate, to assess the allegations I am making and find that I am correct.

Fifteen, twenty and thirty years ago, complaints made by children living in orphanages about the treatment they were subjected to were dismissed by the authorities, and others, as unbelievable. The complaints were therefore not investigated. Because these valid complaints were not investigated the conduct of violating these children continued.

In the last few years the Australian court system has finally produced findings leading to jail sentences which validate the complaints from fifteen to thirty years ago. Untold damage was incurred for the children in question because these complaints were not further investigated at the time they were made. Now my complaints about Telstra and the FTAP appear to be unbelievable because they remain un-investigated. This does not, however, alter the validity or the seriousness of the complaint. Will the four original members of COT continue to be stalloed and denied Natural Justice?

I await your support,

Sincerely,

Alan Smith

cc Mr John Wynack, Commonwealth Ombudsman's Office, Canberra
Mr John Pinnock, Telecommunications Industry Ombudsman, Melbourne
Senator Richard Alston, Shadow Minister for Communications, Canberra
Senator Michael Baume
Bronwyn Bishop, MP
Senator Ron Boswell, National Party, Canberra
Senator Vicky Bourne, Australian Democrats, Canberra
Senator Coulter
Leigh Cunningham, Chief Administrator, Institute of Arbitrators, Victoria
Senator Haradine
The Hon Duncan Kerr MP, Office of the Minister for Justice
The Hon Michael Lee, Minister for Communications, Canberra
Senator Dee Margetts
The Hon Jan Wade, Minister for Fair Trading, Victoria
Mr Mark Woods, President of the Law Institute, Victoria

COPY

27 February, 1996

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

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

Dear Mr James

Complaint By Mr Alan Smith against Dr Gordon Hughes

Mr Smith has copied to me his letters to you of 15 and 18 January 1996, and your response to him of 16 January 1996, as well as his letter to you of 9 February 1996. Dr Hughes has also copied to me his letter to you of 16 February 1996.

As Administrator of the Fast Track Arbitration Procedure, I wish to comment on the allegations put to you by Mr Smith, subject to certain constraints due to the confidential nature of the arbitration procedure.

At the outset, I advise that Mr Smith's allegations concerning Dr Hughes' conduct of the Arbitration are unwarranted.

Mr Smith is one of the so-called 'COT Cases' (formerly 'Casualties of Telecom', now 'Casualties of Telstra') for whom a unique arbitration procedure was established in April 1994. This arbitration procedure was negotiated between the four original COT Claimants (which included Mr Smith), Telecom (now Telstra), AUSTEL and the TIO. The TIO is the Administrator of the arbitration procedure, responsible for administrative arrangements the arbitrators require. The procedure provides for an independent expert Resource Unit, comprising telecommunications and financial arms, to assist the Arbitrator by conducting its own independent investigation and analysis of the evidence and submissions presented by the parties.

Dr Hughes was appointed to arbitrate the four separate claims, as all the parties involved (that is each claimant and Telstra) agreed he had the necessary integrity and expertise that the task required. I enclose for your information a copy of a letter from Mr Smith and another COT Claimant, [name deleted], to the TIO dated 3 August 1994, in which they both confirm their confidence in the integrity of Dr Hughes.

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

Box 18098
Collins Street East
Melbourne 3000
atl/pinnock/073

Telephone (03) 9277 8777
Facsimile (03) 9277 8797
Tel Freecall 1800 062 058
Fax Freecall 1800 630 614

However, since receiving Dr Hughes' Award in May 1995, Mr Smith has made a series of surprising allegations concerning the conduct of the Arbitrator, the Arbitrator's Resource Unit (Ferrier Hodgson Corporate Advisory and Lane Telecommunications), and the TIO. These allegations have ranged from assertions of incompetence and conflict of interest, to bias and outright corruption and collusion; on one occasion Mr Smith alleged that the TIO was "as bad as the rest of these swines who conducted this Fast-Track Arbitration Procedure". Despite Mr Smith's claims that he has proof to substantiate the allegations, any such 'proof' which he has so far provided to me is in fact nothing of the sort.

The arbitration procedure was designed to be informal and flexible, and it explicitly lowered the standard of proof required from claimants. It has been very disappointing that this informality and flexibility may have contributed to Mr Smith's sense that the arbitration procedure and those involved in it were less professional or deserving of his respect and confidence than the Supreme Court.

Over the last 9 months I have received many letters of complaint from Mr Smith (on average over that period two to three letters per week; in one month over 25 letters). Mr Smith has also written directly to Dr Hughes on a number of occasions. These letters have largely consisted of expressions of great discontent with the outcome of the arbitration.

This discontent seems to have had an adverse impact on the high regard which Mr Smith had previously held for Dr Hughes, with the consequence that his allegations began to also be directed towards Dr Hughes' integrity.

In a circular fashion, Mr Smith has then attempted to substantiate his allegations that Dr Hughes lacked integrity and independence, and that he had been denied natural justice by Dr Hughes, with examples of instances in which he believed Dr Hughes erred in his assessment of the evidence and submissions presented by the parties during the course of his arbitration.

Mr Smith continues, effectively, to seek a review, by all and sundry, including the TIO, of Dr Hughes' Award by impugning his character, integrity and independence. This is not a legitimate means of appealing the Arbitrator's Award, and I have written to Mr Smith on numerous occasions advising him that I am not in a position to investigate the manner in which Dr Hughes reached his decision, and that he should seek legal advice if he feels the circumstances warrant an appeal to the Supreme Court.

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Mr Smith has admitted to me in writing that late last year he rang Dr Hughes' home phone number (apparently in the middle of the night, at approximately 2.00am) and spoke to Dr Hughes' wife, impersonating a member of the Resource Unit. Mr Smith gave me the following explanation of this incident:

> *"Once I had made sure that it was Dr Hughes' residence I felt that I might upset Mrs Hughes if I told her who I was and so I said "No worries, I'll contact Gordon when he gets back." I gave her [name deleted]'s name instead of my own - it seemed more appropriate at the time."*

This explanation does not convince me that his behaviour was at all appropriate.

In his letter to you of 9 February 1996 Mr Smith refers to a letter I sent to him in November 1995. For your information I enclose a copy of that letter. You will see that I do not make any statement in that letter remotely resembling that which he has attributed to me. Mr Smith has a tendency to purport to refer specifically to correspondence, when recourse to the correspondence itself proves that his memory deceives him.

No evidence produced to me by any claimant, but particularly by Mr Smith, has affected my utmost confidence in Dr Hughes' integrity and independence.

Mr Smith does not seem capable of accepting the decision of the independent arbitrator, or alternatively, pursuing a challenge of that decision through the proper channels. Undeniably, he has undergone a difficult experience in his prolonged dispute with Telstra. However, in my view, Mr Smith cannot or will not put this episode behind him, and is desperately clutching at straws. He is now widely circulating serious allegations which are completely without foundation.

Yours sincerely

John Pinnock
Ombudsman

cc *Dr Gordon Hughes.*

Itemised Call Details *continued*

STD calls *continued*

	Date	Time	Place	Number	Rate	Min:Sec	$
	Telephone Service 055-26 7230 *continued*						
117-9	28 Nov	03:19 pm	Sydney	0299652913	Day	0:14	0.23
117-10	28 Nov	03:48 pm	Melbourne	0396022266	Day	12:08	4.32
117-11	28 Nov	04:10 pm	Melbourne	0396903322	Day	1:59	0.81
117-12	28 Nov	04:26 pm	Canberra	062822051	Day	9:14	4.52
117-13	28 Nov	04:37 pm	Melbourne	0392778787	Day	1:00	0.47
118-1	28 Nov	05:25 pm	Sydney	0299652913	Day	1:18	0.74
118-2	28 Nov	05:44 pm	Melbourne	0392778777	Day	3:30	1.33
118-3	28 Nov	05:49 pm	Brisbane	0732780341	Day	0:52	0.53
118-4	28 Nov	07:06 pm	Brisbane	0732780341	Night	2:30	0.95
118-5	28 Nov	08:02 pm	Melbourne	0395722836	Night	0:28	0.23
118-6	29 Nov	08:37 am	Brisbane	0732780341	Day	11:25	5.55
118-7	29 Nov	09:22 am	Melbourne	0396298361	Day	0:47	0.39
118-8	29 Nov	10:03 am	Melbourne	0398761254	Day	1:23	0.60
118-9	29 Nov	10:12 am	Canberra	062773614	Day	1:34	0.87
118-10	29 Nov	10:14 am	Canberra	062773177	Day	1:41	0.92
118-11	29 Nov	10:16 am	Canberra	062778464	Day	1:34	0.87
118-12	29 Nov	10:19 am	Canberra	062497829	Day	1:30	0.8
118-13	29 Nov	10:22 am	Brisbane	0732780341	Day	1:21	0.7
119-1	29 Nov	11:47 am	Melbourne	0392778797	Day	1:06	0.50
119-2	29 Nov	11:53 am	Canberra	062773308	Day	1:33	0.86

Exhibit (210)
Refer to Billing Summary
Exhibit (326)

- **Exhibit 210(a)** from Darren Kearney, Senior Policy Analyst, AUSTEL Carrier Monitoring Unit dated 14th October 1995, to me confirms Telstra had still not addressed the 008 billing issues originally raised by me in 1994.

- **Exhibit 210(b)** from Darren Kearney, dated 6 December 1995, confirms AUSTEL had recently forwarding to Telstra information associated with my 008 itemised billing sheets originally provided by me to AUSTEL, 3rd October 1995.

- **Exhibit 210(c)** from Darren Kearney to AUSTEL's Bruce Mathews confirming from information provided by me 19th December 1995, (27 separate examples) confirmed Telstra's itemised billing records associated with my 008 service did not match Telstra's Call Charge Analysis Data (CCAS).?

- **Exhibit 210(d)** from AUSTEL's John MacMahon, to Telstra's Mr Hambleton dated 2nd August 1996, is requesting information regarding Telstra's **'Charging for Short Duration and Unanswered Calls'** first raised in 1994.

Please refer to summary (Exhibit 326 regarding this exhibit

AUSTEL
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AUTHORITY

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Melbourne
Victoria 3004
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TTY: (03) 9828 7490

94/269

14 October 1995

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

Dear Mr Smith

CHARGING DISCREPANCIES RELATED TO TELSTRA'S 008/1800 SERVICE

Further to your letter 12 October 1995 requesting that AUSTEL raise two issues with Telstra relating to charging discrepancies concerning its 008/1800 service, specifically short duration calls and incorrect charging, I write to advise you that AUSTEL has raised these issues with Telstra.

As noted in my letter to you of 4 October 1995, AUSTEL has written to Telstra regarding the issues originally raised by you in 1994. The letter refers specifically to *charging discrepancies raised in 1994 by Mr Alan Smith of Cape Bridgewater Holiday Camp regarding his 008 service.* Further, the letter notes that *the matters raised issues about the call charging and billing accuracy of Telstra's 008/1800 service* and that *the issues raised by Mr Smith included matters related to short duration calls.*

As previously advised, you will be informed of the outcome of this matter.

Yours sincerely

Darren Kearney
Senior Policy Analyst
Carrier Monitoring Unit

cc John Pinnock, TIO

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CMU/13/DK

AUSTEL
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

ORIGINAL OF FACSIMILE TRANSMISS...
SENT BY AUSTEL ON 6/12/95

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

94/269

6 December 1995

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

Dear Mr Smith

CHARGING DISCREPANCIES RELATED TO TELSTRA'S 008/1800 SERVICE

I refer to my recent correspondence advising you that AUSTEL had again written to Telstra regarding the issues relating to charging discrepancies concerning its 008/1800 service originally raised by you in 1994. I write to request additional information from you to assist AUSTEL in its investigation of charging discrepancies associated with Telstra's 008/1800 service.

In your letters to Bruce Mathews and Neil Tuckwell of 2 October 1995 and October 1995, respectively, you refer to "massive incorrect charging" on yo 008/1800 account. A copy of a letter forwarded by you to the Herald Sun dated 9 October 1995 was attached to your letter to Neil Tuckwell, in whic you noted that you had "shown AUSTEL proof of massive incorrect chargi on your 008/1800 account and that this proof included "data, evidence and accounts and ... leaves no doubt".

AUSTEL received information from you on 3 October 1994 regarding this matter, including test sheets and itemised billing sheets for your 008/1800 service. As previously advised, AUSTEL has forwarded this information to Telstra for a response.

AUSTEL now requests from you any other information which you consider supports your claims of massive incorrect charging referred to above.

Your assistance in this matter would be appreciated.

Yours sincerely

Darren Kearney
Senior Policy Analyst
Carrier Monitoring Unit

CMU/21/DK

210 B

94/269

26 February 1996

BRUCE MATTHEWS

cc Peter Gilmartin
Ellie Calero

CHARGING DISCREPANCIES RAISED BY ALAN SMITH

The following is a guide to documentation provided by Alan Smith on 19 December 1995, in support of his claim of massive incorrect charging on his 008/1800 account.

2. I understand that you have commenced examining the documentation provided. The following information is intended to assist you in assessing the validity of Mr Smith's claims, as it identifies the documents Mr Smith regards as specifically supporting his assertions.

3. It should be noted that AUSTEL has advised Mr Smith that it is investigating the charging discrepancies he has raised to ascertain their potential systemic nature. It has been stressed to Mr Smith that this investigation is being undertaken in the context of AUSTEL's ongoing work resulting from its 1992 Inquiry into Standards for Call Charging and Billing Systems, and is not related to his arbitration.

