

POST ARBITRATION CORRESPONDENCE			
(in date order from April 1995 to 2006)			
REVISED ADDITION DATED 26 AUGUST 2018			
DATE	FROM	TO	IMPORTANCE
18-Apr-95	Mr John Rundell, TIO-appointed Arbitration Project Manager	Mr Warwick Smith, TIO and administrator of my arbitration (copied to Dr Hughes, Arbitrator)	Comment that there had been 'forces at work' beyond his 'reasonable control' that had interfered in the arbitration process.
28-April-95	Peter Bartlett TIO Special Counsel	Warwick Smith TIO	<p>The TIO special counsel wrote to the TIO noting:</p> <p><i>"Attached is a draft letter to [arbitrator]. It is in reasonably harsh terms.</i></p> <p><i>"Could you please consider whether a letter in this form or an amended form, should go to [arbitrator]."</i> (See Arbitrator File No/47)</p> <p>The draft letter to the arbitrator states:</p> <p><i>"However, I understand you are to present a paper in Greece in mid May.</i></p> <p><i>"I would expect that the Award would be delivered prior to your departure.</i></p> <p><i>"It would be unacceptable to contemplate the delivery of the Award being delayed until after your return."</i></p> <p>And accordingly, the arbitrator handed down his award the day before he left for Greece, despite the two arbitration technical consultants notifying him, on 30 April 1995, that their technical report was weeks away from being completed.</p> <p>What needs to be clarified is why the TIO special counsel would make a statement in a draft letter advising the arbitrator that <i>"It would be unacceptable to contemplate the delivery of the Award being delayed until after your return,"</i> especially considering the technical consultants report was incomplete. Who had the power to direct the arbitrator?</p>
30-Apr-95	DMR & Lanes, TIO-appointed technical consultants	Dr Hughes, Arbitrator	Draft Technical Evaluation Report on my telephone and fax problems. Page 2 of this report confirms that DMR & Lanes had not completed the report at this stage, and needed 'extra weeks' to investigate the billing issues I had raised in my claim.

30-Apr-95	Dr Hughes, Arbitrator (and/or his advisors)	Mr George Close (my technical consultant) and Telstra	The same draft report was disguised as the final report by the removal of the request for 'extra weeks', and the addition of an extra 13 bound claim documents to the list of documents assessed.
30-Apr-95	Dr Hughes, Arbitrator	Telstra and my technical advisors (for official response)	This was a draft of the DMR & Lanes Technical Evaluation Report, but the arbitrator submitted it for Telstra and me to officially respond to, representing it as the final report.
12-May-95	Warwick Smith, TIO	Board and Council of the TIO	This four-page fax, headed <i>Private & Confidential</i> , was faxed directly to each member of the Board and Council, as well as to the Telstra offices of Ted Benjamin, Telstra's arbitration defence officer, and Graeme Ward, of Telstra's Directorate of Corporate Planning. Before this, and just as alarming, was the move of Grant Campbell from Deputy TIO/administrator of my arbitration to Telstra's arbitration defence office (Customer Affairs). In his position as Deputy TIO, Mr Campbell dealt with the 008/1800 and fax problems I raised in my arbitration. When he moved to Telstra he became Telstra's advisor on the 008/1800 billing faults of the COT claimants, but on the side of Telstra.
12-May-95	Dr Hughes, Arbitrator	Mr Warwick Smith, TIO and administrator of my arbitration	Dr Hughes informed the arbitration administrator that there were many deficiencies in the COT Arbitration Agreement and the agreement should therefore be revised if the process was to 'remain credible'.
24-May-95	Mr Warwick Smith, TIO and administrator of my arbitration	Mr Steve Black, Telstra	Advice that Warwick Smith had passed Steve Black's letter of 19th May 1995 to AUSTEL's Carrier Monitoring Unit.
26-May-95	Telstra	Me	On this day I received three Telstra FOI documents, all confirming that Telstra had used impracticable Bell Canada test results to support their arbitration defence.
2-Jun-95	Ms Pia Di Mattina, TIO's office	Mr Warwick Smith, TIO and administrator of my arbitration	A fax, sent in relation to my arbitration, includes the comment <i>"So all's well that ends well ... we hope!"</i>
22-Jun-95	Ms Pia Di Mattina, TIO's office	Mr Peter Bartlett, TIO Legal Counsel	This fax asked <i>"What the approach should be re parties seeking to revisit issues post Arbitration"</i> and noted that <i>"His position is not to open the can of worms."</i>
23-Jun-95	Mr John Pinnock, TIO	Dr Hughes, regarding my letter to Dr Hughes on 20th June 1995	My letter to Dr Hughes maintained that Telstra had not abided by the FOI Act during my arbitration. Mr Pinnock wrote that he was <i>"... presently considering the matter you have raised, and shall respond further next week."</i>
28-Jun-95	Mr John Pinnock, TIO	Me	This letter, sent in response to my FOI complaints, states: <i>"The Arbitration process has run its course and a final resolution has been achieved."</i>
29-Jun-95	Taits Solicitors	AUSTEL	Written on my behalf, this letter detailed my concerns regarding information I had received which proved that Telstra had used a Bell Canada test report to support their arbitration defence when they already knew that Bell Canada's testing process was 'impracticable'.

12-Jul-95	Mr Cliff Mathieson, AUSTEL's Carrier Monitoring Unit	Taits Solicitors	<i>"The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the tests should be referred to those who carried them out or claim to have carried them out."</i>
15-Jul-95	Ms Amanda Davis, once General Manager of Consumer Affairs at AUSTEL	Me	Ms Davis wrote, concerning the COT claimants, that: <i>"The treatment these individuals have received from Telecom and the Commonwealth Government Agencies has been disgraceful."</i>
17-Jul-95	Mr John Pinnock, TIO	Me	This letter, written in response to my letter of 27th June concerning my claims that Dr Hughes did not ask Telstra for relevant fault information during my arbitration, stated that Dr Hughes believed my request for discovery superseded my reply to Telstra's defence and included the comment that <i>"There can be no doubt that the Arbitrator considered the issue which you raised."</i>
28-Jul-95	Mr John Pinnock, TIO	Me	I did not receive this letter until 2001, when it was finally provided under the TIO Privacy Policy Act. It is so censored that it is impossible to make sense of it.
7-Aug-95	Dr Gordon Hughes, arbitrator	Me	<p>When I received my arbitration documents back from Dr Hughes's office, I discovered some forty sets of documents were missing. My Telstra fax account proves that these documents were all faxed to the arbitrator's office during my arbitration but Telstra's schedule of arbitration material they received from the arbitrator shows that they did not receive these forty sets of documents. The TIO, John Pinnock, has refused to investigate the disappearance of these documents.</p> <p>Some of the documents I did receive from the arbitrator's office proved that some documents sent by Telstra to the arbitrator were not forwarded on to me even though they included arbitration procedural information I was legally entitled to receive. Some of these 'missing' documents showed that Telstra had requested an arbitration meeting with me to look at ways of addressing the billing faults I raised in my claim. The TIO-appointed arbitration consultants have now admitted to Mr Pinnock that they withheld this information from me but, again, Mr Pinnock will not address this matter.</p>
7-Aug-95	Mr John Pinnock, TIO	Me	Sent in response to many letters of complaint I had sent, regarding the conduct of my arbitration. Mr Pinnock noted <i>"In those letters you raise a number of complaints. As administrator of the FTAP, I have a duty to ensure the integrity of the procedure. Your complaints go to this issue."</i>

8-Aug-95	COT claimants	Me	On this day other COT claimants provided me with a copy of a Telstra FOI email dated 2nd March 1994, from Telstra's Steve Black to Telstra's David Krasnostein, of Telstra's Legal Directorate. This email (D01166) states: <i>"My course therefore is to force Gordon Hughes to rule on our preferred rules of arbitration."</i> Later, on 22nd March 1994, unbeknown to the four COT claimants, the arbitrator and the TIO met with Steve Black and David Krasnostein to discuss these rules, without the claimants being represented, and without our knowledge. We now know that the rules that the claimants were told had been drafted by the arbitrator and the TIO's Legal Counsel were actually drafted by Telstra's lawyers. How can the defence (Telstra) draft a set of rules that the arbitrator (judge) will use to make his determination? How could the TIO sanction such a secret meeting and allow it to be held without the knowledge of the claimants?
21-Aug-95	Mr Steve Black, Telstra	Mr John Pinnock, TIO	Confirmation that some of the Bell Canada test results were impracticable.
25-Aug-95	Ms Pia Di Mattina, TIO's office	Mr Steve Black, Telstra	Asking for information as to why the Bell Canada information had been withheld from me until after my arbitration.
29-Aug-95	Mr Cliff Mathieson, AUSTEL's Carrier Monitoring Unit	Me	<i>"... as stated in my letter to you 12 July 1995, the Fast Track Arbitration Procedure is a confidential procedure and AUSTEL is not party to it."</i>
30-Aug-95	Department of Communications	Mr John Pinnock, TIO	Confirmation of my concerns regarding the Bell Canada testing at Cape Bridgewater.
31-Aug-95	Mr John Pinnock, TIO	Me	<i>"I refer to your letter 16 August 1995, which responds to my letter of 28th July 1995. I have carefully considered your letter, however I stand by my letter to you on 28th July 1995, there a number of matters on which we disagree."</i>
4-Sep-95	Mr John Pinnock, TIO	Me	In response to my concerns regarding my arbitration, Mr Pinnock stated: <i>"I do not intend to pursue this issue nor continue to correspond with you on these matters."</i>
7-Sep-95	Mr Ted Benjamin, Telstra	Mr John Pinnock, TIO	Informing Mr Pinnock that Bell Canada International documents N00005, N00006 and N00037, were not made available to me before 26th May 1995. Ted Benjamin was Telstra's official COT Arbitration Liaison Officer and also sat on the TIO Board and Council during the COT arbitrations. As a result of his position with the TIO's office, he would have been privy to many issues associated with the TIO-administered arbitration.
7-Sep-95	Mr John Pinnock, TIO	Me	Concerning my complaints, Mr Pinnock wrote: <i>"As I have also previously pointed out to you, any continuing concerns you may have with the arbitration should be raised with your own legal advisors."</i>
12-Sep-95	Mr John Pinnock, TIO	Mr Ted Benjamin, Telstra	<i>"I refer to your letter of 7th September 1995. You have also responded that Documents N00005, N00006 and N00037 were first supplied to Mr Smith under FOI on 26 May, and that they were not made available prior to that date. Could you please clarify</i>

			<i>why this was so."</i>
12-Sep-95	Mr John Pinnock, TIO	Mr Ted Benjamin, Telstra	<i>"I am seeking further clarification from Telstra regarding its response concerning documents N00005, N00006 and N00037."</i>
20-Sep-95	Mr John Pinnock, TIO	Me	<i>"Dr Hughes has no further role to play in your arbitration. It is inappropriate for you to contact him directly regarding matters arising out of your arbitration process."</i>
20-Sep-95			Senator Ron Boswell appeared before the Senate and condemned the way the four COT claimants had been treated during the Fast Track Arbitration Process.
3-Oct-95	Mr Cliff Mathieson, AUSTEL's Carrier Monitoring Unit	Mr Steve Black, Telstra	Asking why Telstra had still not addressed the 008/1800 billing discrepancies that AUSTEL first raised on 4th October 1994, on my behalf.
4-Oct-95	Mr Darren Kearney, AUSTEL Carrier Monitoring Unit	Me	<i>"Concerning your letters to Bruce Mathews of 5 September 1995 and 2nd October 1995, I write to advise you that AUSTEL has again written to Telstra regarding the issues originally raised in Bruce Mathews' letter to Telstra of 4 October 1994. You will be advised of the outcome of this matter."</i>
12-Oct-95	Mr Darren Kearney, AUSTEL Carrier Monitoring Unit	Me	Confirmation that AUSTEL had again raised the 1994 008/1800 billing discrepancies with Telstra, adding <i>"As previously advised you will be informed of the outcome of this matter."</i>
16-Oct-95	Mr Steve Black, Telstra	AUSTEL	Telstra's response to the 008/1800 billing issues I raised in my arbitration claim, five months earlier.
16-Oct-95	Mr John Pinnock, TIO	Me	Directing me to stop writing to Dr Hughes and confirming Dr Hughes' statement <i>"... that any failure on his part to respond to your allegations regarding his integrity or the integrity of the arbitration process or persons associated with the arbitration process should not be interpreted as acquiescence."</i>
23-Oct-95	Bassett & Sharkey, Barristers & Lawyers	Mr John Pinnock, TIO	Written on my behalf, concerning Telstra's use of Bell Canada International test results in their defence of my arbitration claims, even though they already knew that the tests were impracticable.
25-Oct-95	Ms Pia Di Mattina, TIO's office	Mr Peter Bartlett, TIO Legal Counsel	Fax asking if <i>"... we should respond by saying we cannot and will not take action sought. AS has rights under the FTAP of the Act which he is at liberty to pursue."</i>
26-Oct-95	Mr John Pinnock, TIO (Draft only)	Bassett & Sharkey	<i>"With respect, Mr Smith continually makes allegations questioning the arbitration process and the award. I am not in the position to know or investigate whether any of his claims have merit."</i>
9-Nov-95	Mr John Pinnock, TIO	Bassett & Sharkey	A shorter version of his original draft dated 26th October: <i>"If Mr Smith feels the process was flawed or the Award tainted he has legal avenues available to him."</i>

10-Nov-95	Mr Cliff Mathieson, AUSTEL	Michael Lee, MP, Minister for Communications	In AUSTEL's quarterly COT Report to the Minister, Mr Mathieson noted that: "... the TIO has observed that the progress of arbitration for both the original four complainants and the other group involved in the Special Arbitration Procedure has been significantly hampered. The TIO attributes this to: * delays in the provision of documentation and information to the various customers under Freedom of Information entitlements; and) * the legalistic approach adopted by Telstra in its defence against these claims." With this information to hand in November 1995 why, in 1996, did both Dr Hughes and Mr Pinnock deliberately mislead the Institute of Arbitrators Australia concerning my arbitration, particularly in relation to these very same issues?
15-Nov-95	Mr John Rundell, TIO-appointed Arbitration Project Manager (Ferrier Hodgson Corporate Advisory (FHCA))	Mr John Pinnock, TIO	Admitting that NONE of the billing issues I raised in my arbitration claim were ever assessed by DMR & Lanes, the TIO-appointed technical consultants to the arbitration.
15-Nov-95	Mr John Pinnock, TIO	Me	"I acknowledge receipt of your letter dated 12 November 1995 regarding the BCI testing and your proposed mirror tests. Again I reiterate that this office has no power to take action which amounts to an investigation of your arbitration or the decision of the Arbitrator."
20-Nov-95	Senator Michael Baume (on my behalf)	Office of the Minister for Communications	Senator Baume sent two Telstra faxes asking Robert King, Senator Baume's Secretary, to "Please respond, I am particularly concerned about allegations that heat was belatedly shown to have caused faults in the unmanned exchange, that the Bell Canada International report should be 'cleansed'."
22-Nov-95	Mr Ted Benjamin, Telstra	Me	Responding to my letter dated 8th October 1995 (concerning the impracticable Bell Canada International tests), Mr Benjamin stated: "Telstra rejects the allegations set out in your letter, in particular the allegations that it has behaved 'in an unconscionable manner' and that it 'knew the BCI report was flawed'."
28-Nov-95	Mr John Pinnock, TIO	Me	Even though AUSTEL had told Mr Pinnock on 3 October 1995 (see above) that Telstra had then still not addressed the 008/1800 billing problems I first raised, both in my claim and with AUSTEL, in May 1994 (see 4 October 94), Mr Pinnock was still prepared to say that the billing faults were not addressed under the arbitration process because: "... this matter was current at a late stage (April 1995) of the Arbitration process."
28-Nov-95	Telstra	Me	Confirmation that Telstra's TF200 'sticky beer' defence report, which was provided to the arbitrator, did not correspond with their original laboratory tests. This letter was inadvertently provided to me under FOI.

