

**CAV**  
**CHRONOLOGY**  
**LGE**

**Exhibits 1103 to 1132**

arbitration whatsoever.

**Senator CARR**—So you are not able to establish that? I will ask a general question of the Telstra representatives. How is it that you think claimants are able to establish the dollar amounts of their losses if they do not have access to all of the documentation?

**Mr Armstrong**—That is not a proposition that Telstra puts.

**Senator SCHACHT**—It is true that you do not put the proposition. The process of accessing different information means that it is very difficult for claimants to make an accurate assessment, because the information on which they can base an accurate assessment does not come across, does it?

**Mr Benjamin**—The claimants would know how their business was performing. They are able to put in figures which show when they think the business might have been affected.

**Senator SCHACHT**—Mr Benjamin, from my knowledge of the settlements reached, Telstra has accepted whatever the claim may have been. Your offer has always been under 10 per cent of the claim, usually five per cent of the claim.

**Mr Benjamin**—We have not operated on any basis that says that the offer should be—

**Senator SCHACHT**—I know that there is not a foregone conclusion, but the fact is that whatever the claim may be, even after the end of mediation, arbitration, or whatever, even after your first offer—indeed, even with claims that run into millions—your offer usually never gets into six figures. It is usually \$10,000 or \$20,000 or \$30,000, even though someone may be claiming \$3 million. That might be an extraordinarily stupid claim with no basis. However, I find a consistent pattern: people's claims for loss of their business may run into millions, but Telstra only offers \$50,000, \$30,000, \$160,000 or \$20,000. The percentage figure is very small. I am not saying that the claims that run into millions have any more validity than your counter-offers, but there seems to be an extraordinary difference if you are talking about the economic impact on the business. You do not even accept that.

**Mr Ward**—We distinguish between the percentages that are calculated from what the independent arbitration comes up with and what Telstra may offer during the process—

**Senator SCHACHT**—There have been approximately 130 cases, but I take the case of Mr Honner. He is not a CoT case. He has made a claim—and he is on the record now—for close to \$2 million or over \$2 million. He has put in a claim that is based on an

**Mr Mounsher**—Yes.

**Senator CARR**—Mr Pinnock, given that process, what do you say to the claim that Ms Oldfield makes that the settlement process from beginning to end was nothing but a strategy of wearing down the client until submission resulted from financial hardship causing the inability to continue the process? Court action was beyond Ms Oldfield's financial means.

**Mr Pinnock**—With the caveat that I was not present during the mediation session—and I was not the mediator—I doubt that that would be a fair characterisation. I know the mediator who was appointed. Mr Bartlett is a special counsel in the arbitration procedures. If Mr Bartlett allowed negotiations or mediation to be conducted in that way, I would be extraordinarily surprised. Whether any two parties can agree during the mediation is always the issue.

**Senator CARR**—As I say, it is not my intention to go through the particular cases. Similar to a number of senators, I am getting a great deal of material from Mr Alan Smith in regard to the flawed processes in terms of the BCI report. I have been presented with what I regard as a substantial case concerning the business of Mr and Mrs Bova and their complaints regarding the functioning and conduct of the resource unit. Mr Pinnock and Mr Ward have mentioned Telstra's claims in respect of statutory immunities. Mr Ward, did the statutory immunities apply to all of the arbitration process? Were you completely relinquishing your immunity in regard to the special rules for arbitration?

**Mr Armstrong**—Yes.

**Senator CARR**—Was that true in all respects? So there would be no application by Telstra for the use of your legislative shield of the Crown?

**Mr Armstrong**—Correct.

**Senator CARR**—It is specifically set out in law. You are saying that there was no use by Telstra in the special rules of arbitration of the shield of the Crown provisions?

**Mr Armstrong**—Correct.

**Senator CARR**—On what basis do you think claimants are able to establish the dollar amounts of their losses if they did not have all of the documentation?

**Mr Armstrong**—Is that addressed to me?

**Senator CARR**—This is a question for Mr Wynack. How is that able to be one?

**Mr Wynack**—The Commonwealth Ombudsman has no involvement in the

**Mr Mounsher**—What was the question?

**Senator CARR**—Was Ms Oldfield's account of the process accurate?

**Mr Mounsher**—Without further work, I am not sure that I could comment on exactly what happened. We certainly had a mediation session in December, I believe, which did not resolve the matter. There were subsequent negotiations over the following three months. I recall that it was probably not until March that there was some movement in respect of Telstra's offer to settle. But we very quickly got to a position where we were not prepared to move any further. That was the offer that was on the table. Ultimately, Ms Oldfield agreed to settle on that basis.

**Senator CARR**—On the basis that the file would be closed, that it was a final offer?

**Mr Mounsher**—Yes, that was the final offer.

**Senator CARR**—Was there a request that she deny claims made for wrongful billing because of the implications it had for a class action?

**Mr Mounsher**—I am unable to comment on that. I have no recollection of that, Senator.

**Senator CARR**—I will ask you to take that on notice and establish whether an additional clause was placed in the release form sent to Ms Oldfield. I am sure that could be verified one way or another. Her account is either right or wrong on that matter.

**Mr Mounsher**—Yes.

**Senator CARR**—I take it you have confirmed that the accompanying letter threatened to close all negotiations and the file, if the offer was not accepted within a short time?

**Mr Benjamin**—I do not know about the word 'threatened'. In negotiations you reach a point at which you can go no further in respect of the amount. I do not know that it is fair to portray that as a threat. What that is saying is, 'We have got to this limit. We can't see our way clear to go any further. If you believe that you can't settle at this figure, then the negotiations are at an end.' I do not think it is fair to portray that as a threat.

**Senator CARR**—I understand your point. The claim was made in that letter that this was a final offer and that if Ms Oldfield did not accept it within a short period she would presumably have to seek alternative legal courses of action open to her. That is essentially the proposition that was put?

**Mr Benjamin**—We will have to check that.

**Senator SCHACHT**—Was she legally represented at that last meeting when you said, 'This is our final offer. We can go no further'?

**Mr Benjamin**—We will have to check the details of that.

**Senator SCHACHT**—We had better be very sure of this. If she was by herself when you put that to her, you get a very different outcome. I want to be sure that her legal representative was sitting next to her when you put the final offer and said, 'We can go no further.' Presumably, if the lawyer had half a wit about him, he would already know that further processes were open if the mediation was to go no further.

**Senator CARR**—I am advised that Mr Peter Bartlett rang Ms Oldfield to congratulate her on the acceptance of the offer. She advised him that she had accepted no offer. She states that when she was told it was \$100,000, including costs:

I told him again I did not accept this, and in any case, Hannah (Christian), had indicated that they would pay costs off negotiations with us with Telstra direct and insisted on "pre-mediation" conferences, and asked us to bring all of our case to Melbourne).

She asked her solicitors for a copy of the release form. She was given one. It appeared standard. She has stated:

When Telstra posted a release form again there were two fresh matters.

(1). It contained ridiculous clauses and was quite different to the first (later explained that a clause denying a later claim for wrongful billing was because we had written a letter mentioning a class action, to a Senator—and they—

that is, Telstra—

had seen it).

(2). The accompanying letter threatened to close all negotiations and file if we did not accept within a given—short period—of time.

She also stated:

5. subsequently visited Telstra (Christian Hannah, and found Peter Bartlett present). I made it very clear about the settlement amount, and argued my case regarding the costs, but was given no response other than, take it or leave it. I made it very clear as to my beliefs about the process from beginning to end and included the fact as to why.

Does that recollection of events, as contained in the material I have just put to this committee, coincide with Telstra's recollection of those events?

**Mr Pinnock**—Senator, the TIO is in no doubt that Ms Oldfield was dissatisfied with the outcome. That is why we tried after the event to put the thing back together. Part of the matter that she raised was that there was an element of duress. I have never to this day understood exactly what that was and how it occurred. She was not suggesting that the TIO had been party to that. This is the first I have heard—

**Senator SCHACHT**—Did she tell you what the duress was?

**Mr Pinnock**—No. Without her spelling it out, I gathered that she was in effect saying that she was put in a position such that, financially, it was the only offer available and, if she had really had a choice in the matter she would not have taken it, but there were so many constraints that she had to. It may have been more than that. Senator Carr, this is the first occasion that I have heard of a suggestion of a conspiracy or criminal conduct.

**Senator CARR**—Mr Benjamin, can you advise the committee whether a threat was ever put to Ms Oldfield that if she did not accept the offer by a specified date the file would be closed?

**Mr Benjamin**—We would probably have said that we had reached a position where we were making our final offer. If that was not acceptable to her, we would have to close the file, because there were no further steps that we could take. It would be open to her then to go through other processes, such as arbitration, the TIO or the courts, to resolve the issue. All that we were saying in effect was that we would negotiate with her as far as we could possibly go in respect of the amount.

**Senator SCHACHT**—Did you make it clear that if that was still unacceptable to her other processes were still open? You did not say, 'If you don't accept this offer, you're gone. We'll close the file and that's it. You're gone'?

**Mr Benjamin**—We could not say that, because—

**Senator SCHACHT**—Did you formally tell her, 'That's our final offer. We can't go any further. But if you don't like it, you have other processes that you can go to'?

**Mr Benjamin**—That would be our normal process, but I would have to check the documentation on that.

**Senator SCHACHT**—Please check that. There may be allegations that it was put in a different light. I think you ought to get that clear.

**Mr Benjamin**—I will make the point that she was legally represented.

**Senator CARR**—By whom was she legally represented?

and that she said it was deeply flawed. I take it you stand by that?

**Mr Pinnock**—What I told the committee on the last occasion was correct. But Ms Oldfield was never in arbitration. It was a mediated settlement. I was not a party to the mediation; I arranged it. As I understand it, the dispute concerned the ultimate figure for the achievement of the settlement. I understood that there was an argument about that. But whatever the figure was, both parties agreed that it was inclusive of costs.

**Senator CARR**—That is the point of dispute. Ms Oldfield says that in fact you did the negotiations.

**Mr Pinnock**—That is not true.

**Senator CARR**—You deny that claim?

**Mr Pinnock**—Yes. After the event, because there was a dispute about what the actual terms of the mediated agreement were, we certainly discussed the matter with both Ms Oldfield and Telstra. But we were not involved in the mediation of the matter at all. We are talking about matters of some confidence. I understood that the dispute arose, initially at least, because Ms Oldfield herself was not physically present but was represented by a legal adviser, who subsequently, she said, had acted outside his instructions. It was then that we attempted, as it were, to come along after the event—not being a party to it—to try to get some resolution as to an agreed figure and its being inclusive of costs.

**Senator CARR**—Mr Benjamin, at the last hearing you indicated that Ms Oldfield had not entered the agreement under duress. Do you still hold that view?

**Mr Benjamin**—Yes. These were negotiations that took place between ourselves and Ms Oldfield. With the course of events that Mr Pinnock has just described that flowed through, in the end she agreed to a negotiated settlement. I do not consider that to be under duress.

**Senator CARR**—You do not?

**Mr Benjamin**—No.

**Senator CARR**—In a letter to me, she said that she left the TIO in absolutely no doubt about the flaws in the process, the nature of the negotiation/mediation process, and what she describes as 'criminal tactics and acts performed by Telstra'. Have you never been made aware of those claims?

**Mr Benjamin**—No. I cannot imagine what criminal acts she could be talking about.

The third thing that I attempted to address from a quite early stage was the absence of any right of the claimants to be compensated for costs. Telstra's attitude was to some extent positive in that the initial approach met with the response, 'We are prepared to consider that, but not at the present time.'

I attempted to convince both Telstra and a number of the claimants that, by agreement, they could effectively truncate the arbitration procedure as it stood by agreeing to vary some of the conditions under which it was being carried out with a view to speeding the whole process up. From recollection, I discussed that possibility with three, perhaps four, claimants, who had indicated some initial interest in that idea. Subsequently, all but one rejected that as a possibility. One claimant effectively went through a truncated form of procedure.

Finally, in relation to a number of cases, I suggested to the claimants and to Telstra that, notwithstanding Telstra's previous attitude to mediation, it would be possible nevertheless to negotiate a settlement in their particular cases. I am struggling to be precise about this now—and Mr Benjamin may correct me—but I recollect that two matters were settled in that manner. It may have been three, but there were certainly two. In a very potted version, that is the sort of thing that has been going on behind the scenes in my role as administrator.

**Senator CARR**—Can you explain to me why some cases received legal costs and others did not?

**Mr Pinnock**—Yes. Those cases which were settled as a result of negotiation, even after they had gone into the arbitration agreement, were settled by Telstra with the claimants on the basis of an all-inclusive figure. Therefore, that settlement figure took into account claims for costs, or what have otherwise been claims for costs submitted in the normal way. All other eligible claimants—that is to say, those whose arbitrations were completed and in whose favour an award was made—have been paid their costs. There are four claims in respect of which costs have not yet been paid.

**Senator CARR**—Which are those four?

**Mr Pinnock**—Mr Schorer. Mr Schorer never made an application under the procedure in relation to the payment of the costs which was agreed on and discussed by the Senate on the last occasion. The other three claims are those claims which are still subject to a determination by the arbitrator. In respect of those claims, Telstra has paid to the TIO a sum of money based on an interim assessment by me of the legal and other costs of those claimants in the arbitrations to date, as a result of information put to me by those claimants.

**Senator CARR**—There is still the case of a Ms Barbara Oldfield, which I referred to in the last hearings. You advised the committee that she was not happy with the process



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M. Phillips

Yours faithfully

Dear Graham,

This is just to let you know that in recent conversations with Tony Watson from Telecom he has asked me your involvement in my case and also inferred to "be careful" of you as you had outstanding Telecom complaints ongoing. I'm not sure where he was leading but I find it completely unprofessional on his behalf and also none of his business.

10.3.95





MINISTER FOR COMMUNICATIONS AND THE ARTS  
MINISTER FOR TOURISM  
THE HON MICHAEL LEE MP

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Ms Michele Phillips  
23 Murumba Drive  
SOUTH OAKLEIGH VIC 3167

16 DEC 1994

Dear Ms Phillips

Thank you for your letter of 8 November 1994 about problems you have experienced with your telephone service.

I appreciate the stress caused by the sorts of incidents you have described. These are serious allegations and I suggest that it would be appropriate for your concerns to be referred to the Telecommunications Industry Ombudsman (TIO) for investigation.

The TIO has been established to investigate complaints by consumers about all matters relating to service, customer privacy, and the issue of charging for telecommunications services. This is a free service to consumers.

If you provide me with written consent, I will refer your correspondence to the TIO for his attention. However, should you wish to pursue the matter you have raised personally with the TIO, you may write directly to the Telecommunications Industry Ombudsman, Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000, or telephone by making a freecall to 1800 062058.

Thank you for bringing your concerns to my attention, and I trust that the TIO will be able to resolve the issues to your satisfaction

Yours sincerely

  
MICHAEL LEE

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THIS IS A TAPED RECORD OF CONVERSATION BETWEEN CONSTABLE  
TIMOTHY WAYNE DAHLSTROM AND MR ALAN SMITH CONDUCTED AT CAPE  
BRIDGEWATER HOLIDAY CAMP, VICTORIA, ON MONDAY 26TH OF  
SEPTEMBER 1994

PERSONS PRESENT: Timothy Wayne DAHLSTROM  
Detective Superintendent Jeffrey PENROSE  
Mr Alan SMITH

TIME COMMENCED: IS APPROXIMATELY 6.30PM

- Q1. Alan just, we're conducting a further interview or record of conversation with you. You were previously interviewed by Superintendent PENROSE in February of this year?
- A. I was yes.
- Q2. And since then you've received quite a number of documents from Telecom?
- A. I have yes.
- Q3. Which have been released under Freedom of Information after you applied for them. Subsequent to your conversation earlier in February, you have now been made aware that your service here at Cape Bridgewater was live monitored at some stage by Telecom?
- A. Yes I have. Actually, first of all I was made aware of that by Austel, John McMAHON and with, actually a letter from John McMAHON and with my FOI I gained a notification that, that, that you know they had monitored my lines and listened in on my lines for a period of about three months.
- Q4. And in that previous record of conversation you weren't aware of that, you, you were only surmising that your service might have been monitored at some stage?
- A. That's right, I had, I had good thoughts that, for different reasons we all thought we were being live monitored and I guess a lot of it, we, we might have thought was paranoia. And, but I had the the thoughts that I was being monitored yes.
- Q5. Okay. I'll just show you a few documents that you've actually sent on to us and we've give us from other sources. But one of the documents is an internal email message, it's dated Friday 14th January 1994. And as you can see in detail some of the problems with Cape Bridgewater Holiday Camp and clearly states that monitoring of the

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10/10/10



RECORD OF CONVERSATION BETWEEN CONSTABLE TIMOTHY DAHLSTROM AND  
MR ALAN SMITH (CONTINUED) PAGE 2

- A. Did, did take place.
- Q6. Took place and the dates there are June 1993 to August 1993?
- A. August.
- Q7. Since then have you also had other information about monitoring on your service?
- A. Yes I, I come up with a document I guess, maybe a month ago or six weeks ago, five weeks, it clearly states that the malicious call trace was on my other line which was my 26723, 230 line. And they would come out of the actual diary notes of the Portland Exchange, which is a different, a different number to what, the, the prior one you were talking about, was 267267.
- Q8. Okay. I'll just show you a, just show you a photocopy of a document, which you sent to me on the 14th of September, and that's a photocopy of a diary note, page dated the 7th October 1993?
- A. That's right.
- Q9. And is that the one you're referring to where?
- A. That's the one I'm referring to.
- Q10. And that states down here, at 9.00am a malicious call trace was removed from 267230?
- A. 7230 that's right.
- Q11. Okay. Just for the purpose of the tape, and for our own information prior to these dates, had you ever made any request, request with Telecom for a malicious call trace to be placed on your lines?
- A. No I have never, never once have I asked for malicious call trace and I make it very clear that never at any stage has Telecom said they were going to do any monitoring on my lines or any, any tapping or any listening of calls, at all at any time.
- Q12. Okay. So the only testing that you were fully aware of that was conducted by Telecom on your lines, which involved recording of details etc were the Elmi testing arranged by Austel?
- A. Elmi the, this is this year Elmi by Austel, but I was

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aware that there was Elmi in 92. But only because of the briefcase being left here at my premises in 93, in June, the 3rd or 4th of 93, that I found that there was Elmi being monitoring the call, like the, as the tapes in at the RCM. But I didn't, I wasn't aware of them being done.

Q13. That, that, but that pre, previous Elmi testing wasn't done with your knowledge at the time. Is that correct?

A. That wasn't done, yes. The 92 was done at my time I knew about that, but certainly not the one in the Elmi, in, in May of 93, I wasn't aware of that at all.

DAHLSTROM Okay.

A. And they've refused to give me any tapes from, from, from that. I've only got the five day tape that I managed to get a copy of out of the briefcase. Now they, they have stated in their FOI that they've had, it ran from May to July and I've received no documentation and I've applied for it twice under FOI and I've received none.

Q14. And the live monitoring as Telecom term it, that ran from approximately June 93 till August 93. Were you consulted in relation to that? \*

A. No.

Q15. And no approach was made from Telecom to gain your consent to live monitor your telephone calls?