4. Mr Smith identified 27 examples of charging discrepancies which he regarded as specifically supporting his claims. These examples have been marked and referenced accordingly in the documentation he provided. In summary, Mr Smith claimed that -

- 008 account and CCAS records for the period 4/7/93 to 6/7/93 showed charging discrepancies (Example 1);
- his 008 account showed longer calls than apparent in CCAS records specifically on 20/5/93 (Example 2);
- a Telstra 008 billing record and CCAS records for calls on 14/4/94 showed charging discrepancies (Example 3);
- a Telstra 008 billing record, CCAS records and a 008 account showed charging discrepancies on 26/4/94 (Example 4);
- various discrepancies were apparent as a result of test calls made to his service by Telstra from Ballarat. See Example 23. (Example 5);

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- a Telstra 008 billing record showed calls made on 24/5/94 were of a longer duration than apparent on CCAS records for the same day (Example 6);
- a CCAS record for 29/5/94 showed a discrepancy in the number of calls made when compared with his 008 account for the same day (Example 7);
- a CCAS record for 31/5/94 showed a discrepancy in the duration of calls when compared with his 008 account for the same day (Example 8);
- a CCAS record for 24/5/94 showed a discrepancy in the duration of a call when compared with his 008 account for the same day (Example 9);
- a CCAS record for 3/6/94 showed a discrepancy in the duration of a call when compared with his 008 account for the same day (Example 10);
- his 008 account for 12/4/94 showed a call which did not appear on a CCAS record for the same day (Example 11);
- a CCAS record for 16/4/94 showed a discrepancy in the duration of calls when compared with his 008 account for the same day (Example 12);
- a CCAS record for 18/4/94 showed a discrepancy in the duration of calls when compared with his 008 account for the same day (Example 13);
- a CCAS record for 1/6/94 showed a discrepancy in the duration of calls when compared with his 008 account for the same day (Example 14);
- CCAS records of his outgoing calls showed unusually long 'wait times' (Example 15);
- Telstra call event data for July 1994 was in some instances inconsistent with his 008 account for that period (Example 16);
- the duration of calls listed on his 008 accounts for the second half of 1993 were often inconsistent with CCAS records for the same period (Example 17);
- records of CCAS monitoring undertaken for other customers connected to the Cape Bridgewater exchange demonstrated that other customers in the Portland area had raised charging discrepancies with Telstra (Example 18);
- hand written notes by a Telstra 1100 operator indicated that a caller received a "dead line" when calling Mr Smith's 008 number, however Mr Smith's account shows that he was charged for this call (Example 19);
- Telstra records show that Amanda Davis was charged for two calls to Mr Smith which CCAS records show Mr Smith did not receive (Example 20);
- Cheryl Haddock received a recorded message when calling Mr Smith's 008 number, however his 008 account showed short duration calls from her number for the corresponding period (Example 21);

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- a call made on 13 January at 11.57 am listed on his 008 account could not have occurred because the previous call commenced at 11.50 am and was 9 minutes and 49 seconds in duration (Example 22);

- documentation shows notes made by Telstra which indicate that test calls made to his 008 number were unsuccessful, however these calls appeared on Mr Smith's 008 account (Example 23);

- analysis done by George Close and Associates identifies faults associated with outgoing and incoming calls on Mr Smith's Goldphone service (Example 24);

- notes made by Telstra on outgoing and incoming call event records show discrepancies and faults associated with Mr Smith's service (Example 25);

- his 008 account and call event records for a corresponding period showed charging discrepancies (Example 26); and

- a billing record for his service was inconsistent with outgoing call event records for the service (Example 27).

5. Mr Smith wrote to me on 20, 22 and 27 December 1995 outlining details of other charging discrepancies. These letters are on file 94/269. I also spoke with Mr Smith on 20 February 1996 about charging discrepancies associated with his Goldphone service. Mr Smith requested that AUSTEL investigate these matters along with the alleged discrepancies associated with his 008 service. I confirmed with Mr Smith that his preference was that the charging discrepancies associated with his Goldphone service be investigated first.

6. I am happy to discuss any aspects of the above with you.

Darren Kearney
Senior Policy Analyst
Consumer Liaison

C

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2 August 1996

Mr D Hambleton
Group Manager Regulatory
Telstra Corporation Ltd
Locked Bag 4350
MELBOURNE VIC 8100
FACSIMILE NO: 9663-1218

Dear Mr Hambleton

CHARGING FOR SHORT DURATION AND UNANSWERED CALLS

I refer to publicity on the above issue in recent months and our ongoing liaison with Telstra since the issue was first raised in 1994.

I am now seeking a range of information to facilitate consideration of the substance, incidence and nature of complaints regarding short duration and/or unanswered calls. Certain of this information relates to statistics required to be furnished under section 5.4 of Licence Declaration No. 2 of 1991. I understand that Telstra's complaint management support system, CICERO, contains a sub-category which enables it to separately record complaints relating to short duration calls (SDC).

Complaint data concerning short duration calls

You are asked to provide AUSTEL with the following complaint data concerning short duration calls for the latest available twelve month period:

(a) the total number of SDC complaints received by Telstra;

(b) the percentage of the total number of billing complaints which concern SDC;

(c) the number of SDC complaints relating to IDD Calls;

(d) the number of SDC complaints concerning STD calls;

(e) the number of SDC complaints relating to 008/1800 services,

(f) the total number of 008/1800 services currently in operation, and

(g) the number of SDC complaints relating to mobile services (if possible, disaggregated into digital and analogue technologies).

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Your comment on the view included in recent newspaper reports that the problem has its highest incidence at older exchanges would also be appreciated.

Please advise whether the incidence of SDCs is known to be higher in particular charge zones. If so, please supply details for any zone where the incidence of SDC as a proportion of long distance calls is greater than 20% over a period of say one month or more.

Traffic study data concerning short duration calls

In relation to Telstra's advice of 16 October 1995 (Mr Steve Black) that some 12% of all long distance calls are valid calls of less than 15 seconds:

(a) what is the current proportion of 'long distance' calls under 15 seconds;

(b) does the 'long distance' category detailed include IDD calls; and

(c) what proportion of 'long distance' calls are between 1-5 seconds, 6-10 seconds, and 11-15 seconds.

Telstra complaint handling practices concerning short duration calls

Telstra's advice quoted above stated that STD and IDD SDCs of 6 seconds or less are not charged to the caller. Please advise:

(a) is this practice confidential; and

(b) the procedures which Telstra normally adopts when a customer complains of a short duration call, including the process of investigating the validity of the customer's complaint.

Advice to customers on how the duration of a call is measured

The advice quoted states that the billing system for 008/1800 services records the length of the call as the time between the called party picking up the phone and the caller hanging up at the end of the conversation and that this billing practice is no different from a normal call.

As these call measurement practices are relevant to the duration of the call which may appear on a customer's bill, please advise what advice Telstra provides to customers or has made publicly available on:

(a) the commencement of the billing period of a 'normal' call; and

(b) the completion of the billing period of a 'normal' call.

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Results of studies on the causes of short duration calls

I acknowledge Telstra's recent advice of continuing difficulties in work to facilitate the Short Duration Call /customer perspective study first referred to in August 1994 and the hope that some progress on the support platforms would be made in June 1996.

Apart from this study—of which we would wish to be appraised—the letter of 16 October stated that Telstra proposed to undertake the following work in relation to short duration calls in the context of the possible existence of fault conditions:

(a) technical research and testing with a focus on the customer access network; and

(b) internal research involving overseas telcos.

Please advise the outcome of these studies.

Could I have your response by 23 August 1996 please. I would be pleased to discuss or clarify any of the issues raised in this letter.

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

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28 March 1996

Mr David Hawker MP
Federal Member for Wannon
97 Thompson Street
Hamilton 3300

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

Dear Mr Hawker

Re: Alan Smith

I refer to Mr Alan Smith's facsimile to you of 11 February 1996. In that letter Mr Smith makes a number of allegations with respect to his Fast Track Arbitration Procedure. Whilst I am unable to make specific comments on that completed Arbitration or the result, I would like to respond to those allegations which relate to my office.

On page 1 of his letter, Mr Smith contends that the TIO knew of "massive incorrect charging for the supply of Telstra services to small businesses and the general public, but turned a blind eye (or closed eyes)..." This broad and generalised statement is entirely unfounded. My office handles many complaints about Telstra's charges and responds to those complaints on a case by case basis. It does so in a thorough and conscientious manner which provides fairness to both complainants and the carriers.

My office does not have the power to make general findings on Telstra's charging practices. Investigations of systemic over-charging are properly handled by AUSTEL which, I understand, has an established working party looking into the issue. It is incorrect for Mr Smith to assert that the TIO has avoided dealing with over-charging practices. My office refers questions of general charging practices to AUSTEL and deals with particular problems itself. Mr Smith's allegations of over-charging for his service formed part of the claim submitted to the Arbitrator. Consequently, this matter was dealt with in his Arbitration.

Mr Smith alleges (also on page 1) that the independent Arbitration process was "faulty" and "high jacked by a section of Telstra management". Again these allegations are without foundation. The Arbitration was subject to a set of rules agreed between the parties, was heard by an Arbitrator whose independence and integrity was accepted by Mr Smith and was properly administered by my office. At no stage was the procedure directed or driven by Telstra, much less "high jacked."

Mr Smith also asserts at the bottom of page 1 that the law firm of which the Arbitrator is a partner was awarded a $4,000,000 Telstra contract during the period of his Arbitration. This is completely incorrect. The firm was named on a panel of 45 firms eligible for Telstra work. The Arbitrator has informed me that the Melbourne office of

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the firm has declined undertaking any work for Telstra during the course of the Arbitrations and has 'run off' the work which was being conducted for Telstra prior to his appointment.

The Arbitrator has stated that the Sydney office of the firm has also been 'running off' files on which it was acting for Telstra prior to the Arbitrator's appointment. As at November 1995 the office had billed $19,000, with only $5,000 worth of unbilled work in progress. Finally, the Arbitrator has informed me that the firm's Brisbane office, which is financially separate from the Melbourne and Sydney offices and does not share profits, was involved in an information technology project for Telstra Atlas in 1995. I am informed that the firm had billed approximately $147,000 for this work as at November 1995.

A the top of page 2 Mr Smith asserts that "written evidence shows that the Arbitrator was pressured by Telstra to support their position". I do not know to what "written evidence" Mr Smith is referring. In the past Mr Smith has made similar references to written evidence of proof of a particular allegation he has made. Invariably he chooses not to produce this evidence or proof when requested to do so, or produces material which does not, in fact, support his allegations at all.

On page 3, Mr Smith states that the Financial and Technical Resource Unit was improperly instructed by the Arbitrator and omitted vital evidence from their report. Mr Smith appears to misunderstand the role of the Resource Unit. The Unit is required by the terms of the Fast Track Arbitration Procedure to work in conjunction with and advise the Arbitrator. Both the Arbitrator and the Resource Unit are independent of either Telstra or a claimant. All evidence and submissions placed before the Arbitrator and the Resource Unit would have been considered, even if not specifically referred to in a final report.

It is obvious that Mr Smith is unsatisfied with the result of the arbitration of his dispute with Telstra. Whilst his frustration is understandable, I will not allow unfounded and incorrect allegations about my office or the Arbitration procedure to go unanswered. Mr Smith's Arbitration was conducted under a fair and equitable procedure, before an experienced Arbitrator of independence and integrity and administered by an office which was in no way compromised or influenced.

I trust this response is of assistance to you.

Yours sincerely

John Pinnock
Ombudsman

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

28 October 1997

Mr Ted Benjamin
Director, Consumer Affairs
Regulatory & External Affairs
Telstra Corporation
37 Floor/242 Exhibition Street
MELBOURNE 3000

Facsimile 03 9632 3235

Dear Ted

Mr Alan Smith: Dispute 1800 Charges

For your information I enclose a copy of a letter received from Mr Smith.

I would appreciate your detailed advice concerning call charges for Mr Smith's 1800 line, in particular whether Telstra agrees that this matter was not addressed in Mr Smith's arbitration.

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

encl.

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Telstra

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

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

16 October 1995

Austel
5 Queens Road
MELBOURNE VIC 3000

Attention: Mr Cliff Mathieson

By facsimile: (03) 9820 3021

Dear Sir,

CHARGING DISCREPANCIES REPORTED BY ALAN SMITH AND ISSUE RELATED TO SHORT DURATION CALLS ON 008 NUMBERS

I refer to your letters of 4 October 1994, 1 December 1994 and 3 October 1995.

As a preface to Telstra's answers, I note the following:

Mr Smith has two services: (055) 267 267
(055) 267 230, which is a fax service.
In addition Mr Smith has a 008 service, which is "tagged" to (055) 267 267 (In other words 008 calls are answered on 267 267, but are separately billed).

Point (1): Caller to Mr Smith received RVA:

I note that Mr Smith 's complaint to Austel stated that his caller to his 008 number experienced 3 RVA's on 27 May 1994, between 7:51pm and 7:59pm. However, Telstra's Service Plus records show that, at that time, Mr Smith reported that his caller, an investigator in Queensland, at Mr Smith's request, made two calls to his fax number (267 230) between 8.00pm and 8.15pm and received an RVA on both occasions. Mr Smith then claims that he picked up his fax handset and received busy tone. Then the caller rang the 008 number (tagged to 267 267) and Mr Smith advised that the caller received an RVA.

Mr Smith had earlier that day complained to Telstra that his fax service had been giving single bursts of ring at various times. We assume that this is why Mr Smith asked his investigator to ring his fax.

At the time, Telstra had SMART 10 equipment monitoring all Mr Smith's lines and the records showed that:

- On 27 May 94, the last call to the fax number (267 230) was at 7:54:20pm. This call lasted 65 seconds.

- His 008 service (267 267) records 3 incoming calls: at 7.51pm lasting 119 secs; at 7.55pm lasting 43 secs and at 7.59pm, lasting 166 seconds (see Attachment 1). The next 008 call was at 9:59pm, which lasted 23 minutes 11 seconds.

Billing of Mr Smith's 008 calls commence when Mr Smith picks up his phone in answer to an incoming call. Billing ceases when the ***caller*** hangs up. This is no different from a normal call except that on a 008 service the called party rather than the calling party is billed. However if the caller from Queensland had received an RVA, then Mr Smith would not have picked up his phone (as he would have received no ring tone) and the length of the conversation would not have been recorded or billed. From the notes Mr Smith has made on his copy of the accounts (See Attachment 2), it appears that he has assumed that the call at 9:59pm and the calls recorded between 7:51pm and 7:59 pm were those RVA's. But, there would be no record of those RVA calls on his bill as no connection would have taken place.