30-Nov-95			In the Senate, Senator Ron Boswell moved a motion: <i>"That the Senate call on the Ministers of Communications and the Arts to establish an independent inquiry into the behaviour of Telstra in respect of the resultant costs to COT members of the extensive, prolonged and excessively legalistic arbitration process."</i> The motion was unanimously accepted by the then-Labor Government.
6-Dec-95	Mr Derek Ryan, DMR Corporate (my arbitration financial advisor)	Senator Richard Alston, then Shadow Minister for Communications	Advice that, in Derek Ryan's opinion, Ferrier Hodgson Corporate Advisory (FHCA) had not prepared their arbitration financial report correctly, which "... effectively meant that it was impossible to challenge the assumptions, calculations and the time periods used in the FHCA report" and that Mr Ryan had "... been advised by a staff member of FHCA that a large amount of information was excluded from their final report at the request of the arbitrator."
6-Dec-95	Mr Darren Kearney, AUSTEL Carrier Monitoring Unit	Me	In relation to the 008/1800 billing problems included in my arbitration claim, Mr Kearney wrote: <i>"AUSTEL received information from you on 3 October 1994 regarding this matter, including test sheets and itemised billing sheets for your 008/1800 service. AUSTEL has forwarded this information to Telstra for a response. AUSTEL now request from you any other information which you consider supports your claims of massive incorrect charging referred to above."</i>
13-Dec-95	Melbourne Law Partners, Barristers & Solicitors	Me	<i>"Overall, however, we are of the opinion that the FTAP was fundamentally flawed given its objectives."</i>
13-Dec-95	Mr Anthony Hodgson, Chairman of FHCA	Me	Advice that I should raise my arbitration concerns directly with Mr Pinnock
20-Dec-95	Mr John Pinnock, TIO	Mr Derek Ryan, DMR Corporate (my arbitration financial advisors)	Disagreeing with Mr Ryan's assertions that large amounts of information had been excluded from the FHCA financial report and noting: <i>"It concerns me that rash statements, assertions and allegations concerning Mr Smith's arbitration procedure are being circulated."</i>
22-Dec-95	Mr Derek Ryan, DMR Corporate (my arbitration financial advisor)	Mr John Pinnock, TIO	Confirming his original statement to Senator Alston.
10-Jan-96	Mr John Pinnock, TIO	Me	Regarding "... access to various correspondence held by the TIO concerning the Fast Track Arbitration Procedure. I do not propose to provide you copies of any documents held by this office."
23-Jan-96	Dr Hughes, Arbitrator	Mr John Pinnock, TIO	In relation to allegations I had raised with Mr Laurie James, President of the Institute of Arbitrators, regarding my arbitration, Dr Hughes asked for a discussion with Mr Pinnock in connection with a number of matters resulting from my complaints, including "... the cost of responding to the allegations (and) the implications to the arbitration procedure, if I make a full and frank disclosure of the facts to Mr James."

13-Feb-96	Mr John Rundell, TIO-appointed Arbitration Project Manager (Ferrier Hodgson Corporate Advisory (FHCA))	John Pinnock, TIO	<i>"I did advise Mr Ryan that the final report did not cover all material and working papers." and "As you may be aware, I have contacted the Brighton CIB in relation to damage to property at my home. You should be aware that the Brighton CIB intend to interview Mr Smith in relation to criminal damage to my property."</i>
14-Feb-96	Mr John Pinnock, TIO	Me	<i>"You know that I will not become involved in discussions which amount to an investigation of the arbitration procedure. I wrote to you on 28 November 1995, regarding your concerns over differences between the Resource Unit's Technical report which you received in May 1995."</i>
15-Feb-96	Dr Hughes, Arbitrator	Mr John Pinnock, TIO	Concerning the allegations I raised with the Institute of Arbitrators, Dr Hughes asked Mr Pinnock to read a copy of Dr Hughes' draft letter to the Institute and confirm "... that there is nothing in the proposed letter which would embarrass your office or jeopardise the current arbitrations." At the time, Dr Hughes and Mr Pinnock were still involved in arbitrations for the remaining COT claimants, using an Arbitration Agreement that Dr Hughes had already advised the TIO (see 12 May 1995) was not credible.
16-Feb-96	Dr Hughes, Arbitrator	Mr Laurie James, President of the Institute of Arbitrators.	Dr Hughes provided Mr James with a copy of John Rundell's letter of 13 February 1996 (see above).
26-Feb-96	Mr Darren Kearney, AUSTEL Carrier Monitoring Unit	Mr Bruce Mathews, AUSTEL	Internal AUSTEL letter detailing twenty-seven of the billing discrepancies I provided to AUSTEL and acknowledging that Telstra's CCAS data and my billing records indicated discrepancies.
27-Feb-96	Mr John Pinnock, TIO	Mr Laurie James, President of the Institute of Arbitrators.	Letter of support for Dr Hughes which also attacks my credibility by knowingly misinforming Mr James that I had rung Dr Hughes' wife at 2 o'clock one morning.
28-Mar-96	Mr John Pinnock, TIO	The Hon David Hawker MP	AUSTEL told Mr Pinnock, on 3rd October 1995 (see above), that Telstra had then still not addressed the billing faults in my claim. Mr John Rundell provided the same information to Mr Pinnock on 15th November 1995 (see above), but Mr Pinnock still told Mr Hawker that <i>"Mr Smith's allegations of over-charging for his service formed part of the claim submitted to the Arbitration. Consequently, this matter was dealt with in his arbitration."</i>
23-Apr-96	Ms Robin Sutton (on behalf of the Prime Minister)	Me	<i>"Your comments and concerns have been noted and referred to the Minister for Communications and the Arts, the Hon Richard Alston."</i>

11-Jul-96	Ms Sue Harlow, AUSTEL	Senator Richard Alston	<p>On page 12 of AUSTEL's sixth status report on Telstra's progress in implementing AUSTEL's April 1994 recommendations, Ms Harlow confirms that TIO's condemnation of Telstra's conduct during all the COT arbitrations: <i>"The TIO believes that Telstra has, in all claims, responded in an overly legalistic manner. It has shown a tendency to deny liability under ever potential clause of action on the basis of perceived statutory and contractual immunities. It has lodged lengthy and detailed requests for further and better particulars in most arbitrations. In short, while the arbitration procedure has sought to relax the legal burdens, Telstra's conduct certainly has not. Telstra has taken excessive time in the provision of material requested under FOI."</i> This comment is made by the same Sue Harlow who previously, on 16th May 1994, proved to the TIO that Telstra was altering information on documents I had legally requested under FOI, in a clear attempt to minimise their liability.</p> <p>It is interesting to note the TIO's expressed concern regarding Telstra's delaying tactics, as this was one of the three issues that Dr Hughes had also raised with the TIO in his earlier letter to the TIO (on 12th May 1995), where he even suggested that the arbitration agreement should be changed to allow for more time to obtain further particulars and documents. We now know that the TIO denied this request and continued to administer the arbitration agreement, even though the arbitrator had clearly described the process as 'not credible'. Why didn't Ms Harlow tell Senator Alston that all the continuing problems would have been solved in May 1995, if only the TIO had followed the arbitrator's suggestion that the agreement be amended?</p>
2-Aug-96	Ms Sue Hodgkinson, TIO-appointed Arbitration Resource advisor (FHCA)	Dr Hughes, Arbitrator (copied to the TIO's office)	Admission that FHCA had withheld a number of arbitration procedural documents from me during my arbitration.
16-Aug-96	Mr Wally Rothwell, Deputy TIO	Me	In response to two faxes I sent to the TIO on 5th August 1995, Mr Rothwell wrote: <i>"The matters you raise in those letters relate to your arbitration procedure. I advise that you should direct any future correspondence on these issues to the Ombudsman, Mr John Pinnock."</i>
16-Aug-96	Mr John Pinnock, TIO	Me	Re my concerns that Mr Paul Howell, author of the DMR & Lanes technical report, didn't sign off the report, Mr Pinnock wrote: <i>"I note that the Arbitrator was not obliged to forward a copy of this covering letter to you, as it did not, strictly speaking, form part of the Technical Evaluation Report."</i> This did not allay my concerns.
21-Aug-96	Mr David Lever, from the Minister's office	Mr Matt Deeble, from the TIO's office	Mr Lever sent Mr Deeble a copy of my letter to Mr Laurie James, President of the Institute of Arbitrators, after I had copied it to Senator Alston for comment.
4-Sep-96	Mr Paul Fletcher, from Senator	Me	Mr Fletcher wrote: <i>"The Minister is extremely concerned to ensure that the COT cases are treated</i>

	Alston's office		<i>fairly and that your claims against Telstra are given a thorough hearing."</i>
10-Sep-96	Mr J Muirhead, the new President of the Institute of Arbitrators	Me	Mr Muirhead advised that the Institute had not been approached when the TIO appointed the arbitrator, adding "... <i>there is always a risk in these circumstances.</i> "
20-Dec-96	Mr Cliff Mathieson, AUSTEL's Carrier Monitoring Unit	Me	Advice that the billing faults raised by both AUSTEL and me during my arbitration were NOT addressed during the arbitration, noting: " <i>AUSTEL will not enter into discussion on issues related to your telephone service which pre-date the finalisation of your arbitration.</i> " This contradicts AUSTEL's previous advice (see 6th December 1995), which directed me to provide AUSTEL with information regarding billing faults.
4-Feb-97	Mr John Pinnock, TIO	Me	<i>"I reject completely your assertion that Dr Hughes and David Read 'conspired to breach the rules of the Arbitration."</i>
12-Feb-97	Telstra	Mr John Wynack, Director of Investigation, Commonwealth Ombudsman's Office	Regarding Telstra's admission that they had destroyed the 'Steve Black arbitration file' before my October 1995 FOI request.
24-Feb-97	Mr John Pinnock, TIO	Me	<i>"Since the arbitrator delivered his award, you have written many letters to me asserting, variously, that the arbitrator, and/or the Resource Unit, erred in their duties under the Arbitration agreement."</i>
11-Mar-97	Mr John Wynack, Director of Investigation, Commonwealth Ombudsman's Office	Telstra	This letter noted Mr Wynack's concerns regarding "... <i>the disposal of some of Mr Black's papers after Mr Black left the employ of Telstra.</i> "
13-Mar-97	Mr John Wynack, Director of Investigation, Commonwealth Ombudsman's Office	Telstra	<i>"On 7 March 1997, I interviewed Ms Gill, Mr Benjamin and Mr Kearney in an attempt to obtain information about the alleged disposal of the documents to assist the Ombudsman to form a view as to whether Telstra has acted unreasonably in failing to provide Mr Smith pursuant to his October 1995 FOI application."</i>
14-Mar-97	Mr John Wynack, Director of Investigation, Commonwealth Ombudsman's Office	Mr John Armstrong, Telstra's Legal Officer	<i>"I should be grateful if you would notify Mr Benjamin, Mr Kearney and Ms Gill of my opinion that, on the basis of the information given to me by Mr Benjamin and Ms Gill, it is extremely improbable that Ms Gill disposed of the documents in the 'arbitration file'."</i>
2-Apr-97	Mr John Pinnock, TIO	Me	In response to my letter of 22nd March, Mr Pinnock wrote: " <i>You state that I am 'already aware' of the two conflicting versions of the DMR/Lanes Technical Report regarding (your) phone faults. I do not intend to reiterate my comments on this issue.</i> "
22-Apr-97	Mr John Wynack, Director of Investigation, Commonwealth Ombudsman's Office	Mr John Armstrong, Telstra's Legal Officer	<i>"I refer to your letter of 22nd April 1997 to Mr Alan Smith concerning the assessment of the amount of compensation payable to Mr Smith. I note with concern that you sent a copy of that letter to the TIO. Please inform me as soon as possible why you have made the TIO privy to what I understood to be a</i>

			<i>confidential process involving Mr Morgan."</i>
6-May-97	Telstra	Mr John Pinnock, TIO	Admission that Telstra had submitted an unsigned witness statement during their defence of my arbitration claims.
26-May-97	Mr Tom Dale from the Minister's office	Me	<i>"The TIO has advised that he has completed his task as administrator in your claim for compensation as a Casualty of Telecom (Cot) Case and has fully investigated the concerns you have raised with his office."</i>
27-May-97	Mr John Pinnock, TIO	Me	<i>"I refer to your latest correspondence and advise that it has been twelve (12) months since the arbitration of your claim for compensation as a Casualty of Telecom (Cot). My role as Administrator has ceased."</i>
18-Jun-97	Mr Montalte, Telstra's Corporate Secretary	Me	Notification that Telstra would not revisit my claims regarding the BCI tests.
24-Jun-97			Senate Hansard records confirm that, during an investigation of the COT arbitrations, an ex-Telstra employee, Lindsey White, described his position with Telstra, noting that: "... the introduction process was, as I said before, that the first five had to be stopped at all cost..." Mr White named me as one of the 'first five'. Mr Pinnock's statement to the Senate infers that, in his opinion, Telstra had not behaved unfairly during the COT arbitrations but his office has always known that Telstra tampered with evidence in a (successful) attempt to minimise their liability. That tampering including fabricating official arbitration reports so the service provided to me through the Telstra network would not be investigated during my arbitration.
8-Jul-97	Mr Derek Ryan, DMR Corporate (my arbitration financial advisor)	Senator Schacht	Confirmation that Mr Ryan was not surprised by Telstra's former employee's statements, on Channel 9's 'A Current Affair', regarding the issues related to the COT arbitrations FOI matters and the administration of my arbitration.
20-Aug-97	Mr Ben Dunn, Lawyer	Me, c/o Senator Boswell	Confirming his belief that I was "... less than fairly dealt with by Telstra and the arbitrator."
26-Aug-97	Mr John Wynack, Director of Investigation, Commonwealth Ombudsman's Office	Mr John Armstrong, Telstra's Legal Officer	Regarding my October 1995 FOI request, Mr Wynack wrote: "On the 26th September 1996, you informed me that you were attempting to locate copies of the documents."
26-Sep-97	Mr John Pinnock, TIO	The Senate Environment, Recreation, Communications and the Arts Legislation Committee	Mr Pinnock's report to the Senate regarding the many deficiencies in the COT arbitration process noted: "... one of the potential deficiencies should have been obvious from the outset. For present purposes, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, the arbitrator had no control over the process, because it was conducted entirely outside the ambit of the Arbitration Procedures."

4-Oct-97	Mr John Wynack, Director of Investigation, Commonwealth Ombudsman's Office	Mr John Armstrong, Telstra's Legal Officer	Referring to his previous letter of 13 March 1997, Mr Wynack asked Mr Armstrong "... to inform me of the actions which Telstra has taken to ascertain the whereabouts of the specific file which Ms Gill described as the 'arbitration file', and whether Telstra asked Mr Black whether he had knowledge of the whereabouts of the file. I have no record of receiving a response to my inquiries."
8-Oct-97	The Hon Peter Costello, Federal Treasurer	Me	"I am quite seriously concerned about the allegations you make regarding the Telecommunications Ombudsman, Telstra Senior Management, the Arbitrator and the Resource Unit attached to the Arbitration. Any information you have of the allegations of impropriety should be brought to the attention of Senator Alston and the Australian Federal Police."
28-Oct-97	Mr John Pinnock, TIO	Me	Informing me that Mr Pinnock had forwarded my letter of 7 October to Telstra, asking for "... some preliminary information in terms of the attached letter."
28-Oct-97	Mr John Pinnock, TIO	Mr Ted Benjamin, Telstra	"I would appreciate your detailed advice concerning call charges for Mr Smith's 1800 line, in particular whether Telstra agrees that this matter was not addressed in Mr Smith's arbitration."
7-Nov-97	Mr John Pinnock, TIO	The Minister's office	Mr Pinnock made no reference to Dr Hughes continuing to arbitrate using an agreement he knew was not credible. Instead, Mr Pinnock advised the Department that he had "... considered each and every one of these various allegations which I found to be without substance."
3-Dec-97	The Treasurer's office	Senator Alston's office	The Treasurer's office forwarded on my correspondence regarding the unethical way in which my arbitration had been conducted.
17-Dec-97	Mr Wally Rothwell, Deputy TIO	Me	Confirmation that Mr Pinnock had written to Telstra on 28th October regarding charges related to my fax line.
17-Dec-97	Mr Wally Rothwell, Deputy TIO	Mr Ted Benjamin, Telstra	Asking Mr Benjamin to "... advise as to when a reply might be expected ..." to Mr Pinnock's letter to Mr Benjamin on 28th October 1997, regarding my 1800 service.
9-Jan-98	Mr Harry Wilson, Telstra	Ms Toni Ahkin, of the Minister's office	In relation to the Hon David Hawker's representation to the Minister in relation to my matters, Mr Wilson wrote: "... finally, a response from Major Disputes area. I have asked for a summary of the meeting on the 14th so if you would like to know the results, please give me a call."
14-Jan-98	Ms Lyn Chisholm, Telstra	Me	Ms Chisholm wrote that, during her investigation at Cape Bridgewater, it appeared that the billing faults I raised in my arbitration claim had continued after my arbitration (also see her comments in her file notes).
19-Jan-98	Ms Toni Ahkin, of the Minister's office	Mr John Pinnock, TIO	"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 his 1800 numbers."
21-Jan-98	Mr Harry Wilson, Telstra	Ms Toni Ahkin, of the Minister's office	"Please find attached summary of meeting between Telstra's representative and Alan Smith on 14 January. Lyn met with Mr Smith again on 16 January at the TIO's office and has spoken to him on the

			telephone on 21 January. Mr Smith has provided documents to Lyn that he feels supports his claim."
21-Jan-98	Ms Toni Ahkin, of the Minister's office	Mr John Pinnock, TIO	"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."
22-Jan-98	Ms Toni Ahkin, of the Minister's office	Mr John Pinnock, TIO	"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."
4-Feb-98	Mr Ted Benjamin, Telstra	Mr John Pinnock, TIO	"Telstra has examined the information forwarded by your office with regard to Mr Smith's 1800 telephone service and is currently conducting an investigation into Mr Smith's complaints."
13-Feb-98	Mr Tom Dale, of the Minister's office	Me	In relation to my allegations that my arbitration was not conducted transparently, Mr Dale wrote: "The TIO advised that it is correct that you received documents from Telstra under the Freedom of Information Act after the arbitration process was complete that you considered were relevant to your claim ... (and) ... has found your allegations to be without substance."
26-Feb-98	Mr Wally Rothwell, Deputy TIO	Me	Mr Rothwell advised that his office had received my letters of 17th and 18th (regarding billing information that was withheld from me during my arbitration), and noted that: "... the Ombudsman has asked me to seek the opinion of the Special Counsel to the TIO under the FTAP, as to whether the aspect raised in those letters are matters which were or should have been decided by the Arbitrator in the Award he made."
27-Feb-98	The Hon David Hawker, MP	Me	"I am writing to the Minister for Communications asking him to carefully examine your claims."
27-Feb-98	Senator Richard Alston, Minister for Communications	The Hon David Hawker, MP	"I understand that Mr Smith met with Telstra in January 1998 in order to resolve his concerns and has submitted some evidence which he considers supports his claim."
17-Mar-98	Mr Anthony Hodgson, Chairman of Ferrier Hodgson	Mr Alan Cameron, Chairman of the Australian Securities Commission	Even though Ferrier Hodgson had told Mr Pinnock, on 15th November 1995, that DMR and Lanes had NOT addressed my billing claim documents, Mr Hodgson still told Mr Cameron that "DMR and Lanes did address all the claim documents submitted to the Arbitration."
21-May-98	Mr John Pinnock, TIO	The Hon David Hawker, MP	"Recently, Mr Smith has raised a question as to whether the Arbitrator's Award dealt with his complaint that he had been overcharged on his 008 (now 1800) freecall service. As this is a matter which I can properly consider, I have made preliminary enquiries of Telstra and have also sought advice from Mr Peter Bartlett, Special Counsel, Minter Ellison."
29-May-98	Senator Richard Alston, Minister for Communications	The Hon David Hawker, MP	"I understand that Mr Smith gave an undertaking in January 1998, that he would provide Telstra with documentation he had in his possession supporting his claims. The Telecommunication Industry Ombudsman has also advised that the matter is still under consideration."