A. No. Definitely not.

Q16. Another document that you've sent me, is the detail of telephone calls made, call details dated the 31st of, the calls were made on the 31st of January 1994 and along with a number of printed information on the document, it's a two page document, ah numbered K01410 and K01411, for the purpose of the tape. That's the document you sent me is that correct? \*

A. That's right yes.

Q17. Now along with the printed data on that, two pages there is also a number of handwritten entries on that?

A. Mmhuh.

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Q18. And those entries actually identify the callers or the numbers called from this, from your premises?

A. It does yes.

Q19. Now those handwritten entries were not made by yourself?

A. No.

Q20. Can you tell me who might've made those entries?

A. No I, I don't recognise the handwriting. But I certainly didn't, it certainly wasn't, wasn't mine and you'll see that who actually rung these, Fay SMITH, my ex-wife, which you know I find rather, rather poor.

Q21. The other numbers called can you just run through those for me as to the sort of general people they were writing down of who you called?

A. GM, which, which if you go across the page you'll see that it was Graham SCHORER from, from Golden Messenger. If you go across the page you'll see the phone number of Austel which was then the, the General Manager, you go across the page you'll see GM again which was the Graham SCHORER, go across the page to Telecommunications Ombudsman's office, a domestic number. You go across the line again you see Austel, you see Golden Messenger, you see Austel, you see Austel, you see Fay SMITH was my ex-wife, you see the Ombudsman again, you see Golden Messenger, Golden Messenger that's twice. You turn the page you come up to the top of the page you see GM which, check the number it's the Golden Messenger and then the bottom page you see where I rang my son, Golden Messenger and if you go to the bottom of the page you will find, which is very relevant although it's not relevant to perhaps the, the monitoring is that it registered the next call which was the, in the evening registered 3,599 seconds. We've never been able to prove that the phone was completely, they, they were locked up. communication ex, has shown the calls were being locked up into this business and that's what's been a clear example of calls locking up.

Q22. There are also a number of other numbers that are listed in the printed details?

A. That's right.

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Q23. Which haven't, haven't had anything written next to them?

A. But they are, they are, they are non, non company calls in other words they're calls that didn't terminate, so of them calls didn't terminate. And that, they haven't see that they didn't terminate. Some did, some didn't.

Q24. So generally the thrust of the people written into this, into this document are people associated with the COT issue?

A. With, well everyone of them on there is to do with a COT issue except my ex-wife.

Q25. Right. And do you have any recollection as to at that time back in January 94, whether you may have been speaking with your ex-wife about the COT issue?

A. I was talking to my son yeah. My son resides with my ex-wife and by gee I was yeah. Well I mean the, the whole, the whole issue has been probably last 18 months. My, my son and I have discussed, because I've been pretty sick with worry and, and like through the son and thing what's happening, he'll say, well look every time we talk it's always on, you know how far is the process going and what's happening and this, see yeah it would've been, I never, in actual fact until just now I hadn't realised. I mean I've taken and looked at all the others right and I've put them, hang on this is all to do with, with COT. But it wasn't until yeah, yeah.

Q26. And you also raised with me several weeks ago on the phone the fact that you'd be tendering for a bus service and you made mention that Telecom had written down the name of the bus service etc? \*

A. Mmm.

Q27. That, that's also on another document, just take a bit of time and find it. This documents, it's dated the 10/9/92?

A. That's right. ↑

Q28. Written by yourself to Mark Ross the Customer Service Manager, Commercial Country, Victoria where you actually told him, in the letter that you would be possibly tendering for a bus service,

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in which you don't mention the name of the bus service, and you're asking for a guarantee of your phone service?

A. That's right.

Q29. And again you've shown on this document that handwritten onto the document is the actual name of the bus service? \*

A. I think this is the worst out of the lot of them, because at no stage, I mean it was only a small charter but I, I kept this one very, very clear and there's no way in the world that I disclosed who it was. Because let's face it, I'm not saying anyone else would've got this contract, it was only a small charter but the point is I mentioned it in the letter form that I wanted a, a guarantee so that I could tell this gentleman, because the same person experienced problems with my phone, and I thought well at least I can do the right thing if I can give him a guarantee then, you know, then he could guarantee to his people that yeah okay, we can, we can do the service. A handwritten note is the name of the bus company on the right hand side which, it's just. \*

Q30. And had you been making calls to the bus company around that time, or to the owner?

A. Oh yes, yes, yeah, yeah.

Q31. And that handwritten note just for the purpose of the tape is O'Meara is the name?

A. O'Meara and actually that same fellow did send a letter prior, prior to that, that he'd experienced problems with my phones, prior. So there is a letter in Telecom archives and I have a copy, where he actually sent a letter complaining about getting through to Cape Bridgewater. ←

Q32. Right. All right so we'll just, you've also said that there are other documents there, although they're not directly relating to the live monitoring issue they show that the malicious call trace has been set up on your line without your knowledge.

A. That's right.

Q33. And those documents you say clearly show that the malicious call trace has affected the phone service

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COMPANIES AND OTHER

here?

A. Well there are notes say in August of, of 93 that because of lines jamming and because of their own net, like network investigations it clearly said that it malfunctioned, lock ups so they, supposedly to take it off the, off the line and yet when you see the other document we talked about a moment ago, the 267230 line, well that was still on three months later or two and a half months later then when they originally found that the, was interfered with the incoming line, so why do they have it on my fax line. Which is my direct line that I ring out on. And, and you know I, I find that, that's ludicrous. They, they either was listening to my calls which I believe they were on my, in, outgoing lines, but even so they still knew at that time that it was interfering with my line at that time. It was proven they'd proven it themselves that it was malfunctioning in my, my service. So they, they didn't give a, a razoo about the, the service they were providing as long as they could listen in to my calls, and that's how I see it. \*

Q34. Prior to you receiving the documents under FOI were you, had you been informed earlier that the malicious call trace had been placed on? \*

A. No, no.

Q35. And that would lead to say that Telecom had never told you prior to you getting these documents under FOI that the malicious call trace was affecting your line?

A. No, no.

Q36. So each time that you made a complaint about your telephone service and the faults that you were experiencing, no explanation was given to you that it was possibly testing equipment on the line that was causing the problems?

A. No, no.

Q37. Okay. Now the other issue that you raised with me several weeks ago was in relation to a technician from here at Portland exchange, Mr Gordon Stone, is that correct?

A. Mmhuh.

Q38. And I believe you approached Mr Stone and he's \*

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given you some information in relation to live \*  
monitoring of your telephone service?

A.

Well first of all I guess I, I'd had this document probably for about a month and it's regarding, I believe that the circumstances arose that I believe that a certain discussions were, was, was spoke about in Portland. So I rang him up, it was on a Sunday, and I, I made a, it was a pretty, pretty straight level conversation and there wasn't, it wasn't really hot headed and I'd asked him had he listened in on my calls. And he said now look, he said, look, you know there was a, you've got the documentation but he said no, he said, look there was no taping that I can assure you, there was no taping of the calls. I said well if there's no taping, I said there must be records and I said I've received no records under FOI of any faults on my line. Now if this was for fault reading where's the bloody FOI faults where's the faults on the diaries which I'm entitled to and I said well so, if you were the only one who was li, he said well there were other people across this at the time. And I said so you weren't the only one that was listening. He said, well as I said to you before there's a lot, there's a lot of people across your problem at that time. And I said well I'd like something in writing, he said, well I've got to go to, to college tomorrow, or to, to Warrnambool early in the morning, I said well you can pick up a, a, in actual fact he didn't realise, he thought you had to, his actual statement was, well that means I've got to go to the, to the Police Station or to the, to the, to the Courts to pick up a, an affidavit, and I said no, I said you can go to a local, Davis', the local newsagent, I said you can pick one up there, I can do that anywhere now. So I said if you pick that up, I said I'll accept that, I said I won't worry you again. I said even if you write it on, on a piece of paper, I said, but I want something official because I said enough's enough and that's what he was going to do. Now, I heard nothing from him for about a week, I then put a notice on the notice board at the College just asking him to ring me. I heard nothing from him then and then I rang him, it was about a week later and he said I'm not allowed to talk to you, he said if you want any information, you are to talk to my solicitor. I said, oh I said well look you know, who's your solicitor he said Simon CHALMER of Telecom. Now this man's already left, he's already left Telecom yet they've got a Telecom solicitor. I rang

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Simon CHALMERS and he said like this is an arbitration process, I said no it's not it doesn't come under the, under the arbitration umbrella. And I said it's I want, I want to, you know I want to get to the bottom of you know what's happened. And he was reluctant to talk about it.

Q39. So the conversation you had with Gordon STOKES you said to me before we started the tape, that was on Sunday the 21st of August 94?

A. I've got, I've got to be, be sure, if it wasn't the 21st it was the following Sunday, I've got it written down somewhere.

Q40. So it'd be round about the, so almost a month ago?

A. Yeah about a month yeah.

Q41. And, Mr STOKES is an ex-Telecom employee, to your knowledge he's been out of Telecom for several months before that?

A. I think about four months yeah.

Q42. Okay. But he was a main technician here before that?

A. He was, he was the main fellow, he, he was the main.

Q43. And he's been out to your premises several times while he was with Telecom?

A. He has.

Q44. To service your phone system?

A. Right.

Q45. And during that time, he had not discussed or disclosed to you that monitoring was taking place on your lines? \*

A. Never, never.

Q46. And I think you mentioned before we started the tape that he in fact also, blamed your answering system at some stage for problems?

A. Not, not him, Ross ANDERSON back in April the 13th 92, he blamed the answering machine as, as my problem, source of problems.

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RECORD OF CONVERSATION BETWEEN CONSTABLE TIMOTHY DAHLSTROM AND  
MR ALAN SMITH (CONTINUED) PAGE 10

DAHLSTROM Okay.

A. I don't know whether I ever told you gentlemen this but, and it, it's well documented in Telecom notes, that and I don't know, remember the date. But it was within about two days after we had a, the first Current Affair program, I had rang ELSTERNWICK from the ABC and I wanted to speak to Mr MCNIGHT, did I mention that before.

DAHLSTROM Yes.

PENROSE Yes.

A. Oh, .....

DAHLSTROM Yeah, yeah I do recall that.

A. Okay.

Q47. Okay. So when you spoke to Gordon STOKES a month ago, he didn't specifically say that other people were monitoring the line or monitoring your service. His general thrust was that?

A. Across, across my fault so. And he, he more or less made it quite clear that he wasn't the only one. But it wasn't until I sort of badgered him or put him in a, in a corner if you'd like to say that, he said well look, he said there was a lot of people, I said well you were the only one listening in to my calls. And he said, well no, there was, what I'm saying to you, there was a lot of people across your case at that time. But he made it quite clear that there was no taping so, when you put one against the other, I got the, I got the, the reference that yeah there was quite a few people listening in on it. ↗ \*

Q48. And this all came about as, as a result of certain rumours or?

A. Well it's just a gut feelin that I've got that, there's a discussion took place yeah.

Q49. About a certain incident?

A. About a certain incident, where, where I can't work out where that instance there. It would not mean it just wouldn't happen, it just wouldn't happen.

Q50. And the only information or the only way that it became known?

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RECORD OF CONVERSATION BETWEEN CONSTABLE TIMOTHY DAHLSTROM AND  
MR ALAN SMITH (CONTINUED) PAGE 11

A. Well how I saw it yeah, is through the,  
Q51. Is over the telephone service?

A. Yeah mm.

PENROSE

Q52. What was the incident?

A. It was an incident that's sort of a little bit delicate.

DAHLSTROM  
Q53.

All right, so since you've spoken to Simon CHALMERS it's been your opinion or, it was virtually stated to you that Mr STOKES won't be speaking to you or making any affidavit?

A. He said there'd be no affidavits from Gordon STOKES, any, any reference has got to be dealt with this office, and I said well if, if Mr STOKES is not employed by Telecom how can you be representing him. I said all I want is an affidavit, or a, a letter of some sort to, to give the arbitrator, although it's not arbitration process I said, I want something that, to show how much we, us fellas have been under you know, under stress. And I make it very, make it known here I believe it's not only three or four or five months I think they've been monitoring the lines, and listen in on calls a lot longer than that. There was a period of time where we used to hear clicks, I've heard, I've heard like background as if I can hear the actual exchange, someone in the exchange. Now about two months ago I think it, I rang, I rang Tim, Ann was on the other line and we were getting, and we, it was, I actually taped it, and it was like as if we had, and when we first got on the line as if you could hear background, as it was hollow and you could hear sort of footsteps or, or, or work being done in the background as if he was inside an exchange, it was, it was strange. Now I've had that happen a couple of times, when I've picked the phone up I can hear that background noise, when I put the phone down and 10 seconds or 15 seconds later, I try to pick it up because I'm, I've worked this 90, this 90 seconds business on my phone, where I've been charged for the, I've tried to do my own testing and I've heard an echo in background on the line and that's happened about twice, going back probably I don't know two months ago, three months ago probably round about February, March.

ASK ME ABOUT THIS  
LATER.

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Q54. Just one last thing Alan that I've got, there's a letter here that you've written to Mr Paul RUMBLE of Telecom? \*

A. Right.

Q55. ~~And it relates to a conversation that you had on the 31st of June with him?~~

A. Mmhuh.

Q56. And I believe it also relates to the bus?

A. Right, it does yes.

Q57. Company matters etcetera. The thing that I'm intrigued by is the statement here that you've given Mr RUMBLE your word that you would not go running off to the Federal Police etcetera? \*

A. Mmhuh.

Q58. Can you tell me what he background of that is?

A. Well I rang Paul RUMBLE up and I said look, I want some sort of clarification with all these, I said we, we get people saying that my staff no longer, as soon as I leave, that they, turn me back they're away. I said we get people that are saying that this person no longer here, and I went through all this, what you've got there. And I said, now I come up with the documentation, I said with Malcolm FRASER that I spoke to Malcolm FRASER and I know damn well I didn't tell anybody. I said I come up with this document and I said and there's no, nobody, nobody's given me any information to, to, to where you got all this information from. And he said well look I'll, I said my.. the one thing I want to know I said, how the bloody hell did you, or what made you fella's write this notifications at the side of these columns of people I've rang. I said I want to know. And he said look, well I'll do anything, he said, just don't go running off to the Federal Police. I said I won't go, I said I tell you what, you do the right thing by me, you return to me you give me some a letter back on this, I said I won't go off to the Federal Police. I've had letters regarding that, and I gave that to Warwick SMITH too. \*

Q59. And that, I mean that relates directly to the monitoring of your service where, where it would

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indicate that monitoring was taking place without \*  
your consent?

A. That was before I found the other document under  
malicious call trace, on my 267230, as I said they  
haven't got back to me since.

Q60. And you know what Mr RUMBLE's position is in  
Telecom?

A. Yes. He's Customer Response Unit, which would be  
sort of number, number one underneath Mr BLACK.

Q61. And he is fully aware of our investigation in \*  
relation to monitoring of telephone services?

A. Oh yeah sure.

DAHLSTROM Okay. Superintendent PENROSE have you got any  
questions.

PENROSE  
Q62.

Thanks Tim. The information that John McMAHON  
passed on you from Austel about live monitoring. Do \*  
you know where he got that information from?

A. No, but it, it is in an Austel document, I can't  
find it but it wouldn't be that hard to find. At a,  
it's amazing because I wanted to put it into my, my  
own submission but it's a document saying Mr SMITH  
was one of two people that were, the lines were in,  
and it's really to that, very similar to that one  
that it's in the Telecom stuff. So it did mention  
Glen Waters being John MAIN and it mentioned me but  
it did say that the certain times of 1993 that  
Mr SMITH's lines was, you know was monitored. And  
that's when I first knew right. And then I come  
across me FOI and of course that, that clarified it.

PENROSE Do we have that document.

DAHLSTROM Yeah I think I've seen it somewhere before, which is  
virtually a mirror of the document we spoke about  
earlier.

A. Yeah it's very close to that.

DAHLSTROM Where, it's an internal report stating the  
monitoring did take place.

PENROSE  
Q63.

And live monitoring as far as he was aware was aural

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monitoring.

A. Mm.

Q64. As far as you're aware?

A. Well that, that's I guess that's right yeah.

Q65. Your interpretation. That diary note that Tim showed you, do you know who the author of that is?

A. No. Well I'll put it this way, I, I'd say it would be Gordon STOKES because he did most of the work, but I mean I couldn't.

Q66. And you wouldn't like to guess on your behalf, you're not familiar with Mr STOKES' writing or?

A. Guess yeah. When he writes longhand yes that seems to be a bit shorthand.

DAHLSTROM Printed I think.

A. Printed yeah.

PENROSE

Q67. But the only testing you consented to was the Elmi testing in 1992?

A. In 1992 and I asked them for all the prints of 1992 and the, the one of Austel.

Q68. And in 1993 when the Telecom employees left the briefcase here. You discovered data in that?

A. I actually did yeah. For six days.

Q69. Did they, used Elmi testing?

A. Well when I, when I checked this it clearly shows that 29 incoming calls, 26 sorry, 26 incoming calls were short duration calls that didn't reach his business, and it's, they got little ticks the side. So that in five days there was calls didn't reach Cape Bridgewater, The Camp. what, when I really wanted to get on and I in other documentation in the Aus, in, says, the RCM was, was registering short duration calls and I've asked for this information and I still, they still haven't writ they've refused to give it to me. And I've asked it on a separate issues which I can you know I can sort out..... for

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some documents, to how I've asked for it. Now that was on the line for three months and they still haven't given me under FOI.

Q70. And that would be an Elmi machine connected to your service at the Portland exchange?

A. Yeah. At the Portland exchange to the RCM.

Q71. In relation to live monitoring, you spoke about it occurring in June or July of 1993?

A. Mmhuh.

Q72. Where does that information come from?

A. That's, that's in that document.

Q73. The one that you identified earlier?

A. Mmm.

Q74. And in 1993 were you still reporting faults with your telephone?

A. I have been reporting faults right up until June 1994. And, and, and Telecom themselves have found faults in 1994, a lot of faults in 1994. Well up to, even up to June, May the 25th we are, I had repeated voice announcements, I'll tell you something that, that I've, I've done a four minute video clip, that when I rang, I rang 1100, a girl got on the phone and I've signed a Stat Dec to this, her name was Heidi and I gave her a nice little bit of a run around about her name, about a Swiss story that we will, probably shouldn't tell.

PENROSE I think you've told me about this before.

A. Yeah.

PENROSE From Ballarat.

A. Yeah and from Bendigo. And this lady then turns around and says mate, turns around and I asked her to, to tell me what she heard if you ring 26 26 66 number, 008 number. No phones rang only on one ring and that's all that happened and I had somebody present in, in, in the building here. She gets back on to my fax line which I was dialling out and I said what did you hear, and she says something about the Camp. I said I beg your pardon she said

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something about a camp, I said I'm sorry I didn't quite hear you what did you say, she said something about a camp, she said I heard somebody say something about a camp. I said my lady I said nobody even picked the phone up, I said it only rang once, she said well I heard something about it, I said do you mind, she said what, what are you trying to do. I said well go get me the supervisor, so the supervisor come on, I said look, I said I want to go into all this, I said but there, there's something wrong, I said now this is what's happened. Do you mind getting her to ring the phone again, with that she got back, she rang the phone, it rang once or twice as normal right, the person picked the phone up and spoke on the phone and said hello, and that's all she done right. Okay, now the phone was put down and then we left it at that, three weeks later I get my phone bill, and I was charged for the first call, I was charged for 19, for 19 seconds which I never even picked up. The next call which was said hello, and Telecom's admitted this right, I was charged for four minutes and 19 seconds. Now I've done a video clip of this, of, of in front of a professional video right, of exactly this case because she, there was something wrong and she didn't want to, she didn't want to, at no time did I speak on that phone, nobody said the Cape Bridgewater Holiday Camp, I find another documentation that, that I rang, I was ringing Graham SCHORER's and I couldn't get through to him. I rang 132999, the reporter from there turns around and says, when he realised we were COT he didn't report the call. So we've not only been dealing with, with, with COT issues like with, with, with through Telecom, we've been try, we're getting bum steered by 132999 and 1100. Now that, that's clarified, I mean I, I've, I mean it's documented that that's a fact it happened yeah.