Mr Ross Anderson, a Telstra CPE technician, visited Mr Smith's premises on 27 May 1994 to check the fax machine but found no fault. Attached is part of a Statutory Declaration made by Mr Anderson in December 1994 for the purposes of the arbitration (See Attachment 3). The paragraphs in question relate to Mr Anderson's visit to Mr Smith's premises on 27 May 1994 and suggest Mr Smith had a poor understanding of the operation of his new fax machine.

Telstra also notes that Mr Smith or a representative of Mr Smith called 1100 on 27 May to complain of RVA on his fax line. No fault was found.

The only record Telstra has of Mr Smith making a complaint about his 008 service, at that time, is a complaint to Service Plus (132999) where on 27 May 1994, he complained of short duration calls being charged to his 008 account. This complaint obviously could not have related to the account attached to your letter, which he would not have received at that stage. In an any event, investigations at the time found no fault with his 008 service.

Telstra Conclusion:

Telstra's records do not accord with Mr Smith's complaint to Austel. Testing was carried out in response to the complaints recorded in Service Plus and Leopard. Testing results suggest that there was no fault with any of his lines on 27 May 1994.

Point (2) Advising Mr Smith about the outcome of his complaint

Telstra's records do not show that Mr Smith was ever specifically given results of the RVA complaints. However, given that his complaints were recorded on Service Plus, it can be assumed that he would have been advised by a Service Plus operator of final clearance.

Point (3) Discrepancy Between the 008 Bill and the SMART 10 data

The Smart 10 and the billing system carry out different functions and are not meant to reflect one another.

Smart 10 is connected to Mr Smith's exchange and times the calls based on activities on his handset. Consequently, the time between Mr Smith picking up his phone and hanging up in the cited instance was 2 min and 46 seconds as measured by the Smart 10 equipment (see Attachment 1). .

However, 008 calls are billed based on the time from the B party (Mr Smith) picking up the handset until the time the ***A party*** hangs up at the end of the communication. In this case after Mr Smith hung up, the caller took 29 seconds to hang up his end of the line. Mr Smith was consequently charged for a 3 min 15 second phone call (see Attachment 2).

Point (4) Lack of call origin data for one call

Call Data Information.

According to Telstra's internal Billing record (See Attachment 4), the call had a partial A party number (partial Calling Line Indentification - "CLI") which was 070. A likely explanation for the lack of the full A party number (full CLI) of the call was that the originating exchange did not have CLI capability. In order to protect the privacy of the callers, the CABS software for 008 service is designed to remove the last 4 digits of the A Party Number before printing the final bill to the customers. This rule applies to partial CLI as well as full CLI calls. Since the 008 call only had a partial CLI with three digits, 070, the CABS software would have removed all of them. This explains why there was no call origin data for the 008 call at 9:53 am on 28/5/94 on Mr Smith's account (see Attachment 2). This call was for 1 second and was charged at 1 cent.

It is noted that for STD and IDD calls, short duration calls of 6 seconds or less are not charged to the caller. However this is not the case with 008 numbers.

The account that Mr Smith refers to is consistent with the scenarios outlined above. In addition, this call is at this stage too old to allow retrieval of "raw" data and therefore Telstra is unable to cross correlate to determine what occurred. What can be said is that results of testing performed at the time of investigation (refer next item) indicate no faulty access or systemic short duration problem.

Short Duration Call.

Smart 10 data shows that on this particular call, the phone gave 8 rings. This would take about 12 seconds (see Attachment 1). I can only surmise that as Mr Smith arrived at his phone to pick up the handset, the caller was in the process of hanging up. The result would be a billed call of very short duration, as was the case here.

Point (5) Short Duration calls on 008

(a) Mr Jason Boulter of the Melaleuca Motel

Short duration calls suggest that both the caller and the called party picked up the phone for the purpose of conversation. There needs to be a connection between two lines for a bill to be generated (subject to the comments made under "Summation" below). If Mr Boulter had not received call attempts from customers, as he claims, then he would not have had reason to pick up his handset. In those instances he would not have been billed for any calls.

Until Telstra is given further information in relation to the Melaleuca Motel, no further comment relating specifically to his service can be made. It should be noted that the Melaleuca Motel is now under different management and is being billed for its services through a reseller and consequently we have no detailed call or service information.

(b) General Observations

Short duration calls on 008 numbers can occur for a variety of reasons:.

- Caller changes mind and hangs up just after called party has picked up the phone;
- Caller, on hearing the name or voice of the called party realises that a wrong number has been called and hangs up without explanation;
- Caller hangs on for some time and hangs up just as called party reaches and picks up the handset;
- An unusual condition known as 'no voice on answer', where the called party, either because of a CPE malfunction or a fault condition cannot hear the voice of the caller upon giving a greeting, and as a consequence hangs up the phone, causing the caller to also hang up.
- In addition, further network reasons are included below in the summation.

Point (6) Mr Smith's Claim that he is being overcharged 11%

Telstra is unclear as to what is being requested by Austel. Mr Smith's 267 230 service is usually his fax line, although by his own admission, he uses it to make calls. His 008 service is not connected to his fax line. In his letter to Austel of 3 October 1994, Mr Smith complains of his 267 230 line, but then uses an "analysis sheet", being Smart10 and billing data for his 008 service, as an example of how he is being overcharged. Consequently, our explanation below focuses on Mr Smith's claim that he is being overcharged for calls to his 008 service.

As has been explained above, Smart 10 and the billing system have different functions. Mr Smith is not being overcharged for his calls.

Smart 10 is connected to Mr Smith's exchange lines and times the calls based on activities on his handset. Consequently the time between Mr Smith picking up his handset and hanging up is the time recorded.

However, the billing system for the 008 services records the length of the call as that time between the called party picking up the phone and the caller hanging up at the end of the conversation.

Obviously there can be a time delay between the caller hanging up and the called party hanging up. This is reflected by the fact that the Smart 10 data will record the length of the call differently from the billing system .

Point (7) Mr Smith Claimed that he was charged for 008 calls that were not connected

Telstra has demonstrated above that the calls complained of under question (1) did connect to Mr Smith's service and fairly long conversation times were recorded. Telstra also confirms that, if calls did not connect to his 008 service then no call would be billed.

If the calls in question actually connected to an RVA, Mr Smith would also not be charged and there would be no record on the account.

Summation

A final point to be made is that valid "short calls" make up a sizeable proportion of normal long distance traffic. Traffic studies show that some 12% of all calls are under 15 seconds. The question here is whether invalid short calls are being charged to customers, specifically to 008/1-800 customers.

While a network or equipment fault could cause a wrongly charged short call, operational tests and fault analyses to date have revealed no systemic cause: that is, identified wrongly charged short calls have been caused by isolated and non-related events. In such cases, the causes are quickly corrected and the accounts of any customers identified as having been wrongly charged are appropriately adjusted. It is therefore almost impossible that Mr Smith's 008 service has systematically been billed for unconnected calls.

Generally, the sources of short duration calls, include:

- Customer related causes and misconceptions - for example:
  - customer not understanding that a call answered by a telephone answering machine is charged;
  - customer premises call diversion (the caller is charged) to a busy or non-answering number;
- Network and equipment faults - for example, the call drops out soon after answer;
- Customer premises equipment features, faults, and misuse, for example:
  - false answer signal from a PABX;
  - fax/phone switch: call is answered by an auto facsimile switch which reinserts ring prior to full voice or fax response.
- Those examples given in 5(b) above.

However, Telstra is vigilant in examining possible faults and error conditions. Operational tests and research are continuing into the possible existence of fault conditions. In brief, it is proposed to undertake the following work:

(a) Customer research to identify reasons for short duration call causes from a customer perspective - details of the proposed research have been previously advised to AUSTEL. However, the study has been delayed by technical constraints.

(b) Technical research and testing with a focus on the customer access network.

(c) Internal research involving overseas telcos.

Yours faithfully

Steve Black

Steve Black
Group General Manager
Customer Affairs

ATTACHMENT 1

METERING ERRORS

FALSE PULSES				
OUTSIDE CALLS	:			0 PULSES
OUTGOING CALLS	:	0	CALLS	0 PULSES
INCOMING CALLS	:	0	CALLS	0 PULSES
OVERMETERED	:	0	CALLS	0 PULSES
UNDERMETERED	:	0	CALLS	0 PULSES

OUTGOING CALLS		
TOTAL	:	864
UNANSWERED	:	182
ANSWERED		
UNIT FEE METERED	(OAU):	0
STD	(OAS):	0
IDD	(OAI):	0
OPERATOR CONTROL	(OAX):	0
ABBREVIATED DIALLING	(OAA):	0
QUESTIONABLE	(OAQ):	682
INCOMING CALLS		
UNANSWERED	(IU):	19
ANSWERED	(IA):	110
METER PULSE NO CALL	(MNC):	0
INCOMPLETE CALL	(INC):	0

DETAILED CALL DATA REPORT
DIRECTORY: 267267 CHANNEL: 5
NOTE: PREVIOUS CALL DATA HAVE BEEN DELETED

CALL CLASS	TIME	NUMBER DIALLED /RING/OPERATOR	WAIT	CONVERS. TIME	METERING	PRICE
IA	940527 06:43:47	RINGINGS: 4	00:06	00:05:13		
IA	940527 07:50:12	RINGINGS: 4	00:06	00:08:58		
IA	940527 09:02:29	RINGINGS: 6	00:08	00:03:49		
IA	940527 10:22:27	RINGINGS: 2	00:03	00:01:02		
IA	940527 10:38:00	RINGINGS: 2	00:03	00:04:09		
IA	940527 10:54:29	RINGINGS: 4	00:06	00:00:01		
IA	940527 11:09:50	RINGINGS: 4	00:05	00:01:52		
IA	940527 11:26:09	RINGINGS: 4	00:04	00:00:47		
IA	940527 12:03:44	RINGINGS: 2	00:03	00:00:09		
IA	940527 12:04:06	RINGINGS: 4	00:05	00:00:03		
IA	940527 12:04:24	RINGINGS: 4	00:05	00:00:08		
IA	940527 12:04:48	RINGINGS: 4	00:05	00:00:04		
IA	940527 12:05:08	RINGINGS: 4	00:04	00:00:05		
IA	940527 12:05:29	RINGINGS: 4	00:04	00:00:05		
IA	940527 12:05:47	RINGINGS: 4	00:05	00:00:04		
IA	940527 12:06:07	RINGINGS: 4	00:04	00:00:06		
IA	940527 12:06:31	RINGINGS: 4	00:05	00:00:04		
IA	940527 12:06:51	RINGINGS: 3	00:04	00:00:05		
IA	940527 12:07:11	RINGINGS: 2	00:03	00:00:05		
IA	940527 12:07:30	RINGINGS: 4	00:04	00:00:05		
IA	940527 12:07:49	RINGINGS: 4	00:04	00:00:05		
IA	940527 12:08:09	RINGINGS: 4	00:05	00:00:04		
IA	940527 12:08:28	RINGINGS: 4	00:05	00:00:07		
IA	940527 12:08:50	RINGINGS: 4	00:05	00:00:03		
IA	940527 12:09:08	RINGINGS: 2	00:02	00:00:05		
IA	940527 12:09:25	RINGINGS: 2	00:03	00:02:22		
IA	940527 14:20:20	RINGINGS: 6	00:07	00:06:25		
IA	940527 14:26:55	RINGINGS: 4	00:05	00:02:31		
IA	940527 16:21:44	RINGINGS: 2	00:03	00:00:13		
IA	940527 17:18:17	RINGINGS: 4	00:05	00:03:02		
IA	940527 17:44:02	RINGINGS: 6	00:09	00:15:25		
IA	940527 19:32:57	RINGINGS: 6	00:08	00:17:47		
IA	940527 19:51:14	RINGINGS: 4	00:04	00:01:59		
IA	940527 19:55:18	RINGINGS: 2	00:02	00:00:43		
IA	940527 19:58:46	RINGINGS: 4	00:05	00:02:46		
IA	940527 20:13:38	RINGINGS: 4	00:06	00:13:28		

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 IA  !940527 20:47:15!   RINGINGS: 4   !00:05!00:00:26!          !
 IA  !940527 21:58:48!   RINGINGS: 6   !00:07!00:23:11!          !
-------------------------------------------------------------------------

CALL DATA SUMMARY - FROM START OF STUDY
DIRECTORY: 267267        CHANNEL: 5
ZONE:   1  CCR: 0 - NO CALL CHARGE RECORD        REASON:0

START TIME: 940429 11:02:51          OPERATOR: ANDY
STOP  TIME:                          OPERATOR:
METER READINGS
   START   READING      :      99999
   CURRENT READING      :          0
   STOP    READING      :
NUMBER OF METER PULSES
   FROM START           :          0 EQUALS        0.00
METERING ERRORS
   FALSE PULSES
      OUTSIDE  CALLS    :                          0 PULSES
      OUTGOING CALLS    :          0  CALLS        0 PULSES
      INCOMING CALLS    :          0  CALLS        0 PULSES
   OVERMETERED          :          0  CALLS        0 PULSES
   UNDERMETERED         :          0  CALLS        0 PULSES
OUTGOING CALLS
   TOTAL                             :     13
   UNANSWERED                        :     11
   ANSWERED
      UNIT FEE METERED          (OAU):      0
      STD                       (OAS):      0
      IDD                       (OAI):      0
      OPERATOR CONTROL          (OAX):      0
      ABBREVIATED DIALLING      (OAA):      0
      QUESTIONABLE              (OAQ):      2
INCOMING CALLS
   UNANSWERED                   (IU ):     54
   ANSWERED                     (IA ):    357
METER PULSE NO CALL             (MNC):      0
INCOMPLETE CALL                 (INC):      0
--------------------------- END OF REPORT ----------------------------
> print stored
STARTDATE = (1901-01-01) ?
STOPDATE = (1994-05-28) ?
EXCEPTIONS-ONLY = (NO) ?
DATACHANNEL = (2) ?