9-Jun-98	Mr Wally Rothwell, Deputy TIO	Me	<i>"The purpose of my intended meeting with Mr Hughes is to clarify whether he did consider the 1800 issues during the arbitration. The Ombudsman's advice to me though, is that he is only prepared to discuss or investigate the 1800 matter of overcharging and the Gold Phone issue if that appears to be necessary, after I have looked into it initially."</i>
17-Jun-98	Mr Wally Rothwell, Deputy TIO	Me	<i>"I understand that you are going through a hard time at the moment and while I cannot guarantee a successful outcome of your 1800 complaint, hope that you can bear with the delay."</i>
22-Jun-98	William Hunt, Solicitors	Me	Evidence of blank faxes still being received by my customers and business associates.
16-Jul-98	Mr Wally Rothwell, Deputy TIO	Me	<i>"With regard to the 1800 and Gold Phone matters, I have received information from Mr Bartlett and have asked Dr Hughes about his consideration of the matters during arbitration."</i>
24/25 Jul-98	Various business associates	Me	Confirmation of the continuation of fax problems experienced by different people, over the previous years.
18-Aug-98	Mr Lester Watson, Director, Attorney-General's Department	Me	<i>"I note from our telephone conversation on 17 August that your purpose in writing to the Attorney-General was specifically in relation to your concerns about the integrity and security of documents being transmitted by facsimile. I regret that the Attorney-General cannot be of assistance to you in this matter."</i>
25-Aug-98	Mr John Pinnock, TIO	Me	<i>"The only issues that I am considering, as the former Administrator of your arbitration, are the alleged overcharging for your 1800 service and matters pertaining to your Gold Phone service, and whether they were considered in the final award."</i>
16-Oct-98	The Hon David Hawker, MP	Mr John Pinnock, TIO	<i>"I would appreciate your assistance in resolving Mr Smith's complaint."</i>
22-Oct-98	The Hon David Hawker, MP	Senator Richard Alston, Minister for Communications	<i>"I would appreciate your assistance in resolving Mr Smith's complaint and ideally, could I ask for a staff member to meet with Alan to sort out his concerns."</i>
4-Nov-98	Mr Wally Rothwell, Deputy TIO	Mr Peter Bartlett, TIO Legal Counsel	<i>"In light of Dr Hughes' response, the Ombudsman has asked to seek your advice as to whether you would therefore be of the opinion that both matters were, for all intents and purposes, addressed in the arbitration."</i>
11-Nov-98	Ms Dianne Southwell, from the Minister's office	Mr John Pinnock, TIO	Asking for advice "... on the likely time-frame for finalising Mr Smith's claim of overcharging on his 1800 number. A meeting has been proposed between Mr Smith and Senator Ian Campbell and your response will form the basis for the proposed meeting."
14-Dec-98	Mr Philip Gaejens, Chief of Staff, Office of the Treasurer	Me	<i>"The Treasurer is concerned that your complaint be properly addressed. I am advised that the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts, Senator Ian Campbell, will be assisting Senator Alston on telecommunications consumer issues, including yours and other similar cases relating to Telstra."</i>
27-Jan-99	Senator Kim Carr	Me	Senator Carr acknowledged my continued struggle and added <i>"Your manuscript demonstrates quite clearly how Telstra has been prepared to infringe upon the civil liberties of Australian citizens in a</i>

			<i>manner that is most disturbing and unacceptable."</i>
29-Jan-99	Mr Mark Dunstone, from the Minister's office	Mr John Pinnock, TIO	Mr Dunstone asked: "Could you advise the status of the TIO's investigation into Mr Smith's claim of overcharging on his 1800 number. I understand this matter has been before the TIO for some years."
10-Feb-99	Mr John Pinnock, TIO	The Hon David Hawker, MP	In response to a letter from Mr Hawker on 11 December 1998, Mr Pinnock wrote: "The only matter outstanding which the TIO is considering is whether the Arbitrator considered Mr Smith's claim for overcharging on his then 008 service when he made his award." This shows that Mr Pinnock had still not told Mr Hawker that the TIO-appointed Arbitration Resource Unit had admitted that NONE of my billing claim documents had ever been investigated and/or addressed during my arbitration.
10-Feb-99	Mr John Pinnock, TIO	Mr Mark Dunstone, from the Minister's office	"Mr Smith, however, raised issues in 1998 which I considered merited investigation, viz whether the arbitrator had, in his Award, dealt with Mr Smith's claim that he had been overcharged on his 008 (now 1800) telephone service as well as complaints concerning his fax line. The TIO has carried out some preliminary, if protracted, investigation of the former claim." Obviously Mr Pinnock had not told the Minister that Telstra, and the TIO's staff, were all fully aware that these billing problems continued after my arbitration, along with lock-up faults on both my incoming service and the fax line, and that all these problems were still occurring even as he wrote his letter to Mr Dunstone.
26-Feb-99	Graham Schorer	Me	Complaints of fax problems when Graham received faxes from my fax machine (see "Ring for Justice" page 121).
23-May-99	Mr John Pinnock, TIO	Me	"Due to the voluminous files held by the TIO, relating to the TIO's involvement in the Cot process, the letter you request to Steve Black, which relates to Steve Black's letter of 19th May 1995, cannot be found." 19th May 1995 was during my arbitration.
2-Jun-99	Mr John Pinnock, TIO	The Hon Tony Staley, Chairman, TIO Counsel	Raising concerns regarding the arbitration process, and noting: "I am even more strongly of the view today. In part my position has hardened because of the many problems and deficiencies in the Arbitration process."
2-Aug-99	Senator Ian Campbell	Me	Noting that he could not provide any assistance but adding "It would seem from your correspondence that you are alleging Telstra has engaged in unlawful practices by diverting your incoming calls. Should you consider that Telstra has committed an offence under the Telecommunications Interception Act 1979, the appropriate authority to investigate the offences is either the AFP or Victorian police force."
3-Aug-99	Mr John Pinnock, TIO	Me	"I have reviewed the resources which the TIO has devoted to dealing with your extra ordinary number of complaints and letters over the past years and advise you that I do not propose to take any further action in relation to these matters."

24-Oct-99	Cathy Ezard	Mr John Pinnock, TIO	Statutory declaration confirming the on-going phone problems and various privacy issues associated with our phone service.
28-Oct-99	The Hon Tony Staley, Chairman, TIO Counsel	Me	<i>"Having regard to the decision of the Arbitrator, the nature of your continuing complaints, the huge investment of resources of the TIO over the past four years, I have concluded that the matters demand finality and do not propose to answer further letters from you on this subject."</i>
30-Jan-00	Ms Margaret Van Run, Warrnambool (Vic)	Me	Confirmation of the many fax problems she had experienced while trying to contact my business.
13-Jun-00	Frank Nolan, ACA	Me	Advising that the ACA will not investigate any matters pertaining to my arbitration.
22-Dec-00	Telstra	The Hon David Hawker, MP	Regarding the disconnection of my Gold Phone in December 1995, even though they knew that non-connected calls were continually being incorrectly charged to my account.
12-Jul-01	Telstra	The Hon David Hawker, MP	Deflecting my complaints that Telstra should not have disconnected this line because they had not fixed the phone problems that were affecting the billing on this service.
12-Jul-01	Ms Ronda Fienberg	Me	Complaint concerning more phone and fax problems experienced with my phone service.
14-Sep-01	The Hon Senator Nick Minchin's office	Me	Confirming that Senator Minchin expected Senator Alston to address my Telstra-related issues.
18-Oct-01	Mr John Neil, Executive Officer, ACA	Me	<i>"I refer to your letter of 26 August 2001 to the Chairman of the ACA regarding your allegations about Telstra's behaviour during your arbitration procedure. I note you have previously raised them with other authorities including the Commonwealth Ombudsman and the Victoria Police. I do not propose to engage in further correspondence with you on these matters."</i>
7-Nov-01	Senator Brett Mason	Me	Confirming that Senator Mason expected Senator Alston to address my Telstra-related issues.
24-Jan-02	Mr Peter Condliffe, CEO, Institute of Arbitrators	Me	Noting that he had passed on to the Institute's Professional Affairs Committee the material I had provided to him concerning Dr Hughes.
30-Jan-02	Mr Ian Nosworthy, Senior Vice President, Institute of Arbitrators Australia	Me	In response to the information he had received from me via Mr Condliffe (see immediately above), Mr Nosworthy wrote: <i>"It should be clearly understood that the Institute's role is to take seriously complaints which are articulated against its arbitrators. We will do so here."</i>
15-Mar-02	The Hon David Hawker, MP	Me	<i>"I have ensured the Minister for Communications and Information Technology is aware of your offer to provide fresh evidence."</i>
27-Mar-02	The Hon David Hawker, MP	Me	Acknowledging that Senator Alston 'will respond to my matters shortly'.
10-Apr-02	Mr Ian Nosworthy, Senior Vice President,	Me	<i>"I do note your recent actions have involved making a complaint to police, alleging fraud -- at least on the part of Telstra -- and I do not propose to conduct further enquiry in relation to the matter if you are</i>

	Institute of Arbitrators Australia		<i>pursuing police actions."</i>
28-May-02	Mr John Pinnock, TIO	Me	<i>"The TIO has devoted considerable resources over this period in responding to your many letters. I do not believe there is any obligation on this office to continue. Accordingly I do not propose to reply to any further letters from you."</i>
29-May-02	Mr Michael Brealy, Senator Alston's Liaison Officer	The Hon David Hawker, MP	<i>"Three issues raised in your letter are receiving attention and the Minister will respond to you shortly."</i>
3-Jul-02	Mr Colin Lyons, from Senator Richard Alston's Office	Me	Suggesting that, as I had received legal advice about my Telstra matters, then this alternative course of action should be considered.
12-Jul-02	Senator Richard Alston, Minister for Communications	The Hon David Hawker, MP	<i>"As the material provided by Alan Smith relates to the arbitration undertaken by Dr Hughes, under the administration of the TIO, I have referred your letters to the TIO for advice."</i>
17-Jul-02	Mr Colin Lyons, from Senator Richard Alston's Office	Me	<i>"I would, therefore, ask that you refrain from providing any further material until the TIO has provided advice on the material you have supplied to date."</i>
14-Oct-02	Mr Michael Brealy, Senator Alston's Liaison Officer	The Hon David Hawker, MP	In relation to my matters, Mr Brealy wrote: <i>"The issues raised in your letter are receiving attention and the Minister will respond to you shortly."</i>
16-Oct-02			Telstra FOI document I00265 confirms that David Hawker has passed Darren Lewis's phone problem complaints to Senator Alston: <i>"This 3rd October letter has been cc'd to the TIO but doesn't seem to have made it's way into Telstra yet. Hopefully the TIO will become involved and that will take the Minister and Member out of the equation."</i>
18-Oct-02			Telstra FOI document I00271 refers to Darren Lewis's complaint to David Hawker and states: <i>"The TIO have previously investigated a number of complaints related by (name blanked out), the previous account holder for this service, in which similar issues were raised."</i>
25-Oct-02	The Hon David Hawker, MP	Mr Darren Lewis (now the owner of CBHC)	Acknowledgement that Mr Lewis's telephone complaints have been passed on to Senator Alston
15-Nov-02	Mr Michael Brealy, Senator Alston's Liaison Officer	The Hon David Hawker, MP	In relation to my matters, Mr Brealy wrote: <i>"The issues raised in your letter are receiving attention and the Minister will respond to you shortly."</i>
21-Nov-02	Mr Ian Carson, State President of the Liberal Party	Me	Notifying me that he had forwarded my Telstra-related letter to the Chair of the Constitutional Committee, Mr Daryl Williams, for his attention.
26-Nov-02	Mr Neil Skill, Prime Minister's office	Me	Noting that he has provided Senator Alston with my Telstra-related correspondence.

20-Dec-02	Mr Douglas Gration, Telstra Company Secretary	Me	<i>"I refer to your most recent correspondence to Mr Ralph, dated 16th December. Mr Ralph has asked me to review the matters you have raised on his behalf, I expect to be in a position to respond to you shortly."</i>
14-Jan-03	Mr John Neil, Executive Manager, ACA	Me	Refusing to look into the 1800 issues, Mr Neil suggested that: <i>"To the extent that these matters relate to Telstra's conduct in reaching a settlement with you, it seems that your best course of action is to pursue it as an individual matter."</i>
16-Jan-03	Mr Colin Lyons, from Senator Richard Alston's Office	Me	<i>"I regret that the Minister and the Department are unable to assist you further."</i>
23-Jan-03	Ms Gillian McKenzie, TIO's office	Telstra	Confirmation that Mr & Mrs Lewis, the new owners of the CBHC, believe their incoming telephone calls more than doubled after Telstra re-wired the business and disconnected a phone alarm bell, on 9th December 2002.
29-Jan-03	Mr Michael Brealy, Senator Alston's Liaison Officer	The Hon David Hawker, MP	In relation to my Telstra matters, Mr Brealy wrote: <i>"The issues raised in your correspondence are receiving attention and the Minister will respond to you shortly."</i>
30-Jan-03	Mr Douglas Gration, Telstra Company Secretary	Me	<i>"I refer to your most recent correspondence to Mr Ralph, dated 10th January 2003. Mr Ralph has asked that I review the matters you have raised on his behalf, I expect to be in a position to respond shortly."</i>
26-Feb-03	Mr John Pinnock, TIO	Me	Regarding my letters of 27 January and February 2003, Mr Pinnock stated: <i>"Each letter raises yet again issues relating to your Arbitration which was concluded almost eight years ago. As I have said on numerous previous occasions, I do not propose to take any further action on a matter that was subject of a final decision by the arbitrator."</i>
3-Apr-03	Mr Douglas Gration, Telstra Company Secretary	Me	Re issues I had raised with Mr Ralph (see above): <i>"Clearly there are very significant differences between your position and Telstra's on the matters you have raised."</i>
15-Apr-03	Senator Richard Alston, Minister for Communications	The Hon David Hawker, MP	<i>"In July 2002, the Department forwarded this correspondence to the TIO, to enable the TIO to assess whether a basis for reassessment of Mr Smith's award. The TIO found that the material did not, in his view, constitute a basis for reassessing the compensation made to Mr Smith."</i>
24-Jul-03	Mr Doug Field, Assistant Ombudsman	Me	Stating that he would investigate my evidence regarding Telstra fax-screening my faxes without permission.
14-Aug-03	Mr Doug Field, Assistant Ombudsman	Me	Confirming that he had officially passed on to the TIO for investigation the blank fax pages I had sent him.
19-Aug-03	Ms Nikki Vajrabukka, Liaison Officer to Senator Alston	The Hon David Hawker, MP	<i>"The issues raised in your letter are receiving attention and the Minister will respond to you shortly."</i>
12-Sep-03	Ministerial Officer, Prime Minister's office	Me	Acknowledging my letter of 1st September and advising that it had been passed on to Senator Alston and the Attorney General, Mr Daryl Williams.