Q75. And when did you discover that the malicious call trace was on your line in the FOI documents that you received. Just roughly?

A. About two months ago, oh six weeks ago.

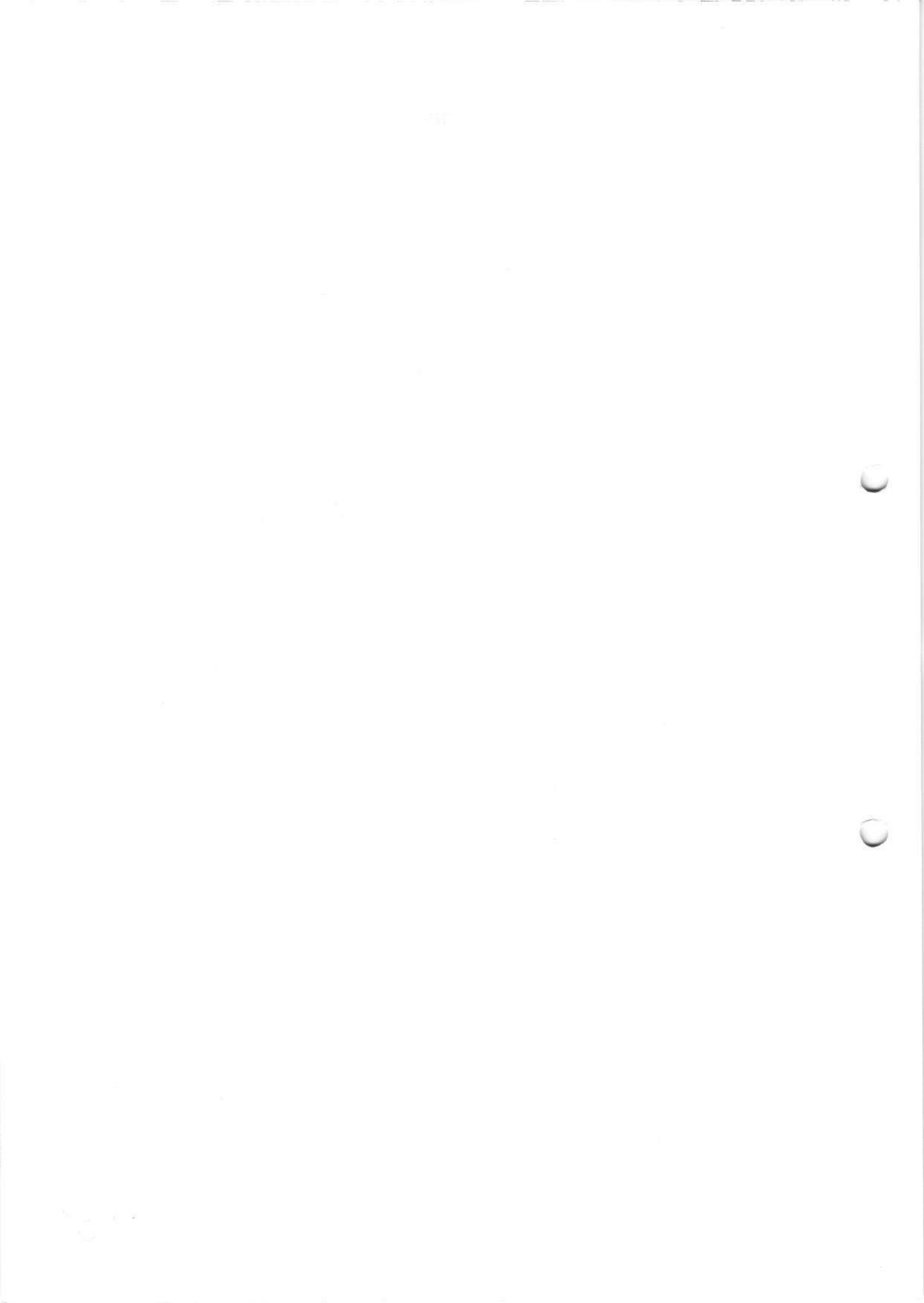
Q76. And you had no knowledge of it?

A. No I had, I'd seen it but I didn't write it, I've written so much of, I've listened to it, I've had it, I hadn't put a great significance to it, yeah.

Q77. And in relation to Gordon STOKES what do you say to

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you specifically that, that's suggested that he was involved in live monitoring of your telephone service?

A. Well now you've put it this way. I assumed, so that's why I rang him, I thought well he'd have to be the person, him being in charge right. And that's, and he, he didn't refute it, now I found that strange at the time, he didn't re, he didn't say oh it wasn't me, he didn't deny it, he didn't deny it at all, he just said that I wasn't, no, he said, there was no taping. \*

Q78. I haven't heard, I'd haven't heard rain like that for six months?

A. Didn't ask, take it with you. He said it's, it's, it's, we, we, there was, there was no taping done and he made it quite, in fact, which I believe right. But what I'm left, what I'm wondering is, is quite common I've been lead to believe now it's quite common that they, they, when they, when they listen in on the calls it goes through the whole exchange. Now I've been told that on a lot of occasions, so I'm wondering if this, if that's the case how many other people could've listened to it. Could be Mrs SMITH, could've been Mrs BROWN, Mrs BROWN talks to Mrs SMITH, husband and next minute it's all around town. \*

Q79. At which college did you put the notice up at?

A. Ah, the, the Warrnambool Deakin University.

Q80. What's, Mr STOKES associated with it is he?

A. He, he's doing a, a course there at the moment. And all I done was put a please contact me Mr STOKES.

Q81. Did John McMAHON ever describe the document that he'd spoken to you where it had been identified to him about the live monitoring? \*

A. No, no never.

DAHLSTROM Okay. That, that document that you, the one you were referring to, or John McMAHON may be referring to, we do have a copy of it.

A. Right.

DAHLSTROM However, because it's been provided to us by

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Telecom, I'm, I won't show it to you. \*

A. You can't yeah I understand.

DAHLSTROM But it does identify the fact that, that you were  
live monitored for a period of time. So we're quite  
satisfied that, that there are other references to \*

A. Right.

PENROSE  
Q82.

How often does it rain down here?

A. Only when you fellas come down. We've had about  
five good days actually.

DAHLSTROM  
Q83.

Have you got anything else Alan to do with the live  
monitoring issue?

A. Ah, no but I, this, I mean how can you say that you  
know, because it's, it's documented that it happened  
from this time to that time, but nothing, in my  
wildest dreams would think that I'd ever been taped  
but now I know that what I'd thought for five  
months, six months, 12 months. I believe I've been  
taped or listened too over a good, you know a good  
period of time, 12 months, 18 months, and I believe  
up until only a matter of two months ago, a lot of  
funny things used to happen on the line, we'd hear  
clicks and, and it's just, well I can no longer use \*

Q84. There is just one more document that you've sent to  
us that probably wasn't in the initial record of  
conversation and that's a handwritten note?

A. Sorry.

FEMALE Brad wants you to know if he can break for  
second.

DAHLSTROM I'll just suspend the tape then the  
approximately 7.05pm.

TAPED RECORD OF CONVERSATION RECOMMENCED. TIME IS  
APPROXIMATELY 7.08PM

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Q85. Alan just before the suspension we were just discussing the live monitoring and we established that it was around June, July, August of 93?

A. Right.

Q86. ~~The document here that you've sent to us earlier has got the date, 27/6 on it?~~

A. Right.

Q87. We can only assume I suppose that it's 1993. But there is a number blacked out?

A. Mmhuh.

Q88. And an arrow to your number which would show that this, this person called you?

A. Right.

Q89. At 6.40pm. And the notation written on it is caller, caller is usually from this number but \* apparently somewhere in Adelaide on this occasion?

A. Right.

Q90. And I think you've brought that to our attention to say well how would they know that this person, and whether he calls from?

A. Yeah how would they know.

Q91. A certain number but is away in Adelaide. Other then, as you say, listening in to the telephone? \*

A. I, that's it, I mean how would you know. I, I've shown that to quite a few people and they said oh God yeah, you know how, how would they know. You tell me, it's a, it's a pizza parlour and he had a dial-a-pizza parlour, and he's gone broke and he's pretty, clear set sort of a fella, and he put in about 60 grand and he's done the lot. And I was using this as an example to give to Senator BOSWELL, and at that time we were getting all these people that I could get the information so that I could forward it to BOSWELL at that time to present to the Senate. So all this was being done, was being known at that time, because they were getting as much information we could get, to BOSWELL and to Richard ALSTON, Shadow Minister, to present to the Senate.

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Q92. And that's not Ralphie's Pizza, that's someone else?

A. No that's, I can't think of it, think of the name of the place but it's, it's in Adelaide and, he actually was on, on, on the Current Affair program that, not Current Affair, yeah Current Affair program, and he's the gentleman that was, so I contacted him and I said well give me as much information you can and we can present your case perhaps to, you know to, to the Senate, which we did.

Q93. Okay. All right do you have anything else Alan?

A. No I don't, not really, no.

DAHLSTROM And Superintendent PENROSE anything else that you'd like to discuss with Alan.

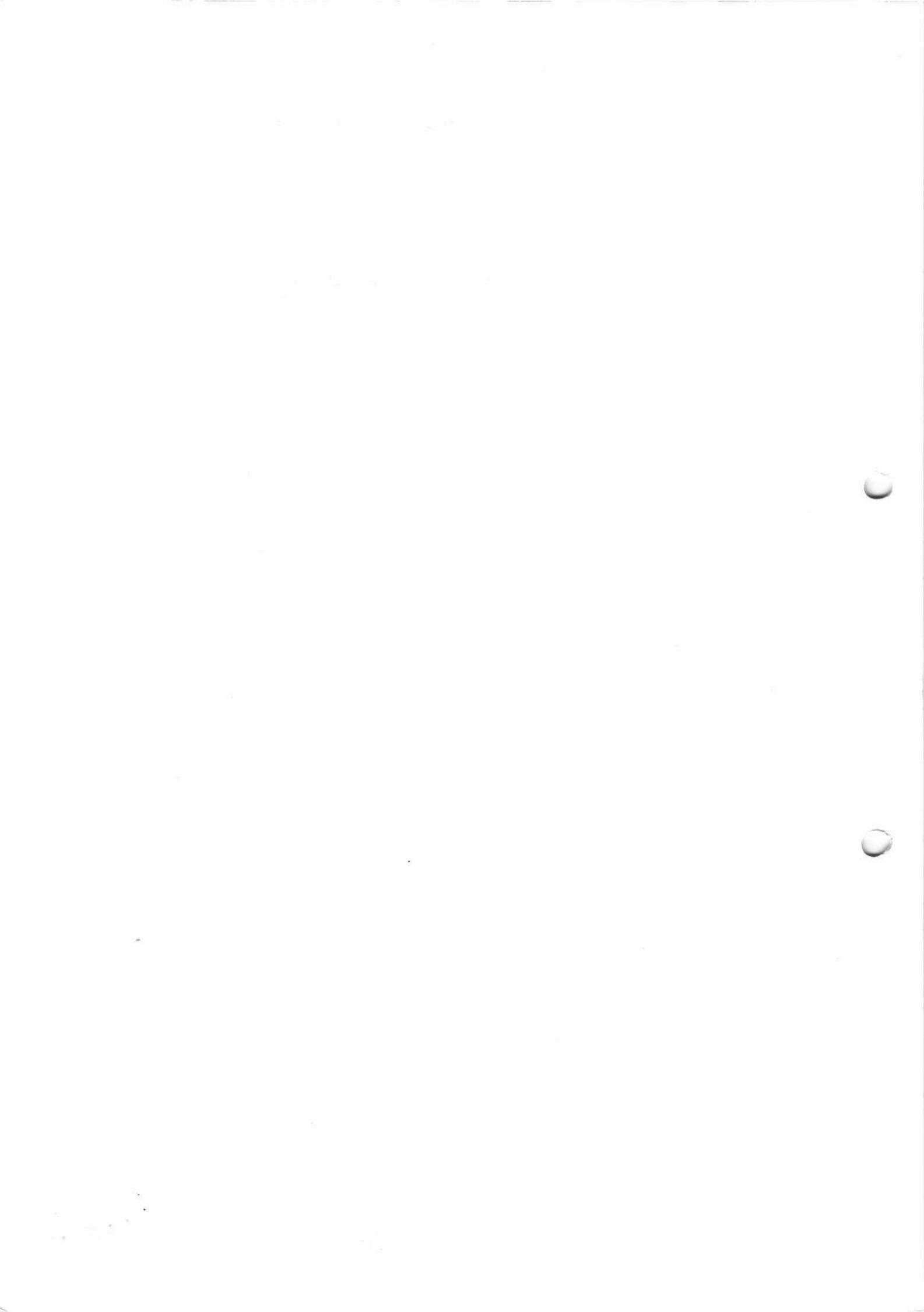
PENROSE No thanks.

DAHLSTROM Okay. That being the case I'll turn the tape off.

AND THE TIME IS 7.11PM

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Seal Cove Guest House  
1703 Bridgewater Road  
Cape Bridgewater, Portland 3305  
Phone/Fax: 03 55 267 170

26<sup>th</sup> September 2008

Ms Regina Pertou  
Member  
Administrative Appeals Tribunal  
P O Box 9955  
Melbourne 3001

SENT TO CROWLEY, IAINA  
17/5/08

**AAT MATTER NO 1836 of 2008**

Dear Ms Pertou,

A copy of my letter dated 26<sup>th</sup> September, to Mr Marcus Bezzi, ACMA, is attached for your information. As this letter explains, I understand that the hearing of 3<sup>rd</sup> October 2008 will now go ahead since ACMA and I have not been able to reach an agreement so far. My letter to Mr Bezzi therefore details my Statement of Readiness to Proceed.

I am truly amazed to learn that ACMA is prepared to release the FOI material I requested under subsection 29(5) of the FOI Act but still refuses to do so 'in the public interest'. I hope the following information might convince ACMA to reconsider their situation since, as the Regulator (and therefore a servant of the people) they have a duty of care to all Australians. I believe this duty of care extends to releasing the requested documents 'in the public interest'.

As I am sure you are aware, the Trade Practices Act directs companies to withdraw faulty goods or services immediately upon becoming aware of problems related to those goods and/or services and, at the same time, to bring the problems to the notice of their customers and the Australian public in general. If they do not follow these directions, they are in breach of the Trade Practices Act. If a Regulator like ACMA becomes aware of similar matters as part of their regulatory duties, they also have a duty to demand that the trader recall the faulty goods or services. If such a Regulator does not issue such directions, they are in breach of their regulatory duties. My AAT Statement of Facts and Contentions, and the listed information I will be relying on at the forthcoming hearing, proves that AUSTEL/ACMA has, in the past, allowed Telstra to continue to provide a faulty service to the Australian people, without directing Telstra to withdraw the service and warn the Australian public of the full extent of the problems with that service, even though AUSTEL/ACMA knew of the existence of those faults. Since this means that many Telstra customers have suffered as a result of paying for a service known to be faulty, my matters are therefore of public interest.

The following points clarify the 'public interest' aspect of the documents currently under dispute:

1. Some of the material that is not included in ACMA's list of documents they are willing to supply under subsection 29(5) of the FOI Act relate to technical material regarding Telstra's Portland AXE telephone exchange and the Cape Bridgewater RCM system. This material is directly related to other documents that ACMA relied on in a draft report they secretly provided to Telstra during my arbitration, without copying it on to me, even though the arbitration was a private matter between Telstra and me.

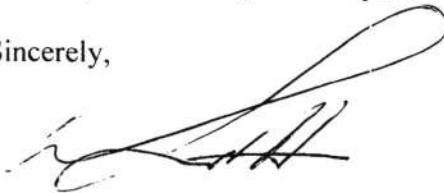
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2. The draft ACMA report referred to at point 1 (above) confirmed ACMA's awareness of Telstra's misleading and deceptive conduct during a previous settlement agreement between Telstra and me, but Telstra was still allowed to provide the arbitrator with the same false and misleading information, and the regulator has so far done nothing.
  3. ACMA knows that, on at least two occasions, Telstra used the regulator to 'rubber stamp' two technical reports that Telstra knew were more than just flawed but which were then provided to the arbitrator during my arbitration. ACMA has not publicised their knowledge of this matter.
  4. If the regulator was, even now, prepared to announce publicly that Telstra relied on the two false and misleading reports referred to at point 3 (above), and withdraw both reports from the public domain, I would then have a good basis on which to appeal my arbitration award on the grounds that Telstra knowingly used defence material they knew was false and/or manufactured.
  5. During my private arbitration with Telstra, the regulator was secretly writing to the arbitrator and the defendants without copying those letters on to me.
  6. During my private arbitration with Telstra, Telstra answered the regulator's letters and copied those responses to the arbitrator, but neither Telstra, AUSTEL or the arbitrator copied the same onto me.
  7. During my private arbitration with Telstra, the three-way secret correspondence that was exchanged between AUSTEL/ACMA, the arbitrator and Telstra discussed billing issues I had raised in my arbitration. AUSTEL/ACMA clearly labelled these issues as a public matter and directed that they be addressed in my arbitration.
  8. None of the billing issues I raised in my arbitration claim were ever addressed, even though the regulator and Telstra both advised the arbitrator in their correspondence they would be.
  9. On 3<sup>rd</sup> October 1995, five months after my private arbitration with Telstra had been completed, AUSTEL/ACMA wrote to Telstra noting that Telstra had still not addressed these same billing issues. AUSTEL/ACMA directed Telstra to respond by close of business 13<sup>th</sup> October 1995.
  10. On 16<sup>th</sup> October 1995 the regulator allowed Telstra to address one of the billing issues from my arbitration, outside the legal arena of my arbitration. Since my arbitration was a private matter between Telstra and me, the regulator did not have the authority to allow arbitration matters to be addressed in such a confidential way, outside the arbitration process, thus disallowing me my legal right under the Commercial Arbitration Act 1984, to challenge the false information that Telstra knew was false and misleading.
- 
11. It is of public interest that as soon as AUSTEL/ACMA became aware that the 008/1800 billing information provided to them by Telstra on 16<sup>th</sup> October 1995, (see point 10 above), was false and misleading they wrote to me on 6<sup>th</sup> December 1995 noting: "*I write to request additional information from you to assist AUSTEL in its investigation of charging discrepancies associated with Telstra's 008/1800 service. Your assistance in this matter would be appreciated.*" AUSTEL/ACMA did not advise me that they had allowed Telstra to use Telstra arbitration legal documents, including sworn witness statements, in a clandestine operation outside the legal forum of my arbitration.