UNSORTED DATA FROM MASS STORAGE

-------------------------------------------------------------------------
DIRECTORY!CALL !      TIME       ! NUMBER DIALLED !WAIT !CONVERS.!METERING
         !CLASS!                 ! /RING/OPERATOR !     !  TIME  !
-------------------------------------------------------------------------
         ! DE  !940527 02:09:27!  OPER: AUTODUMP!      !        !
         !LETE !                 !                !     !        !
         ! LOG !                 !                !     !        !
         ! LOG !940527 02:09:28!  OPER: AUTODUMP!      !        !
         !OUT  !                 !                !     !        !
         ! WAR !940527 02:09:41!DATACHANNEL DISC!      !        !
         !NING !                 !ONNECTED, ERROR !     !        !
         !     !                 !ID.: 97, PARAMET!     !        !
         !     !                 !ERS: 2,0        !     !        !
267230   ! OAQ !940527 06:26:35!074434234        !00:35!00:00:40!
267267   ! IA  !940527 06:43:47!   RINGINGS: 4   !00:06!00:05:13!
267230   ! OAQ !940527 06:49:29!074434234        !00:33!00:01:23!
267230   ! OAQ !940527 07:17:00!074434022        !00:34!00:29:28!
267267   ! IA  !940527 07:50:12!   RINGINGS: 4   !00:06!00:08:58!
267230   ! OUQ !940527 08:17:56!0744022          !00:24!        !
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DETAILED CALL DATA REPORT
DIRECTORY: 267267 CHANNEL: 5
NOTE: PREVIOUS CALL DATA HAVE BEEN DELETED

CALL CLASS	TIME	NUMBER DIALLED /RING/OPERATOR	WAIT	CONVERS. TIME	METERING	PRICE
IA	940528 09:15:38	RINGINGS: 6	00:09	00:06:16		
IA	940528 09:53:24	RINGINGS: 8	00:12	00:00:28		
IA	940528 10:51:50	RINGINGS: 6	00:08	00:10:03		
IA	940528 13:03:01	RINGINGS: 6	00:07	00:32:23		
IA	940528 14:20:17	RINGINGS: 8	00:12	00:09:51		
IU	940528 14:37:33	RINGINGS: 4	00:07			
IU	940528 14:38:02	RINGINGS: 4	00:08			
IU	940528 14:39:11	RINGINGS: 4	00:06			
IU	940528 14:39:40	RINGINGS: 2	00:04			
IU	940528 14:40:06	RINGINGS: 4	00:08			
IA	940528 15:42:00	RINGINGS: 9	00:13	00:31:12		
IA	940528 16:25:36	RINGINGS: 4	00:06	00:02:02		
IU	940528 16:35:30	RINGINGS: 4	00:08			
IU	940528 16:36:01	RINGINGS: 4	00:07			
IU	940528 16:46:31	RINGINGS: 4	00:08			
IU	940528 19:49:47	RINGINGS: 4	00:07			
IA	940528 22:04:34	RINGINGS: 10	00:13	00:09:24		

CALL DATA SUMMARY - FROM START OF STUDY
DIRECTORY: 267267 CHANNEL: 5
ZONE: 1 CCR: 0 - NO CALL CHARGE RECORD REASON:0

START TIME: 940429 11:02:51 OPERATOR: ANDY
STOP TIME: OPERATOR:
METER READINGS
START READING : 99999
CURRENT READING : 0
STOP READING :
NUMBER OF METER PULSES
FROM START : 0 EQUALS 0.00
METERING ERRORS
FALSE PULSES
OUTSIDE CALLS : 0 PULSES
OUTGOING CALLS : 0 CALLS 0 PULSES
INCOMING CALLS : 0 CALLS 0 PULSES
OVERMETERED : 0 CALLS 0 PULSES
UNDERMETERED : 0 CALLS 0 PULSES
OUTGOING CALLS
TOTAL : 13
UNANSWERED : 11
ANSWERED
UNIT FEE METERED (OAU) : 0
STD (OAS) : 0
IDD (OAI) : 0
OPERATOR CONTROL (OAX) : 0
ABBREVIATED DIALLING (OAA) : 0
QUESTIONABLE (OAQ) : 2
INCOMING CALLS
UNANSWERED (IU) : 63
ANSWERED (IA) : 365
METER PULSE NO CALL (MNC) : 0
INCOMPLETE CALL (INC) : 0

---------- END OF REPORT ----------

> print stored
STARTDATE = (1901-01-01) ?
STOPDATE = (1994-05-29) ?
EXCEPTIONS-ONLY = (NO) ?

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ATTACHMENT 2

Freecall 008/1800 calls *continued*

	Date	Time	Origin	Destination	Rate	Min:Sec		$
	Answering number		055267267	*continued*				
20-4	21 May	01:07 pm	00339	055267267	Day	0:03		0.01
20-5	22 May	10:01 am	07443	055267267	Economy	3:16		0.53
20-6	22 May	10:06 am	07443	055267267	Economy	2:42	2·37	0.44
20-7	22 May	10:18 am	07443	055267267	Economy	5:58		0.97
20-8	22 May	01:27 pm	01511	055267267		0:32		0.22
20-9	22 May	04:12 pm	03568	055267267	Economy	18:35		2.45
20-10	22 May	04:50 pm	01511	055267267		0:50		0.34
20-11	22 May	05:02 pm	01511	055267267		2:44	2·37	1.12
20-12	23 May	05:35 am	07443	055267267	Economy	21:06		3.42
21-1	23 May	08:04 am	05	055267267	Day	3:45		1.16
21-2	23 May	01:19 pm	07443	055267267	Day	11:21		4.61
21-3	23 May	03:43 pm	02486	055267267	Day	6:24		2.60
21-4	23 May	04:57 pm	03629	055267267	Day	15:15		4.70
21-5	24 May	09:27 am	03568	055267267	Day	10:22		3.19
21-6	24 May	10:54 am	07443	055267267	Day	29:05		11.80
21-7	24 May	03:47 pm	03329	055267267	Day	3:47		1.16
21-8	25 May	07:43 am	07443	055267267	Economy	0:05		0.01
21-9	25 May	12:07 pm	07443	055267267	Day	21:17		8.64
21-10	25 May	12:41 pm	07443	055267267	Day	23:41		9.61
21-11	25 May	07:56 pm	03568	055267267	Night	1:00		0.21
21-12	25 May	07:52 am	07443	055267267	Economy	0:34		0.09
22-1	26 May	12:32 pm	03562	055267267	Day	6:07		1.88
22-2	26 May	04:03 pm	07443	055267267	Day	18:30		7.51
22-3	26 May	07:23 pm	07444	055267267	Night	2:34		0.70
22-4	26 May	07:37 pm	05	055267267	Night	19:08		4.02
22-5	27 May	06:44 am	07443	055267267	Economy	6:13		0.85
22-6	27 May	07:50 am	07443	055267267	Economy	8:58		1.46
22-7	27 May	12:04 pm	05339	055267267	Day	0:03		0.01
22-8	27 May	12:05 pm	05338	055267267	Day	0:04		0.02
22-9	27 May	12:05 pm	05339	055267267	Day	0:03		0.02
22-10	27 May	12:06 pm	05339	055267267	Day	0:05		0.02
22-11	27 May	12:07 pm	05338	055267267	Day	0:06		0.03
22-12	27 May	12:07 pm	05339	055267267	Day	0:04		0.02
23-1	27 May	12:08 pm	05338	055267267	Day	0:03		0.02
23-2	27 May	12:09 pm	05339	055267267	Day	0:03		0.01
23-3	27 May	12:09 pm	05339	055267267	Day	2:33		0.79
23-4	27 May	04:22 pm	03820	055267267	Day	0:52		0.27
23-5	27 May	06:18 pm	05229	055267267	Day	3:02		0.93
23-6	27 May	05:44 pm	07443	055267267	Day	15:25		8.25
23-7	27 May	07:51 pm	01511	055267267		1:51		0.76
23-8	27 May	07:55 pm	01511	055267267		0:44		0.30
23-9	27 May	07:59 pm	01511	055267267		3:15		1.33
23-10	27 May	09:59 pm	03582	055267267	Night	23:11		3.12
23-11	28 May	09:16 am	03568	055267267	Day	6:16		1.93
23-12	28 May	09:53 am		055267267	Day	0:01		0.01
24-1	28 May	02:20 pm	03553	055267267	Day	9:51		3.04

Continued Overleaf

RALLIART

TEST CALLS

TEST 2 CALLS

NEVER ARRIVED

NOT CONNECTED

R.VA

2H/O NRR 11/46

R·VA CALLS. "GARRY ELLACOTT"

ATTACHMENT 3

28. On 19 March 1994 Mr Smith's 267 260 gold phone line was removed from RCM system no. 1 as a precaution because ongoing investigations had not yet discovered the intermittent no dial tone fault. The reason for this delay in discovering the fault is that there were no fault reports from Cape Bridgewater customers of no dial tone or RCM alarms between 11 & 19 March 1994. When the complaints reappeared on 19 March 1994, a number of Telecom experts from CAN (customer access network) Technologies were called in to assist as a matter of urgency. It was concluded that because the RCM system no. 1 generally failed in the night it may be sensitive to cooler temperatures. On 23 March 1993 we therefore set up a cooling fan in the hut which holds the RCM systems at Cape Bridgewater and discovered that the RCM system no. 1 failed when the ambient temperature reduced to 74 degrees F which is about 23.3 degrees C. On 23 March 1994 we replaced the SCU board again with a new board and the fault was remedied.

Mr Smith's new facsimile machine - May 1994

29. In the morning of 27 May 1994 I attended at Cape Bridgewater Holiday Camp in response to complaints of ring only once in relation to Mr Smith's 267 267 and 267 230 lines. When I arrived I noticed that Mr Smith had a new Panasonic facsimile machine. I was concerned about the implications of Mr Smith purchasing any form of CPE, particularly CPE which involved new technology that he may find difficult to understand. Mr Smith told me he had purchased this facsimile in the previous week.

30. I arranged test calls to be made to Mr Smith's 267 267 line from Telecom's Fault Dispatch Centre in Ballarat. Several test calls were made and the 267 267 telephone rang okay.

31. Mr Smith told me that people were having difficulty in sending facsimile transmissions to his 267 230 line. Mr Smith specifically mentioned that Mrs Trigg from a Portland bus company was having difficulty in sending him facsimiles.

32. Whilst at the camp I arranged for Telecom's Fault Dispatch Centre in Ballarat to also send test facsimiles to Mr Smith's 267 230 line. These facsimiles were received okay. Mr Smith's facsimile machine incorporates a facsimile, a telephone handset and a photocopier and has three modes of operation:

    (i) Telephone;

    (ii) Fax; and

    (iii) Auto.

33. During my 27 May 1994 visit, Mr Smith's facsimile machine was in "Auto" mode, which means that if an automatic facsimile machine called 267 230, Mr Smith's facsimile machine would ring for 2 complete cycles of ring, answer the call and the receive the facsimile transmission immediately. The facsimile machine used by the Ballarat FDC is an automatic facsimile machine. In contrast, if a manually operated facsimile machine called 267 230, the caller would lift the phone handset, dial Mr Smith's number and then wait to receive facsimile tones from Mr Smith's machine before pressing transmit on their manual facsimile machine. However, because Mr Smith's facsimile machine is switched to "Auto" mode, it permits 2 full cycles of ring to be transmitted to the calling party and then answers the call. At this point Mr Smith's facsimile machine rings the telephone incorporated into the machine and the calling party continues to receive ring tone

and not facsimile tones as would generally be expected. That is, when Mr Smith's facsimile machine is in "Auto" it recognises manual calls as a "voice" call as it has not received facsimile tones from the calling machine. In this situation both machines are waiting for each other to send facsimile tones. If the incoming caller using a manual facsimile machine presses transmit prior to receiving facsimile tones (which is not the usual situation), Mr Smith's facsimile machine when in "Auto" mode will notice that a facsimile is coming through and automatically accept the transmission.

34. This situation when Mr Smith's facsimile machine is in "Auto" mode may confuse a caller with a manual facsimile machine and can lead to the incoming caller who is waiting for facsimile tones to prematurely hang up. In this case Mr Smith may misunderstand this to be bursts of ring caused by Telecom's network as he would not receive a facsimile transmission. If the caller with a manual facsimile machine holds on for 30 seconds of ring in total when Mr Smith's facsimiles in "Auto" mode, Mr Smith's facsimile machine will then change and transmit facsimile tones to the incoming caller. However, it is unusual to wait 30 seconds for facsimile machines to give facsimile tone and it is likely that an incoming caller with a manual facsimile machine will get frustrated before the 30 seconds of ring has elapsed and hang up prematurely (causing "bursts of ring").

35. After lunch on 27 May 1994 I attended at Mrs Trigg's business to ask her about the difficulty Mr Smith said she was having in sending facsimile transmissions to Cape Bridgewater Holiday Camp. Mrs Trigg had a manually operated facsimile machine. I informed Mrs Trigg that Mr Smith had recently purchase a new facsimile machine. I also told Mrs Trigg that because Mr Smith's facsimile machine was in "Auto" mode, she has two options when sending a manual facsimile to Mr Smith. She can either wait for 30 seconds for his machine to send facsimile tones or press the transmit button on her facsimile machine after several rings and her facsimiles will automatically transmit to Mr Smith's facsimile machine.

36. If Mr Smith's facsimile machine was permanently set to fax mode facsimile tone would be sent to incoming calls after 2 complete cycles of ring and there would be no confusion for callers with manual facsimile machines.