12-Sep-03	The Hon David Hawker, MP	Me	Acknowledging my report dated 24 August 2003, and adding: <i>"I can assure you that this week while in Canberra I personally delivered the report and a copy of your covering letter to the Minister."</i>
7-Oct-03	Mr John Pinnock, TIO	Me	With reference to the Commonwealth Ombudsman officially passing to him the fax screen issues, Mr Pinnock wrote: <i>"In my opinion, the information you have supplied amounts to no more than speculation and innuendo and I am not persuaded that there is credible evidence to warrant an investigation by the TIO."</i>
9-Oct-03	Ministerial Officer, Prime Minister's office	Me	Advice that the Minister's office could not assist me.
14-Nov-03	The Hon David Hawker, MP	Me	Advising that he would raise my Telstra matters with the new Minister for Communications, the Hon Daryl Williams.
3-Dec-03	Mr Simon Burford, on behalf of the new Minister, the Hon Daryl Williams	The Hon David Hawker, MP	In regard to my matters, Mr Burford wrote: <i>"The issues raised in your letter are receiving attention and the Minister will respond to you shortly."</i>
11-Dec-03	Mr Douglas Gration, Telstra Company Secretary	Me	Refusing to address the matters I raised in my 17 November correspondence.
12-Dec-03	The Hon Daryl Williams, Minister for Communications	The Hon David Hawker, MP	Advising that Telstra believes that the fax interception issues are actually problems with my own fax machine.
12-Jan-04	Mr Philip Ruddock, MP, Attorney-General	Me	Regarding my Telstra issues.
27-Jan-04	Mr Simon Burford, Chief of Staff, Office of the Minister for Communications	The Hon David Hawker, MP	<i>"The issues raised in your letter are receiving attention and the Minister will respond to you shortly."</i>
3-Feb-04	Ms Annette Willing, on behalf of the Attorney-General	Me	Suggesting I report my allegations of unlawful interception of telecommunications services to the AFP.
11-Feb-04	The Hon Daryl Williams, Minister for Communications	The Hon David Hawker, MP	Acknowledgement that he had received advice from Mr Pinnock regarding my fax matters and stating that the TIO believed that my evidence was nothing more than 'speculation and innuendo' and therefore did not warrant further investigation by the TIO.
27-Feb-04	Mr Peter Coan, Treasury	Me	Confirming that he had transferred my Telstra matters to the Minister.
8-Mar-04	Mr Peter Coan, Treasury	Me	Confirming that he had transferred my Telstra matters to the Minister.
25-Mar-04	Mr John Rohan, Chairman of the TIO Board	Me	Refusal to comment on my Telstra issues.

29-Jul-04	Mr Tony Staley, Chairman, TIO Council	Me	Noting that I had not appealed the arbitrator's award and adding that, although it was evident that I "... still remain dissatisfied with the nature of the arbitration procedure and the conduct of the Arbitrator and the Administrator, the TIO Council will not in any way seek to reopen these matters."
3-Nov-04	The Hon David Hawker, MP	Me	"Thank you for your manuscript titled <i>"The Arbitrator"</i> . As requested I have forwarded your manuscript to the Hon Senator Helen Coonan, Minister for Communications."
10-Jan-05	Mr John Rohan, Chairman of the TIO Board & Mr Tony Staley, Chairman of the TIO Council	Me	"Neither the Board nor Council of the TIO Limited considers that Mr Warwick Smith or Mr John Pinnock has acted inappropriately regarding your arbitration or associated matters."
25-Feb-05	The Hon David Hawker, MP	Me	Confirming that he had provided further Telstra-related material to the Hon Senator Helen Coonan.
29-Jun-05	Ms Mary Balzary, Treasury	Me	"Thank you for your letters of 27th April, 10 and 13 June and 3, 10, 16, and 24 May 2005 to the Treasurer concerning Telstra." The letter also confirms that the material I provided had been passed on to Senator Coonan.
15-Sep-05	Senator Barnaby Joyce	Me	"The Minister has advised that she will appoint an independent assessor to review the status of outstanding claims and provide a basis for these to be resolved."
13-Oct-05	Mr Adam Carson, Department of Communications, IT and the Arts (DCITA)	Me	Confirming that Mr Simon Bryant of DCITA had refused my FOI request for the TIO's report to the Minister on 26th September 1997, (see attached report) on the grounds that it either does not exist or cannot be found.
28-Oct-05	Mr Adam Carson, Department of Communications, IT and the Arts (DCITA)	Me	In response to my FOI request for: "... correspondence sent from the office of the Minister for Communications, Information Technology and the Arts to the office of the TIO between August 1997 and December 2002, regarding any matters related to the continuation of billing faults and matters arising out of those faults which were not addressed in (your) arbitration with Telstra, including information that supports Telstra agreeing to address the billing faults that continued after (that) arbitration", and all correspondence from the TIO to the Minister on the same issues, Mr Carson wrote that the DCITA could not provide the requested information because it either does not exist or cannot be found.
22-Dec-05	Mr Simon Bryant, DCITA	Me	Independent Assessment Terms of Reference, which states: "In conducting the assessment, the Department have agreed to the following: (a) Information provided by the claimant and relevant information held by the Department or Minister where the claimant agrees to this information being used."
17-Mar-06	Mr David Lever, DCITA	Me	"If the material you provide to the Department as part of the Independent assessment process indicates that Telstra or its employees have committed criminal offences in connection with your arbitration, we will refer the matter to the relevant authority."

18-Jan-06	Mr David Lever, DCITA	Mr John Pinnock, TIO	This email regarding the so-called 'Minister's Independent assessment process' states: "John, you may not be aware that the Department has been asked by the Minister to conduct an assessment of various disputes with Telstra, involving around 22 current or former customers or contractors of Telstra. Some of the former 'COTs' are among the 22 who will be asked if they wish to participate in the process. The assessment will focus on process rather than the merits of the claims, including whether all available dispute resolution mechanisms have been used. As part of the process, we may need to seek advice on various cases."
28-Feb-06	Mr Simon Bryant, DCITA	Me	Asking if I will agree to the DCITA Terms of Reference (see above), and advising that "The Department holds a considerable amount of correspondence from you on its files. This correspondence will also be examined as part of the assessment, to the extent practicable."
18-Mar-06	Mr David Lever, DC	Me	"In your letter to Ms Franklin you have sought documents, without charge, that you previously requested under FOI. It appears that you are seeking access to documents that you would like to resubmit to the Department for the purpose of the Independent assessment. The Terms of Reference for the Independent assessment provide that the Department will have regard to relevant information held by the Department, as well as information provided by the claimant. To the extent that the information to the assessment of claim is already held by the Department, it will be considered as part of the assessment." (This information was not assessed.)
26-Mar-06	Mr John Pinnock, TIO	Mr David Lever, DCITA	A file note recording contact between Mr Pinnock and Mr Lever, indicating that Mr Pinnock asked if a person who's name has been blanked out was involved in the Independent Assessment process. Mr Lever advised Mr Pinnock that this person was involved. Mr Pinnock then advised Mr Lever that the person had contacted Mr Pinnock, asking for documents that he wanted to include in his Independent Assessment claim. Mr Lever advised Mr Pinnock that the Department had already asked this person to forward any documents by 17 March 2006. (The blanked out name was obviously mine)
7-Apr-06	Mr David Lever, DCITA	Me	Confirming that Mr Lever had advised me that my claim had to be in by 17 March 2006.
20-Apr-06	Mr John Pinnock, TIO	Me	Acknowledging receipt of my 3rd March request for documents, Mr Pinnock writes: "I am seeking advice about your letter and will write to you as soon as possible."
13-Jul-06	Senator Helen Coonan	Me	Final Independent Assessment report, with covering letter. It is clear from both these documents that the DCITA did not assess any of the material held by the Department, as they should have, according to the Terms of Reference.
31-Aug-06	The Hon David Hawker, MP	Me	"I acknowledge receipt of your correspondence dated 23 August 2006. As requested, issues concerning privacy breaching have been raised with Senator Coonan's office for your meeting with the Minister set

19 May 08	Mr. David Lever, DETA	Mr. John Pinnock, TIO	<p>The email regarding the so-called "Minister's Independent Assessment Process" states: "After you may not be aware that the Department has been asked by the Minister to conduct an assessment of various disputes with Telstar involving approximately 25 current or former customers or contractors of Telstar. Some of the former CIOs, including the 15 who were asked if they wish to participate in the process. The assessment will focus on issues other than the merits of the claims, including whether all available dispute resolution mechanisms have been exhausted. And in the process, we may need to seek advice from our lawyers."</p>
28 Feb 08	Mr. David Lever, DETA		<p>Asked if I will agree to the DETA Terms of Reference as shown, and advising that the Department has a considerable amount of correspondence from you on its file. This correspondence will also be examined as part of the assessment. I will be available to you.</p>
19 May 08	Mr. David Lever, DETA		<p>In your letter to the Minister, you requested that documents without which you cannot properly request under PIA, if necessary, that you are seeking access to documents that you would like to review, to the Department for the purpose of the independent assessment. The Terms of Reference for the independent assessment you refer to in the Department will have regard to relevant information given by the Department, as well as information provided by the claimant. To the extent that the information is relevant to the assessment of the claim, it will be included in the assessment. The information you are requesting is not relevant. A letter regarding contact between Mr. Pinnock and Mr. Lever, indicating that Mr. Pinnock advised a person whose name has been blacked out with redacted information, independent Assessment process. Mr. Lever advised Mr. Pinnock that this person was a former Telstar employee. It is noted that Mr. Lever stated the person had contacted Mr. Pinnock, asking for documents that is wanted to include in his Independent Assessment claim. Mr. Lever stated that Pinnock had the Department's letter dated 12 March 2008. (The letter in question was received by Mr. Pinnock on 12 March 2008.)</p>
23 March 08	Mr. David Lever, DETA	Mr. John Pinnock, TIO	<p>Confirming that Mr. Lever had the copy of the letter dated 12 March 2008 by 12 March 2008.</p>
17 April 08	Mr. David Lever, DETA	Mr. John Pinnock, TIO	<p>All outstanding records of 17 April 2008 were provided to Mr. Pinnock. The outstanding records about your letter and the letter dated 12 March 2008.</p>
10 April 08	Mr. David Lever, DETA	Mr. John Pinnock, TIO	<p>The Independent Assessment Process will be conducted by the Department. The Department will be responsible for the assessment. The Department will be responsible for the assessment. The Department will be responsible for the assessment.</p>
21 April 08	Mr. David Lever, DETA	Mr. John Pinnock, TIO	<p>The Department will be responsible for the assessment. The Department will be responsible for the assessment. The Department will be responsible for the assessment.</p>

			for 6 September 2006."
			200 DOCUMENTS IN ALL

Post Arbitration File



FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

BY COURIER

18 April 1995

Pia

14/4/95

We to discuss

Mr Warwick Smith
Telecommunications Industry Ombudsman
Ground Floor
321 Exhibition Street
MELBOURNE VIC 3000

Dear Sir,

RE : Fast Track Arbitration Procedure - Resource Unit
Arbitrations: Smith, Garms, Gillan/Valkobi

I acknowledge receipt of your letter of 23 March 1995. The matters raised in your letter were discussed at a meeting with Sue Hodgkinson and me on Tuesday, 4 April 1995. I now formally reply to your letter and update you on further developments since our meeting.

I note from the tone of your letter that you are somewhat concerned as to the apparent time frames within which you, as Administrator of the Fast Track Arbitrations, can expect finalisation of the above named arbitrations.

You have requested advice as to when, in terms of weeks, the Resource Unit envisages being in a position to provide its integrated financial and technical assessments to the Arbitrator for the above arbitrations. I now respond accordingly in relation to each:

Smith

The Resource Units role is almost complete, but more work is to be done to tidy our reports (both technical and financial) to a form suitable for submission to the parties by the end of April 1995.

The Resource Unit has completed a preliminary review of the financial material contained in the claim, defence and reply. The interim report has been drafted based on the assumption that technical faults did occur.

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD
A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK
LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000
TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER

16



No further questions are anticipated from the Arbitrator. An important meeting took place between the Resource Unit and the Arbitrator on 10 April 1995 over the need to manage the issuance of Resource Unit reports.

Lane Telecommunications have commenced their detailed review in mid March and now have completed their draft interim report (on 6 April 1995). This report is subject to review and amendment by Paul Howell of DMR Inc prior to issuance.

Garms

The Resource Unit has commenced its review of the financial issues. A preliminary report is envisaged to be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they estimate that their preliminary review will be completed within one month (mid to late May) for review by Paul Howell of DMR Inc.

Gillan/Valkobi

The Resource Unit has commenced its review of the financial issues. We envisage that our preliminary report will be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they likewise expect their preliminary review will be completed within one month for review by Paul Howell of DMR Inc.

Resource Unit (including Technical Support)

I note your comment that the Resource Unit reports issued to the Arbitrator must also be provided to the claimant and Telecom for their comment. We agree that this may prolong the process further, but the fact is that this is a requirement of the fast track arbitration. The Smith report will be available imminently and subsequent reports can, with the benefit of experience be expected to proceed more expeditiously.

I also advise that Mr Paul Howell, Director of DMR Inc Canada arrived in Australia on 13 April 1995 and worked over the Easter Holiday period, particularly on the Smith claim. Any technical report prepared in draft by Lanes will be signed off and appear on the letterhead of DMR Inc. Paul Howell anticipates completing the Smith technical report by the end of April. 11 What

Further, I advise that additional resources have been applied to the assignments and work on each has been undertaken contemporaneously. We have technical staff and financial support staff working on Garms and Gillan (in parallel) and visits to Brisbane are anticipated by the end of April 1995.



Arbitration

I understand that Dr Hughes will contact you directly (in your capacity as Administrator of the Fast Track Arbitration Procedures) on any legal procedural issues associated with the progress of the Arbitrations.

Conclusion

In conjunction with Dr Gordon Hughes, we are fast tracking the procedure with the aim of achieving a decision that has regard for due process and investigation.

In closing, I hope that it is possible for you (in your capacity as Administrator for the above referred Fast Track Arbitrations) to continue in that position until we can resolve these claims.

It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work. It is only now, following the review and acceptance of our Resource Unit (including acceptance of Lane Telecommunications by the COT claimants), that we are in a position to analyse the merits (including technical aspects) of each claim.

Do not hesitate to contact the writer directly on (03) 629 8855.

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY

JOHN RUNDELL
Project Manager - Resource Unit
Associate Director

Encl.

c.c. Mr Peter Bartlett, Partner, Minter Ellison Morris Fletcher.
Dr Gordon Hughes, Arbitrator, Managing Partner, Hunt & Hunt.



MELBOURNE SYDNEY BRISBANE CANBERRA GOLD COAST LONDON HONG KONG BEIJING
ASSOCIATED OFFICES ADELAIDE PERTH AUCKLAND WELLINGTON JAKARTA SINGAPORE

↑

DRAFT

↓

28 April 199

Dr Gordon Hughes
Hunt & Hunt
Solicitors
GPO Box 1533N
MELBOURNE VIC 3000

By Facsimile: 614 873

Dear Gordon

Fast Track Arbitration - Smith

I am becoming increasingly concerned at the delays in the finalisation of this matter.

The Resource Unit tells me that it expects its technical and financial reports to the Arbitrator will be released today to the parties. The parties will then of course have the right to a reasonable period within which to comment on these reports. The extent of this period would of course be in your discretion.

However, I understand you are to present a paper in Greece in mid-May.

I would expect the Award would be delivered prior to your departure.

It would be unacceptable to contemplate the delivery of the Award being delayed until after your return.

Could you please contact me to discuss.

Yours sincerely

Warwick L Smith
Ombudsman

DRAFT

18A

**TELECOMMUNICATIONS INDUSTRY OMBUDSMAN
- FAST TRACK ARBITRATION**

2

**RESOURCE UNIT TECHNICAL EVALUATION REPORT
- RE: MR ALAN SMITH OF
CAPE BRIDGEWATER HOLIDAY CAMP**

Issue: of 30 April 1995
Prepared by: Mr David Read and Mr Paul Howell

**DMR Group Inc.**

Suite 2300
1200 McGill College
Montreal Quebec
H3B4G7
Canada

Tel: 514 344 9244
Fax: 514 342 2210



**Lane
Telecommunications
Pty Ltd**
ACN 008 092 082

181 Fullarton Road
Dulwich
South Australia 5065

Tel: 08 364 5225
Fax: 08 364 5335

Sections 4 and 5 are an impact assessment and summary. We have ascertained that there were times when the service provided by Telecom to Mr Smith, quite aside from problems with CPE, fell below a reasonable level. These times ranged in duration from years in some cases, to 18 months in one case, to an estimated 70 days in one case, to shorter times in other cases. These durations of poor service were, in our judgement, sufficiently severe to render Mr Smith's service from Telecom unreliable and deficient.

Cape Bridgewater Documentation

The "Fast Track" arbitration proceedings are "on documents and written submissions". More than 4,000 pages of documentation have been presented by both parties and examined by us. We have also visited the site. Not all of the documentation has real bearing on the question of whether or not there were faults with the service provided by Telecom. We reviewed but did not use Mr Smith's diaries (Telecom's examination of Mr Smith's diaries arrived in the week of 17 April 1995). Like Telecom, we separate the problems caused by Mr Smith's CPE from those in Telecom's service and concentrate only on the latter. A comprehensive log of Mr Smith's complaints does not appear to exist.