12. It is of public interest that AUSTEL/ACMA visited my business on 19<sup>th</sup> December 1995 (a ten-hour round trip from Melbourne) so they could take back with them further evidence consisting of six bound volumes of billing information to assist AUSTEL in its investigation of charging discrepancies associated with Telstra's 008/1800 service.
13. AUSTEL/ACMA secretly wrote to Telstra during my arbitration on 16<sup>th</sup> November 1994 noting: "*The recent SVT results for Mr Alan Smith raise some issues on which AUSTEL request clarification, as follows: That Telecom will shortly provide, as requested in AUSTEL's letter of 11 October 1994, a statement: the deficiencies of the current testing process for the "Call Continuity / Dropouts to Neighbouring LIC" test contained in the Service Verification Tests (SVT). This statement should also detail the action Telecom intends to take to address this deficiency.*" PLEASE NOTE: it is of public interest that a government funded regulator would advise only the defendants in a private arbitration that their arbitration SVT tests were deficient, but concealed their knowledge of this from the arbitrator and the claimant.
14. It is of public interest that AUSTEL/ACMA became aware in 1994, that the Bell Canada International Inc (BCI) Cape Bridgewater tests were impracticable, but still allowed Telstra to use these tests in their defence of my claims.
15. AUSTEL/ACMA has covered up these serious breaches in their regulatory duty.
16. By not demanding that Telstra withdraw the Bell Canada and Service Verification reports from their defence of my arbitration, AUSTEL/ACMA have denied me a sound basis on which to appeal my arbitration matters in the Supreme Court of Victoria.

It is therefore of public interest, that ACMA provide all the information I need under FOI so that I can expose this disgraceful episode in the public interest.

Sincerely,



Alan Smith

Copies to

Ms Allison Jerney, Senior Lawyer, ACMA, P.O. Box 13112, Law Courts Melbourne 8010

1107



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Fx. 055 267 230

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Mr Frank Bloust,  
Chief Executive,  
Telstra.

**PROTECTED**

Fax 02 264 2044.

Dear Mr Bloust,

I will keep this letter brief and to the point.

Would you please instruct the management team within Telecom, that can respond to this request.

How does a conversation I had with a former Prime Minister Mr. Malcolm Fraser, end up in a Telecom document as common knowledge.

I spoke with Mr Fraser yesterday on this matter. He has made it very clear he did not talk to anyone within Telecom about our conversation in the month of April last year.

I also make it clear, the only knowledge I have of discussing this conversation, was with a person on the phone, and for various reasons would not have informed Telecom.

I have faxed along with this letter the notation from this Telecom document. I might also add there are other alarming extracts within my F.O.I. files, that show various odd occurrences similar to the one mentioned here. However this is my first request at this stage.

Would you please have the various departments respond to this request within the next 24 hours. I await your response.

Sincerely,

Alan Smith.

- H. PARKER
- D. KRASNOSTEIN
- I. CAMPBELL
- S. BLACK

**PROTECTED**

**RECEIVED**

11 / 4 / 94

CEO'S OFFICE  
SYDNEY  
FREEDOM OF INFORMATION ACT 1982  
(COMMONWEALTH)

DOCUMENT HAS BEEN RELEASED  
UNDER THE FOI ACT BY  
AUSTRALIAN FEDERAL POLICE

1108

*For Response.  
Please note Frank is meeting  
with Malcolm Fraser later  
this week on an unrelated  
issue.*



3 October 1994

COMMERCIAL AND CONSUMER  
CUSTOMER AFFAIRS

8/242 EXHIBITION STREET  
MELBOURNE  
VICTORIA 3000  
Australia

Telephone (03) 634 5736  
Facsimile (03) 634 9930

622770

Mr G. Schorer  
Golden Messenger  
405 Queensberry Street  
NORTH MELBOURNE VIC 3051

**RE: MEETING WITH THE ARBITRATOR**

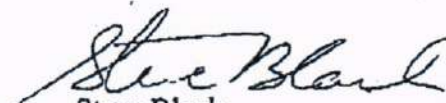
Dear Mr Schorer

I refer to discussions with Mr Alan Smith on 3 October 1994. Mr Smith advised me that he understood the Arbitrator had indicated his availability to convene a meeting between Telecom and Mr Smith, Mrs Garms and yourself.

Subject to the confirmation of the consent and availability of the Arbitrator I confirm my agreement to meet with him, Mr Smith, Mrs Garms and yourself on Wednesday 5 October 1994, or such other date as the Arbitrator is available. I will confirm with the Telecommunications Industry Ombudsman arrangements for the reimbursement of travel expenses for Mrs Garms and Mr Smith.

The Arbitrator will determine the format of the meeting, which topics will be dealt with in joint session and which topics are more appropriately dealt with on an individual basis. The purpose of the meeting is to address the means by which these Arbitrations may be progressed promptly. In particular the meeting will focus on issues relating to the production of documents both by Telecom and between the parties.

Yours faithfully

  
Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

1109

93/94 WRH:MYC

24th November, 1995

Dr Gordon Hughes  
c/- Messrs Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

Dear Dr. Hughes,

RE: Arbitration - Golden Messengers and Telstra

We refer to your letter of 6th November last to our client and subsequent correspondence.

Our client advises that it is not in any position to advise with certainty whether or not it anticipates "a delay of considerable or indeterminate length".

The arbitration proceedings were entered into on a clearly accepted basis that Telstra would supply required documentation under FOI provisions. Our client cannot proceed without the relevant information being made available.

Without being critical of Telstra at this stage, the fact is that the material is being provided extremely slowly. The last delivery of documentation was received only this month. We are instructed that material which is well known to have existed (and presumably has not since been lost or destroyed) is still awaited.

Our client is aware of the disastrous state of affairs as to the supply of FOI documents in the recent Smith arbitration wherein documentation was supplied shortly before and after you made your decision; it does not want to be similarly disadvantaged in its own proceedings.

Your advice that you will give consideration to the question of whether the arbitration should be abandoned is noted. Our client, as we are at present advised, would not be agreeable to any such proposal.

However, if you personally find the present situation tedious and simply wish to resign as arbitrator for that or for any other reason, our client would not object, nor would it consider it would be entitled to offer objections.

Yours truly,

HUNTS'

1109



ALP 011

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

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.

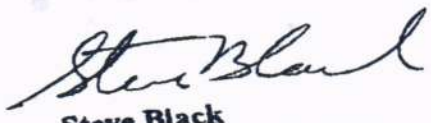
I refer also to our recent telephone conversations on this subject.

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

1110

PARLIAMENT OF AUSTRALIA · THE SENATE

SENATOR MICHAEL BAUME  
SENATOR FOR NEW SOUTH WALES

20 November 1995

Mr Robert King  
Secretary  
Senate Standing Committee on Environment, Recreation, Communications &  
the Arts  
S1 57  
Parliament House  
CANBERRA 2600

Dear Mr King

In keeping with the arrangements made at the ERCA Committee's hearing into Telstra on 17 November 1995 for my questions on C.o.T. cases to be taken on notice, with the responses to be "in camera", I now ask:-

1. Please respond and the matters raised in the attached two faxes to me from Alan Smith. I am particularly concerned about the allegation that a Telstra employee recommended that Coopers & Lybrand be threatened into withdrawing their report into this matter (p 4), that heat was belatedly shown to have caused faults in the unmanned exchange, that the Bell Canada International report should be "cleansed", and that there was a potential for conflict of interest with the arbitrator and the technical resource team.
2. Please respond to the matters raised in Ann Garms' letter to the ombudsman of 14 November 1995, a copy of which has been sent to me, which raises some of the matters in Mr Smith's correspondence and others relating to her own business.
3. Please respond to the five submissions made to me on 17 November 1995 by Ann Garms, and to the memorandum from Stephen Black to David Krasnostein of 2 March 1994.

Yours sincerely,



SENATOR MICHAEL BAUME  
Senator for New South Wales

SENATOR HOUSE, 70 PHILLIP STREET, SYDNEY (GPO BOX No 36, SYDNEY 2001) FACSIMILE 02-251 2640 TELEPHONE 02-251 2631 TOLL FREE 008 805 026  
SENATOR HOUSE, CANBERRA, A.C.T. 2800

FACSIMILE 06-277 3614 TELEPHONE 06-277 3610

1111



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Mr. Frank Blount,  
Executive Officer  
Telstra.

29th November, 1994

Dear Mr. Blount,

For six and a half years, I have been in conflict with Telecom management.

On Monday, 28th November, 1994, I viewed "The 7.30 Report" on the A.B.C. television network, where Mr. Graham Schorer, spokesperson for C.O.T., was being interviewed. I was amazed to see how much he has aged over the short span of 2½ years of which I have had the pleasure of knowing him. It appears to me that the four original members of C.O.T. are still fighting, against overwhelming odds, the giant Telecom Corporate animal.

We have been treated as criminals. Four small business people, from four completely different walks of life, spanning two States of Australia. Does the Board of Telstra really believe that such a group, with diverse interests and separated by such great distances, could possibly concoct such similar stories, if those stories were not absolutely true? Those people were bound together by one common bond — an enormous battle to try and make Telecom understand and accept the fact that their businesses were plagued by constant and never-ending telephone faults.

Not only did the four of us have similar complaints against Telecom, but we all received the same high-handed treatment when we lodged those complaints. We were belittled, derided and lied to by Telecom management — both individually and collectively. It became evident, as we discussed our problems, that we were the victims of misleading and deceptive Corporate conduct, from the hands of a few Telecom employees.

In two days, Mr. Blount, Telstra is to produce its defence against my Submission, in accordance with the Fast Track Arbitration Procedure.

Twelve months ago I signed an agreement with you, Mr. Blount. You broke that agreement. Nothing has changed. Telecom is still lying to C.O.T. and its members. Again I ask, does the Board of Telstra really believe that we (C.O.T.) are all willing to risk our integrity by fabricating a story to suit our own ends?

I, along with other C.O.T. members, have evidence that Telecom employees lied about certain incidents. They fabricated stories which were intended to deceive and mislead; the reasons for which are known only to themselves.

Never at any time during my discussions with Telecom management, did they show any interest in hearing what I had to say about these fabricated stories. Stories told by the very people who were responsible for relaying messages back to that same management. Thus I was told that no communication faults were known on my service.

1112

C.O.T. was born out of the frustration of its members when confronted with bad management, as practised by a few senior Telecom employees. Nothing else.

I know of a young Telecom employee who refused a senior position within Telecom — the inner sanctum. The reason for that refusal, was that he believed he lacked management skills.

I may be wrong, Mr. Blount; I may be well off target. But just maybe, therein lies your problem. This man knew his capabilities. Surely he could have received additional training. How many technical people have Telecom trained in customer relations?

One has only to review the case of Mr. Steve. Black, Customer Response Unit, to understand where Telecom has gone wrong. In the Senate Estimates he was described as a man with a point of view, different to the truth.

Look at his response when questioned about the "bugging" of a Ballarat man. This is just another example of the misleading and deceptive behaviour practised by certain members of Telecom Management. They find it easier to lie than seek out a solution to the problem.

I spent some time with Mr. Ralph Bova when he and his family came to my Camp for a holiday. They had no money. The holiday was a gesture, on my part, to help someone in need. Nothing more. Ralph Bova, in case you are not aware, used to be a very good Pizza cook — a man proud of his heritage.

One day, in conversation, he tearfully told me his story. True, he may have been stressed out, but he was certainly not a liar. His story triggered an awareness in me — that like Mr. Bova and Ms. Anne Garms, my telephone, too, had been "bugged" by Telecom.

Mr. Bova is a broken man today. He has been clinically certified as "mentally unstable." His accusations against Telecom — his constant story that Telecom had "bugged" his phones, has now been proved to be correct. One wonders whether the effect of what Telecom allowed to happen, will ever be erased from that man's mind?

In preparing the submission for my claim against Telecom, I spoke with two Clinical Psychologists. I produced my diaries, which recorded the saga of Telecom/C.O.T. events; and which caused me some embarrassment as I was reminded of incidents which triggered so much anger, goading me to write as I did. Yet I tabled these documents, holding nothing back, despite my embarrassment.

I met with Kaye Frankcom, a Psychologist, here in Portland, in her professional rooms. She treated me like a human being and I felt like one. Likewise, I was interviewed by Mr. Christopher Mackey, in his rooms. Again I was treated humanely and not belittled.

I submitted the report from Christopher Mackey, and though I did not entirely agree with his findings, I presented his notes; as I had nothing, either then or now, to hide.

Of all the things that have occurred to me during my life, through my years in the Merchant Navy right up to this present confrontation, nothing compares with my experience at the hands of Telstra and Clinical Psychologist, Ian Joblin.

Mr. Rumble, Customer Response Unit, Telecom, arranged for me to meet with Ian Joblin, who, supposedly, had no previous association with either Telecom or Mr. Rumble. I hope this is the case.

The newly-appointed (?) Telecom Psychologist chose, as the venue for my appointment, the Public Bar of the Richmond Henty Hotel. Not being a regular hotel patron, I felt ill at ease from the very outset. For five hours, Mr. Blount, I was handed hundreds of small cards, which I had to place in three different piles. Never, in all my life, did I believe that I would be subjected to Psychological Analysis in a public place, i.e.: a Hotel Bar.

I would suggest to you, Mr. Blount, that you take a good long, hard look into Telecom. Why, I keep wondering, did your staff lie? Certainly you eavesdropped on my calls . . . you placed my home under surveillance; but what, in the long-run, did it all achieve?

From the very beginning the whole thing has been a bloody disgrace . . . a bloody Australian disgrace . . . and still the lies continue. Telecom are still denying C.O.T. members the right to view F.O.I. documents. What are they frightened of now?

What else can I say, but, "Meet me in the Richmond Henry."



ALAN SMITH  
Cape Bridgewater Holiday Camp,  
Portland, 3305.

1112

is made is required, but not such that the opponent may discover the contents of the document.

*WATER AUTHORITY OF WESTERN AUSTRALIA v AIL HOLDINGS PTY LTD (1991) 7 WAR 135 (WA Sup Ct, Acting Master Adams).*

4126. **Government communications to obtain legal advice — Improper use of regulation-making power alleged.**] — *Held*, that where there was *prima facie* evidence that a government's communications with its legal advisers came into being as part of a plan to defeat the interests of a class by deliberately using regulation-making power for a purpose outside the enabling Act, sufficient colour existed to displace the usual privilege attaching to the professional legal advice.

[(1984) 3 FCR 534; 55 ALR 545 *affd.*]

*A-G (NT) v KEARNEY (1985) 158 CLR 500; 59 ALJR 749; 61 ALR 55 (HC).*

4127. **Statute abrogating claim.**] — Two firms of solicitors were served orders to produce certain documents belonging to L. The documents were described as "property-tracking documents" as defined by the *Drug Trafficking (Civil Proceedings) Act 1990 (NSW)*. Both firms resisted the order claiming legal professional privilege but delivered the documents to the Law Society pending the resolution of the matter. *Held*: (1) Section 35(1)(b) of the *Drug Trafficking (Civil Proceedings) Act 1990 (NSW)* does not apply to the position of the solicitor's client. However, it is directed at persons who have an obligation not to disclose the existence or contents of a document and applies to persons such as solicitors, accountants and others who are bound by professional codes of ethics to keep secret their client's documentation. (2) Section 35(1)(b) does abrogate a claim that a solicitor is not required to produce documents held by the solicitor on the ground of legal professional privilege.

*STATE DRUG CRIME COMMISSION v LARSSON (1991) 53 A Crim R 131 (NSW Sup Ct, Newman J).*

4128. **Document prepared by agent or representative of party — For advice as to possible litigation.**] — *Held*: (1) In an action by an insured, being conducted on its behalf by an insurer pursuant to a right of

subrogation, loss assessors who provided reports to the insurer were in the position of agents of the insured. (2) A report by the loss assessors addressed to a solicitor but forwarded to the insurer was properly privileged as being a communication to the solicitor for the purpose of securing advice as to possible litigation. (3) The critical question was not the subsequent use of the report but the purpose for which it was brought into existence.

*LEADER WESTERNPORT PRINTING PTY LTD (T/A WAVERLEY OFFSET PUBLISHING GROUP) v IPD INSTANT & DUPLICATING PTY LTD (1988) 5 ANZ Insurance Cases 75,364 (Vic Sup Ct, Gobbo J).*

4129. —.] — *Held*, that documents prepared by agents or representatives of a party are subject to the "sole purpose test" in order to qualify for legal professional privilege, namely, was the confidential communication created or made solely for the purpose of submission to legal advisers for advice, or for use in legal proceedings.

*NICKMAR PTY LTD v PRESERVATRICE SKANDIA INSURANCE LTD (1985) 3 NSWLR 44 (NSW Sup Ct, Wood J).*

4130. **Document prepared by third party.**] — *Held*: (1) Legal professional privilege only attaches to documents prepared by third parties (not being servants or employees of the entity called upon to produce the documents) when they are prepared for or in contemplation of litigation or for the purpose of giving advice or obtaining evidence with reference to such litigation. (2) Documents obtained from third parties (eg investigators or experts) who are retained by solicitors, on the explicit instructions of a client, will be subject to legal professional privilege if the information can properly be regarded as collected and communicated confidentially on behalf of the client to its legal adviser, in the character, and for the purpose, of obtaining legal advice.

*NICKMAR PTY LTD v PRESERVATRICE SKANDIA INSURANCE LTD (1985) 3 NSWLR 44 (NSW Sup Ct, Wood J).*

4131. **Statements obtained by plaintiff's solicitor from defendant's insured.**] — The solicitors acting for the plaintiff in claims for damages for personal injuries arising out

From: "The Australian Digest"

1113



**Australian Government**  

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**Department of Communications**

Mr Alan Smith  
1703 Bridgewater Road  
PORTLAND VIC 3305

13 June 2014

Dear Mr Smith

I refer to your letter of 4 May 2014 to The Honourable Tony Abbott, Prime Minister, attaching your letter of the same date to Senator Scott Ryan, seeking approval of your use of certain transcripts and other documents that you describe as Telstra and government related documents in relation to the publication of your manuscript *Ring for Justice*.

Your letter was referred to the Department of Communications for reply.

Neither the Prime Minister, nor Senator Ryan, nor any other member of the government is able to provide you with official written permission or any kind of approval to use or release transcripts or documents in relation to your manuscript. The use and/or publication of the transcripts and other documents is a matter on which you and your publisher need to seek your own legal advice.

Further, the matters dealt with in your letters have been fully assessed by the Commonwealth. These matters have been the subject of previous correspondence and will not be reopened.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'A Flannery', written over a horizontal line.