Businesses at Cape Bridgewater

37. I understand that Mr Smith's Letter of Claim states that Mr Smith is the only commercial business in Cape Bridgewater. I know of at least the following commercial enterprises or business persons in Cape Bridgewater:

- Kalari Limestone Quarry (telephone no. 267 234);
- Blacksell concrete contractor (267 258);
- Barry Wilson who is a stock buyer for Australian Meat Holdings has a facsimile and telephone (267 280 & 267 281) - I know Mr Wilson personally and in the evening he is constantly making and receiving telephone calls and transmitting and receiving facsimiles in relation to buying stock;
- B. Le Page commercial fisherman (267 268);
- R. Le Page Haines commercial fisherman (267 239);
- Barry Sullivan constructions (267 273);
- G Kelly abalone diver has a telephone and facsimile (267 230 & 267 216);

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ATTACHMENT 4

MSG

16522, 807 A Z B CALL 16 JUN 94 LIVE P 23/32 V88 008 001

BRIDGEWATER HOLIDAY CAMP MTR CUR AMT DUE

MR ALAN SMITH MIC $ 1427.94C

WTH PER 1

100 SERVICE 008 816 522
FREECALL 008/1800 CALLS
ANSWERING NUMBER 055267267

IN	RAC	DATE	TIME	ORIGIN	DESTINATION	RATE	MIN/SEC	AMOUNT
1	585	27 MAY	12.08P	053382521	055267267	D	0:03	0.02
2	585	27 MAY	12.09P	053396576	055267267	D	0:03	0.01
3	585	27 MAY	12.09P	053396524	055267267	D	2:33	0.79
4	585	27 MAY	04.22P	038204568	055267267	D	0:52	0.27
5	585	27 MAY	05.18P	052293309	055267267	D	3:02	0.93
6	585	27 MAY	05.44P	074434022	055267267	D	15:25	6.25
7	585	27 MAY	07.51P	015112944	055267267		1:51	0.76
8	585	27 MAY	07.55P	015112944	055267267		0:44	0.30
9	585	27 MAY	07.59P	015112944	055267267		3:15	1.33
10	585	27 MAY	09.59P	035622075	055267267	N	23:11	3.12
11	585	28 MAY	09.16A	035681824	055267267	D	6:15	1.93
12	585	28 MAY	09.53A	070	055267267	D	0:01	0.01

A

AS indicates IA 8 rings. 28 Sec B pre-G off hook.

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NEW 000208

SMITH

	A	B	C	D	E	F	G
1	Date	Counter	Type of Info	Description	From	To	New File Ref No
176	24-Jul-92	C304	Letter	Several times over past year when try to contact Smith, without success Oct/Nov 1991 phoned at least 6 times received RVa. March/April 92 - RVA	Robert Palmer	TWIMC	A33
177	24-Jul-92	D97	Letter	Tried to call many times over past year (92) without success - received RVA trying to organise camp for Heywood grade 4 (Portland)	R. Palmer		A14
178	24-Jul-92	MS273	Fault report	Probably from briefcase left at Smith's premises. Complaining people getting RVA message. Latest report 22 Jul 92 from Station Pier where 'Abel Tasman' berths. Similar fault reported Frs Seq 327 17 Mar 92. Fault has gone on for 8 months.	n/a	n/a	A52
179	24-Jul-92	MS274	Fault report	Followed trunking, appears OK, did not make test calls. Les Sketcher, W'bool AXE made 2 successful calls. Keith McIntie, pay-phone section will make test calls from Station Pier. Have contacted Hew McIntosh of Network Investigations.	n/a	n/a	A52
180	27-Jul-92	B100	fax	callers from Greyhound Terminal receiving RVA when dialling 267267. Action - asked NET/MAN to make test calls NFF	Stokes		A7
181	27-Jul-92	B101	fax	calls from MELB rec RVA. Action - contacted Tony Leydon NET/MAN carry out tests. Ross Tonkin rang back 19/3/92. MELU did not analyse 055267 correctly therefore calls would fail. Cleared x 54 NH	Stokes		A7
182	27-Jul-92	B156	note of telephone discussion	rang smith, explained better if he went through Mark Ross as per letter 20/7. Told Smith it would get him into trouble with the hierarchy if he went further. Smith claims its not a matter of money for compensation but need for public to know.	???		A10
183	27-Jul-92	B157	note of telephone discussion	Smith complained of overcharging. Smith said he hadn't and wouldn't cash the cheque	???		A10
184	27-Jul-92	B97	fax	Smith officially complained & has been referred to legal dept. in Brisbane. He has been offered a settlement to cover lost advertising and business revenue. Smith unhappy and looks like pursuing matter further	Stokes		A7
185	27-Jul-92	B98	fax	[redacted] from Abel Tasman getting RVA when calling 267267. Action - asked NET/MAN for assistance. Tom checked out NFF	[redacted]tokes		A7
186	27-Jul-92	B99	fax	TR report caller from 057 981622 getting RVA when calling 267267. Action - asked Ballarat OSC for assistance. They made test calls from BRAX and Bendigo.DAM in BRAX and Bendigo AXE checked. Chris Doody requested all Nodes & ARF's to make test calls. NFF.	Stokes		A7
187	27-Jul-92	J284	File note	phone rang twice then stopped i/c			A6
188	27-Jul-92	J285	File note	call from [redacted] got RVA i/c			A6
189	27-Jul-92	J286	File note	call from Sydney got RVA i/c			A6
190	27-Jul-92	J287	File note	call from Sydney got RVA i/c			A6
191	27-Jul-92	J288	File note	call from [redacted] got RVA i/c			A6
192	27-Jul-92	J289	File note	3 out of 6 calls from Greyhound terminal FranklinSt. Melb to Cape [redacted] got RVA i/c/			A6
193	27-Jul-92	J290	File note	call from Martwell 03 889 6658 got RVA i/c			A6
194	27-Jul-92	J291	File note	call from Martwell 03 889 6658 got RVA i/c			A6
195	27-Jul-92	J292	File note	call from Portland 055 234 222 got RVA i/c			A6
196	27-Jul-92	J293	File note	call from Violet Town 057 981 xxx got RVA i/c/			A6
197	27-Jul-92	J294	File note	call from Mallam 03 7055xx got RVA i/c			A6
198	27-Jul-92	J295	File note	call from Station Pier 5.10 pm got RVA i/c			A6
199	27-Jul-92	J300	File note	Smith provides Telecom with ph. no.s of people trying to contact him and having problems - Heywood School 271 200: Oct 1991 - Feb 1992 - Heywood Museum ? - Oct 1991 - Feb 1992 - Maddon Community Centre 053 424 4675: Oct 1991 - Feb 1992			A6
200	27-Jul-92	J301	File note	phone rang twice then stopped i/c/			A6
201	27-Jul-92	J302	File note	phone rang twice then stopped 4.15 pm i/c/			A6
202	27-Jul-92	J303	File note	phone rang twice then stopped 5pm i/c			A6
203	27-Jul-92	J304	File note	phone rang twice then stopped 11pm i/c			A6
204	27-Jul-92	J305	File note	phone rang twice then stopped 11pm i/c			A6
205	27-Jul-92	J306	File note	phone rang twice then stopped 11.18 pm i/c			A6
206	27-Jul-92	J307	File note	phone rang twice then stopped 11am i/c			A6
207	28-Jul-92	B10	test data summary	test calls made between 28/7/92 to 7/10/92 - PTARS (MELU & MELQ)	n/a	n/a	A7

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	A	B	C	D
1	Date	Counter	Type of Info	Description MERGCB2
597	11-Dec-92	C291	Settlement issues paper	Smith wanted 150k, chance of legal action high
598	11-Dec-92	C292	Settlement issues paper	Poor performance of Telecom - historically March data problem, local Portland problem fixed in October, wiring and cabling issues and RVA on congestion
599	11-Dec-92	C293	Settlement issues paper	Slow resolution by Telecom of past problems of Smith - both technical and claims
600	11-Dec-92	C294	Settlement issues paper	Evidence - letters say not getting through, AUSTEL and Ombudsman both trouble getting through, claims credible in media
601	11-Dec-92	C295	Settlement issues paper	Smith claims loss of business and loss of prospective partner who could not get through on the phone
602	11-Dec-92	C296	Settlement issues paper	Mr Smith's service problems were network related and spanned a period of 3-4 years - possible immunities
603	11-Dec-92	C297	Settlement issues paper	Smith's service suffered over several years - some diff. to detect exchange problems in last 8 months
604	11-Dec-92	C298	Settlement issues paper	If Smith win legal battle awarded payment as high as $40,000 - if went to Arbitration $80,000 not out of the question (costs)
605	11-Dec-92	C299	Letter	Settlement agreement - pay Smith $80,000, denial of liability, confidential agreement
606	11-Dec-92	C300	Minute	Mr Smith now satisfied with the standard of his telephone service - reach settlement against Telecom for poor service over past couple of years

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Telstra

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9 October1997

Legal Directorate
FOI Unit

Level 38
242 Exhibition Street
Melbourne Vic 3000
Australia

Postal Address:
Locked Bag 5691
MELBOURNE VIC 8100

Telephone 03 9632 3371
Facsimile 03 9634 2744

Mr A Smith
Cape Bridgewater Holiday Camp
RMB 4408
PORTLAND VIC 3305

Dear Mr Smith,

Re Freedom of Information Request - your letter of 18 September 1997

I acknowledge the receipt of your letter dated 18 September 1997 in which you have sought access to Microsoft Excel spreadsheets discussed in the Senate Estimates Hearing held on 24 June 1997. It is my understanding that you are seeking the Excel spreadsheets which were created by Telstra in preparing its defence in respect to your arbitration claim. The search for the Excel spreadsheets sought in your request is still in progress and I will advise you of my decision in respect to the Excel spreadsheets in the near future.

In you request you have sought remission of fees and charges on the grounds of financial hardship, public interest and your belief that the spreadsheets sought in your request fell within the scope of your previous FOI requests.

I have reviewed the scope of your previous FOI requests and I am satisfied that the Excel spreadsheets sought in your current request do not fall within the scope of any of your previous FOI requests.

In respect to your claim for remission of fees and charges on the grounds of financial hardship, I do not consider that there is insufficient evidence to warrant the remission of fees in this instance.

In respect to claim for remission of fees and charges on the grounds of Public Interest, I consider the information that would be contained in the spreadsheets sought by your current request would be specific to the preparation of Telstra's defence documentation in respect to "your" Arbitration claim and as such I do not consider the release of the Excel spreadsheets to be in the public interest or in the interest of a substantial section of the public.

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TOTAL P.06

I therefore advise you that, subject to Section 30A of the Freedom of Information Act, I have refused your request your remission of fees and charges on the grounds set out in your letter of 18 September 1997.

I have enclosed a receipt for your $30 application fee with this letter.

Review Rights - Remission of Fees and Charges

My decision is subject to review under section 54 of the Act. If you wish to apply for review, you should write to the:

The Freedom of Information Unit
Telstra Australia
Locked Bag 5691
MELBOURNE VIC 8100

You should make this application within 30 days of the date of receipt of this letter.

Section 57 of the *Freedom of Information Act* provides that a person may complain to the Ombudsman concerning action taken by Telstra in the exercise of powers or the performance of functions under this Act.

A complaint to the Ombudsman may be made orally or in writing and should be directed to:

Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601
Telephone: (06) 276 0111

The Ombudsman usually prefers applicants to seek internal review before complaining about a decision.

Yours sincerely

Rod Kearney
Manager Freedom of Information

May 27, 1996

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

Mr Alan Smith
Cape Bridgewater Holiday Camp
Portland 3305

By facsimile 005 267 230

Dear Alan

I refer to your recent correspondence and our telephone conversation of 22 May 1996.

You have requested my advice on whether you are able to disclose the figure of your Award under your arbitration procedure to the Australian Tax Office. As I have stated to you before, my office cannot provide you with legal advice on your confidentiality obligations. I refer you to clause 17 of the Rules for the Fast Track Arbitration Procedure. That clause states that it "is to be read subject to any requirements of law". I suggest that you contact the Australian Tax Office and your legal adviser to determine whether you are obliged by law to provide information about your Award. You may also wish to contact Telstra and assess their attitude to your disclosure. These comments should not be taken as legal advice on your confidentiality obligations.

In your facsimile of 23 May 1996, you state that your potential financiers find it difficult to believe that the Fast Track Arbitration procedure provided for the parties to bear their own costs. I am unable to provide you with legal advice on how to proceed. However, clause 22 of the Rules of the Fast Track Arbitration Procedure clearly states that "each party shall bear its own costs of the arbitration". Your confidentiality obligations under the procedure may not prevent you from disclosing the rules of the procedure to a third party (such as a potential financier). Again, I suggest you seek advice on this matter.

In respect of your letters of 20 and 21 May 1996, I repeat my position, stated to you many times, that the TIO cannot and will not investigate or make findings on any substantive issue already dealt with in your arbitration. If you have complaints about the conduct of your arbitration procedure, I suggest you seek legal advice on the availability of review or an appeal.

In respect of your letter of 13 May 1996, I am not prepared to revise the media release issued by my predecessor, omitting any reference to your "substantial award". His statement about your Award remains accurate, notwithstanding your comments. You further request that I write to confirm that your arbitration procedure proved you had

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telephone service difficulties which was, therefore, detrimental to your financial position. By virtue of the confidentiality provisions of your arbitration procedure, I am unable to state anything further than that which was set out in the media release of 12 May 1995.

In your letter of 6 May 1996, you allege that Dr Hughes' firm, Hunt & Hunt had accepted a $4,000,000 contract from Telstra during your arbitration. This is simply untrue. Hunt & Hunt was named on a panel of firms eligible for Telstra work. The Chairman of Hunt & Hunt has informed my office that the firm's Melbourne office declined undertaking any work for Telstra during the course of the arbitrations and has 'run off' the work which was being conducted for Telstra prior to Dr Hughes' appointment as Arbitrator.

The Chairman has also stated that the firm's Sydney office has also been running off files on which it was acting for Telstra prior to the Arbitrator's appointment and as at November 1995 the office had billed $19,000, with only $5,000 worth of unbilled work in progress. Finally, the Chairman has informed me that the firm's Brisbane office, which is financially separate from the Melbourne and Sydney offices and does not share profits, was involved in an information technology project for Telstra Atlas in 1995. I am informed that the firm billed approximately $147,000 for this work as at November 1995.