The Technical Report focuses only on the real faults which can now be determined with a sufficient degree of definiteness. We are not saying anything about other faults which may or may not have occurred but are not adequately documented. And unless pertinent documents have been withheld, it is our view that it will not be feasible for anyone to determine with certainty what other faults there might or might not have been.

One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems.

Otherwise, the Technical Report on Cape Bridgewater is complete.

A key document is Telecom's Statutory Declaration of 12 December 1994. Without taking a position in regard to other parts of the document, we question three points raised in Telecom's Service History Statutory Declaration of 12 December 1994 [Ref B004].

"Bogus" Complaints

First, Telecom states that Mr Smith made "bogus" complaints [B004 p74, p78, Appendix 4, p10]. What they mean is his calls in June 1993 from Linton to test Telecom's fault recording. As others have indicated (see Coopers and Lybrand Review of Telecom Australia's Difficult Network Fault Policies and Procedures, November 1993, p6) "Telecom did not have established, national, documented complaint handling procedures [...] up to November 1992," and "documented complaint handling procedures were not fully implemented between November 1992 and October 1993." Furthermore, [p7] "fault handling procedures were deficient." Smith's June 1993 calls from Linton were, as he has stated, to test Telecom's fault reporting procedures, because people who had been unable to reach him told him that Telecom did not appear to be doing anything when they reported problems. We find Smith's tests in this instance to be unlikely to effect any useful results, but the term "bogus" does not apply.

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There were occasions when Mr Smith mistook problems with his own CPE for Telecom faults, but this is a normal occurrence in the operation of any multi-vendor system, which the end-to-end telephone system increasingly is. Telecom takes pains to separate these CPE problems from the legitimate faults, which they acknowledge.

Sources of Information

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

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

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

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

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

2.22 All services for CBHC were lost for 3 hours due to an exchange data programming error. Such major impact due to an operational error is deemed a less than reasonable level of service.

ASSESSMENT - Service was less than reasonable.

2.23 Continued reports of 008 faults up to the present. As the level of disruption to overall CBHC service is not clear, and fault causes have not been diagnosed, a reasonable expectation is that these faults would remain "open".

ASSESSMENT - Indeterminate.

3. About 200 fault reports were made over December 1992 to October 1994. Specific assessment of these reports other than where covered above, has not been attempted.

5 Summary

CBHC telephone services have suffered considerable technical difficulties during the period in question. Telecom, certainly initially fully concentrated on the CAN/CPE elements, and if they were 'intact', faults would be treated as NFF (No Fault Found). As can be seen from the above, faults did exist that affected the CBHC services, causing service to fall below a reasonable level and apart from CPE problems, most of these faults or problems were in the Inter Exchange Network.

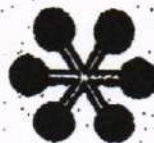
**TELECOMMUNICATIONS INDUSTRY OMBUDSMAN
- FAST TRACK ARBITRATION**

**DRAFT FOR DISCUSSION
PURPOSES ONLY**

**RESOURCE UNIT TECHNICAL REPORT
- RE: MR ALAN SMITH OF
CAPE BRIDGEWATER HOLIDAY CAMP**

**NOTE: This is a Draft Report and is Subject to
Further Review Before Final Submission**

**Issue: Draft of 6 April 1995
Prepared by: Mr David Read**



**Lane
Telecommunications
Pty Ltd
ACN 008 092 082**

**181 Fullarton Road
Dulwich
South Australia 5065**

**Tel: 08 364 5225
Fax: 08 364 5335
Ref: MCON0225**

15-11-1995 09:20 FROM CAPE BRIDGE HOLIDAY CAMP
APR 07 '95 17:07 LANE TELECOM 61 8 3645335

TO

032877001

P.02

P.2/25

DRAFT FOR DISCUSSION PURPOSES ONLY

Scope of Report

The report covers incidents and events potentially affecting the telephone services provided to the Cape Bridgewater Holiday Camp during the period February 1988 to August 1994.

Source of Information

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

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- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
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- inspection of the CPE at the Cape Bridgewater Holiday Camp
- inspection of the exchange equipment at Portland (RCM, AXE 104, ARF)
- discussions with Mr Alan Smith, accompanied by Mr Peter Gamble of Telecom Australia.

BY: HUNT & HUNT

12- 5-95 : 2:41PM : MELBOURNE OFFICE

61 3

90

2



Hunt & Hunt

LAWYERS

12 May 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FAX: 277 8797

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

Partners
David M. Scarlett
Edward S. Boyce
James C.F. Harrowell
Christine A. Calley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Swift
Wayne B. Cahill
Neville C.H. Debnay
Grant D. Sefton
Charles Veevers
Andrew Leslie Smith
William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Kelleway
Andrew Jenkins

Associates
Shane G. Hind
John S. Molnar
Melissa A. Henderson
Francis V. Galichio
John D.F. Morris

Dear Warwick

FAST-TRACK ARBITRATION PROCEDURE

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

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

In simple terms, my observations are as follows:

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

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

T. BY: HUNT & HUNT

:12- 5-95 ; 2:41PM ;

MELBOURNE OFFICE→

61 3 277 8797: # 3

2

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

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

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

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

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

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

Yours sincerely


GORDON HUGHES

file

24 May 1995

Private & Confidential

Telecommunications
Industry
OmbudsmanWarwick L. Smith LLB
OmbudsmanMr Steve Black
Group General Manager
Customer Affairs
Telecom
37/242 Exhibition Street
MELBOURNE VIC 3000Black
Benjamin
Geary
Evert
Armstrong
Phillips
ChapmanHaar
Chisholm
Gamble
Levy
Deloitte
Sutton
KearneyFreehills
~~Chisholm~~
Holding Redlich
~~Black~~
D'Ang

By facsimile: 9632 3235

File.....

Smith / T10

Dear Steve,

RE: ALAN SMITH

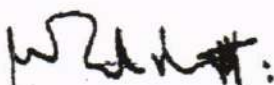
Under the terms of the Fast-Track Arbitration Procedure, Cl.14 provides that payment is due within 3 weeks of the despatch of the award, unless appeals in accord with Cl.12 of the Arbitration agreement proceed.

I understand from Mr Paul Rizzo last evening that the matter of payment will be settled forthwith. Other matters relating to liability will be dealt with separately. Dr Hughes is in his office from 30 May 1995.

Can we please now discuss finalisation.

I have to hand your letter of 19 May 1995 to AUSTEL's Carrier Monitoring Unit which refers to the Smith decision and the reconciliation of the Arbitrator's comments on Telstra's legal liability. I am happy to discuss this matter. AUSTEL has sought my views.

Yours sincerely

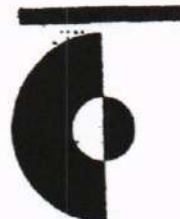

Warwick L. Smith
Ombudsman

M34131

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

✓
DOCUMENT H

FAXED



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

Telecommunications
Industry
Ombudsman

Facsimile Cover Sheet

TO: WLS

Company: _____

Fax: _____

FROM: PAD

Company: _____

Fax: _____

Date: 2/6/95

Pages: 3 (including cover sheet)

Comments: ✓

confirmation from ① re Smith.

Spoke to Paul Haar this afternoon and
the handing over of the cheque was
effected this morning as planned.

So, all's well that ends well ... we hope!
↑
cheers. p. ↑

FAXED



Telecommunications Industry Ombudsman ACN 057 634 787
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000
Telephone: 61 3 277 8771 Facsimile: 61 3 277 8797

Telecommunication
Industry
Ombudsman

Facsimile Cover Sheet

TO: PLB
Company: Munkers
Fax: 9617 4621

FROM: PAD
Company: TIO
Fax: 92778797
Date: 22.6.95

Pages: 1 (including cover sheet)

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

Feter,

could you please have a look at Hughes' letter
to Pinnock dated 21 June 95 re Alan Smith.

John wants to discuss it on Monday, and
what the approach should be re parties
seeking to revisit issues post Arb'n. His position
is not to open the can of worms, but would
like to discuss strategy with you.
Regards, Pa.

COPY



Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

23 June 1995

Private & Confidential

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

By facsimile: (055) 267 230

Dear Mr Smith

I refer to our conversation on 22 June 1995 and your correspondence to Dr Hughes of 20 June 1995 which was copied to me.

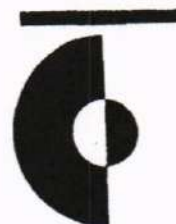
I am presently considering the matter you have raised, and shall respond further next week.

Yours sincerely

John Pinnock
Ombudsman

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

COPY



28 June 1995

Telecommunications
Industry
Ombudsman

Strictly Confidential

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

John Pinnock
Ombudsman

By facsimile: (055) 267 230

Dear Mr Smith

I refer to your recent correspondence.

So far as your request concerning the Bell Canada raw data is concerned, our file shows that on 15 August 1994 you asked the Arbitrator to direct Telecom to produce this information. On 16 August 1994 Dr Hughes asked Telecom for its reaction to your request so that he could consider appropriate directions on the matter. There is no indication on our file that Telecom responded. Nonetheless, on 25 August 1994 you provided statutory declarations to the Arbitrator to the effect that your claim documentation was complete.

Our file then shows that by letter dated 28 December 1994 you again formally requested the Arbitrator to require Telecom to provide the raw data associated with the Bell Canada testing. The Arbitrator wrote to Telecom that day enclosing a copy of your letter and requesting a submission in relation to your request. Telecom's submission, dated 13 January 1995, insofar as it related to your request for the raw data stated:

" Telecom located some of Bell Canada International's working documents which were thought to be in the possession of Bell Canada International but which were later found to have been left with Telecom staff in Australia.

Those working documents, insofar as they related to Mr Smith's business and fell within the scope of his FOI request of December 1993 were provided to Mr Smith under cover of my letter dated 21 October 1994. Mr Smith has previously been informed (by letter dated 15 December 1994 from Telecom to Mr Smith) that, as far as I am aware, all Bell Canada International's working documents (including raw data) in Telecom's possession have already been provided to him."

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

Dr Hughes provided you with a copy of this submission on 23 January 1995, noting that Telecom did not consider it had any further information of relevance in its possession. Dr Hughes then invited you, within twenty-four hours, to respond to Telecom's submission. Our file does not indicate that you took the matter any further.

In other correspondence you refer to what you apparently now see as problems in the process of developing the Fast-Track Arbitration Procedure, an agreement which flowed from the Fast Track Settlement Proposal negotiated by AUSTEL and the parties in November 1993.

I understand that during that negotiation process Mr Schorer and Mrs Garms sought their own independent legal advice. Of course you had the opportunity to do likewise.

The Arbitration Procedure that was subsequently agreed to by all the parties set out a fair and realistic framework within which these longstanding disputes could be resolved.

The problems in the provision of documentation under FOI did cause delays in the progress of these arbitrations. However, as you are aware, this office has no jurisdiction over FOI, which is instead within the realm of the Commonwealth Ombudsman.

As you know, Dr Hughes took the view that it would assist neither the parties nor the process itself to insist on the adherence to submission deadlines when FOI applications by the claimants remained outstanding. It was not possible or appropriate for Dr Hughes or this office to play a more active role in the FOI issue.

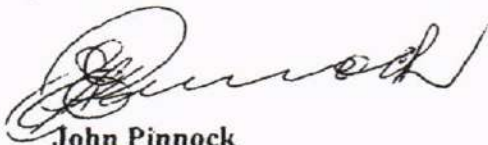
Your concerns, only recently expressed, with the Arbitration Procedure appear to be based on the grounds that you had no guidance as to how to present your claim to the Arbitrator, in the face of the far greater resources available to Telstra for the preparation of its defence. Of course, in order to maintain the integrity and impartiality of the arbitration procedure, neither this office nor the Arbitrator could provide you with such guidance. Dr Hughes states in his Award that he took into account the fact that you formulated your claim submissions without legal representation. He also notes that he did not believe it would have been reasonable to expect you to present your claim in a manner similar to that which would have been adopted by a legal practitioner.

While you may be disappointed with the Arbitrator's findings as to the losses which flowed from the considerable technical difficulties for which Telecom was found liable, this should not detract from your justifiable sense of great achievement with regard to the technical findings.

The Arbitration process has run its course, and a final resolution has been achieved. There is nothing to be gained by revisiting issues which have been dealt with in the arbitration procedure. Neither Dr Hughes nor this office has any further role to play in the matters which gave rise to your dispute with Telecom which has now been resolved.

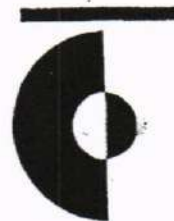
However, if you do experience any further problems with your telecommunications services that are unrelated to the matters resolved by the arbitration procedure please do not hesitate to contact us.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'John Pinnoch', with a stylized flourish at the end.

John Pinnoch
Ombudsman

COPY



28 June 1995

Telecommunications
Industry
Ombudsman

Strictly Confidential

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

John Pinnock
Ombudsman

By facsimile: (055) 267 230

Dear Mr Smith

I refer to your recent correspondence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Arbitration process has run its course, and a final resolution has been achieved. There is nothing to be gained by revisiting issues which have been dealt with in the arbitration procedure. Neither Dr Hughes nor this office has any further role to play in the matters which gave rise to your dispute with Telecom which has now been resolved.

However, if you do experience any further problems with your telecommunications services that are unrelated to the matters resolved by the arbitration procedure please do not hesitate to contact us.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'John Pinnoch', written in a cursive style.

John Pinnoch
Ombudsman

TAITS

SOLICITORS • CONSULTANTS

June 29, 1995.

29/6/95

WARRNAMBOOL121 Kepler Street,
Warrnambool.P.O. Box 311,
Warrnambool, 3280

DX 28003 Warrnambool

Tel: (055) 61 4111

Fax: (055) 61 4567

PORT FAIRY6 Princes Street,
Port Fairy.P.O. Box 121
Port Fairy, 3284

Tel: (055) 68 1010

Fax: (055) 68 2731

MORTLAKE118 Dunkap Street,
Mortlake.P.O. Box 1
Mortlake, 3272

Tel: (055) 99 2504

Fax: (055) 99 2036

PARTNERSDr. Aiken
Mr. Aitken
Mr. Biddle
Mr. Ezy**ASSOCIATE**

Elizabeth Laidlaw

ACCREDITED**SPECIALISTS**James Tait
Business Law;
Wills & Estate Planning;
Local Government,
Planning & Environment.Graham Ezy
Family Law;
Commercial Litigation.Reply to: Warrnambool
Our Ref: Mr. Ezy: 7:18
Your Ref:Mr. Neil Tuckwell,
Chairman,
Austel,
P.O. Box 7443,
ST. KILDA ROAD,
MELBOURNE. 3004
FAX 03/9820 3021

Dear Sir,

Alan Smith - Cape Bridgewater Holiday Camp

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

Mr. Smith instructs:

1. He has had recent correspondence with your office and also discussions with Mr. Matherson regarding the testing by Bell Canada International Inc. and Neat during November 1993.
2. From 28.10.93 to 8.11.95 the Neat Testing was being evaluated. To perform the test an Ericsson Neat Network Test Unit was connected to the test number at the Cape Bridgewater RCM 055 267 211 in the same line group as Mr. Smith's number (055 267 267). Mr. Smith has the results of those tests.
3. Over the same period, during the Neat testing, Bell Canada International Inc. performed their tests to the same RCM number at Cape Bridgewater PTARS 055 267 211, from 12.45 p.m. on 5.11.93 until 4.30 p.m. 5.11.93 (from South Yarra 03 867 1234). Also, on the same day, from Richmond (03 428 8974), between 12.45 p.m. and 4.18 p.m. further tests were done to the same PTARS 055 267 211.
4. On 6.11.93 from 054 434 234 to the PTARS 055 267 211 more tests were done to that same number, finishing at 10 a.m. on 8.11.93.
5. Mr. Smith has already refuted the amount of test calls that took place over these days.

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

Yours faithfully,


 TAIT'S SOLICITOR

20A



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

94/0269 -10

12 July 1995

Tait's Solicitors
PO Box 311
WARRNAMBOOL 3280

Facsimile (055) 61 4567

Attn Mr Ezzy

Dear Sir

Re: ALAN SMITH - CAPE BRIDGEWATER HOLIDAY CAMP

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

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

Yours faithfully

Cliff Mathieson
General Manager
Carrier Monitoring Unit

cc Mr A Smith
Facsimile (055) 267 230

20B

28 Rowe Street
North Fitzroy
Vic 3068
Tel: 9486 3136
Fax: 9489 4452

Dear Sir,

Casualties of Telecom (COT Cases)

I am writing this in support of Mr Alan Smith, who, I believe has a meeting with you during the week beginning 17 July.

I first met the COT Cases in 1992 in my capacity as General Manager, Consumer Affairs at Austel. The "founding" group were Mr Smith, Mrs Ann Garms of the Tivoli Restaurant, Brisbane, Mrs Shiela Hawkins of the Society Restaurant, Melbourne, Mrs Maureen Gillan of Japanese Spare Parts, Brisbane and Mr Graham Schorer of Golden Messenger Couriers, Melbourne. Mrs Hawkins withdrew very early on, and I have had no contact with her since then.