**Angela Flannery**  
General Counsel

1114





DEPARTMENT OF  
COMMUNICATIONS  
AND THE ARTS

Our Reference

**FACSIMILE**

To:	John Pinnock
Organisation:	Telecommunications Industry Ombudsman
Phone number:	03 9277 8777
Facsimile number:	03 9277 8797

From:	Lori Catelli
Phone number:	02 6279 1225
Facsimile number:	02 6279 1555
Date:	6 November 1997
Number of pages:	8

GPO Box 2154 Canberra ACT 2601 Australia. Telephone (06) 279 1000 Facsimile (06) 279 1901 Email [dca@dca.gov.au](mailto:dca@dca.gov.au)

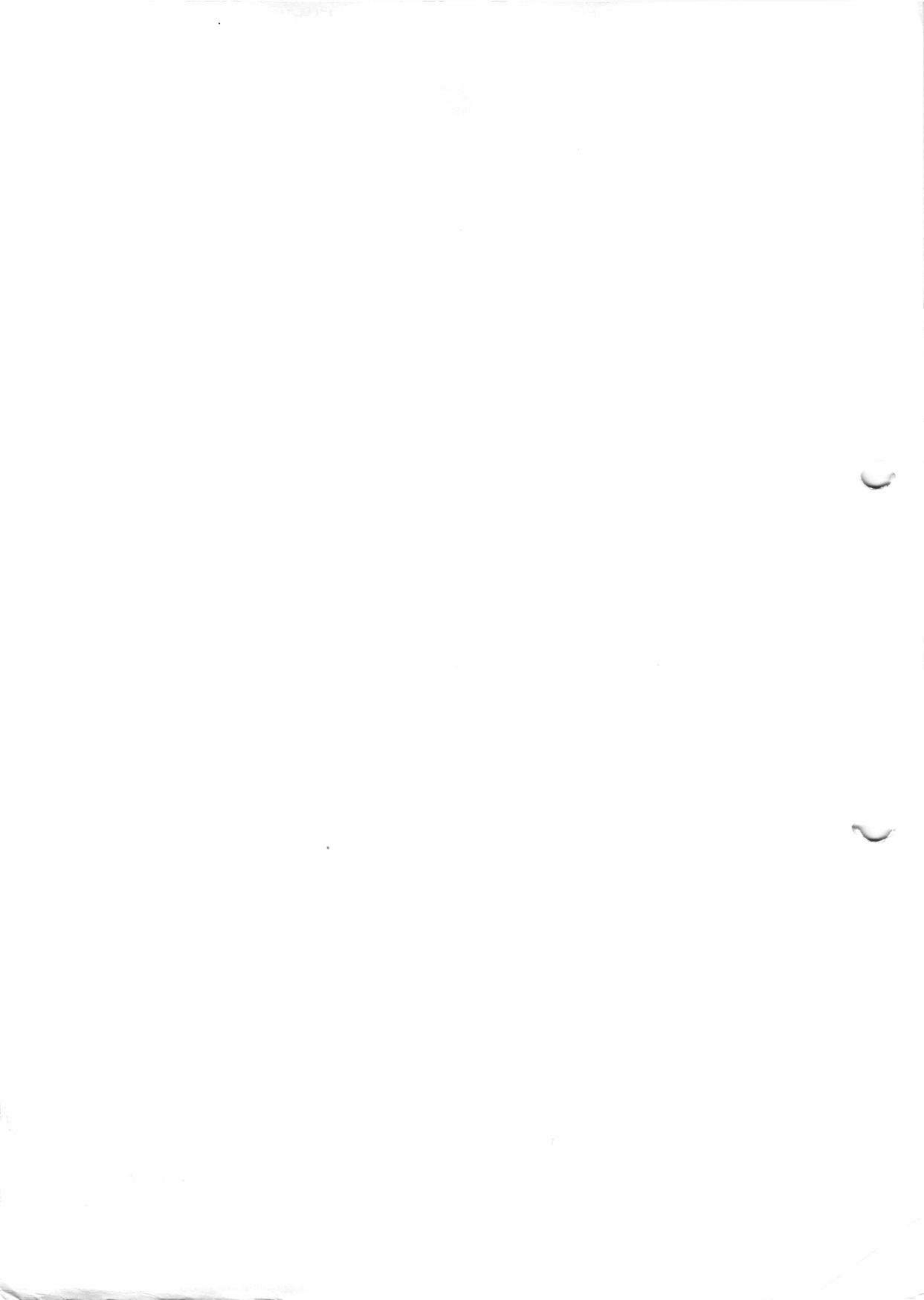
Re: Ministerial Number 97101006 - Mr Alan Smith

John

Can you please urgently provide me with advice for our response to Mr Smith. I have also faxed Telstra for input as well. Thanks.

Lori

1115



97120258



OFFICE OF THE TREASURER

- 3 DEC 1997

Mr David Quilty  
Chief of Staff  
Office of Senator the Hon. Richard Alston  
Minister for Communications, Information Economy and the Arts  
MG 70  
Parliament House  
CANBERRA ACT 2600

RECEIVED  
- 4 DEC 1997

Dear David

Attached please find correspondence from Mr Alan Smith in relation to his claims as a Casualty of Telstra member.

As this matter falls within the portfolio responsibility of your Minister I would be grateful if you would respond to Mr Smith directly as appropriate.

I have also copied this material to the Minister for Justice, Senator the Hon. Amanda Vanstone.

Yours sincerely

Philip Gaetjens  
Principal Adviser

RECEIVED ON  
01 DEC 1997  
M.L.S.

Minister	Relations
- 4 DEC 97	
Referred for:	
<input type="checkbox"/> Urgent by	.....
<input type="checkbox"/> Acknowledgment	
<input type="checkbox"/> Reply by:	
Minister	<input type="checkbox"/>
Chief of Staff	<input type="checkbox"/>
Adviser	<input type="checkbox"/>
Department	<input type="checkbox"/>
<input checked="" type="checkbox"/> Immediate Action	
<input type="checkbox"/> .....	
Co:	PF

1116





DEPARTMENT OF  
COMMUNICATIONS  
AND THE ARTS

Our Reference

**FACSIMILE**

To: Mr John Pinnock  
Telecommunications Industry Ombudsman  
Phone number: 1800-062-058  
Facsimile number: 1800-630-614

From: Toni Ahkin  
Phone number: (02) 6271 1509  
Facsimile number: (02) 6271 1850  
Date: 19 January 1998  
Number of pages:

GPO Box 2154 Canberra ACT 2601 Australia. Telephone (02) 6271 1000 Facsimile (02) 6271 1901 Email [dea@dea.gov.au](mailto:dea@dea.gov.au)

Mr Pinnock

Further to this morning's discussion concerning Alan Smith I am forwarding you 8 pages of a 40 odd page Min Rep - 97120258 for your information; coupled with 3 pages from Telstra on Mr Smith's allegations that he was overcharged on 1800 numbers. Min Rep 97090972 has been marked for response.

Telstra has undertaken to provide a transcript of the 14 January meeting with Mr Smith. This information is needed in order to respond to Min Rep 97090972 and I will forward a copy to you on receipt of this information.

To Smith File

 19/1

1117

2

**FILE NOTE***Legal and Professional Privilege Applies - Telecom Confidential*

FILE: MR ALAN SMITH  
FROM: LYN CHISHOLM  
SUBJECT: BILLING DISPUTE 1800 TELEPHONE SERVICE  
DATE: 16 JANUARY, 1998

On 14 January, 1998, Lyn Chisholm and Phil Carless of Telstra's Customer Response Unit met with Mr Smith to examine documentation in relation to his complaints lodged with the Minister's Office and the Telecommunications Industry Ombudsman regarding his 1800 telephone service.

Mr Smith in these complaints had made general allegations with regard to overcharging of the 1800 telephone service, however, Telstra had not received any supporting documentation along with his complaints.

In telephone discussions with Mr Smith, I advised him that in order for Telstra to address his claims, documentation supporting his complaints would need to be forwarded to allow Telstra to fully investigate the matter.

Mr Smith raised concerns with regard to the matter and the Arbitration and I advised that I would be investigating any instances he put forward since the conclusion of the Arbitration. Mr Smith stated that he had evidence of instances that spanned through the Arbitration and that the problem was not addressed in the Arbitration and further that the same instances continued after the Arbitration.

I suggested that we meet so that Telstra could view the documents he was referring to and work at resolving the matter from there.

**Meeting Notes 14 January, 1998****Present at Meeting**

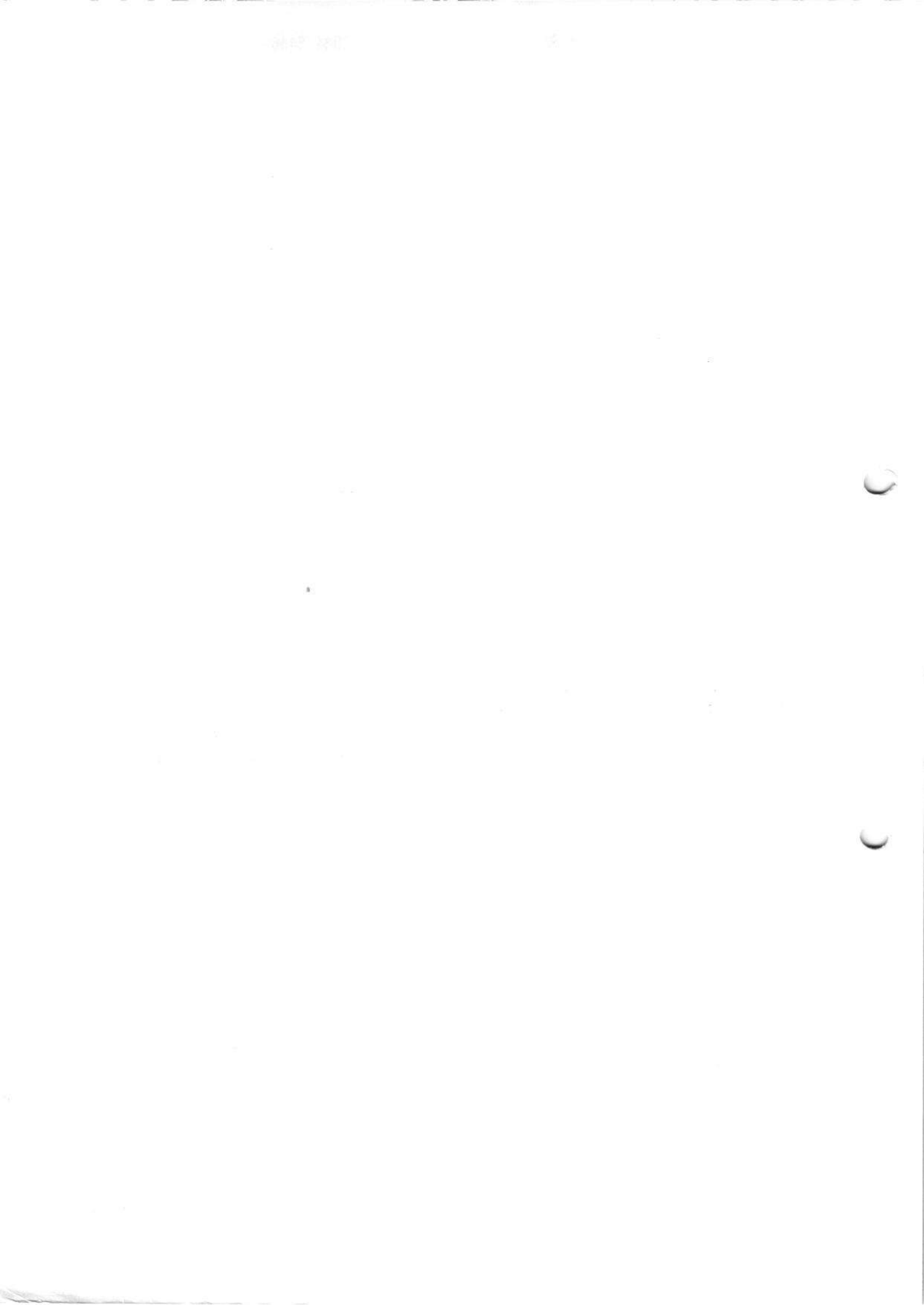
Lyn Chisholm - Telstra  
Phil Carless - Telstra

Alan Smith - Cape Bridgewater Holiday Camp  
Ray Whitworth - Observer

Alan Smith explained that he had attempted to have this matter addressed in his Arbitration and via Austel and the Ministers office for quite some time. He believes that this issue was not addressed in his Arbitration although Telstra had given an undertaking to Austel in November, 1994.

I explained to Alan that it was my understanding that at the time Austel wrote to Telstra, the Arbitration was in process and that Telstra had written back to Austel and the Arbitrator that it believed the matter would be addressed in the Arbitration.

1118



2

I then explained to Alan that Telstra had replied to the letter from Austel dated 4 October, 1994 and to further letters from Austel on this matter dated 1 December, 1994 and 3 October, 1995 and in this provided a response to his complaints of charging discrepancies and short duration calls on the 1800 telephone number.

Mr Smith put forward two copies of the Lanes Resource Unit reports. One that had been forwarded to him as part of the Arbitration and one that had been obtained from Dr Hughes's office by mistake when he collected his Arbitration documents.

In what appeared to be a "Draft" of the Lanes report, a paragraph appears relating to Mr Smith's billing complaints, that an addendum report was to be provided at a later date otherwise the report is complete.

Mr Smith stated that the issued report did not include the addendum report nor did it make any reference to his 1800 complaints.

Further Mr Smith produced various printouts of CCAS data in comparison with his Telstra accounts. In many instances the calls add up however, in some cases there appeared to be differences in the duration of the call times.

Mr Smith also provided Telstra accounts that showed an overlap in the time of calls.

Mr Smith stated that there were also discrepancies in details taken by the Commonwealth Ombudsman. He advised that he had asked the Commonwealth Ombudsman to only use the 1800 telephone number when contacting Mr Smith. In the Assessment Documentation for Mr Smith's claim for compensation for FOI matters, Mr Smith states that there is a large discrepancy between the number of calls listed by the CO as being made to Mr Smith and the number of calls he had been charged for on the 1800 account.

I note that the examples given by Mr Smith at the meeting spanned the period of the Arbitration and after the conclusion of the Arbitration.

I advised that Telstra had not seen copies of his examples and had not been able to clearly respond to his complaints without being able to examine the documentation he had put forward at the meeting.

Mr Smith advised that he had provided all details to the TIO office, I responded that we may not have seen all the documentation he had put forward and that the TIO at this point had not raised a formal dispute or complaint regarding the matter.

I advised Mr Smith that I would seek copies of any additional information that they may have with regard to his complaint.

Mr Smith advised that he would provide me copies of all documentation that he had with regard to the 1800 number and copies of the documentation he had produced at the meeting. Mr Smith advised that he would provide this material to me during the week beginning 19 January, 1998.

1118



2

I advised that once Telstra had received the information, further investigation could be carried out in the matter.

Mr Smith again enquired about the matter of the Arbitration. I again advised that I would be examining the documents with regard to complaints after the Arbitration, and that a further response with regard to the Arbitration would be provided.

1118



DEPARTMENT OF  
COMMUNICATIONS  
AND THE ARTS

Our Reference

**FACSIMILE**

To:	Mr John Pinnock Telecommunications Industry Ombudsman
Phone number:	1800-062-058
Facsimile number:	1800-630-614

From:	Toni Ahkin
Phone number:	(02) 6271 1509
Facsimile number:	(02) 6271 1850
Date:	22 January 1998
Number of pages:	Cover + 4

GPO Box 2154 Canberra ACT 2601 Australia. Telephone (02) 6271 1000 Facsimile (02) 6271 1901 Email dca@dca.gov.au

Mr Pinnock

Further to our recent phone conversation I am forwarding Telstra's transcript of its meeting with Alan Smith, held on 14 January 1998 concerning his claim of overcharging on his 1800 number.

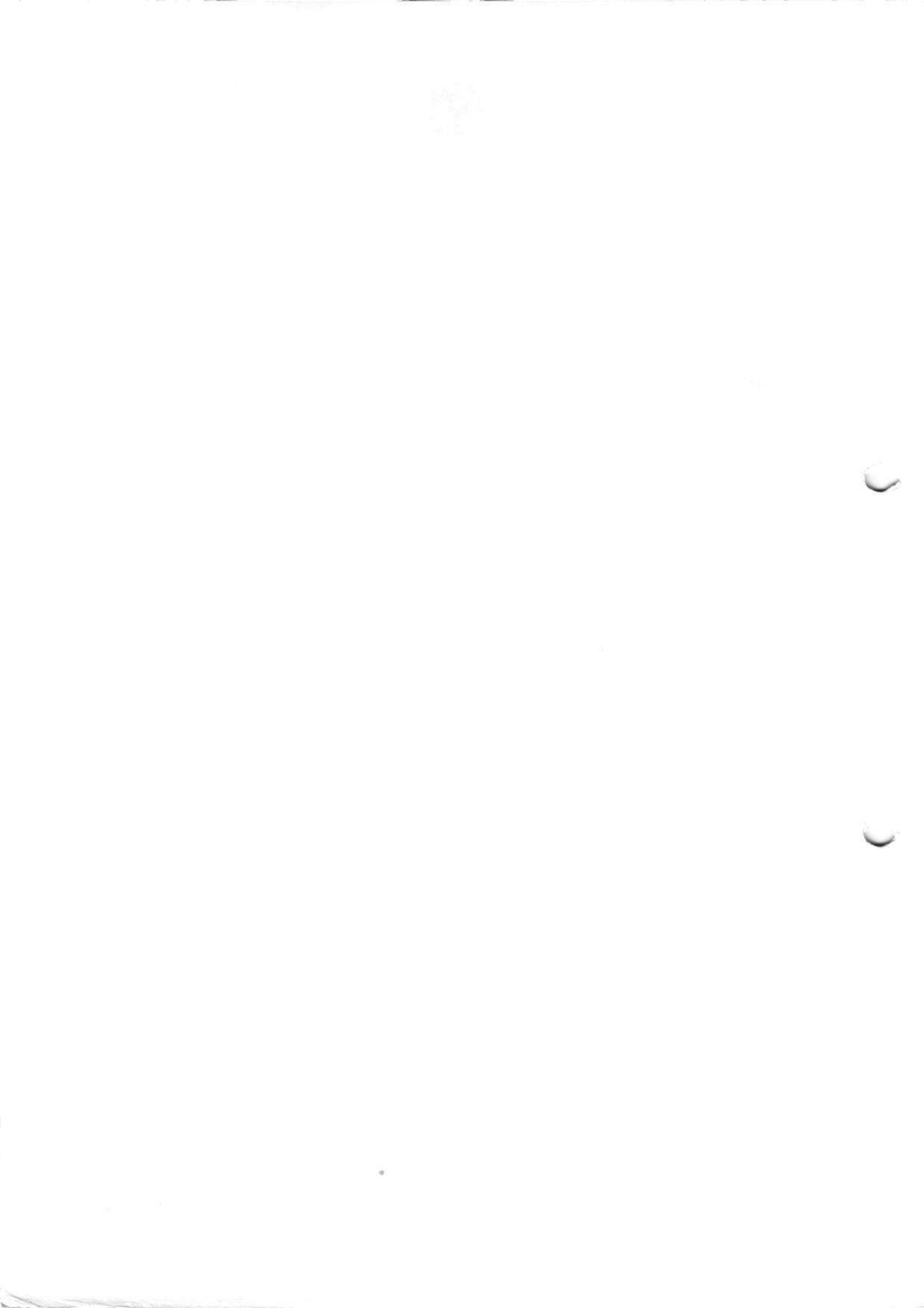
Mr Smith has undertaken to provide further documentation to Telstra.

*Wally,*  
Please see \* over page.  
Do you know anything about that?