With respect to allegations you raise about the conduct of both the Resource Unit and the Arbitrator, you appear to have misunderstood the role of the Resource Unit. The Resource Unit is required by the terms of the Fast Track Arbitration to work in conjunction with and advise the Arbitrator. Both the Resource Unit and the Arbitrator are to act independently from Telstra or a claimant, but not from each other. All evidence and submissions placed before either the Arbitrator or the Resource Unit would have been considered, even if not specifically referred to in a final report.

I refer to your letter of 4 May 1996. In that letter you emphasise the difficulty you faced as a layperson preparing material in your arbitration. You imply that this fact was not taken into consideration in the arbitration. This also is incorrect. I refer you to your Award where Dr Hughes states (at 2.1 (d)) that one of a variety of facts he took into account in preparing your Award was that you were not a lawyer and not legally represented. Dr Hughes also states (at 4.3(b)) that he did not expect you, as an unrepresented layperson, to articulate the legal bases for your claim and that this did not detract from the quality of your submission.

You also complain that my office should have assessed issues and reviewed claim material. That is a matter for the Arbitrator and not me as Administrator. Any material submitted to Dr Hughes would have been considered by him in the course of writing his Award. It is not the TIO's role to investigate or make findings with respect to any substantive issue raised in an arbitration. This is no less true in a completed arbitration. such as yours.

In your letter of 3 May 1996, you request that I ask Telstra why they chose not to defend allegations raised in your claim regarding your 008 service. As this matter was raised in

your claim, it would have been considered by the Arbitrator, regardless of Telstra's failure to respond. I reiterate my comments above with respect to substantive issues such as this and therefore cannot ask such a question of Telstra, as I have no power to do so.

You forwarded two letters to my office on 29 April 1996. The first was a request for written confirmation that none of the material submitted in your claim was tampered with by the Resource Unit or the Arbitrator and that all claim documents were circulated. I reiterate that your claim was concluded once the Arbitrator handed down his Award and I am not in a position to review or question his findings. Furthermore, I have no power at law or under the Arbitration procedure to seek such assurances and I therefore decline to meet your request.

In your second letter you refer to a number of documents you have requested under FOI and request that I follow these matters up, on your behalf. Your FOI requests were outside the ambit of your arbitration procedure and have nothing to do with my office. I am unable to assist you in this request. You may wish to look at the Freedom of Information Act and determine your rights to review.

Your letter of 27 April 1996 requests me to expand upon the statements made in the TIO 1995 Annual Report. I reject your allegations that the Arbitrator and the Arbitration was manipulated by Telstra and decline your invitation to say anything further on the matter.

Your continued requests to this office for a review or investigation of the issues arising out of your arbitration procedure can only be met by continued refusal. I do not have such power. I am confident that there was no conflict of interest nor threat to the impartiality of either Dr Hughes or the Resource Unit in the conduct of your arbitration and have provided reasons for this confidence to you. This concludes the matters which can be assessed by my office.

I advise that any further requests by you for a review or investigation of (or comment on) the substantive issues in your completed arbitration will not be answered.

Yours sincerely

John Pinnock
Ombudsman

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FAX FROM: ALAN SMITH	**FAX TO:** MR JOHN PINNOCK TELECOMMUNICATIONS INDUSTRY OMBUDSMAN MELBOURNE
Cape Bridgewater Holiday Camp Portland 3305	**DATE:** 25.6.96
FAX NO: 055 267 230	**NUMBER OF PAGES** (including this page)
PHONE NO: 008 816 522	

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

Dear Mr Pinnock,

I am writing today regarding two separate issues:

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

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

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

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

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

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

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

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

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

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

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

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

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

The author of this document was Ted Benjamin.

This paragraph raises two issues:

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. ***FOI documents L69056 to L69086, from Ted Benjamin of Telstra to Dr Hughes, dated 9th May 1995: two responses from Telstra, one regarding the Technical Evaluation Report by DMR and Lanes and the other regarding the Financial Evaluation Report by Ferrier Hodgson Corporate Advisory.***

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

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

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

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

L68963 & 84	*16/9/94*	L63369	*23/12/95*	L63339	*12/4/94*
L68989 & 90	*23/9/94*	L63820	*6/1/95*	L69036 & 37	*16/12/94*
L68995	*3/10/94*	L63896	*22/12/94*	L69046	*16/12/94*
L63661	*12/4/95*	L69028	*6/12/94*		

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

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

I await your response.

Sincerely

Alan Smith

copies to:

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

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FAX FROM: ALAN SMITH *Cape Bridgewater Holiday Camp* *Portland 3305* **FAX NO:** 055 267 230 **PHONE NO:** 008 816 522	**FAX TO:** MR JOHN PINNOCK TELECOMMUNICATIONS INDUSTRY OMBUDSMAN MELBOURNE **DATE:** 26.6.96 **NUMBER OF PAGES** (including this page) /

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

Dear Mr Pinnock,

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

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

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

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

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

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

Sincerely,

Alan Smith

These are quite serious allegations. We need to respond to specific letters Smith says weren't forwarded & received and provide answers on each. Refer to

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AUSTEL
AUSTRALIAN
TELECOMMUNICATIONS
AUTHORITY

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

11 July 1996

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

Dear Senator Alston

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

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

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

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

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

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

Yours sincerely

Sue Harlow
Member

Postal Address: P O Box 7443 St Kilda Road Melbourne Victoria 3004

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30 July, 1996

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road
RMB 4409
CAPE BRIDGEWATER 3306

by facsimile 055 267 230

Dear Alan

I refer to your recent facsimiles.

In your facsimiles of 25 June and 21 July 1996, you refer to a number of letters which you allege were required to be provided to you under the FTAP and were not. I note in your letter of 21 July that you refer to correspondance between Telstra and AUSTEL, and the Arbitrator and AUSTEL. Clause 6 of the FTAP does not require this correspondance to be copied to you. In regard to the other letters to which you refer, I have contacted Dr Hughes and he has informed me that .....

As to the other matters you raise in these two lettters I advise that they are either matters which relate to a substantive issue in your arbitration, or request assistance with FOI issues, or have been answered previously. I refer to my letter 27 May 1996 where I advised you that I would no longer repond to your requests on these issues.

In your facsimile of 26 June 1996, you allege that the two pages provided by my office on 17 April 1996 were not, in fact, pages 38 and 39 of the Resource Unit's Technical Evaluation Report. I advise that the Resource Unit has informed me that the pages my office provided to you was the correct material. The Resource Unit has stated that "pages 38 and 39 of the Technical Evaluation Report is FOI document numbered K00942 (two pages)...Further, these two pages are specifically referred to as 'pages following' in paragraph 2.21 on page 31 of the Technical Evaluation Report". I trust that this resolves the matter.

You refer to "four bound volumes of documents" which you submitted to the Arbitrator after December 1994. The Resource Unit informs me the Arbitrator did forward this material to it and that the final (and not draft) Technical Evaluation Report dated 30 April 1995 includes this material in its 'Sources of Information' List on page 40. I enclose a copy of that page. The Resource Unit informs me that the following entries relate to the four volumes of documents:

- Smith - Samplesof FOI Telecom documents (SM49)

25/6
-① to Hughes 16/12/94 ✓
① to Hughes 27/4/95 ✓
-① to Hughes 12/4/95 ✓
-2 for ⑤ to Hughes 9/5/95 ✓
-① to Hughes 16, 25/9/94
3/11/94 ✓
24/12/94 ✓ 6/12.94
6/1/95 ✓
23/12/95 ✓

26/6
- Hughes not give ① copy of Smith Reply

21/7
- ① to Hughes 16/12/94

26?

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- Smith - Appendix C Additional Evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc Further Information (SM46)

The Resource Unit also informs me that it returned these documents to you in their letter of 6 October 1995 (Annexure A, page 3 of 3).

I refer to your letter of 28 June 1996 where you refer to "separate correspondance" to which Dr Hughes referred in his letter to Mr Benjamin dated 13 April 1995, whic you believe you did not receive. Copies of the two letters of 13 April 1995 which you enclosed with your letter are also on the TIO file. There are no other letters written by Dr Hughes to Telstra or yourself in relation to your arbitration which bear that date on the TIO file.

I have spokn to Dr Hughes on this matter and he confirms that this is the case. The "separate correspondance" to which he refers in his letter to you of the same date, a copy of which was sent to you at the time, and which you included with you your letter to this office.

In your recent letters you make a number of requests with respect to FOI materials not provided or incomplely provided to you. I repeat my earlier comments that the TIO has no jursdiction over FOI matters and can not assist you in this regard. You should raise this issue with Telstra directly or with the Commonwealth Ombudsman if you are unsatisifed with Telstra's response.

Yours sincerely

John Pinnock
Ombudsman

FERRIER HODGSON
CORPORATE ADVISORY

COPY

MEMORANDUM

TO : Dr Gordon Hughes

FROM : Susan Hodgkinson

DATE : 2 August 1996

SUBJECT : **A Smith Letter dated 25 June 1996**

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

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

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

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

I have attached copies and extracts of the relevant documents.

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

Regards

Sussan Hodgkinson

cc: Mr Matt Deeble,TIO Ltd

August 16, 1996

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

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

COPY

By facsimile 055 267 230

Dear Alan

I refer to your letter of 12 August 1996. In that letter you request a copy of the covering letter, signed by Mr Paul Howell of DMR Group Canada, to the Resource Unit's Technical Evaluation Report in your completed arbitration.

I note that the Arbitrator was not obliged to forward a copy of this covering letter to you, as it did not, strictly speaking, form a part of the Technical Evaluation Report. However, in the interests of alleviating your concerns, I now enclose a copy of Paul Howell's covering letter.

As to the other disparaging remarks you make in your letter in respect of the Resource Unit and the Fast Track Arbitration Procedure, I reject those comments entirely.

Yours sincerely

John Pinnock
Ombudsman

cc *Senator Richard Alston*
Professor Alan Fels
Mr John Wynack

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Commonwealth of Australia

STATUTORY DECLARATION

Statutory Declarations Act 1959

I, **ALAN SMITH**

make the following declaration under the *Statutory Declarations Act 1959:*

2 *Set out matter declared to in numbered paragraphs*

On 23rd February 2006 I wrote the attached letter to Mr Bryant. Attached to that letter are: a letter dated 12th August 1996, from me to John Pinnock, the TIO; Mr Pinnock's response (dated 16th August 1996); a letter dated 30th April 1995, apparently signed by Mr Paul Howell of DMR Group Canada and two pages, both dated 30th April 1995, from an arbitration technical report prepared by DMR & Lanes. The matters related to these documents are why I have decided to prepare this document now.

In my letter to Mr Bryant, at point 3, I raise the issue of the technical consultant's arbitration report dated 30th April 1995, prepared by DMR & Lanes. For the purposes of this Statutory Declaration I now state that I received a copy of the DMR & Lanes report dated 30th April 1995, together with advice from the arbitrator, Dr Hughes, asking for my written response to the report. I assume that Telstra received the same version of the report and the same directions from Dr Hughes.

In August 1995, three months after my arbitration, I travelled to Melbourne to pick up all my arbitration claim documents. I later discovered that the arbitrator's secretary, Caroline Friend, had inadvertently also provided me with a manila envelope containing a number of documents I had not seen before. Inside the manila envelope I found two versions of an arbitration technical report, one dated 6th April 1995 from David Read of Lanes Telecommunications, and one dated 30th April 1995, from DMR & Lanes. At first I thought the DMR & Lanes report was just a replica of their report that I had been given by the arbitrator during my arbitration. When I compared the two, however, I discovered, in this newly obtained version of the report, information that was not included in the version that had been officially provided to me during my arbitration. The information omitted from the so-called 'final', arbitration version of the report included references to billing faults, and 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 problems."* The version of the DMR & Lanes report that I discovered in the manila envelope turned out to be only a draft of their report. Except for differences in the list of documents sourced in relation to their findings regarding my billing claims, the rest of this draft version is identical to the version that was represented to me as the final version of the report. The draft version of the report stated that the billing claim documents were to be assessed over the coming weeks. My billing claim included 13 bound volumes of over 2,600 documents. None of these volumes or documents is included in the list of documents sourced by the consultants. The draft

C34659

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clearly states that, on 30th April 1995, when they prepared the draft of their report, the consultants still needed extra weeks to resolve the billing fault issues and yet the so-called final report, which now included the 13 volumes of 2,600 documents in the documents list, was submitted to arbitration on the same date and forwarded to me for my official response, even though the arbitrator knew I would then be responding to a report that was incomplete.

The attached letter dated 12th August 1996, to Mr John Pinnock, confirms that I wrote to the Institute of Arbitrators because the DMR & Lanes report had not been signed off. Mr Pinnock apparently also wrote to the Institute and provided them with a copy of what he called a covering letter supplied by Paul Howell of DMR Canada. As you can see, when he wrote to me on 16th August, his advice was that he didn't believe the arbitrator was obliged to supply me with a copy of the DMR 'covering letter'.

Just days after my arbitration, in shock at finding that none of my billing claim documents had been addressed, and after uncovering information that was not uncovered during my arbitration, I collapsed with a suspected heart attack and was rushed to hospital by ambulance. On my return, five days later, Mr Paul Howell of DMR Canada telephoned me at home. I had not spoken to Mr Howell before, but he told me he had heard that I had been in hospital and was phoning to wish me well. Mr Howell then went on to tell me that my arbitration was the worst process he had ever been associated with and that, had it been conducted in North America, it would never have been allowed to continue under such an atrocious administration. I told him I appreciated his concern, but was disappointed with his technical report and asked him why he had not signed it off. He replied in words to the effect that he hadn't signed the report because it had never been completed.

Why would Mr Howell admit that the report was never finished yet still provide a covering letter with the same date as that unfinished report?

Who would write a covering letter stating that a final report (with the same date as a draft of the report) was complete, when the draft clearly stated that it was not complete and needed extra weeks to resolve billing issues?