The treatment these individuals have received from Telecom and Commonwealth government agencies has been disgraceful, and I have no doubt that they have all suffered as much through this treatment as they did through the faults on their telephone services.

One of the most striking things about this group is their persistence and enduring belief that eventually there will be a fair and equitable outcome for them, and they are to be admired for having kept as focused as they have throughout their campaign.

Having said that, I am aware that they have all suffered both physically and in their family relationships. In one case, the partner of the claimant has become quite seriously incapacitated; due, I believe to the way Telecom has dealt with them. The others have all suffered various stress related conditions (such as a minor stroke).

During my time at Austel I pressed as hard as I could for an investigation into the complaints. The resistance to that course of action came from the then Chairman, Mr Robin Davey. He was eventually galvanised into action by ministerial pressure. The Austel report looks good to the casual observer, but it has now become clear that much of the information accepted by Austel was at best inaccurate, and at worst fabricated, and that Austel knew or ought to have known this at the time.

TEL NO.

16 Jul 95 7:32 P.01

After leaving Austel I continued to lend support to the COT Cases, and was instrumental in helping them negotiate the inappropriately named "Fast Track" Arbitration Agreement. That was over a year ago, and neither the Office of the Commonwealth Ombudsman nor the Arbitrator has been successful in extracting information from Telecom which would equip the claimants to press their claims effectively. Telecom has devoted staggering levels of time, money and resources to defeating the claims, and there is no pretence even that the arbitration process has attempted to produce a contest between equals.

This has increased the stress levels and feeling that there may be no hope of an equitable outcome, and I have observed the general health of all claimants declining noticeably over the last eight or nine months in particular.

Because I'm not aware of the exact circumstances surrounding your meeting with Mr Smith, nor your identity, you can appreciate that I am being fairly circumspect in what I am prepared to commit to writing. Suffice it to say, though, that I am fast coming to share the view that a public inquiry of some description is the only way that the reasons behind the appalling treatment of these people will be brought to the surface.

Even if the remaining claimants receive satisfactory settlements (and I have no reason to think that will be the outcome) it is crucial that the process be investigated in the interests of accountability of public companies and the public servants in other government agencies.

I would be happy to talk to you in more detail if you think that would be useful, and can be reached at the number shown above at any time.

Thank you for your interest in this matter, and for sparing the time to talk to Alan.

Yours sincerely

Charles E. Davis

Amanda Davis

15 July '95

COPY



Telecommunications
Industry
Ombudsman

July 17, 1995

John Pinnock
Ombudsman

STRICTLY CONFIDENTIAL

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

By Facsimile: (055) 267 230

Dear Mr. Smith,

I refer to your letter of 27 June 1995, and in particular to your request that I ascertain whether Dr. Hughes sought fault data from Telecom following your letter to him of 6 January 1995.

My office raised your query with Dr. Hughes. We received a response from Dr. Hughes on 14 July 1995 to the effect that he had understood that your request was for the purposes of preparing your Reply to Telecom's Defence. Dr. Hughes pointed out that upon his return from annual leave you arranged to personally deliver your Reply to him on 20 January 1995.

His file note of that meeting states that he discussed with you the contents of your letter of 6 January 1995 in which you referred to "incorrect details presented in Telecom's Defence Documents," and that your response was that these matters were now all incorporated in your Reply Documents. Dr. Hughes states that it was therefore clear to him that your letter of 6 January 1995 was superseded by your Reply documentation and that, having submitted your Reply, the presentation of your case was at an end.

I have provided this clarification so that there can be no doubt that the Arbitrator considered the issue which you raised. However, I reiterate that there is nothing to be gained by revisiting issues which have been dealt with by the arbitration procedure.

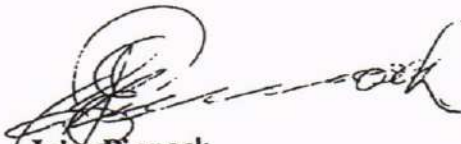
/2

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

I made the point in my letter of 28 June, that neither Dr. Hughes nor this office has any further role to play in the matters which gave rise to your dispute with Telecom which has now been resolved by the arbitration. The same can be said for Ferrier Hodgson Corporate Advisory.

I have received correspondence from Ferrier Hodgson Corporate Advisory that you have continued to contact them since the delivery of the Award. There is no basis upon which they can respond to any communication from you, as their involvement in your arbitration ended upon delivery of their report to Dr. Hughes. You then had the opportunity to respond to this report directly to Dr. Hughes, and your response would have been taken into account by him in his deliberations.

Yours sincerely,



John Pinnock
Ombudsman



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

COPY



Telecommunications
Industry
Ombudsman

August 25, 1995

John Pinnock
Ombudsman

Mr. Steve Black
Group General Manager - Customer Affairs
Telstra Corporation Limited
Locked Bag 4960
MELBOURNE VIC. 8100

Dear Mr. Black,

Re: Alan Smith : Supply of Documents under FOI

You are aware that Mr. Smith has complained that certain documents relevant to his claim were released to him under FOI after the arbitrator had made his award, and were received by him on 26 May, 1995.

In particular, Mr. Smith alleges that:

1. Document A40558 (copy attached) shows that there is a report in existence associated with the early 1990 Optocoupler measurements, on file with Telstra on 13 February 1990. Mr. Smith says that he has not read that report.
2. Documents N00005, N00006, N00037 (copies attached) are relevant to and support a number of claims he has made concerning the Bell Canada report.
3. Documents K41972 - K41975 (copies attached) are relevant to Telstra's state of knowledge (as communicated to AUSTEL) of faults on Mr. Smith's telephone line.

As Administrator of the Fast-Track Arbitration Procedure (FTAP) Mr. Smith's claims, if true, are matters which I would have to consider.

I am aware that in general terms, Telstra maintains that documents released to Mr. Smith under FOI on or about 26 May 1995, are copies of documents previously released.

Please provide me with evidence of any release dates, in respect of the documents detailed above, prior to 26 May, 1995.

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12

A21

Further, please advise me whether, and if so when, the report referred to in A40558 was released to Mr. Smith.

Mr. Smith has also advised me that he has on a number of occasions requested that Telstra supply him with tables and schedules related to the FOI material sent to him on 26 May 1995 and February 1994. He has stated that he is yet to receive these tables and schedules. I would be grateful if they could be provided to him.

Yours sincerely,

John Pinnock
Ombudsman

Per: 

Encs.



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

94/0269-11

29 August 1995

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

Facsimile No: (055) 267 230

Dear Mr Smith

YOUR FACSIMILE OF 13 AUGUST 1995

Mr Tuckwell has requested that I respond on his behalf to your facsimile to AUSTEL dated 13 August 1995.

In your facsimile you raise issues which you consider "*severely disadvantaged (your) Fast Track Arbitration submission/claim.*" As you are aware, and as stated in my letter to you of 12 July 1995, the Fast Track Arbitration Procedure is a confidential procedure and AUSTEL is not a party to it. AUSTEL considers that issues concerning the Fast Track Arbitration procedure should be directed to the Telecommunications Industry Ombudsman (TIO), who administers this procedure.

If the TIO requests advice or information from AUSTEL on issues raised in connection with the Fast Track Arbitration Procedure, AUSTEL will provide an appropriate response to the TIO.

Yours sincerely,



Cliff Mathieson
General Manager
Carrier Monitoring Unit

cc Mr John Pinnock, Telecommunications Industry Ombudsman.

*Dear
Please
desires.
I think this was
said to us
at the time*

Our Reference
P95/605



DEPARTMENT OF
COMMUNICATIONS
AND THE ARTS

14 SEP

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

Dear Mr Pinnock

The attached facsimiles were received by the office of the Minister for Communications and the Arts, the Hon Michael Lee MP, on 22 and 23 August 1995 from Mr Alan Smith of Cape Bridgewater Holiday Camp, Portland VIC 3305. Mr Smith wrote to the Minister in relation to his ongoing dispute with Telstra about the Bell Canada testing process at Cape Bridgewater.

I am referring these facsimiles to you in view of your responsibility for the Casualties of Telstra (COT) arbitrations.

I have written to Mr Smith advising him that his correspondence has been forwarded to you for consideration.

Yours sincerely

John Neil
Acting First Assistant Secretary
Telecommunications Industry Division


30 August 1995

01/09 09:35

031 3 277 8797

TIO LTD

01002



Telecommunications
Industry
Ombudsman

August 31, 1995

John Pinnock
Ombudsman

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

By Facsimile: (055) 267 230

Dear Mr. Smith,

I refer to your letter of 16 August 1995, which responds to my letter to you of 28 July 1995.

I have carefully considered your letter, however I stand by my letter to you of the 28 July 1995. Clearly there are a number of matters on which we disagree.

Yours sincerely,



John Pinnock
Ombudsman

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

COPY



**Telecommunications
Industry
Ombudsman**

September 4, 1995

**John Pinnock
Ombudsman**

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


By Facsimile: (055) 267 230

Dear Mr. Smith,

I refer to your letter of 1 September 1995.

I do not intend to pursue this issue nor continue to correspond with you on these matters.

Yours sincerely,


John Pinnock
Ombudsman

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

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

Telstra Corporati.
ACN 051 775 556

You will note that Mr Smith in his claim documents says *"Telstra have already agreed that something was amiss with the testing of Cape Bridgewater as far as Bell Canada was concerned"*. Further, in his reply to the Resource Team he talks about the Bell Canada test calls to Cape Bridgewater in November 1994. A copy of relevant claim and reply pages are attached (Attachment 1).

In addition, Telstra notes that the Arbitrator states in his decision in relation to the Bell Canada Report and others that *"in reaching my own conclusions I have taken account of the findings contained in the reports but I have not accepted as evidence the material upon which those findings were based unless that material has been corroborated or (where relevant) incorporated by reference in the present claim"*. (see clause 3.8 (c)). In relation to the incorporation of BCI testing by reference, Telstra did not rely on the BCI testing in its arbitration defence documents. The only reference to the BCI testing is made by Mr Smith in his claim and reply documents.

Telstra denies that any information in relation to this matter has been withheld from Mr Smith. The copy of the E-mail mentioned above (N00037), makes it clear that Mr Smith was well aware of some form of discrepancy in August 1994 and he brought this up in his claim documents.

It is also clear that the Arbitrator did not accept as evidence BCI testing material unless it was corroborated or incorporated by reference in his decision. Consequently, Telstra submits that this matter has been completed and that no further explanation need be given.

It should be noted further that Telstra advised Mr Smith that approximately 60% of documents released to him under FOI on or about 26 May 1995 were copies of documents previously released. A detailed explanation of how this occurred has already been delivered to the Commonwealth Ombudsman. *What was in the other 40%*

3. Documents K41972 to K41975 were sent to Mr Smith on 24 May 1995. Duplicates of these pages, namely R10401-R10405 were sent to Mr Smith on 19 July 1994 - released in full at that time. Review tables were sent to him on 22 December 1994 (see Attachment 2). Mr Smith was consequently aware of the contents of this letter prior to the lodging of his claim.

Yours faithfully



Ted Benjamin
Group Manager
Customer Affairs

Attach:

COPY



**Telecommunications
Industry
Ombudsman**

September 7, 1995

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

By Facsimile: (055) 267 230

Dear Mr. Smith,


I acknowledge receipt of your letters of 3 September 1995 with enclosures, and 4 September 1995.

As I have stated in previous correspondence with you, the arbitration procedure was completed in May 1995 with the delivery of the Arbitrator's Award, and the subsequent payment by Telstra of money required to be paid under that Award.

As I have also previously pointed out to you, any continuing concerns you may have with the arbitration should be raised with your own legal advisers.

I shall not respond to any further correspondence from you on these matters.

Yours sincerely,


John Pinnock
Ombudsman

COPY



Telecommunication
Industry
Ombudsman

September 12, 1995

John Pinnock
Ombudsman

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

By facsimile: (03) 9632 3235

Dear Ted,

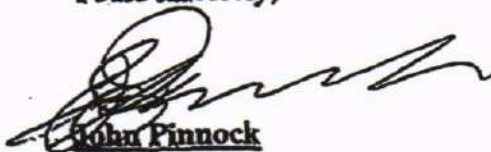
Re: Alan Smith : Supply of Documents under FOI

I refer to your letter of 7 September 1995.

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

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

Yours sincerely,


John Pinnock
Ombudsman

23A

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

COPY



Telecommunications
Industry
Ombudsman

September 12, 1995

John Pinnock
Ombudsman

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

By Facsimile: (055) 267 230

Dear Mr. Smith,

I refer to your letters of 8 and 10 September 1995.

If you continue to have concerns over the arbitration procedure and the Award handed down by the Arbitrator, then you should seek legal advice as to your options. I note that you have done so and have provided me with a copy of a document, described as a Memorandum of Advice, on this issue. Clearly you need to carefully consider any legal options available to you, the costs involved, and the prospects of success.

As I have stated to you in writing on numerous occasions over the last few months, as the Administrator of the arbitration I have no power to review the manner in which the Arbitrator conducted the arbitration, nor the decision reached by the Arbitrator.

Furthermore, it is quite wrong of you to state that I have decided not to address **any** of the matters brought to the attention of this office by the Cape Bridgewater Holiday Camp.

You are aware that on 25 August I wrote to Steve Black of Telstra, seeking its response to your allegations that you had received FOI material after the delivery of the Arbitrator's Award.

/2

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

Telstra has now advised me:


1. the report referred to is the PCM Multiplex Report, Telstra states that you have never requested a copy of this report under FOI. Telstra also states that the report was made available by Telstra to the Arbitrator to be passed on to you last year. Further, Telstra states that you had brought that matter up with the Commonwealth Ombudsman, and the matter had been dealt with by Telstra through that office.
2. the documents K41972 to K41975 which Telstra sent to you on 24 May 1995, were duplicates of documents R10401 to R10405, which were forwarded to you on 19 July 1994.

I am seeking further clarification from Telstra regarding its response concerning documents N00005, N00006 and N00037, as well as evidence as to Telstra's statement concerning the release date of documents in 1 and 2 above.

As to the other matter you have raised with this office, being the incorrect listing of your 1800 line in the White Pages, you are aware that this office raised your complaint with Telstra. This was done soon after receiving information on your complaint from you. As is the usual procedure, the TIO informed Telstra of your complaint and sought from the carrier all relevant documentation, with this to be provided within twenty-eight days. As no response was received from Telstra within the required timeframe, the matter was raised to the level of a dispute, and the relevant information again sought from Telstra. The Deputy Ombudsman now has responsibility for the complaint. Telstra still have not responded. You have been kept informed of these matters by this office. To ask in your letter of 10 September 1995 whether this complaint "is going to be ignored" is quite unjustified, as you know that we are investigating your complaint.

As has always been the case, this office will address any matters of concern to the Cape Bridgewater Holiday Camp provided those matters fall within the jurisdiction of the TIO. I reiterate that I have no role to play in any review of the arbitration process so far as it might relate to the conduct and Award of the Arbitrator. The question of whether you were supplied FOI material **after** the Arbitrator handed down his Award is a separate issue, and is being looked at.

Yours sincerely,


John Pinnoch
Ombudsman

COPY



September 20, 1995

Telecommunications
Industry
Ombudsman

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

John Pinnock
Ombudsman

By Facsimile: (055) 267 230

Dear Mr. Smith,

I refer to your letter of 11 September 1995 and your two letters of 14 September 1995, all addressed to Dr. Gordon Hughes, copies of which you forwarded to me.

As I stated to you in my letter of 28 June 1995, and reiterate now, Dr. Hughes has no further role to play in your arbitration. It is inappropriate for you to contact him directly regarding matters arising out of the arbitration process. Similarly, it would be inappropriate for Dr. Hughes to respond to you directly, and I have advised him of this.

However, you had already raised with this office the issue to which you refer in your letter of 11 September to Dr. Hughes, by letter dated 27 June. This office responded to you by letter dated 17 July 1995.

Yours sincerely,

John Pinnock
Ombudsman

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

MATTERS OF PUBLIC INTEREST

Telstra

Senator BOSWELL (Queensland--Leader of the National Party of Australia) (1.08 p.m.)-- At the moment there are customers of Telstra who, for many years, have also been casualties of Telstra. For years they have experienced problems with dead lines, lines dropping out, busy signals when it was not busy and many more. They complained, even to the point of not paying their bills and having their phones cut off, which they desperately needed for their business, all in a desperate plea to Telstra to fix their lines.

In one member's case, there was acknowledgment of lines being physically removed, with Telecom officers stating that there was a prima facie case existing for conviction if the offender could be found. There were all once successful business people, with the type of business that relied on a telephone service fit for their purpose: a service they did not receive. Eleven years after their first complaints to Telstra, where are they now? They are acknowledged as the motivators of Telecom's customer complaints reforms. As a direct result, a telecommunications industry ombudsman has been set up and a complaints resolution process established. But, as individuals, they have been beaten both emotionally and financially through an 11-year battle with Telstra. Now their bankers have lost patience with their lengthy dispute settlement and they are going down fast.