*John*  
22/1

*John* I spoke to Lyn Davidson. The meeting was at Schorer's, not TIO. (Fraudman?). He will tell Henry.  
*Wally* 24/1

1118





DEPARTMENT OF  
COMMUNICATIONS  
AND THE ARTS

RECEIVED

23 JAN 1998

Our Reference

**FACSIMILE**

To: Mr John Pinnock  
Telecommunications Industry Ombudsman  
Phone number: 1800-062-058  
Facsimile number: 1800-630-614

From: Toni Ahkin  
Phone number: (02) 6271 1509  
Facsimile number: (02) 6271 1850  
Date: 23 January 1998  
Number of pages: Cover + 3

GPO Box 2154 Canberra ACT 2601 Australia. Telephone (02) 6271 1000 Facsimile (02) 6271 1901 Email [dca@dca.gov.au](mailto:dca@dca.gov.au)

Mr Pinnock

Alan SMITH - Proposed replies for Senator Alston's signature

I am forwarding copies of our proposed replies (that will be sent to the Minister's office today) to David Hawker and Alan Smith in response to recent Min Rep's concerning the arbitration process and overcharging on Mr Smith's 1800 number.

*Don't seem to want specific comment from TIO.*  
*Noted:*

*[Signature]*  
*2/11*



1119



1 Cruttenden, Ian

2 From: [mailto:ian.cruttenden@team.telstra.com]  
 3 Sent: Monday, 6 March 2006 9:54 PM  
 4 To: Vajrabukka, Nikki  
 5 Subject: FW: Independent assessment process - notification of further claimant name and request for information  
 6  
 7 Attachments: LR-414601 06.03.06 Response to DCITA request (Smith).doc

8 Hi Nikki

9 Please see attached, our response to the request re: Mr Alan Smith's claim.

10 Cheers

11 David

12 From: Vajrabukka, Nikki [mailto:Nikki.Vajrabukka@dcita.gov.au]  
 13 Sent: Friday, 3 March 2006 11:52 AM  
 14 To:  
 15 Subject: Independent assessment process - notification of further claimant name and request for information  
 16 Importance: High

17 Hi I

As discussed, we have received notification from Mr Alan Smith that he wishes to have his case included in the independent assessment process being conducted by the Department.

To assist the Department in its examination of issues relevant to Mr Smith's case, we would appreciate Telstra providing information in relation to the following issues:

- the claim (a brief description of Mr Smith's dispute with Telstra and the outcome he sought);
- Telstra's response to the claim, including any action taken;
- Telstra's current position in response to the claim;
- compensation paid to Mr Smith (if any) and, if applicable, the conditions that applied to that compensation;
- any dispute resolution mechanisms used by Telstra; and
- the current status of the dispute, including whether there are any Court proceedings pending.

Telstra's advice would be appreciated as soon as possible, to enable to the Department to meet the reporting deadline.

Please don't hesitate to contact me if you have any queries.

cheers,

*Nikki*

NIKKI VAJRABUKKA  
 Telecommunications Consumer Policy  
 Department of Communications, IT and the Arts  
 ☎ Ph: (02) 6271 625  
 📠 Fax: (02) 6271 650  
 ✉ nikki.vajrabukka@dcita.gov.au

1120

Vajrabukka, Nikki

---

From: Vajrabukka, Nikki  
Sent: Friday, 3 March 2006 12:04 PM  
To: Lever, David  
Cc: Lilley, Rachel  
Subject: FW: Independent assessment process - notification of further claimant name and request for information

DL - fyi - sent to David Quilty, as Athol is on leave for the next week or so.

DQ questioned why we accepted [redacted] case for inclusion in the assessment process, since the deadline of 3 February had already passed - I indicated that there was some to-ing and fro-ing to attempt to clarify [redacted] intentions as he appeared to have misunderstood issues associated with the process. DQ accepted this, and indicated that Telstra would try to get the requested info to us as soon as possible.

cheers,  
- Nikki

---

**From:** Vajrabukka, Nikki  
**Sent:** Friday, 3 March 2006 11:52 AM  
**To:** 'david.quilty@team.telstra.com'  
**Subject:** Independent assessment process - notification of further claimant name and request for information  
**Importance:** High

Hi David

As discussed, we have received notification from [redacted] that he wishes to have his case included in the independent assessment process being conducted by the Department.

To assist the Department in its examination of issues relevant to [redacted] case, we would appreciate Telstra providing information in relation to the following issues:

- the claim (a brief description of [redacted] dispute with Telstra and the outcome he sought);
- Telstra's response to the claim, including any action taken;
- Telstra's current position in response to the claim;
- compensation paid to [redacted] if any) and, if applicable, the conditions that applied to that compensation;
- any dispute resolution mechanisms used by Telstra; and
- the current status of the dispute, including whether there are any Court proceedings pending.

Telstra's advice would be appreciated as soon as possible, to enable to the Department to meet the reporting deadline.

Please don't hesitate to contact me if you have any queries.

cheers,

*Nikki*

NIKKI VAJRABUKKA  
Telecommunications Consumer Policy  
Department of Communications, IT and the Arts

13/04/2006

1120

3008A

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PARLIAMENT OF AUSTRALIA · THE SENATE

SENATOR RICHARD ALSTON

*Deputy Leader of the Opposition in the Senate  
Shadow Minister for Communications*

28 October 1993

Mr Robin Davey  
Chairman  
AUSTEL  
PO Box 7443  
St Kilda Road  
MELBOURNE VIC 3004

Dear Robin

Thank you for the opportunity to explore the implications of the latest proposals for resolution of the COT Case complaints and to put in place an appropriate process to deal with future complaints.

As I understand the proposal it would be based on the UK model. The process would be managed or facilitated by the Telecommunications Industry Ombudsman, who would then contract out arbitration responsibilities to one of a panel of arbitrators for each of the claims in order to enable all matters to be dealt with as expeditiously as possible.

Both sides would then put written material before the arbitrator who would then hand down a judgement without taking submissions or hearing evidence. The UK experience suggests that complex cases can take up to three months before a decision is handed down but it could be anticipated that these matters would not take that length of time.

I have already indicated to Ian Campbell that, whilst I was generally inclined to favour the proposals, the Opposition would reserve the right to consider the establishment of a Senate Select Committee if AUSTEL's report raised matters of serious concern regarding outstanding problems or if there is evidence to substantiate the persistent complaints made by COT Case members, particularly Mr Schorer, of "misleading and deceptive conduct" on the part of Telecom. ↙

You will have received a copy of a letter dated 23 October 1993 from Mrs Ann Garms to Mr Frank Blount. Attached to this letter is a document setting out what are described as "extracts of documents identified by Coopers and Lybrand to substantiate COT allegations".

1121

.../2



- 2 -

If the quotations are accurate they would indicate that, despite a concession from Telecom Protective Services on 29 May 1990 that 28 incoming and unanswered calls had been received at Mrs Garm's restaurant, less than a month later the Corporate Secretary was indicating that special monitoring equipment had not revealed any problem. Whilst such an answer may be technically correct in relation to the results of the monitoring equipment, it clearly understates and indeed dismisses problems which Telecom had already conceded.

Further entries refer to "a minor intermittent problem with a relay contact", "a possible faulty rotary", "line one is being stepped over for no apparent reason", "network support confirmed a fault that exists", "problems being experienced ... line one going dead for a few minutes".

Yet on 17 January 1991, Telecom apparently reported to the Commonwealth Ombudsman that "all reports have been carefully checked but nothing has been revealed to indicate any problems ... so far nothing has been found to substantiate the customer's various claims". This answer would seem to be, at the least, disingenuous. In similar vein is the reply on 6 September 1991 "we have been unable to determine any network based condition that has the potential to cause the problems you allege". Again this would seem to be a less than frank answer. A further example would seem to be contained in the letter dated 15 September 1992 and the letter dated 6 April 1993.

If indeed Coopers and Lybrand have identified these documents and this would seem to be confirmed by a report in yesterday's Financial Review - I am somewhat surprised at my understanding from you that Coopers and Lybrand will not be dealing with these matters.

I therefore seek your confirmation that you will fully investigate such allegations and if necessary make the appropriate recommendations to ensure that such behaviour is unlikely to occur again. It could also be appropriate to recommend that in the event of future corporate misbehaviour, the Ombudsman should have jurisdiction to make a punitive award of damages.

Yours sincerely

*Richard Alston*

**RICHARD ALSTON**  
Deputy Leader of the Opposition  
in the Senate  
Shadow Minister for Communications

RKR/aw

1121

# 11: Testing the System

Material in the previous chapter demonstrates how F.O.I. documents helped to expose the depths to which Telstra executives would drop to minimise, trivialise, or belittle customer complaints. Technical records also reluctantly provided under the F.O.I. Act expose further concerns in the areas of Telstra call monitoring devices and methods, customer surveys, incorrectly charges calls, and the use of flawed reports from 'independent' overseas investigators.

I do not disagree with the right of Telstra to use a M.C.T. (Malicious Call Trace) or other monitoring devices in their attempts to identify and rectify telecommunication network problems. I do, however, react strongly to the misuse of these powers. In September/October 1992 when C.O.T. was perceived to be a treat to Telstra, C.O.T. members believed that their telephones were being taped without their knowledge or consent.

```
CORPORATE & GOVT, MAJOR CUSTOMER GROUP                               19/08/92 (02/93)
PADGHAM                                                                SVC01                2.4.8
                                                                Restore : 00/00/00
                                                                Time : 0:00

SERVICE ORDER DISPLAY
PRESS [ESC] TO LEAVE THIS FUNCTION

Order No.: 85773596      Serial #:
Customer : ( ) Site No. :0001      Name:
2) Address : 52 COSTIN ST      Phone:
3) City/ST : FORTITUDE VALLE QLD 4006      Map Locn:
4) Crs strt :      Hours:      Phone: ( )
5) Contact :
6) Site Remark:

7) Territory : B2-2S-213-VLY Quote:      Open Svc Calls: N CSR : BAH01 DSP: BS
8) Contract : 201521 RENT      C/T: RAS      Eff: 28/10/90      Exp: 28/10/9
9) System : E308      COMMANDER E308      10) TO #1
11) Called In: 10/03/92 12) Time: 03:29      Type: E308 RENT CONTRACT
    Call Status: CL 13) Bill Type : NC 14) Req. Type:      15) Priority: 01
16) Commit Dt: 10/03/92 Time :16:00      17) Appt IC:      Time: 0:00 0:00
18) FE : B702
19) Description: LINE 1 NDT NRR SUSPECT SABOTAGE ??????

F1: Labor Usage F2: Parts Usage F3: Solutions F4: Misc Expense <CR>: Continu

CORPORATE & GOVT, MAJOR CUSTOMER GROUP                               19/08/92 (02/93)
PADGHAM                                                                SVC01                2.4.8

SERVICE ORDER DISPLAY
PRESS [ESC] TO LEAVE THIS FUNCTION

Order No.: 85773596      Call Type: C20      Serial#:      Commit: 10/03
Customer : TIVOLI THEATRE RESTAURANT      COMMANDER E308
Contact :      Phone: ( )      Terr: B2-2S-213-VLY
Descr : LINE 1 NDT NRR SUSPECT SABOTAGE ??????
Narrative:
1) 10/03/92 07:10 EB613
2) 2528373 TESTS LOOPED....8K ...MAYBE THE BUG HAS SLIPPED OFF
3) LOCKS LIKE A JOB FOR SUPER SLEUTH SHERLOCK KELLY?????????
4)
5)
6)
```

1122

The previous documents indicate that on 19 August 1992 the telephone of C.O.T. member Ann Garms - of the Tivoli Theatre Restaurant serviced from the Fortitude Valley Exchange - was suspect to "sabotage?????" and that "maybe the bug has slipped off". What was the bug? Who was using it? Who was "Super sleuth Sherlock Kelly???????" F.O.I. document B00471 shows that the Tivoli Theatre Restaurant was certainly under scrutiny. By the way, was the Compass referred to in this document Compass Airlines? I believe it was serviced through the Fortitude Valley Exchange and also experienced horrific telephone problems - but that's someone else's story.

File Subject Interference

Phone [REDACTED] From [REDACTED]

To [REDACTED]

This document contains allegations, circumstantial evidence, facts and hearsay supplied over a period of time by 3 particular customers. I wish to point out I have compiled the following from a third party perspective and do not guarantee the accuracy or otherwise of the information.

My reasons are that I am continuously bombarded by these allegations from customers due to my exposure to them, up to now I have shrugged them off. Now if there is any substance in them I feel Telecom should at least keep itself informed.

There have been a number of other customers alleging possible interference, but in all these cases we have satisfied both ourselves and a customer they had been the victim of nothing more than a technical problem. These three however leave room for doubt.

OLI.

John Bereton (Fed Police) initially stated a particular person was paying money for 3 people + others in Telecom to manipulate some services. References were made of Gus Dodds and a KH at Lutwyche as being close to truth. Why was Federal police stopped from investigating Tivoli case, till John Ingram of Protective services got a letter from Anne Garms saying investigation reopened. Why did John Bereton start to deny anything and the volunteer for service in New Guinea for 2 years.

Why was Gus Dodds of Protective Services investigated? and investigation stopped short of his bank account, Did Barry Bennet do this. As he seen by Brian Toohey (Compass Security) & others helping himself drinks behind the bar at the International Hotel at Spring Hill and their office for phone calls as if he owned the place.

Why were investigations into allegations of sabotage to Compass Airlines stopped?

B00-171



A second letter from Wally Rothwell, written on 29 March 1996, further compounds the mystery of the missing White Pages listings. Not only would we "be flogging a dead horse trying to extract more", but who signed the directory listing form?

29 March, 1996

Our Ref: D/95/36

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



Telecommunications  
Industry  
Ombudsman

John Finnock  
Ombudsman

Dear Alan

We spoke on the phone on 20 March about the closing of your case with the TIO and you asked me to continue to seek from Telstra its final word on your White Pages, which I undertook to do, even though we had closed your case here.

I subsequently spoke to the Ombudsman about your request, before I got down to writing, and it was his view that we had received all that we were going to get from Telstra on the White Pages issue and we would be flogging a dead horse trying to extract more.

Clearly, Telstra is unable to give any reason why your service was not included in the other eighteen directories, in 1993, because it lacks any records. Telstra has also said all it is going to say about the matter of your business name. And it would appear that pursuit of the issue of the signature on the directory listing form, while it may be of interest in your book, is a tenuous one for us.

For this reason, we are unable to pursue the matter further and so I must walk back on my undertaking to you, with apology for misleading you.

Yours sincerely

  
WALLY ROTHWELL  
DEPUTY OMBUDSMAN

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

TIO LTD ACN 057 634 787  
National Headquarters  
315 Exhibition Street

Box 18098  
Collins Street East  
Melbourne 3008

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

1124

28 September 1995

Our Ref: D/95/36

Mr Steve Monro  
Manager, Customer Response Unit  
Office of Customer Affairs  
Telstra Corporation  
Level 2, 242 Exhibition Street  
MELBOURNE VIC 3000



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

Dear Steve

Mr Alan Smith - White Pages Listing

I refer to Patricia D'Cruz's letters of 12 and 22 September regarding the listing of Mr Alan Smith's Cape Bridgewater Camp/Country Get-A-Ways 008 number in the 1993-1995 White Pages directories.

Specifically, I am interested to know why his number was listed, in 1993, in the Warrnambool directory and not any other. Would you please advise the closing dates for Australia-wide listing of the respective directories for 1993. For instance, it is my understanding that the closing date for the Melbourne directory has been March each year, for some time. How is it that there was no entry therefore, in the 1993 Melbourne directory, especially noting that particular effort must have been made for the Warrnambool listing, entries for which closed on 3 January 1992?

With regard to the matter of business name, the TIO notes that Cape Bridgewater Holiday Camp and Convention Centre was registered as Business Number 1203919U on 8 March 1995. Would you please also advise as to how long it has been policy that a non-residential entry must be in a Registered Business Name or a Trading Name?

I would appreciate your early response please.

Yours sincerely

Wally Rothwell  
Deputy Ombudsman

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

TIO LTD ACN 057 634 787  
National Headquarters

Box 18098  
Collins Street East

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

1125

**Pendlebury, Bruce**

From: Pendlebury, Bruce  
To: Black, Stephen  
Date: Thursday, 7 April 1994 7:57AM

K01003

Steve,

at 4:55 pm 6/4/94 I was informed by Network Ops that the route into Portland exchange would be increased by 30% . The work was to be completed prior to midnight that day. This should alleviate any problems Mr. Smith or anyone else in the area has been experiencing with congestion into the area for some time.

PS. I believe this took part place as result of the normal growth and evolution of the network rather than as a result of complaints by Mr Smith.

Regards, Bruce P

**Food for Thought**

Congestion was a regular issue in the Portland/Cape Bridgewater region. In March 1994 Telstra Chief Executive Mr Frank Blount rang me, and after a lengthy discussion, stated that he was not treating my concerns lightly. I feel that Mr Blount would have been amazed to have seen the recently discovered F.O.I. document K01003 dated 7 April 1994 from Bruce Pendlebury to Steve Black - customer response Telstra.

*"Steve: at 4.55pm 6/4/94 I was informed by Network Ops that the route into Portland exchange would be increased by 30%. The Network was to be completed prior to midnight that day. This should alleviate any problems Mr Smith or anyone else in the area has been experiencing with congestion into the area for some time."*

Technical data in F.O.I. showed that on 6 April 1994 30 CCTS was increased to 60 CCTS - mathematically this is either a 50% or 100% increase depending on how the figures are constructed. It was not a 30% increase as stated by Bruce Pendlebury.

This Freedom of Information (FOI) document, K01003, supports the information above, concerning congestion into the Portland region. Mr Pendlebury's comment that this increase was implemented *"as a result of the normal growth and evolution of the network rather than as a result of complaints by Mr Smith."* would seem to indicate that he was not aware that I was instrumental in first alerting Mr Blount to the congestion in the Portland area.

1126

99

Doody, Chris

From: Grindlay, Mark  
To: Doody, Chris  
Subject: CAPE BRIDGEWATER C.O.T.  
Date: Wednesday, Apr 06, 1994 2:59PM  
Priority: High

Chris,

Following previous lost call analysis of the Z route between Warmambool Node and Portland AXE-R (PORX), it was decided to increment this route from 30 to 60 ccts. As no free ETC's or cabinet infrastructure is available at PORX a project has been issued to NDC to increment the route by replacing an empty LSMR 120 with a LSMR 64. The current status of this project is as follows:  
Material in on site, and design pack has been issued to field. Installation ( Rod Fry ) awaiting data from DPG. Rod Fry is aiming to do the job tonight ( 6/4/94 ) if the data arrives in time. If not, it will be either tomorrow night (7/4/94), or approx Wed next week ( 13/4/94) as there is an installation conference early next week and he will be short staffed. I have reiterated to all parties concerned the importance of getting this project done ASAP.

My original request to NDC is attached

From: Grindlay, Mark  
To: Grooby, Lloyd  
Subject: PORX - WBOX CCT INCREMENT & OTHER STUFF  
Date: Thursday, March 03, 1994 5:22PM  
Priority: High

Lloyd,

Could you please arrange for the Z route between Warmambool Node & Portland AXE-R to be incremented from 30 to 60 ccts. To do this without having to wait for the Tyrendarra & Heathmere repairs will require the installation of another LSMR 64 Line magazine as PORX currently has no free ETC's. There are currently no spare magazine positions in the AXE-R cabinets. I propose to replace the last installed empty LSMR 120 magazine ( EM 11 ) in the Extension 2 cabinet for a LSMR 64/0 LSMR. John Tampling has advised these magazines are in stock. Could you please fast track this project due to the sensitivity of the current COT case at Cape Bridgewater ( off PORX)

Also - Leigh Howlett advises that batteries/rectifiers for Gringegalgona, Ozenkadnook, Poolajelo & possibly Melville Forest ( L.H. to confirm) need replacement. Could you please arrange for replacement

Please create ECP projects for the above as appropriate. Could you please advise of timing for completion of the Portland Project so I can advise Network Investigations.