Clearly someone mischievously added the 13 bound volumes of billing documents to the list of sourced documents, thereby indicating that they had all been investigated. This simply confirms that my arbitration was not conducted lawfully, a fact that is supported by a TIO document noting that the TIO was afraid to investigate my arbitration concerns in case it would *'open a can of worms'*.

Two versions are attached of the index to the DMR & Lanes arbitration technical report. Both versions are dated 30th April 1995, thereby confirming that someone was prepared to deceive me (and probably Telstra also) into believing that all 13 volumes of billing claim documents were assessed. I have asked the TIO to compare these two versions of the technical report because, with the exception of the missing 13 volumes and reference to billing issues, they are otherwise word-for-word.

SC/36809

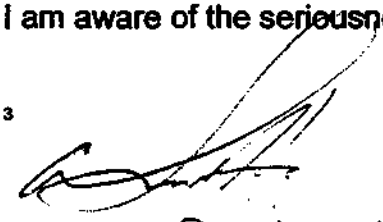
In a letter dated 15th November 1995, from the TIO-appointed arbitration project managers, Ferrier Hodgson Corporate Advisory (FHCA), to Mr Pinnock, FHCA admitted that the arbitration technical consultants never assessed ANY of the billing claim documents I submitted to my arbitration. Still, on 17th March 1998, Mr Anthony Hodgson, Chairman of FHCA, wrote to ASIC stating categorically that ALL the documents I submitted had been addressed. Mr Hodgson's letter was also copied on to Mr Pinnock – who, as noted above, had already been notified (in November 1995) that none of my billing claim documents had been addressed.

Again and again, my evidence proves that my billing claim documents were not assessed at all.

This Statutory Declaration has been prepared as further testament to my contention that neither John Pinnock or his office, or Telstra, can be included as a party to any independent Casualties of Telstra Assessment process. I believe the Minister, the Hon Senator Helen Coonan, should investigate my claims regarding both the illegal tampering with arbitration evidence that is described in the attached letter to Mr Bryant, dated 23rd February 2006, and DMR & Lanes, particularly as DMR & Lanes were the TIO-appointed technical consultants to all the COT arbitrations – the same arbitrations that are under review now.

I am aware of the seriousness of these allegations.

3 *Signature of person making the declaration*

3 

Declared at[4] Portland on[5] 23 of[6] February 200

4 *Place*
5 *Day*
6 *Month and year*

Before me,

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

7 

8 *Full name, qualification and address of person before whom the declaration is made (in printed letters)*

8 Joanne Maree O'KEEFE
Constable of Police
Portland Police Station.
Portland 3305.

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

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DMR

A4

By Hand

30 April 1995

Rcvd John R 30/4/95

Mr John Rundell
Associate Director
Ferrier Hodgson Corporate Advisory
Level 25
140 William Street
MELBOURNE VIC 3000

Dear John,

By this letter I am officially transmitting to you the "Resource Unit Technical Evaluation Report" covering the case of Mr Alan Smith of Cape Bridgewater Holiday Camp for forwarding to the Arbitrator.

DMR Group Inc. of Montreal Canada, together with our associate Lane Telecommunications of Dulwich South Australia have, in accordance with the "Fast Track" arbitration proceedings, completed the Resource Unit technical evaluation for this Arbitration.

The report covers our evaluation and impact assessment

Naturally, we are prepared to discuss any aspect of the report with you or the Arbitrator.

Yours truly,

PAUL C. HOWELL
Director

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Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

04 February 1997

CONFIRMATION
OF FAX

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

Facsimile 03 5526 7230

Dear Mr Smith

I refer to your letter of 4 February 1997.

I reject completely your assertion that Dr Hughes and David Read 'conspired to breach the rules of the Arbitration'.

Similarly, I reject your assertion that there was or ever has been a conflict of interest between Mr Benjamin's membership of the TIO Council and any role he may have had in relation to the supply of FOI documents. Please note that Mr Benjamin has never held any position as an 'executive officer' of the TIO.

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

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att/pinnock/402

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Melbourne Victoria

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Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

24 February 1997

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

Dear Mr Smith

I refer to your letters of 17 and 19 February 1997.

Since the Arbitrator delivered his award, you have written many letters to me asserting, variously, that the Arbitrator, and/or the Resource Unit, erred in their duties under the Arbitration procedure, or performed those duties in such a way as to deliberately prejudice you.

I have advised you in the past that I do not agree with your assertions and there is nothing in your recent letters which changes my view.

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

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

att/pinnock/430

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[redacted]

Ref No: C/94/225

Commonwealth Ombudsman

// March 1997

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61-6-249 7829

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

Dear Mr Armstrong

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

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

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

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

I am not inquiring about document L69202.

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

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

Yours sincerely

John Wynack
Director of Investigations

Ref No: C/94/625

Commonwealth Ombudsman

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13 March 1997

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

Dear Mr Armstrong

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

On 20 December 1996 you informed the Ombudsman :

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

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

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

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

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pursuant to his October 1995 FOI application.

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

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

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

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

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

Yours sincerely

John Wynack
Director of Investigations

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Ref No: C/94/625

Commonwealth Ombudsman

14 March 1997

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61-6-249 7829

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

Dear Mr Armstrong

I refer to my letter of 13 March 1997 concerning the complaint by Mr Alan Smith alleging that Telstra unreasonably has delayed providing documents requested under the FOI application of 18 October 1995.

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

Yours sincerely

John Wynack
Director of Investigations

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Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

27 May 1997

Mr Alan Smith
Cape Bridgewater Holiday Camp
RMB 4408 Cape Bridgewater
PORTLAND 3305

Dear Mr Smith

I refer to your latest correspondence and advise that it has now been twelve (12) months since the arbitration of your claim for compensation as a Casualty of Telecom (COT).

My role as Administrator of your Arbitration has ceased.

I do not propose to answer any of your correspondence in future.

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

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Telstra

18th June, 1997

Michael Montalto
Corporate Secretary

Level 41
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 9634 6400
Facsimile (03) 9632 3215

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

Dear Mr Smith

Re: Arbitration

I refer to your letters dated 24th May 1997, addressed to me, Telstra's Chief Executive Officer and the members of Telstra's Board. It appears that the contents of each of these letters is identical.

I am responding to you on behalf of all of the addressees of your letter.

In those letters you have made allegations as to Telstra's conduct in relation to a report prepared by Bell Canada International. I am advised that you raised these same allegations in your arbitration claim made against Telstra. I am advised further that you again raised these allegations with the Arbitrator after an award had been delivered and he referred those matters to the Telecommunications Industry Ombudsman. Telstra responded to the Ombudsman's queries in relation to this matter.

It is apparent that the allegations you raise have been fully canvassed elsewhere. There is no benefit to be gained in revisiting those matters. Consequently, save to say that Telstra denies outright the allegations made by you that it has engaged in unconscionable conduct, Telstra does not propose to respond to your letters.

Yours faithfully,

Michael Montalto
Corporate Secretary

smith1.doc

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LORETO COLLEGE
BALLARAT

August 8, 1997

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

Dear Alan,

Thank you for the opportunity to read the working draft of your book and to view your promotional video.

Only I know from personal experience that your story is true, I would find it difficult to believe. I was amazed and impressed with the thorough, detailed work you have done in your efforts to find justice.

May your venture at Bridgewater now go from strength to strength.

Yours sincerely,

Maureen Burke

Sr. Maureen Burke, IBVM
PRINCIPAL

Encs.

ALANSMITH.DOC/jd/(cmb)

231 A (49)

St Martins 2031
1412 Geelong Rd
Mt Elliot 3350
Tuesday: 13.4.93

To Whom It May Concern,

During a one week period in March of this year I attempted to contact Mr Alan Smith at Edgewater Camp. On that time I tried many times to phone through.

Each time I dialled I was met with a line that was blank. Even after several re-dials there was no response. I then began to vary the times of calling but it made no difference.

Yours sincerely

Karon Donnellon R.S.M

[KARON DONNELLON]

231B

LEVEL 11, DOMINION BUILDING
533 LITTLE LONSDALE STREET
MELBOURNE VIC 3000
PHONE: 61 3 9670 1505
FAX: 61 3 9670 1551
EMAIL: brereton@labyrinth.net.au

Our Ref. MRB:BJD
Your Ref.

August 20, 1997

Mr Alan Smith
C/- Senator Ron Boswell
National Party
CANBERRA ACT
VIA FACSIMILE NO. (062) 773 246

Dear Alan,

Re: **Alan Smith v Telstra Corporation**

Mr Smith has approached me to write this letter regarding my views of his dealings and difficulties with Telstra and his telephone services at Portland.

I have read Mr Smith's account of the affair together with numerous other documents including a report by a forensic accountant and source materials obtained from Telstra via FOI request. I was given the materials to enable me to advise Mr Smith regarding what legal remedies he may have in the matter. From the materials I have seen, there is little doubt that Mr Smith has a legitimate grievance and has been poorly dealt with by Telstra in trying to resolve his complaint.

The materials seem to me to disclose the following points:

a) There was clearly a serious fault with the exchange affecting Mr Smith's service and causing him a loss of many calls and, consequently, business;

b) From the outset, Telstra were either remiss in discovering the cause and extent of the faults or less than completely candid regarding them. One suspects the situation moved from the former to the latter circumstance over the course of their dealings;

c) It seems clear that at the time of reaching the initial settlement with Telstra, Mr Smith had not been fully informed by them of the extent of the problems with the exchange and that Telstra, wittingly or unwittingly, withheld information relevant to the settlement to Mr Smith's detriment;

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d) The conduct of the arbitration which followed was highly dubious and open to attack as inviting questions of bias since the arbitrator ruled out many relevant documents to the detriment of Mr Smith's claim, refused to acknowledge the problems with the original settlement and was from a legal firm which was in line for or had received large contracts from Telstra. All of these circumstances and the fact that the entire arbitration was conducted in a highly legalistic manner much in favour of Telstra on rules it forced into place suggest that Mr Smith was less than fairly dealt with by Telstra and the arbitrator;

e) Telstra have implemented a "starve-them-out" obstructionist policy in dealing with Mr Smith and the other COT cases. This is amply demonstrated in their approach to the release of FOI material which they initially resisted handing over and then, when forced to, they released in unnecessary and overwhelming volume. It is also demonstrated in their internal memoranda obtained under the FOI report;

f) It seems from the documents provided to me that Telstra have at times misstated the results of testing undertaken on the exchange and Mr Smith's service and even the fact of testing having been undertaken;

g) Mr Smith has suffered losses as a direct result of the faults and further, from Telstra's dispute "resolution" strategies for which he has not but is entitled to recover.

Please note that I have not seen all the documents nor interviewed witnesses in this matter. Obviously the case is involved and extremely time consuming and Mr Smith lacks the resources to fund such an undertaking and, even with the best will in the world, I am not in a position to do so pro bono. That said, I have asked a member of Counsel here in Victoria to look at the materials on a pro bono basis and his view is also essentially that outlined above.

Undercover of these qualifications, I reiterate my view that Mr Smith has not had a fair go in this matter and is well and truly poorer for it.

Please feel free to call the writer to discuss any matter pertaining to these remarks.

Yours faithfully,
MICHAEL BRERETON & CO.

Per: Ben Dunn

231C

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

Senate Environment, Recreation, Communications and the Arts Legislation Committee

Statement by the Telecommunications Industry Ombudsman, John Pinnock

26 September 1997

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

Senate Environment, Recreation, Communications and the Arts Legislation Committee

Statement by the Telecommunications Industry Ombudsman, John Pinnock

26 September 1997

The Committee's proceedings on 24 June 1997 were concerned with administrative problems revealed by Telstra's handling of the COT (Casualties of Telstra) cases, and tended to focus on individual cases.

I thought it might be of assistance to the Committee if I provided an assessment of the COT Arbitration Procedures from my perspective as Administrator of the process, focusing on the essential features, analysing any deficiencies and drawing some conclusions and recommendations for the future.

Before doing so, however, it is appropriate to advise the Committee on the status of the remaining Arbitrations.

Four claims remain to be determined by the Arbitrators.

Lane Telecommunications, which is one part of the technical component of the Resource Unit has withdrawn from the process as a result of a conflict, or perceived conflict, of interest, after being purchased from Pacific Star by Ericsson Australia, a major supplier of equipment to Telstra, including equipment whose performance is central to some of the claims.

Mr Paul Howell remains as a technical adviser to the Resource Unit, but a decision will have to be made by the Arbitrators as to whether to replace Lane Telecommunications and if so, who that replacement should be. The Arbitrators may also have to determine when the conflict of interest arose, there being no consensus on this issue.

I am consulting with three of the four Claimants as to a number of possible replacements, but at the moment no agreement or consensus has been reached.

At the time of Lane's withdrawal one of the claims was very close to being determined, while the second and third claims are at various stages. In one case, the Arbitrator has already made a direction to refer information obtained to date to Mr Howell for preliminary technical assessment.

In the fourth matter, the claimant has elected to proceed with the Arbitration on the basis of Lane Telecommunications continuing as part of the Resource Unit. I expect this Arbitration to be completed in the near future, with a Financial Evaluation Report to be issued by the Resource Unit in the next week.

Turning to the process itself, the COT (Casualties of Telstra) arbitration procedures were designed to provide a means of resolving a number of outstanding claims which had several common features:

- the Claimants were all small business customers of Telstra;
- the businesses were heavily dependent on their telephone service and/or other telecommunications services;
- all claimed to have suffered substantial business losses as a result of Telstra's failure to provide a reasonable level of fault-free service and a failure to properly record and investigate reports of a variety of faults characterised by Telstra as 'Difficult Network Faults';
- although some Claimants had previously sought and been paid compensation by Telstra, all of the claims had been outstanding for a long time.

Initially, the Fast Track Arbitration Procedure (FTAP) was developed to deal with claims by Claimants described as the 'original COT' or 'COT 4'. This was followed by a Special Arbitration Procedure (SAP) developed to handle claims by the remaining COT Claimants.

Both procedures provided for the Telecommunications Industry Ombudsman to act as Administrator of the processes. Independent Arbitrators with the power to give directions to the parties and to make a final determination of the claims were appointed by the Administrator, either with the express consent and approval of, or after consultation with, the Claimants.