Following an investigation of the initial settlement, accepted under duress, Austel, the industry watchdog, came out with a highly critical report of Telecom and the settlement was re-opened. The Austel report concluded that Telecom was less than a model corporate citizen--damning words for our nation's monopoly telecommunications provider which, at that stage, was entering a new period of competition. It recognised Telecom's failure to undertake preventative rather than corrective maintenance on its older analog equipment, some dating back 30 years, as a significant cause of persistent, intermittent faults and that Telecom had clearly put supply side efficiencies ahead of customer concerns.

There is the admission by Telecom to

Austel:

It is of little or no bearing on the case that some of the testing has been purged from the system because we do not require these records to be convinced that this customer has serious concerns with her telephone service.

Backing up the Austel inquiry were critical reports by Coopers and Lybrand, describing Telecom complaints handling as not meeting the minimum requirements of 'adequacy, reasonableness and fairness', and a technical review by Bell (Canada) of Telecom's testing and fault-finding techniques for network faults. Then followed the Federal Police investigation into Telecom's monitoring of COT case services. The Federal Police also found there was a prima facie case to institute proceedings against Telecom but the DPP, in a terse advice, recommended against proceeding.

To this day the parties of the parliament have been denied any access to the Federal Police inquiry or advice from the DPP on the matter--despite persistent demands not only from the coalition but from the Democrats--or matters of the DPP wrongly advising the Federal Police that Telecom was protected by the shield of the Crown and that they could not execute a search warrant against Telecom in their investigations of alleged phone monitoring and tapping.

Once again, the only relief COT members received was to become the catalyst for Telecom to introduce a revised privacy and protection policy. Despite the strong evidence against Telecom, they still received no justice at all. Meanwhile, COT members were still experiencing poor telephone services, their businesses were continuing to suffer and they had been forced to enter the exhausting and expensive process of involvement in all these major inquiries into Telecom.

A Senate inquiry began to be mentioned by senators on this side and the Democrats. In late 1993, Senator Alston and I, at a meeting in Senator Alston's Parliament House offices, were given an assurance by senior Telecom officers that a Senate inquiry would not be necessary--that a fast track, non-legalistic process could be set up, that it would facilitate

20 September 1995

CURRENT SENATE HANSARD

FOI access to Telecom's documents and that it would be all over by April 1994. That process was to be overseen by the Telecommunications Industry Ombudsman. FOI documents from Telecom show that Telecom certainly did not want a Senate inquiry when they refer to:

... walking away, but I do not believe this option would suit Telecom's wider strategy in that it would appear to lead directly to a Senate inquiry.

My course therefore is to force Gordon Hughes--

the arbitrator--

to rule on our preferred rules of arbitration.

A fast track settlement proposal was signed by the four COT members in November 1993 and the fast track arbitration procedure on 24 April 1994, involving a confidentiality clause forbidding COT members any further public comment on Telecom. Even during this period of negotiations on the arbitration rules, FOI was being held up by Telecom. One Commonwealth Ombudsman's report on delays in FOI information condemns Telecom's denial of documents in the following words:

It was unreasonable for Telecom to require the participants to make further submissions while Telecom was considering the arbitration agreement and thereby denying participants the opportunity to consider the rules that Telecom wished to have included in the agreement.

I ask the Minister representing the Minister for Communications and the Arts (Senator McMullan): is this fair play on the part of Telecom? The report goes on:

There is no provision in the FOI Act which would permit Telecom to impose such conditions on applicants prior to granting access to documents--access under the FOI Act is public access.

These COT members have been forced to go to the Commonwealth Ombudsman to force Telecom to comply with the law. Not only were they being denied all necessary documents to mount their case against Telecom, causing much delay, but they were denied access to documents that could have influenced them when negotiating the arbitration rules, and even in whether to enter arbitration at all.

This is an arbitration process not only far exceeding the four-month period, but one which has become so legalistic that it has forced members to borrow hundreds of thousands just to take part in it. It has become a process far beyond the one represented when

they agreed to enter into it, and one which professionals involved in the arbitration agree can never deliver as intended and never give them justice.

Firstly, it was represented to members that it would be fast. It was called a 'fast track arbitration process'. There were many documented assurances given to the COT members on timing and a quick resolution. The assurance was given by Telecom to the deputy Liberal Party Senate leader, Senator Alston, and to me, the leader of the National Party in the Senate, late in 1993 that it would be fast track and non-legalistic and would facilitate FOI documents.

There is the letter from Peter Bartlett, special counsel to the TIO, on 26 February 1994 saying:

The emphasis is on "fast track" resolution of those claims.

It stated also:

With this in mind the arbitration is likely to commence this week and will be completed at the earliest possible time frame.

There is the detailed timetable from the TIO scheduling the final report after four months. Then there have been the delays caused by Telecom's FOI documents. The Commonwealth Ombudsman has twice reviewed Telecom FOI delays and has been very critical of, in her words, 'Telecom's defective administration'.

There have been further delays, referred to by the ombudsman as 'unreasonable', because Telecom sent FOI documents to be vetted by their lawyers before release to members, and delays caused by the destruction of documentation--in the case of the Tivoli Restaurant, all Telecom's raw data on testing from 1989 to July 1993. What this has meant is that the COT members, as Telecom has drip-fed their FOI, have had to resubmit their statements to the arbitrator to include the delayed information.

To give an example of the experience of COT member Ann Garms with FOI documents, she applied to Telecom for FOI in December 1993. In February she received approximately 10,000 documents. In April the arbitration procedure was signed; then in May 20,000 more documents turned up. From May to December 10,000 more documents were drip-fed, continuing till June this year--all for a process promised to be completed within four

20 September 1995

CURRENT SENATE HANSARD

months.

This is a situation of the might of a monopoly like Telstra, with all the resources behind it--said to add up already to millions of dollars--which has to be countered by four struggling business people. And now, despite assurances of fast track, which bankers and other supporters were reassured was the guiding principle of the arbitration, 18 months later the four suffering COT members are left with only one COT case settled and Telstra has made the non-legalistic arbitration process so legalistic that it has cost one COT member nearly \$300,000 to answer Telstra's protracted process.

There have been many scathing reports of Telstra's defective behaviour by Austel, Coopers and Lybrand, the TIO and the Commonwealth Ombudsman. A second Commonwealth Ombudsman report is due out any day--with the first going so far as recommending compensation from Telstra for any costs unnecessarily incurred because of the defective administration by Telstra, which ironically now involves another costly mediation process for the COT members involved. The TIO, in his annual report, described the whole process as:

... clearly the low water mark of effective customer relations, regulatory agency response and questionable direction from past management.

He continues:

Regrettable reliance on excessive legalism and failure to meet freedom of information requirements in a timely fashion has led in my view to an unnecessary prolongation of a process which was intended to be speedy.

The expense these COT members have been put to, arising from the so-called fast track arbitration process, has seen several go to the wall.

I regard it as a grave matter that a government instrumentality like Telstra can give assurances to Senate leaders that it will fast track a process and then turn it into an expensive legalistic process, making a farce of the promise given to COT members and the inducement to go into arbitration. The process has failed these people and can never give them justice--a point confirmed by professionals deeply involved in the arbitration process itself and by the TIO's annual report, where conclusion is described as 'if that is ever achievable'.

The COT members would never have opted for arbitration had they known it would go on so long at a cost of hundreds of thousands of dollars in legal and other expenses. Here are people who Telstra knows are on their knees, and the system becomes so legalistic that, to answer two Telstra requests for further particulars, it requires an additional \$45,000. These people have had their lives ruined by the process that has followed from daring to take on Telstra. It does not stop there. Many people have lent COT members funds to see them through the process based on assurances given by Telstra to Senator Alston and I and written assurances from the TIO that disputes would be settled within months, also risking their houses and businesses because of the outrageous delays.

Telstra has treated the Parliament with contempt. No government monopoly should be allowed to trample over the rights of individual Australians, such as has happened here. It brings me no joy to bring this matter before the Senate. I would rather be here praising Telstra, an Australian icon. But they are not bigger than the Australian people and, through them, the parliament. Telstra has been highly criticised by many government watchdogs all through the process, yet sadly, it is the poor struggling Telstra customers who are having to bear the ultimate burden of financial ruin.

Motion (by Senator Sherry)--by leave--agreed to:

That the sitting of the Senate be suspended till 2.00 p.m.

Sitting suspended from 1.21 to 2.00 p.m.

94/269

3 October 1995

Mr Steve Black
Group General Manager
Customer Affairs
Telstra

Facsimile No: (03) 9632 3241

Dear Mr Black

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

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

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

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

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

28A

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

Yours sincerely



Cliff Mathieson
General Manager
Carrier Monitoring Unit

cc Mr John Pinnock, TIO



94/269

4 October 1995

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

Dear Mr Smith

**CHARGING DISCREPANCIES RELATED TO TELSTRA'S 008/1800
SERVICE**

Concerning your letters to Bruce Matthews of 5 September 1995 and 2 October 1995, I write to advise you that AUSTEL has again written to Telstra regarding the issues originally raised in Bruce Matthews' letter to Telstra of 4 October 1994.

You will be advised of the outcome of this matter.

Please note that Bruce Mathews has moved to another area of AUSTEL.

Yours sincerely


Darren Kearney
Senior Policy Analyst
Carrier Monitoring Unit

CMU/11/OK

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

8 OCT 1995

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

94/269

October 1995



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

Dear Mr Smith

**CHARGING DISCREPANCIES RELATED TO TELSTRA'S 008/1800
SERVICE**

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

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

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

Yours sincerely



Darren Kearney
Senior Policy Analyst
Carrier Monitoring Unit

cc John Pinnock, TIO

CMU/13/DK



Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

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

16 October 1995

Austel
5 Queens Road
MELBOURNE VIC 3000

Attention: Mr Cliff Mathieson

By facsimile: (03) 9820 3021

Dear Sir,

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

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

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

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

Point (1) Caller to Mr Smith received RVA:

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

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

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

- On 27 May 94, the last call to the fax number (267 230) was at 7:54:20pm. This call lasted 65 seconds.
- His 008 service (267 267) records 3 incoming calls: at 7:51pm lasting 119 secs; at 7:55pm lasting 43 secs and at 7:59pm, lasting 166 seconds (see Attachment 1). The next 008 call was at 9:59pm, which lasted 23 minutes 11 seconds.

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

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

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

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

Telstra Conclusion:

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

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

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

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

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

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

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

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

Call Data Information.

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

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

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

Short Duration Call.

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

Point (5) Short Duration calls on 008**(a) Mr Jason Boulter of the Melaleuca Motel**

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

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

(b) General Observations

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

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

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

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

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

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

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

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

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

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

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

Summation

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

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

Generally, the sources of short duration calls, include:

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

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

- (a) Customer research to identify reasons for short duration call causes from a customer perspective - details of the proposed research have been previously advised to AUSTEL. However, the study has been delayed by technical constraints.
- (b) Technical research and testing with a focus on the customer access network.
- (c) Internal research involving overseas telcos.

Yours faithfully



Steve Black
Group General Manager
Customer Affairs

COPY



16 October 1995

Telecommunications
Industry
Ombudsman

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

John Pinnock
Ombudsman

By Facsimile: (055) 267 230

Dear Mr Smith

Fast Track Arbitration Procedure

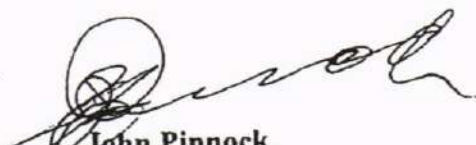
Dr Hughes has written to me to advise that he continues to receive letters from you. This is despite the fact that I have written to you on numerous occasions stating that it is inappropriate for you to continue to contact him or write to him directly.

Dr Hughes has advised me that he does not intend to read or contact me regarding any further material received direct from you. He has also stated that any failure on his part to respond to your allegations regarding his integrity or the integrity of the arbitration process or other persons associated with the arbitration process should not be interpreted as acquiescence.

I agree entirely with Dr Hughes' approach and endorse it.

As I have stated to you on a number of occasions, if you have continuing concerns with the arbitration process you should raise these with your legal advisers, not with this office or Dr Hughes.

Yours sincerely


John Pinnock
Ombudsman

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

25/10

BASSETT & SHARKEY

Barristers & Solicitors

25 OCT. 1995

Partners

William Bassett, B.Ec., LL.B.

Graeme Sharkey, LL.B.

Your Ref:

Our Ref: WEB:LM

23rd October, 1995

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

"WITHOUT PREJUDICE"

Dear Sir,

re: Mr. Alan Smith
Cape Bridgewater Holiday Camp

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

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

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

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

Yours faithfully,
BASSETT & SHARKEY


per WM. E. BASSETT.

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

25



Telecommunications
Industry
Ombudsman

Telecommunications Industry Ombudsman ACN 057 634 787
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000
Telephone: 61 3 9277 8777 Facsimile: 61 3 9277 8797

John Pinnock
Ombudsman

Facsimile Cover Sheet

TO:	Mr. Peter Bartlett
COMPANY	Minter Ellison
FAX:	(03) 9617 4621
FROM:	John Pinnock <i>RAB</i>
COMPANY	TIO
FAX:	(03) 9277 8797
DATE:	25/10/95
PAGES:	2 (including cover sheet)

Comments:

*my prelim. view : we should respond
by saying we cannot & will not
take the action sought. AS has
rights under the ATAP & the
Act which he is at liberty to
pursue / or which he should consider,
as we have made clear to him on
a number of occasions already.*

WEB:LM

26 October 1995

Bassett & Shreekey
Barristers & Solicitors
134 Peel Street
PORTLAND VIC 3305

Dear Sir

Mr Alan Smith

I acknowledge receipt of your letter of 23 October 1995.

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

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

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

or investigate

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

Yours faithfully

~~which do not include~~

John Pirmo
Telecommunications Industry Ombudsman

DRAFT

CCPY



Telecommunications
Industry
Ombudsman

9 November 1995

John Pinnock
Ombudsman

Your Ref: WEB:LM

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

Dear Sir,

Re: Mr. Alan Smith

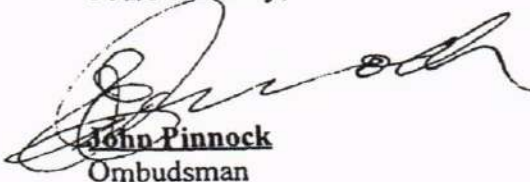
I acknowledge receipt of your letter of 23 October 1995.

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

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

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

Yours sincerely,



John Pinnock
Ombudsman

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



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Melbourne
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TTY: (03) 9828 7490

10 November 1995

The Hon Michael Lee MP
Minister for Communications and the Arts
Parliament House
Canberra ACT 2600

Dear Minister Lee

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

I am pleased to provide AUSTEL's fifth quarterly report on Telstra's progress in implementing the recommendations of AUSTEL's *COT Cases* Report.

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

AUSTEL considers that Telstra is continuing to demonstrate its commitment to implementation of the recommendations of AUSTEL's *COT Cases* Report. Of that report's forty-one recommendations, twenty-five are finalised. Recommendations 6, 7, 8, 10, 25 & 26 have been finalised since the last quarterly report was submitted. Recommendations 6, 7, 8, & 10 relate to Telstra's representation of its liability, and recommendations 25 & 26 concern resolution of difficult network faults. The substantive action required to progress implementation of the outstanding recommendations is being undertaken by Telstra.

Telstra is no longer required to report against recommendations 1, 4, 5, 6, 7, 8, 10, 11, 12, 16, 17, 19, 21, 23, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35 & 36, as these have either been fully implemented or the necessary action has been taken to achieve implementation. While these recommendations are regarded as being exempt from further routine reporting, AUSTEL may provide additional comment should any significant issues arise or milestones occur which concern any of these recommendations.

Yours sincerely

Cliff Mathieson
General Manager
Carrier Monitoring Unit

CMU/15/DK

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

Progress of COT Arbitrations

As discussed in previous COT Status Reports, an arbitration procedure was developed by the TIO, Telstra and four complainants described in AUSTEL's 1994 COT Cases Report as the *original* COT Cases, for these four complainants. The TIO has advised AUSTEL that the first of these arbitrations was finalised in May of this year, with the delivery of the arbitrator's award. The second and third arbitrations are expected to be completed by the end of the year. The claimant in the fourth arbitration has not yet submitted a claim.

A further Special Arbitration Procedure was developed by the TIO in mid 1994. This procedure was designed to cater for 12 further Telstra customers identified by AUSTEL as warranting special consideration and having problems similar to the original COT Cases. The TIO has advised AUSTEL that one of these customers subsequently reached a direct settlement with the carrier, and another elected not to pursue the matter further. The remaining 10 customers are involved in arbitrations, and are currently at different stages in the process of the submission of Claim, Defence and Reply Documents. Six of these arbitrations are expected to be completed early in 1996. As at November 1995 the remaining four customers had not yet submitted their claims to the Arbitrator.

The TIO has observed that the progress of arbitration for both the original four complainants and the other group involved in the Special Arbitration Procedure has been significantly hampered. The TIO attributes this to -

- delays in the provision of documentation and information by Telstra to the various customers under Freedom of Information entitlements;
- delays on the part of claimants in advancing their claims; and
- the legalistic approach adopted by Telstra in its defence against these claims.