K04552

1127

Alan Smith - Seal Cove  
1703 Bridgewater Road  
Portland -3305

22 May 2014

The Hon Tony Abbott  
Prime Minister of Australia  
Principal Office  
Level 2, 17 Sydney Road  
Manly NSW 2095

Senator Scott Ryan ✓  
Liberal Party  
12 Pascoe Vale Road  
Mooney Ponds  
Vic 3039

Senator Barry O'Sullivan  
National Party (Queensland )  
P.O. Box 3135  
Toowoomba  
Qld 4350

Dear Sirs,

I am writing to you all, together, because it is clear in my individual letters dated 4 May 2014, to the three of you, that I should also have provided pages 282 to 291 (which are now attached). It is very clear from these eleven pages and the supporting Exhibits on the previously supplied CD to Mr Malcolm Turnbull MP, Senator Barry O'Sullivan and Mr Dan Tehan MP, that according to **Article 12 of the Universal Declaration of Human Rights**, my rights certainly were violated. It seems that the sixteen COTs on the Senate's Terms of Reference 'B' list (which includes myself) also had their rights violated under **Article 7 of the Universal Declaration of Human Rights** when they were not afforded the same rights of discovery as the five on the Senate's 'litmus test' list, who were provided with numerous important documents by the Senate Estimates Committee.

I am sure if Senator Paul Fletcher kept notes as I do he will remember two telephone conversations he had with me on 27 June and 23 August 1996 and a 72 page report he supposedly had read. Had he actually read that report in 1996, I would not be writing to you today and Senator Boswell would never have had a need to ask Telstra whether their BCI Cape Bridgewater tests were flawed because I had already provided this evidence to the then Paul Fletcher Ministerial Adviser for Telecommunications, whose once glance at this evidence would have concluded as the report on the CD AS 486 concludes the Bell Canada International Inc did NOT Generate 15, 950 tests calls into the CCS7 monitoring equipment allegedly installed at the Cape Bridgewater RCM unmanned exchange because the nearest exchange that could facilitate that equipment is the Warnnambool telephone exchange 116 kilometres from Cape Bridgewater.

In other words, had the then Paul Fletcher acted appropriately when he received this damning evidence in 1996 (I still have the actual copy of the report he sent back to me stamped accordingly (received on 12 June 1996) and acted upon it, all the trauma my partner Cathy and I have suffered since would have ended then.

My manuscript, "Ring for Justice", raises serious doubts as to whether the then-Communications Minister, Senator Richard Alston, was ever told about this 72-page report (and the supporting evidence which was attached to that report).

How easy would it be for the Australian Government to now officially ask me to provide a full copy of the unedited second version of "Ring for Justice" (currently standing at 336 A4 pages, including a Glossary) and stop the heartache now? The Government has nothing to lose and would, instead, discover the real truth regarding my claims.

I look forward to hearing from at least one of you in regards to viewing the still incomplete and unedited version of "Ring for Justice".

Thank you,

Alan Smith

1128



Alan Smith  
Seal Cove  
1703 Bridgewater Road  
Portland 3305

6 July 2014

Ms Angela Flannery  
General Counsel  
Department of Communications  
38 Sydney Avenue  
Forest  
Canberra ACT 2693

Dear Ms Flannery,

In your letter dated 13 June 2014 you advised that my letter of 4 May 2014 to the Hon Tony Abbott, Prime Minister

*"...was referred to the Department of Communications for reply.*

*Further, the matters dealt with in your letter have been fully assessed by the Commonwealth. These matters have been the subject of previous correspondence and will not be reopened".*

The CD that goes with my "Ring for Justice" manuscript has already been provided to the Hon Tony Abbott, Prime Minister; Mr Malcolm Turnbull, Department of Communications; Senator Scott Ryan, Victorian Senator; Senator Barry O'Sullivan and the Hon Barnaby Joyce. The documents on the CD positively confirm that, while various government public servants may have seen my arbitration claim material, which dates back to June 1994, 'the Commonwealth' **as you have put it, has NOT dealt with that material**, as the documents on the CD so clearly show. The threats that Telstra (the defendants in my arbitration) made and then carried out, under the noses of the Arbitrator, the Telecommunication Industry Ombudsman and a number Government ministers, have **NOT been dealt with 'by the Commonwealth'** and neither has the issue of Telstra's tampering with arbitration evidence that I freely gave them for arbitration testing purposes. The documents on the CD also confirm that the arbitrator and the TIO (who administered the arbitration process) knowingly and deliberately misinformed the President of the Institute of Arbitrators Australia regarding my valid claims that my arbitration was not conducted according to the agreed ambit of the arbitration procedure, which is another matter that **has not been dealt with 'by the Commonwealth'**, even though, on 26 September 1997, the TIO (John Pinnock) informed a Senate Estimates Committee and the Department of Communications that:

*"...most significantly, the arbitrator had no control over the process, because it was a process conducted entirely outside the ambit of the arbitration procedures."*

The information on the CD also indicates that, when the Hon David Hawker MP was my Federal Member of Parliament he passed my evidence on to Senator Richard Alston when the Senator was the Minister for Communications in the Howard Liberal Government, and Senator Alston's staff then wrote to the TIO and Telstra asking for help with my claims that Telstra had acted unlawfully towards me during my arbitration and the TIO had NOT conducted my arbitration according to the ambit of the Commercial Arbitration Act. The Department of Communications **public servants** who investigated those claims should never have referred my complaints back to either Telstra or the TIO to investigate because, as you and the Hon Malcolm Turnbull would know, it is totally *unacceptable for any organisation to conduct an investigation into itself when claims of misconduct have been made against it*; and yet, for still unknown reasons, in my case the government public servants sent my claims to the two parties I had accused, as a number of the DCITA Exhibits on the CD so clearly show.

Various interested parties have helped me to compile the evidence on the CD and in "Ring for Justice" including one who **has been a very senior Victorian Police Officer**; who is also a recipient of the Order of Australia; who has assisted both the Victorian and Australian Governments to detect fraud; and who is well known to the Hon Richard Alston, the newly elected Federal President of the Liberal Party. All the various people who have helped me, particularly the ex-police officer, know that my evidence is factual. In October 2007 the ex-police officer personally provided this evidence to Peter Hiland, Victorian Barrister for Consumer Affairs Victoria and Mr Hiland then declared that

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the evidence, which is now on the CD, was 'overwhelming'. When I told Mr Hiland that I could prove that Telstra-related arbitration material had been successfully faxed by a Melbourne lawyer to one of the COT claimants when that claimant was staying in a hotel in Canberra but, just days later, when this same lawyer faxed similar material to the same claimant, except this time the fax was sent to the claimant's Melbourne office, it was intercepted before it reached its intended destination, Mr Hiland was speechless. Not only did I supply him proof of this fact, I also gave him copies of some of my own faxed arbitration material that had eventually been returned to me after the end of my arbitration and it is obvious that some of those documents were stapled to arbitration material belonging to a **different COT claimant**, meaning that both that other claimant's material and my own missing material could not possibly have been properly assessed by the arbitrator. At the same time I also provided Mr Hiland with a copy of one of my Telstra fax accounts that showed that Telstra had billed me for six faxes that they advised the arbitrator could not have possibly been sent from my office to his and, surprise, surprise, the arbitrator believed Telstra's defence that these claim documents could not possibly have been sent even though I gave the arbitrator copies of my fax account proving that they all left my office. **So where are these unaddressed claim documents?**

The ex-police officer referred to above, who was also a Victorian police prosecutor, would confirm that Mr Hiland (who used the word 'collusion') asked for all of my CAV evidence to be copied onto a CD, which I then sent on to him. I am sure if your office was to ask the Hon Richard Alston about this ex-Victorian Major Fraud Squad senior police officer, the Hon Richard Alston would know immediately who I am referring to, and would confirm his integrity.

Some people who have read the draft version of "Ring for Justice" have asked if it had occurred to me that my experiences in China in 1967 might have prompted so many government public servants to continue to insist that my claims are not valid when the CD of Exhibits, and my manuscript, show otherwise. I have, for a long time, also held a strong belief that my treatment, in relation to my Telstra claims, has something to do with the statements I made about the USA back then.

### Peoples Republic of China

Between 1960 and 1987 I worked on various British and Australian merchant navy ships and, on **28 June 1967**, I signed on, in Melbourne, to the MV Hopepeak, which was manned by members of the British Merchant Navy, with a West Indian deck and engine crew. I was initially told by the British Seaman's Union representative in Melbourne that we were bound for Canada and it was only after I had signed official articles that I was told that we were actually bound for Communist China, after first loading wheat in Port Albany, Western Australia. There was just no way I could leave the ship at that point, because I had already jumped a previous English ship (the Port Lyttelton) in April 1963, in Melbourne, and could not afford to have another 'Not Completed Voyage' stamped in my Seaman's discharge book (which is available for inspection).

The crew of the Hopepeak were shocked to discover that Australia was trading with what was then the People's Republic of China, particularly since China was then supporting North Vietnam and Australian troops were dying in the North Vietnamese/Vietcong war. The crew were all well aware of the troubles facing the world at the time and they would have preferred not to be heading to China, even though Australian public servants had assured the then-Australian Liberal Government that, for humanitarian reasons, it was OK to trade with Mao Tse-Tung in China. As the only Australian on board, I wondered if the public servants who were providing that advice to the Government actually knew that, just two years before the loading of the Hopepeak, Mao was suppling Albania, North Korea and North Vietnam with free grain or, I wondered, perhaps they did know about that but, just like some public servants involved in the COT arbitrations between 1994 and 1999, it seem that, back in 1967, the details were unimportant, just as long as Australia sold their wheat. According to more recent media reports however, some prominent business people and public servants were apparently involved, not so long ago, in the Saddam Hussein/AWB grain scandal, with millions of dollars in kickbacks changing hands. Although the AWB, and therefore also the Australian Government, were **not the only entities to be implicated in the oil-for-food scandal**, what happened was scandalous to say the least. And then of course we have the latest scandal involving Eddie Obeid, Barry O'Farell, Senator Arthur Sinodinos, the Australian Water Holdings and, once again, millions of dollars in kickbacks.

So, back in the 1960s, who were the faceless public servants who were telling the Government that it was OK to trade with Mao and his band of Red Guards while Australian wheat was being offloaded

by peasants with grappling hooks, and the peasants were then being bludgeoned to death by their so called 'comrades'? It seems that they were probably a similar breed to the Australian public servants who have told the Australian Government that my claims against Telstra and the TIO's arbitration consultants are not valid, when the CD I provided to the Hon Tony Abbott, and the Hon Malcolm Turnbull shows a completely different story.

In 1967, those Australian bureaucrats who thought it was OK for the Government to send wheat to the People's Republic of China must surely have known that Mao Tse-Tung also authorised the supply of planes, more than a hundred ships, guns, tanks, thousands of trained technical personnel, and financial assistance, to North Vietnam. Did it not dawn on these Australian bureaucrats that some of the Australian wheat being provided to Mao and the People's Republic of China might actually have gone on to feed some of the North Vietnamese/Vietcong who were then killing and crippling many of our young, unseasoned soldiers?

While our ship was unloading this Australian wheat in China however, I was arrested by Mao Red Guards who were allowed to beat prisoners to death rather than shoot them because bullets were too costly. I was told that I would not be released unless I agreed, in writing, that I was a **US sympathiser and follower of Chiang Kai-Shek**, who was then living in exile in Formosa (Taiwan). My first two attempts at writing what the Guards wanted were rejected and then the Captain of our ship advised me that I only had one more chance; when I refused to write what the guards wanted I was told that they would kill me as they were killing their own, just as they had suggested they would kill me too, over the previous few days when, every half hour or so the Guards would wake me up by prodding me with a rifle. The skipper insisted that I would not be leaving with the ship if I didn't do as the Guards wanted and so, eventually, I could see no way out other than to fuel their propaganda machine and I wrote that I hated America and its invasion of North Vietnam.

Since the end of my failed Telstra arbitration I have gone over and over these events in my mind, trying to work out why so many Government bureaucrats have insisted on advising so many Government Ministers that my claims against Telstra and the TIO-appointed Resource Unit are invalid, even though all the evidence proves that this is not correct at all. Can you tell me why this is happening, Ms Flannery, when the evidence on the CD and in the correspondence I have sent to the DCITA over the last two decades proves that Telstra didn't even carry out the twenty mandatory **incoming Service Verification Tests** to each of my three telephone lines that *AUSTEL's COT Cases* report said would occur so that it would be proved that any ongoing telephone problems had been fixed, before the arbitrator brought down his findings?

On 2 February 1995, a prominent AUSTEL public servant (see Exhibit **AS 573** on the CD) advised the then-Minister for Communications, Michael Lee MP, that all the tests conducted at the premises of the COT claimants (Difficult Network Fault) cases had "...met or exceeded the requirements established", even though AUSTEL had written to Telstra on 16 November 1994 (before the February 1995 letter) asking what they intended to do regarding the deficient SVT processes they were supposed to have carried out at my business (see Exhibit **AS 123**, **AS 124**) on the CD). Telstra even went one step further and submitted an arbitration witness statement, under oath, advising the arbitrator that the SVT process confirmed there were no more ongoing telephone problems affecting my business (see Exhibit **SVT E35-A** on the CD). Other Exhibits on the CD, including **AS 486**, show however that the faults continued up to at least 2006, eleven years after Telstra submitted their lies-under-oath witness statements.

One of the issues that has had me going over and over the China episode in my mind is that when I was being interviewed by the press in Sydney on the 18 September 1967, the day after we arrived back from China, I was told that my China experience was a major news story but when the story came out in the newspapers it was only a very small article; when I later spoke to the journalist who wrote the article I was told that my side of the story had been 'pulled' and the reporter remarked then that I would be a marked man, or words to that affect, and the government would have put a black mark against my name, as a communist sympathiser 'Commie'. Did this comment about me becoming a marked man mean that I would be under some sort of surveillance for the rest of my life?

Senate Estimates Committee Hansard records of 24 June 1997 confirm that, after I had provided Senators Chris Schacht and Kim Carr with documents that proved that Telstra had collected information about my private life, even though that information was not connected to my arbitration in any way, the Senators then asked Telstra if they had used their intelligence network to acquire this

information. Various FOI and Australia Federal Police documents on the CD including **GS & AS 900** provide clear proof that I have every reason to believe that my private life is still not so private.

Exhibit **AS 639** on the CD is a small Government report that was used by the Department of Communications, Information, Technology and the Arts (DCITA) during their allegedly Independent Assessment of my claims against Telstra in March/April 2006. It is quite clear that this document was used to verify whether or not my claims against Telstra and the TIO-appointed arbitration consultants were valid but it does not agree with AUSTEL's covert and much more adverse findings (see Exhibit **AS 487** on the CD) and nor does it match other Exhibits on the CD that confirm that my claims are correct. Since you are a trained lawyer, perhaps you could ask the Minister to provide you with a copy of the CD so you can confirm my claims for yourself. Exhibit **AS 639** indicates that other archived government files related to my arbitration matters certainly do not present a true account of the facts. This then also suggests that it is quite possible that the Government's archived files regarding my China matters could also be incorrect, perhaps because public servants have 'cleansed' those files to suit the Government, branding me as the 'baddy' in the matter, when I was only trying to advise the government that it was morally wrong to be selling wheat to China when China was supplying the North Vietnamese with arms and transport at the same time as our troops were trying to kill them or trying not to be killed themselves.

Exhibit **AS 577** and **AS 578** on the CD confirms that on **31 August 2006**, the Hon David Hawker, Speaker in the House of Representatives, wrote to me noting:

*"Many thanks for keeping me informed. As requested, issues concerning privacy breaching have been raised with Senator Coonan's office for your meeting with the Minister set for 6 September 2006".*

**PLEASE NOTE:** The Minister did not address the privacy breaching issues during this meeting.

Exhibit **AS 629** on the CD confirms that, on **Secon December 2008**, Darren Lewis, the new owner of my business, wrote to Registrar Caporal, at the Federal Magistrates Court of Australia appealing against his then threatened bankruptcy. Mr Lewis partly blamed the ongoing telephone problems for the position he was then in, writing:

*"I was advised by Ms McCormick that the Federal Magistrates Court had only received on 5th December 2008, an affidavit prepared by Alan Smith dated 2<sup>nd</sup> December 2008. PLEASE NOTE: I originally enclosed with Alan Smith's affidavit in the (envelope) overnight mail the following documents:*

1. *Two 29 page transparent s/comb bound report titled SVT & BCI - Federal Magistrates Court File No (P) MLG1229/2008 prepared by Alan Smith in support of my claims that I had inherited the ongoing telephone problems and faults when I purchased the Cape Bridgewater Holiday Camp*
2. *Two s/comb transparent bound documents titled Exhibits 1 to 34*
3. *Two s/comb transparent bound documents titled Exhibits 35 to 71 (the attached 71 Exhibits was enclosed in support of Alan Smith's 29 page report);*
4. *Three CD Disks which incorporated all of the submitted material.*

*On learning from Ms McCormick that the information discussed above in points 1 to 4 had not been received by the Federal Magistrates Court I again had a stress attack seizure, a problem I have been suffering with for quite some time due to the predicament I now find myself in and the disbelief that once again my mail has been intercepted. (my emphasis) I have attached herewith dated 3<sup>rd</sup> December 2008, a copy of the Australia Post overnight mail receipt docket numbers SV0750627 and SV0750626 confirming the total cost to send the above aforementioned information was \$21.80. I am sure Australia Post would confirm that a large amount of documents would have been enclosed in these two envelopes when they left Portland".*

The documents that Mr Lewis listed (above) were four Telstra-related submissions and other exhibits that I had provided to the Federal Magistrates Court to support my affidavit. NONE of these four reports and supporting exhibits were in the envelope when it reached the Federal Magistrates Court. A copy of Darren Lewis' Australia Post overnight mail receipt for docket numbers SV750626/7 confirm

that the Portland Post Office charged Mr Lewis \$21.80 for an overnight express post-bag which then only contained my two page affidavit when it was received at the Magistrates Court.

To learn that important documents that were properly submitted to the Federal Magistrates Court in December 2008 were somehow 'lost' along the way is bad enough, but to find that it was already happening more than fourteen years before 2008, between 1994 and 1999, is actually quite horrifying. Back then, in the 1990s, the documents that vanished into thin air included many official arbitration papers related to my business in Cape Bridgewater, some of them the very same BCI (Bell Canada Inc.) and SVT (Service Verification Test) reports that Mr Lewis refers to in his letter (see page 4; above), along with other important evidence that I had compiled for my arbitration claim and tried to fax to the arbitrator but, back then, the TIO and the arbitrator refused to carry out any investigations at all into the disappearance of these important documents. Surely this is not a coincidence? There must be some sort of intentional, sinister link between the 'loss' of my 1994/95 BCI and SVT arbitration submissions that never arrived at the arbitrator's office and, in 2008 (fourteen years later), the very similar 'loss' of **the same type of BCI and SVT information** that, this time, it was lost between the Portland Post Office and the Federal Magistrates court, where it never arrived?