The procedures also provided for the Administrator, upon the request of the Arbitrator, to appoint an independent Resource Unit, comprised of expert technical and financial components, to assist the Arbitrator in reaching his determination. Again, the components of the Resource Unit were appointed either with the express consent and approval of, or after consultation with, the various Claimants.

Finally, the procedures provided for the appointment of an independent Special Counsel to advise the Administrator. In addition, a solicitor from the Special Counsel's firm was seconded on a full-time basis to the TIO to assist the Administrator.

All of these administrative costs of the arbitration procedures, with the exception of the Administrator's time, were to be met by Telstra.

Subsequently, a 'third generation' procedure known as the Standard Arbitration Rules (SAR) was developed by the TIO, in consultation with Telstra, Optus and Vodafone, and approved by AUSTEL, to deal with any future cases which would otherwise involve claims for compensation, beyond the usual powers of the TIO to make binding Determinations or Recommendations. Most of the features of the Standard Arbitration Rules are derived from and in common with the earlier procedures.

The FTAP and SAP required the Claimants and Telstra to maintain confidentiality as to the proceedings. However, under the rules of the FTAP the 'original COT' Claimants were entitled to discuss their respective proceedings and claims with each other.

Where the rules of the FTAP, and the SAP were silent, the proceedings were to be governed by the Victorian Commercial Arbitration Act, 1984. This provides that an Award by the Arbitrator is registerable as an order of the Victorian Supreme Court. The Act also confers a limited right of appeal against any Award by the Arbitrator.

The FTAP and SAP had amongst their objectives that they were to:

- be non-legalistic;
- operate in accordance with the principles of natural justice (procedural fairness); and
- allow the Arbitrator to relax certain rules of law or evidence.

The procedures required that:

- a claimant was to lodge a written Claim;
- Telstra was to lodge a written Defence in response;
- the claimant was to lodge a Reply to the Defence.

Time limits were set for each of these steps, although these could be varied by Direction of the Arbitrator, upon request of either party.

The Arbitrator also had a specific power to order a party to produce documents to the other party, upon request by the other party.

Evidence was to be supported by Statutory Declaration and although provision was made for evidence to be given on oath during an oral hearing ordered at the discretion of the Arbitrator, cross-examination of parties or witnesses was not permitted.

When Claim, Defence and Reply documents had been lodged, the Resource Unit could be formally appointed to review the issues, carry out any necessary site inspections and other investigations and to prepare separate 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.

At the completion of these stages, the Arbitrator would make a determination and Award.

Those are the salient features of the process.

The procedures as developed, envisaged a number of benefits both for the Claimants and for Telstra. From the point of view of the Claimants, the benefits were to be:

- a fast, non-legalistic, procedure, operating in accordance with natural justice to produce a fair outcome;
- all administrative costs were to be borne by Telstra;
- strict rules of evidence and of law were relaxed, in favour of the Claimants.

From Telstra's point of view the benefits were:

- finality and certainty in the determination of the Claims, as opposed to the uncertainties of other methods of resolution such as mediation or negotiated settlements which had already occurred with some of the COT cases
- confidentiality of the process.

Experience has shown that not all of these benefits have materialised. In my view, however, one of the potential deficiencies should have been obvious from the outset.

This deficiency revolves around the vexed question of the best method of enabling the Claimants to obtain documents held by 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.

The Commonwealth Ombudsman has reported on the problems encountered by Claimants in using the FOI process and I won't reiterate her findings. For present purposes, it is enough to say that the process was always going to be problematic, chiefly for three reasons.

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

Secondly, in providing documents, Telstra was entitled to rely on exemptions under the FOI Act. This often resulted in the Claimants receiving documents which were difficult to understand, because information had been deleted.

In contrast, the Claimants could have sought access to documents under the Arbitration Procedures. Provided that documents were relevant the Arbitrator could have directed Telstra to produce the documents without deletions. The Arbitrator could also have directed Telstra to produce documents to him for inspection, in order to determine any argument as to relevance. However, the Claimants would have been bound by the confidentiality provisions of the Arbitration Procedures in relation to documents provided to them in this way.

Thirdly, the FOI process as administered by Telstra was extremely slow and this contributed to much, but not all, of the delay in some Claimants prosecuting their claims.

As to the lessons learnt from experience, while Arbitration is inherently a legal or quasi-legal process, Telstra's approach to the COT Arbitrations was clearly one which was excessively legalistic. In many instances it made voluminous requests for further and better particulars of the legal basis of a Claimant's case when it was in a much better position to judge this issue than almost all the Claimants.

Since my appointment as Telecommunications Industry Ombudsman, my public comments on this aspect have been recorded in the Annual Reports of the TIO, and through the medium of AUSTEL's quarterly reports, on Telstra's implementation of the recommendations flowing from AUSTEL's original COT Report.

One consequence of Telstra's approach was that the Claimants tried not only to match their opponent's legal resources, but also felt it necessary to engage their own technical and financial experts. This was a significant expense for the Claimants because these costs were not 'administrative costs' of the Arbitration Procedures, and those Procedures made no provision for the payment of a Claimant's legal or other costs where the Claimant received an Award in his or her favour.

Although this deficiency has been largely remedied by Telstra agreeing to contribute to a successful Claimant's reasonable costs, by way of an ex gratia payment, the absence of such a guarantee in the Arbitration Procedures was a deficiency.

Next, there have been significant delays, over and above those delays associated with the FOI process in bringing the Arbitrations to completion. In some cases these delays have been due to Claimants being unable to provide information to substantiate their business losses.

These delays have been exacerbated by the extensive arguments by both sides as to the accuracy and merits of the Technical Evaluation and Financial Evaluation Reports produced by the Resource Unit.

Finally, as I have remarked previously, the Arbitrations have been bedevilled by the inability of the parties to treat the disputes as matters of a commercial nature and to put

behind them the atmosphere of mutual suspicion and mistrust that had built up over a long period of time.

An objective and dispassionate analysis of the Arbitration Procedures must, however, recognise that the Claimants have benefited from certain aspects of the process.

First, the Claimants under the FTAP had the significant benefit of Telstra effectively waiving any statutory immunity it may have otherwise been able to plead in legal proceedings.

In particular, Clause 10.1 of the FTAP provides:

> In relation to Telecom's liability, if any, to compensate for any demonstrated loss on the part of the Claimant, the Arbitrator will:
>
> 10.1.1.3 recommend whether, notwithstanding that in respect of a period or periods that Telecom Australia is not strictly liable or has no obligation to pay, due to a statutory immunity covering that period or periods, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

Clause 13 of the FTAP provides:

> Telecom commits in advance to implementing any recommendations made by the Arbitrator pursuant to sub Clause 10.1.1.3.

Secondly, the Claimants under both the FTAP and SAP had the general benefit of the relaxation of rules of law.

In particular, Clause 7.1.1 of the SAP provides:

> In relation to loss the Arbitrator will make a determination:
>
> 7.1.1.3 giving due regard to the normal rules of evidence and legal principles relating to causation, subject to any relaxation which is required to enable the Arbitrator to make a determination on reasonable ground as to the link between the Claimant's demonstrated loss and alleged faults or problems in the Claimant's telephone service, and to make reasonable inferences based upon such evidence as is presented by the Claimant and by Telstra.
>
> (emphasis added)

Although one must be cautious in assessing their effect, these provisions may have been the difference between Claimants succeeding under the Arbitration Procedures, where they might have otherwise failed, or failed in relation to parts of their claims, if they had litigated the matters.

Based on the above analysis, if the Standard Arbitration Rules are to be, and are seen to be effective, changes clearly need to be made to the process.

Before suggesting any changes a number of matters need to be borne in mind.

Firstly, the SAR were developed in consultation with Telstra, Optus and Vodafone to deal with commercial disputes involving customers of those carriers. If the SAR are to be generally available though the TIO, those and other new members of the TIO will have to be consulted about any changes.

Secondly, the SAR have been developed to deal with commercial disputes involving small business which have suffered losses due to faults or problems with their telecommunication services. The procedure is not well suited to deal with other varieties of disputes involving e.g. breaches of privacy, or other conduct unrelated to the provision of telecommunication services.

Thirdly, in conformity with the concept of the TIO as an alternative dispute resolution forum, neither a Claimant nor a member of the TIO can be forced to enter arbitration, although Telstra was required to advise AUSTEL of any occasion when it declined to do so.

The following changes to the SAR need to be considered:

1. Where Telstra is a party to the SAR, Claimants should be encouraged to obtain relevant documents through the Arbitration process, rather than under FOI, thus putting this matter under the control of the Arbitrator.

   While a Claimant could not properly be required to give up rights under the FOI Act, the Arbitrator could ensure that documents were produced speedily.

   In the case of a carrier other than Telstra, a Claimant would only be able to obtain documents through the SAR.

2. Provision must be made for successful Claimants to recover their reasonable legal and other costs.

3. The Resource Unit was intended to provide expert assistance to the Arbitrator. The requirement that its reports were to be provided to the parties appears to have

been written into the arbitration procedures to meet the perceived requirements of natural justice or procedural fairness. However, those principles do not necessarily require this step.

Much time could be saved if the Resource Unit provided expert advice solely to the Arbitrator, as occurs in other types of commercial arbitration where technical expertise is made available to assist an Arbitrator.

4. The problem of excessive legalism is easy to identify but, given the nature of Arbitration, much less easy to remedy.

One solution would be to prohibit the parties from making requests for further and better particulars of any aspect of their respective cases. In the event of any obvious 'gap' the Arbitrator would have a discretionary power to direct a party to provide more material.

5. In general, the Arbitrator should have greater discretionary powers to control delays which have otherwise been inherent in the process to date.

6. Above all, major disputes which might be candidates for Arbitration should be identified at an early stage and a Claimant offered this option if the carrier considers it appropriate.

Because of adverse perceptions about the Arbitration Procedures, only one dispute has been dealt with under the SAR since that procedure was established.

It is interesting to note that of the 43 Dispute cases finalised by the TIO in 1996-97 only 15 were the subject of a formal and binding determination or direction by the Ombudsman.

The balance of 28 cases, which involved claims in excess of the TIO's powers to make a determination or recommendation, were resolved either by conciliation or by mediation.

JOHN PINNOCK
TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

Mr Benjamin—There was no formal declaration, but my involvement was known to the other members of the council.

Senator SCHACHT—You did not put it on the record at the council meeting that you were dealing specifically with CoT cases and trying to beat them down in their complaints, or reduce their position; is that correct?

Mr Benjamin—I did not make a formal declaration to the TIO.

Senator SCHACHT—I have to say that I think that is poor. Mr Pinnock, in the future you ought to get the process right. People should make declarations on the record—in the minutes—and then withdraw from the discussion.

Mr Pinnock—You are making certain assumptions, Senator.

Senator SCHACHT—Mr Benjamin—

Mr Pinnock—Senator, you directed your comment to me. I would like to answer it. Firstly, no discussions were held within the TIO council at any meeting that I went to since I have been ombudsman. My recollection is that I have been to every meeting of council bar one. As to any issue relating to any individual CoT—the issues that were discussed in my status reports to council were simply where each claim was at a particular point in time and how much time I spent personally in relation to those matters. The only discussions that were ever held in council with the TIO when I was present—and as I say, I was present on all but one occasion—were discussions as to the amount of time that I was spending as the administrator of the process as opposed to my other work as ombudsman. Mr Benjamin is correct. In my presence—and I do not know what happened before I became ombudsman—there was no formal declaration. Every member of the council knows, and knew, that Mr Benjamin was involved in the CoT process. For that very reason there was never any discussion as to any of the details of any of the claims, Telstra's attitudes to them, the claimant's attitudes, or any matters that were discussed with me in my role as administrator.

Senator SCHACHT—Mr Pinnock, you said that you gave the status report to the council on the various cases being dealt with. Without belabouring the point, it seems to me that Mr Benjamin's involvement- and he was dealing specifically on behalf of Telstra with those cases—should have been declared in the minutes. You should take that on board. There has been so much heat about these issues. These are the sorts of things that lead to a perception that there might well be an advantage to Telstra. It has someone on the council who is dealing with these complaints on behalf of Telstra and who might inadvertently have inside information into what the process is. That is why I think it is more important. The council ought to have a look at that and obtain legal advice about what is appropriate in relation to the declaration of a conflict of interest or association. This is something that you have to get cleared up and absolutely right.

Mr Armstrong—Yes. The basis upon which it was put that the report was fabricated was an apparent clash of dates, as I recall, with two sets of testing. This goes back a couple of years. I believe that claimants raised the matter with the TIO. Telstra went to Bell Canada and raised the clash of dates with it. As I recall, Bell Canada provided a letter saying that there was an error in the report.

Senator SCHACHT—Can you please provide us with a copy of that letter from Bell Canada?

Mr Armstrong—I do not have it with me.

Senator SCHACHT—Can you get it for us?

Mr Armstrong—Yes.

Senator SCHACHT—I will put that question on notice. As to the complaints to Telstra from the CoT cases—Mr Benjamin, you may think that you have drawn the short straw in Telstra, because you have been designated to handle the CoT cases and so on. Are you also a member of the TIO board?

Mr Benjamin—I am a member of the TIO council.

Senator SCHACHT—Were any CoT complaints or issues discussed at the council while you were present?

Mr Benjamin—There are regular reports from the TIO on the progress of the CoT claims.

Senator SCHACHT—Did the council make any decisions about CoT cases or express any opinion?

Mr Benjamin—I might be assisted by Mr Pinnock.

Mr Pinnock—Yes.

Senator SCHACHT—Did it? Mr Benjamin, did you declare your potential conflict of interest at the council meeting, given that as a Telstra employee you were dealing with CoT cases?

Mr Benjamin—My involvement in CoT cases, I believe, was known to the TIO council.

Senator SCHACHT—No, did you declare your interest?

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4/10

4 October 1997

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Mr John Armstrong
Telstra
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Dear Mr Armstrong

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

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

Yours sincerely

John Wynack
Director of Investigations

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