Exhibit AS 628 on the CD, a document dated 24 April 2008, confirms that, long before Mr Lewis wrote his letter to the Federal Magistrates Court, I had written a similar letter to the Administrative Appeals Tribunal when my FOI claims against the ACMA were being heard. That letter asked the AAT to understand why I had entered a friend's address on the back of the overnight express post-bag I had used to submit part of my submission to the AAT because, as I explained, many of my Telstra-related documents never reached their intended destination.

Exhibit (AS 746) on the CD shows that John Pinnock (TIO) wrote to me on 28 June 1995 stating:

*"...Dr Hughes (arbitrator) then invited you, within twenty-four hours to respond to Telecom's submission. Our files does not indicate that you took the matter any further".*

Exhibit AS 665-B, is a copy of the actual letter I sent to Dr Hughes on the 24 January, 1995 (within the twenty-four hour limit he allowed me). This letter was returned to me from the arbitrators office (three months after my arbitration). The fax-footprint on this two page letter 24-01-1995 - 15:12 - FROM CAPE BRIDGE HDAY CAMP TO 036148730 confirms Dr Hughes office did receive it.

### CONCLUSION

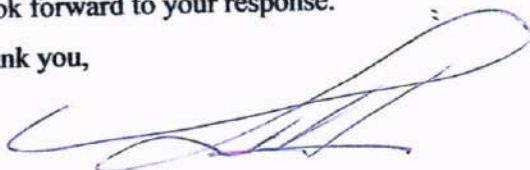
The problem is that you, Ms Flannery, and the likes of the Hon Mr Turnbull, appear to have been brainwashed by your advisors in relation to the serious *invasion of privacy issues* that my partner and I have been forced to live with for so very many years, even though [Article 12 of the Universal Declaration of Human Rights](#) states that:

*"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".*

I am seventy years old now, and I have done nothing wrong; all I have ever done is speak the truth as I see it, so I am now asking you to please tell me, does the Government have a file on me regarding my time in China and what I said while under severe duress, in relation to the USA and Chiang Kai-Shek and, if this is not the case, then why is the Government insisting that I do not have a case against Telstra or the arbitration process when the Exhibits on the CD show so clearly that I do have a case, both against Telstra and against the TIO's office, for allowing the arbitrator to conduct my arbitration process entirely outside the agreed ambit of the Commercial (Victoria) Arbitration Act 1984.

I look forward to your response.

Thank you,



Alan Smith

Copy to: The Hon Richard Alston, Federal President of the Liberal Party, and other interested parties

1129

Alan Smith  
Seal Cove  
1703 Bridgewater Road  
Portland Vic 3305

11 July 2014

The Hon. Tony Abbott  
Prime Minister of Australia  
Principal Office  
Level 2, 17 Sydney Road  
MANLY NSW 2095

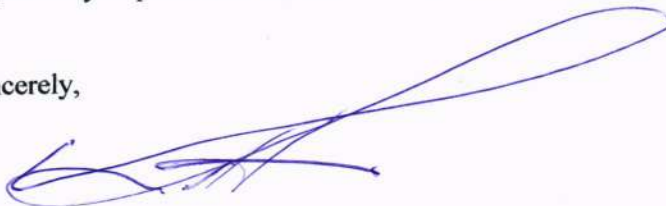
Dear Prime Minister,

The attached letter dated 6 July 2014, to Angela Flannery, General Counsel for the Department of Communications, which is also on the CD I sent to you with my other correspondence dated today discusses how, back in 1994 and 1995, some of my faxes were intercepted and others simply never arrived at the arbitrator's office. Evidence of this is well documented in my manuscript, "Ring for Justice", and the main Exhibit CD which has already been provided to your office, the office of the Hon. Malcolm Turnbull, Senators Barry O'Sullivan and Scott Ryan, and Mr Daniel Tehan, Federal Member for Wannon. Transcripts of the meetings I had with the Australian Federal Police during my arbitration confirm that not only did Telstra collect information about my private and business matters as early as September 1992 ( at least eighteen months before I went into arbitration in April 1994), but the evidence on the first CD I previously sent also demonstrates that, when I discovered that my business fax line was being intercepted and so began to send my private and business faxes from my home phone line, which was **NOT** a dedicated fax line, then someone with access to Telstra's network began to intercept those faxes too, even though they were leaving from a private phone line connected to my private residence. I also have evidence that proves that this interception, which occurred via Telstra's fax screening process, continued up until at least December 2002 and, I therefore believe, that this means that **I have every right to demand an explanation for this**, and to ask if it has anything to do with the China issues I raised in my letter to Ms Flannery?

Transcripts of my first Administrative Appeals Tribunal (AAT) Hearing on 3 October, 2008 with the Government Communications Regulator (ACMA) as the respondents, show that I advised both the respondents and the Senior Member of the AAT, Mr. G. D. Friedman, who was conducting the Hearing, that I was requesting access to FOI documents from the ACMA through the AAT hearing because those documents were all in the public interest. I also indicated that, before I released any publication about the justice that the arbitration process had denied me, my manuscript would first be offered to various Australian Government Ministers and Senators, for their approval.

Prime Minister, all your advisors have to do now is officially request a copy of the still-unedited version of my 362 page manuscript, "Ring for Justice", as before those advisors even come anywhere near the end of that document, they will understand that all of the claims I first raised with the Labor Government in 1995, with the Liberal Government in 1996, and which I have continued to raise right up to the present day with your office, with the Hon. Malcolm Turnbull's office and with Senator Barry O'Sullivan and Mr Daniel Tehan, are **true and correct**. What have you and the Government got to lose by officially asking for a copy of "Ring for Justice"? After all, I am offering you the opportunity to prove that my claims are incorrect and the TIO and ACMA are correct.

Sincerely,



**Alan Smith**

*Copies to: The Hon. Richard Alston, President of the Federal Liberal Party, and other interested parties*

1130

Alan Smith  
Seal Cove  
1703 Bridgewater Road  
Portland Vic. 3305

11 July, 2014

The Hon. Tony Abbott  
Prime Minister of Australia  
Principal Office  
Level 2, 17 Sydney Road  
MANLY NSW 2095

Dear Prime Minister,

I have today just received a very welcome letter dated 7 July, 2014 from your office, in response to the information I forwarded to you on 22 May, 2014. I am pleased to note the comment that my views have been: "... *noted and they are important. A strong democracy and a responsive government always require constant feedback from its people about the issues that concern them.*"

I have now attached here a copy of my latest letter, dated 6 July, 2014 to Ms Angela Flannery, General Counsel for the Department of Communications, together with copies of three transcripts of phone conversations that took place on 13, 19 and 22 April, 1999. The transcripts are related to an earlier transcript, dated 12 April, 1999 which I have already sent to your office and all four transcripts are now on the new CD, which is enclosed, along with copies of a further two letters dated 12 January and 14 April, 1998 from Graham Schorer and Ann Garms to John Wynack, Chair of the Senate ERCA Legislation Committee Working Party.

Ms Flannery wrote to me on 13 June, 2014 suggesting that I should seek my own legal advice as to whether to use the 12 April, 1999 transcript as evidence in the manuscript I am currently completing. I have sent it to you again, firstly because I believe it raises a serious matter involving Senator Ron Boswell, who has truly been a Senator of the people, and I was concerned about tarnishing his good name. Secondly, because I hoped your office would at least look into the topics discussed in that transcript, including the references to Senator Barry O'Sullivan since (before he became a Senator) he was involved with Senator Boswell in authorising compensation payments to the Queensland Endeavour Foundation, which was never included in the 1997 Senate Estimates Committee Terms of Reference (see below) for investigation into the COT claimants' FOI issues. It seems however that either Senator Boswell or Senator O'Sullivan managed to squeeze \$500,000.00 compensation from Telstra for the Endeavour Foundation but the sixteen COTs who had agreed to go on the "B" list in the terms of reference received NO compensation because of Telstra's unlawful conduct towards them during their government endorsed arbitrations/mediations.

In case your office is not aware of the reasons for the establishment of the Senate Estimates Committee Terms of Reference, I should explain that it was because of the many complaints that the Commonwealth Ombudsman had received from numerous members of COT, all complaining that Telstra had either **destroyed or concealed evidence from those who had gone into litigation against them**. Some of those complainants were from among a group of five COTs who had, according to the Terms of Reference, been labelled as the 'litmus test' cases, while the other sixteen (as referred to above) were allocated to a "B" list. The "A" list, 'litmus test' claimants were intended to provide a benchmark for those on the "B" list so that, if the 'litmus test' claimants proved their cases, then those on the "B" list would automatically be provided with access to the Senate process along with the documents that had been concealed from them in the past. A letter dated 5 November, 1998 from John Wynack of the Commonwealth Ombudsman's Office to Senator Patterson, Chair of the Senate ERCA Committee confirms that the COTs had now received 150,000 FOI documents as a result of the Senate's involvement. I have seen some of this evidence and I know, if it had been provided to me in similar circumstances, I would have been able to appeal my award (and probably win that appeal); I would not even have needed to ask for compensation through the Senate Committee working party. This means that the sixteen COTs were not only **denied the right to discovery**, and therefore the right to appeal their awards, but they lost out on the compensation that the five 'litmus test' cases were awarded. **How's that for justice?**

I am sure the Hon. Richard Alston will agree that, two years after the establishment of the Senate enquiry, those on the "A" list had received at least some of the documents they had requested, but Telstra was still playing hardball, even though the Senate had become involved, just as they had through all twenty-one of the earlier arbitrations and mediations. As it turned out however, this process became one of discrimination which led to compensation only being offered to (and accepted by) the five 'litmus test' cases. As a direct result of this two-year-long battle by the

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Senate Estimates Committee Working Party, and with the Howard Government hell-bent on privatising Telstra by then, it looked like it would probably take another two years or more before there was even a small chance that the sixteen on the "B" list would receive any of the documents they had been promised, and so the government apparently decided that those sixteen lives were expendable; perhaps we were simply seen as unavoidable collateral damage.

I suppose that, in some sections of government, confronting the possibility of collateral damage just goes with the position and, while it is hard on those who are the collateral damage, particularly the sixteen COT claimants on the Senate Estimates Committee "B" list, it seems that, for whatever political reasons, it is apparently much more important to ensure that political favours are granted, which is exactly what happened when Senator Boswell and Senator O'Sullivan allowed the Endeavour Foundation to be compensated ahead of those on the Senate Committee "B" list.

### Victoria Police Major Fraud Group

It is now clear that neither your office nor the Hon. Richard Alston are actually aware of the reasons behind my involvement with the Victoria Police Major Fraud Group, in relation to the COT/Telstra arbitrations, but this situation arose because, as requested, I had provided Ms Sue Owens, the lawyer representing COT member Ann Garms (who is well known to both the Hon. Ron Boswell and Senator Barry O'Sullivan) with evidence that proved that the Cape Bridgewater/Bell Canada tests could not possibly have been carried out as described in the report that Telstra had used as part of their arbitration defence of my claims (see letters 12 January and 14 April, 1998 on the enclosed CD). After providing that information I was then contacted by a Mr Neil Jepson from the Major Fraud Group, as part of their investigations into the claims of four of the five 'litmus test' cases, because the Fraud Group were looking for proof, both that Telstra had acted unlawfully during the COT arbitrations and that Telstra and the Telecommunication Industry Ombudsman had allowed false information to be provided to the Secretary of the Environment, Recreation, Communications and the Arts Legislation Committee, after Telstra had been asked 'on notice' to prove that I was wrong about the Cape Bridgewater/Bell Canada Tests.

As part of my discussions with the Major Fraud Group I tabled the two letters dated 12 January and 14 April, 1998 from Graham Schorer and Ann Garms (see above), to the Senate Working Party representatives and John Wynack, the Chair of the Senate ERCA Legislation Committee Working Party. For your convenience I have named these two Exhibits on the CD as COT Australia-BCI Senate Info. These two letters discuss an Addendum to the Cape Bridgewater/Bell Canada International report that was addressed by the Senate Estimates Committee working party investigations and, even though I was not included in the 'litmus test' list; even though my evidence then became one of the tools that was used against Telstra regarding their supply of false information to the Senate Committee in October 1997, in response to Senator Boswell's questions on notice. Even though my evidence contributed, at least in part, to Telstra handing over that compensation, it was the five 'litmus test' cases who received more than fifteen million dollars between them. Alarming, I received **NO** compensation from Telstra whatsoever, even though it was my evidence that proved the Telstra Corporation had knowingly submitted false information to the arbitrator as well as misleading and deceiving the Senate Working Committee in relation to those 'on notice' questions (see Exhibits AS-001 BCI Report and AS-002 BCI Exhibits 1 to 46).

### In Camera Hansards dated 6 & 9 July 1998

Not long after Senator Boswell's 'questions on notice' issues had been discussed, the Major Fraud Group handed me copies of two In-Camera Hansard records **dated 6 & 9 July 1998**, one of which clearly records Senator Chris Schacht advising Telstra, on 9 July 1998, to award: "... a half million or a million dollars each" to only the five 'litmus test' COTs being investigated by the Senate Committee: "... would be an injustice to the 16 or whatever you have settled", (my emphasis) indicating that at least one Australian Senator believed that all twenty-one cases should have been compensated equally. After all, they had all suffered as a direct result of Telstra's unlawful destruction and concealing of evidence and interference with documents so that they became illegible or indecipherable, which is an **indictable offence in Australia** when the parties committing those acts are aware that the documents are required in a legal proceeding.

Since I have great respect for the officers of the Major Fraud Group, although I will not name the person who (inadvertently?) provided these Hansards records, particularly because I suspect that they were given to me to help me have my case re-opened.

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It was clearly noted to me that the Major Fraud Group understood my situation quite clearly. The members of that group were concerned because, here I was in 2000, having now, for the second time, provided clear evidence that proved beyond all doubt that, in January and April 1998, the Chair of the Senate ERCA Committee Working Party had been given proof that Telstra had knowingly supplied false Cape Bridgewater/BCI documents to the Senate, in response to questions 'on notice', and the person who this false information had affected most of all (me) had not received any compensation. Although the five 'litmus test' claimants and the Endeavour Foundation all **DID** receive compensation!

Looking back to 16 August, 2001 when I received the first threat from Senator Alan Eggleston, I remember that it did cross his mind that perhaps I should have exposed the truth then. So that anybody with an interest in the COTs and their fight against Telstra would know, even though Government officials knew what the Telstra Corporation had done to so many innocent citizens under the nose of the Telecommunications Industry Ombudsman, Mr Warwick Smith (Administrator to the arbitration). The Chairman of the TIO Council, the Hon. Tony Staley (who was also the then President of the Federal Liberal Party), sat back and did nothing **while those inactions** allowed Telstra to squeeze the lives out of all the COT claimants.

Imagine how I felt, on 6 December, 2004 when I received the second threat from Senator Alan Eggleston, on top of the threats I had, by then, also received from Telstra, after he I assisted the Australian Federal Police in their investigations into Telstra's unlawful interception of my telephone conversations. All those threats are linked to **the one single issue of the rights of all citizens in a democracy** to have access to documents classified as 'discovery', in relation to any legal process.

On 23 March, 1999 after the Senate Estimates Committee Hearing into why Telstra withheld so many documents from the COT Cases (**my evidence surrounding the Cape Bridgewater BCI impracticable test formed part of that investigation**) had been concluded, the Australian Financial Review reported that the Chairman of the Committee, Senator Alan Eggleston, had stated:

*"A Senate working party delivered a damning report into the COT dispute. The report focussed on the difficulties encountered by COT members as they sought to obtain documents from Telstra. The report found Telstra had deliberately withheld important network documents and/or provided them too late and forced members to proceed with arbitration without the necessary information. Senator Eggleston said: "They [Telstra] have defied the Senate working party. Their conduct is to act as a law unto themselves".*

I believe this is a serious matter that your office should look into. Under these circumstances, your advisors should seriously consider asking the Department of Deregulation to investigate why **every person** included in the Senate Estimates Committee terms of reference should not be awarded an Act of Grace Payment.

Kindly, I await your response,



**Alan Smith**

Copies to: The Hon. Richard Alston, Federal President of the Liberal Party, and other interested parties.

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COT

Holmes, Jim

From: Anderson, Keith  
To: Deplazzi, Betty; Mason, Deirdre; Herron, Jeff; Clark, Robert; Lloyd-George, Tim; McKay, Bruce; White, Barbara; Brand, Alan; Vonwiller, Chris; Schott, Greg; Stanton, John; Shore, Peter; Burdon, Steve; Ademann, Gregory C; Scholz, Des; Gumley, Peter G; Eiferink, Brenda; Nottle, Sharyn A; Hanek, Cheryl; Taylor, Ted G; Oertle, David; Gilbert, Warwick; Flentje, Dennis; Korsten, Audrey; Feenaghty, Blair; Newbold, Greg; Raditsis, Gina; Ward, Graeme; Macphee, Ian M; Anderson, Keith; Crohan, Mark; Minihan, Pat; Liggett, Ray; Nason, Steve; Wright, Steve T; Zof, Charlie; Campbell, Doug; Dixon, Desley; Blount, Frank; Parker, Harvey; Holmes, Jim; Thomas, Mardi; Rizzo, Paul; Scott, Sue; Jennings, Max; Wragge, Harry 242Ex; O'Neill, Alan; Allan, Shane; Tucker, John; Grace, Warren; Lovelock, Brian; Moriarty, Gerry; Campbell, Ian; Semmens, Simone; Halliday, Trevor; Zanotti, Ashley S  
Subject: Alston statement  
Date: Wednesday, 24 November, 1993 6:48PM  
Priority: High

Senator Alston this evening issued a press statement re the O&L and BCI reports. Surprisingly (!!) he did not compliment Telecom.

Critical of the reports and what, he says, they didn't reveal or explain.

Welcomed the "fast track" arbitration process and the mechanism for dealing with future complaints.

AND....

"The Coalition does not see a need for a Senate inquiry at this stage".

Democrats Vicki Bourne also expressed the latter comment in a release she issued.

Alston release DID NOT attack the Govt, the lack of adequate regulation or references to any "misleading, unfair etc" handling of complaints.

Sounds like Ian Campbell earned his money last night and today. We await tomorrow's press.

Keith Anderson

A05245

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Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Main body of faint, illegible text, appearing to be several lines of a letter or document.

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**Australian Government**

**Department of the Prime Minister and Cabinet**

ANDREW FISHER BUILDING  
ONE NATIONAL CIRCUIT  
BARTON

Reference Number: C14/49262

Mr Alan Smith  
Seal Cove  
1703 Bridgewater Road  
PORTLAND VIC 3305

Dear Mr Smith

Thank you for your correspondence dated 22 May 2014 to the Prime Minister.

The Prime Minister has asked me to thank you for your correspondence.

Your views are noted and they are important. A strong democracy and a responsive government always require constant feedback from its people about the issues that concern them.

The matters raised in your correspondence relate to the portfolio responsibilities of the Communications. As such, the Prime Minister has referred your correspondence for a response.

Further details about contacting the Minister and department can be found at [www.gold.gov.au](http://www.gold.gov.au).

Thank you again for writing to the Prime Minister.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'A. Fisher'.

Ministerial and Parliamentary Support Branch

7 July 2014

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