In addition, the TIO has advised AUSTEL that there is a high degree of distrust between the parties who have rarely shifted from mutually entrenched positions, and that these factors have also had an adverse impact on the progress of the arbitrations. Further comment is provided on arbitrations under recommendations 3 and 9.



FERRIER HODGSON CORPORATE ADVISORY

BY COURIER

Our Ref: A1.4

15 November 1995

Mr John Pinnock
Telecommunications Industry Ombudsman
TIO Limited
321 Exhibition St
MELBOURNE VIC 3000

Dear Sir,

**RE : Telecommunications Industry Ombudsman - Resource Unit
Fast Track Arbitration - Alan Smith**

We refer to your letter dated 9 November 1995 with the attached facsimile from Mr Alan Smith dated 8 November 1995, and your recent conversations with Ms Susan Hodgkinson of this office concerning the above completed arbitration.

You have asked us to provide clarification of the issue raised by Mr Smith relating to the deletion of references to a potential addendum on possible discrepancies in Smith's Telecom bills in the final Technical Evaluation Report. We have spoken to Lane Telecommunications Pty Ltd ("Lanes"), who acted as Technical Consultants to the Resource Unit in the above Arbitration, and they have provided the following comments in relation to the issue raised by Mr Smith:

"At a late stage of the Arbitration process, at the time of preparation of the Technical Evaluation Report, there was discussion about billing issues which had been raised by Mr Smith. A draft of the Technical Evaluation Report therefore included reference to the billing matters, which it was thought might require further work beyond the time of issue of the Report."

The primary matter concerned Mr Smith's bills for outgoing calls from Cape Bridgewater. Mr Smith had observed that there was a discrepancy between the call durations of STD calls on his bills and the durations shown by Telecom's call recording equipment connected to Mr Smith's line (in the Customer Access Network).

Discussions were held with Telecom (Mr Peter Gamble) in Mr Smith's presence during the visit to Cape Bridgewater in April 1995, which provided the following information:

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD
A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK

LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000

TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER



- For outgoing calls on a normal customer exchange line, the caller notes the answer of the called party by cessation of the ring tone and the answering voice. However, there is no corresponding physical (electrical) signal on the caller's line (CAN side of the exchange) for the call recording equipment to register that an answer has occurred. Consequently, timing of the call recording equipment is configured to allow a fixed time to answer (say 30 seconds) from the time the caller lifts the handset, or from the completion of dialling, until it assumes that answer has taken place. Thus the overall measured duration of the call from lifting to replacement of the handset is reduced by this fixed amount to give the (assumed) nominal conversation time.
- Billing on the other hand is based on signals recorded at the caller's exchange, including a physical signal to indicate called party answer. Thus the billing duration is precise.
- At an individual call level, there will therefore be discrepancies between the two sets of call duration records except where the actual and assumed times to answer are the same.
- Lanes considered and accepted this technical explanation from Telecom as plausible, and believe Mr Smith also understood and accepted it. Consequently, as the discussion appeared to have resolved this matter, it was not included in the formal Technical Evaluation Report.

A second matter involved 008 calls. Again, this matter was current at a late stage (April 1995) of the Arbitration process. This matter concerned possible overlap in the records of 008 calls made to Mr Smith, and for which he was billed. However, Lanes and DMR Group Inc concluded that the level of disruption to Mr Smith's overall service was not clear, and that it was unlikely that further work would clarify the matter to the extent that it would have a measurable effect on the Arbitrator's determination. The matter was discussed in Section 2.23 of the Technical Evaluation Report, and an assessment of "Indeterminate" was reached.

As no further progress was likely to be made on these matters, the formal version of the Technical Evaluation Report did not leave the billing issue open."

I trust that the above advice from Lane Telecommunications clarifies the issue raised by Mr Smith regarding the Resource Unit's Technical Evaluation Report.



If you have any further queries please do not hesitate to contact the writer or Ms Susan Hodgkinson on (03) 629 8855.

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY

A handwritten signature in black ink, appearing to read 'John Rundell'.

JOHN RUNDELL
Project Manager
Associate Director

cc Dr Gordon Hughes, Hunt & Hunt
Mr Andrew Crouch, Lane Telecommunications Pty Ltd
Mr Paul Howell, DMR Group Inc

COPY



November 15, 1995

Telecommunications
Industry
Ombudsman

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

John Pinnock
Ombudsman

By Facsimile: (055) 267 230

Dear Mr. Smith,

I acknowledge receipt of your letter dated 13 November 1995 regarding the BCI testing and your proposed mirror tests.

There is no role for the TIO to play regarding your proposal, as this office has no role in the presentation of material to an arbitrator. This is a matter for the particular parties involved in a particular arbitration.

I also refer to other recent letters from you. Again I reiterate that this office has no power to take action which amounts to an investigation of your arbitration or the decision of the Arbitrator. You continue writing to me, requesting that I take action along these lines. I have already advised you that I will not respond to any such requests.

Yours sincerely,

John Pinnock
Ombudsman

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



PARLIAMENT OF AUSTRALIA - THE SENATE

20 November 1995

SENATOR MICHAEL BAUME
SENATOR FOR NEW SOUTH WALES

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 to 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



22 November, 1995

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

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

Black
Benjamin
Geary
Evert
Armstrong
Phillips
~~Thompson~~

Haar
Chisholm
Gamble
Levy
Deloitte
~~Sutton~~
Kearney

Freehills
~~Malleone~~
~~Holding Redlich~~
~~Plummer~~
Fanning
D'Am

Dear Mr Smith

File..... *Smith*

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

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

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

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

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

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

Yours faithfully

Ted Benjamin
Group Manager
Customer Affairs

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

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



November 28, 1995

John Pinnock
Ombudsman

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

By Facsimile: (055) 267 230

Dear Mr. Smith,

I refer to the one page letter I received from you yesterday which requests confirmation of the 'legal understanding' of the confidentiality agreement under the Fast-Track Arbitration Procedure.

It is not the role of this office to advise you in relation to this or any of your other legal rights or obligations. I refer you to Schedule E of the Fast-Track Arbitration Procedure, and recommend you seek your own legal advice in relation to it, and the matters you have raised in your letter.

I am aware that you continue to write to me with numerous requests and concerns regarding your arbitration. You have sent approximately 25 letters to the TIO in the last month. As I have previously already told you, I will not take any action concerning your arbitration which in any way amounts to an investigation of that process, nor do I have the power to do so. I have also advised you on numerous occasions that you should seek your own legal advice regarding your rights to appeal the Arbitrator's decision if you believe that the circumstances warrant this.

I will not respond to this sort of correspondence from you.

If you continue to write to me seeking that I take action which you know I cannot and will not take, you will only be frustrated and disappointed by my lack of response.

12 IIE

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

You have also raised with me your concern that there are differences between the Resource Unit's Technical Report which you received in May 1995, and what seems to be a copy of that document which was among the material you collected from the Arbitrator's office in August 1995.

I have sought clarification from the Resource Unit and the Arbitrator on this issue, as the return of documents to you under the arbitration procedure is a matter within my role as Administrator.

I have been advised by the Resource Unit that the apparent copy of the Report which was among the material you collected from the Arbitrator in August 1995, was in fact a draft version of the final Report. The final Report was issued to the Arbitrator on 30 April 1995, and forwarded by the Arbitrator to yourself and Telstra on 1 May 1995. This copy which you collected was still a draft, notwithstanding that it was dated 30 April 1995, and should have indicated that it was still in draft form. The fact that, before being finalised, this Report was in draft form is of course common practice.

The Resource Unit have provided clarification of the reasons for the deletion of references to a potential addendum on possible discrepancies in your Telecom bills from the final Technical Report as follows:

"At a late stage of the Arbitration process, at the time of preparation of the Technical Evaluation Report, there was discussion about billing issues which had been raised by Mr Smith. A draft of the Technical Evaluation Report therefore included reference to the billing matters, which it was thought might require further work beyond the time of issue of the Report."

The primary matter concerned Mr Smith's bills for outgoing calls from Cape Bridgewater. Mr Smith had observed that there was a discrepancy between the call durations of STD calls on his bills and the durations shown by Telecom's call recording equipment connected to Mr Smith's line (in the Customer Access Network).

Discussions were held between Lane Telecommunications (David Read) and Telecom (Mr Peter Gamble) in Mr Smith's presence during the visit to Cape Bridgewater in April 1995, which provided the following information:

- *For outgoing calls on a normal customer exchange line, the caller notes the answer of the called party by cessation of the ring tone and the answering voice. However, there is no corresponding physical (electrical) signal on the caller's line (CAN side of the exchange) for the call recording equipment to register that an answer has occurred. Consequently, timing of the call recording equipment is configured to allow a fixed time to answer (say 30 seconds) from the time the caller lifts the handset, or from the completion of dialling, until it assumes that answer has taken place. Thus the overall measured duration of the call from lifting to replacement of the handset is reduced by this fixed amount to give the (assumed) nominal conversation time.*

NEW TABLE						
(33) Smith File A64535-A64562: EDX Spectra, FTIR Spectra and 1 page Lab Notes File Date Range: May '94						
Document number	Date	Description of Document	Table	Decision	Reason for Decision	
A64535	21/08/95	Copy of handwritten lab notes (26/5/94) re Residue in Touchphone 200	C	Released in full		
A64536-A64548	26/05/94	Graphs re Residues in Touchphone 200	C	Released in full		
A64549-A64562	24/05/94	Composition graphs of residue in Touchphone 200	C	Released in full		

FH

26/5/94.

Residue in Touchphone 200
for Doug Kitchin

Beer residue
(dried o/night)
at RT

beerres.dt

256 scan

m. diamond (right)

100 x 100 per sq.

Av. purge.

Beer residue
not completely
dried

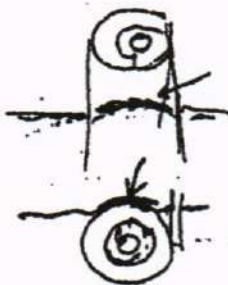
beerreslq.dt

— " —

bram, viscous liq.
ee phone

foine lq. dt

— " —



beerresgl.dt = beerresin + glycerol + N.O.

glycerol = glycerol.dt

coffee.dt 1 + 1 teaspoon (internal) coffee + sugar
(sucrose).
- white

FOI RECEIVED

28/11/95

copy from original
laboratory notebook
4/11/95
24/5/95

A64535

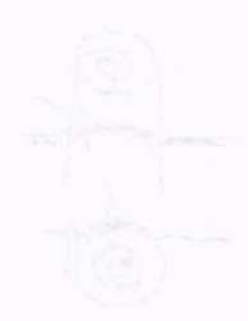
10/2/96

Plants in the garden

Plants in the garden

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Plants in the garden

SENATOR R BOSWELL.

TEL: 61-06-2773246

01 Dec 95

9:31 No.002 P.03

CURRENT SENATE HANSARD

30 November 1995

Page: 4472

[PROOF]

TELECOM AUSTRALIA

Motion (by Senator Boswell)--as amended
by leave--proposed:

That the Senate calls on the Minister for
Communications and the Arts to establish an independent
inquiry into the behaviour of Telecom in respect of the
resultant costs to CCI members of the extensive,
prolonged and excessively legalistic arbitration process.

WEEKLY SENATE HANSARD

20 November 1995

Page: 4124

**NOTICES OF MOTION
Telecom Australia**

Senator BOSWELL (Queensland--Leader of the National Party of Australia)--I give notice that, on the next day of sitting, I shall move:

That the Senate calls on the Minister for Communications and the Arts (Mr Lee) to establish an independent inquiry into the behaviour of Telecom/Telstra on the following grounds--

- (a) the failure of Telstra to meet its commitment to the Casualties of Telecom ~~(CCT)~~ members that they would receive a fast-track, non-legalistic arbitration process;
- (b) the delays in the established arbitration process and in the delivery of freedom of information documents;
- (c) the resultant costs to ~~CCT~~ members of the extensive, prolonged and excessively legalistic arbitration process; and
- (d) the weight of adverse findings against Telecom's conduct including:
 - (i) the Australian Telecommunications Authority's report calling Telecom 'less than a model corporate citizen';
 - (ii) the Commonwealth Ombudsman's report criticising Telecom's 'defective administration';
 - (iii) the Telecommunications Ombudsman's description of the arbitration process with the ~~CCT~~ members as 'clearly the low water mark of effective customer relations'; and
 - (iv) Coopers and Lybrand's report that Telecom's customer complaints service failed to meet the minimum standards of adequacy, reasonableness and fairness.

LAW PARTNERS

BARRISTERS & SOLICITORS

LAW PARTNERS MELBOURNE
Level 1, 140 Queen Street, Melbourne 3000
DX 612 Melbourne
Ph: (03) 9602 2266 Fax: (03) 9602 2039

13 December 1995

Our ref: GV/9510820

Mr Alan Smith
Cape Bridgewater
Holiday Camp
PORTLAND 3305

Dear Mr Smith,

RE: ALAN SMITH FAST TRACK CONCILIATION WITH TELSTRA CORP.

We refer to the above matter and our discussions of the events and circumstances surrounding your claim against Testra.

We have had the opportunity to carefully consider and evaluate the information you have provided to us in relation to the "fast track arbitration process" (FTAP) in which you were recently involved.

From the extensive discussions we have had with you and the correspondence and documentation we have had the benefit of considering it would appear that the FTAP failed to meet its objective of being a non legalistic, unbiased, speedy and cost effective form of resolving your dispute with Telstra.

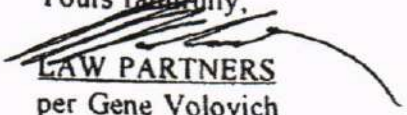
It also appears that there may have been numerous breaches of the rules of natural justice during the FTAP. Certainly there are allegations against some of the key figures involved in the process which prima facie appear to be capable of being substantiated.

Allegations of impropriety are made against Telstra, the independent technical experts and the arbitrator. Unfortunately we have not yet had the opportunity of putting these allegations to the parties involved in order to obtain their response.

Overall however, we are of the opinion that the FTAP was fundamentally flawed given its objectives. The actions of Testra and other key figures in the process were to say the least, against the spirit of the FTAP. In short we believe it would be possible to set aside the arbitrator's decision on the basis of failure of natural justice during the course of the FTAP.

We enclose an account for our services to date and look forward to receiving your further instructions in relation to this matter.

Yours faithfully,


LAW PARTNERS
per Gene Volovich
encl

DEC 13 '95 03:20PM

P.2/2



FERRIER HODGSON CORPORATE ADVISORY

By Facsimile: (055) 267 230

13 December 1995

Mr Alan Smith
Cape Bridgewater Holiday Camp
PORTLAND VIC 3005

Dear Mr Smith,

RE : Telecommunications Industry Ombudsman - Resource Unit
Fast Track Arbitration Procedure between Smith and Telstra

I refer to your letters dated 9 December 1995 and 13 December 1995 in which you raise certain matters in relation to the above arbitration.

This arbitration is administered independently by Mr John Pinnock, the Telecommunications Industry Ombudsman. It is inappropriate for me to enter into correspondence with you on the matters raised in your letter, particularly as the arbitration has been concluded.

I suggest that the matters raised in your letter be addressed directly to Mr Pinnock.

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY


A. G. HODGSON
Chairman

cc Mr John Pinnock, Telecommunications Industry Ombudsman

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD
A.C.N. 052 405 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK

LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000

TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

10-5



FEDERAL RESERVE BANK OF NEW YORK CORPORATE ADVISORY

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COPY



Telecommunications
Industry
Ombudsman

20 December 1995

John Pinnock
Ombudsman

Mr Derek Ryan
DM Ryan Corporate Pty Ltd
40 Market Street
MELBOURNE VIC 3000

Dear Mr Ryan

Re: Mr Alan Smith

Mr Anthony Hodgson of Ferrier Hodgson Corporate Advisory has passed on to me a copy of your letter to Senator Alston dated 6 December 1995.

In that letter you state, among other things, that *"I have since been advised by a staff member of FHCA that a large amount of information was excluded in their final report at the request of the arbitrator"*.

I have been informed by Ferrier Hodgson Corporate Advisory that it is not in fact the case that a large amount of information, or indeed any information, was excluded from the Resource Unit's report at the request of the Arbitrator.

You have not indicated which FHCA staff member advised you that this had occurred, nor provided sufficient further information to substantiate your assertion that a conversation in such detail took place between you and the FHCA staff member. Please do both.

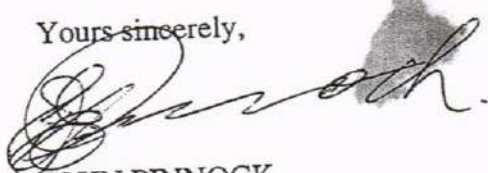
It concerns me that rash and incorrect assertions and allegations concerning Mr Smith's arbitration procedure are being widely circulated, particularly by Mr Smith himself.

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

When such assertions or allegations are able to be rebutted by reference to earlier correspondence, or other records, they do no credit to those making those assertions or allegations.

It is not my role, nor do I have the time or resources, to rebut each incorrect assertion or allegation being made by Mr Smith. I have on numerous occasions explained to Mr Smith why I am unable to engage in continuing correspondence with him in relation to his arbitration. The fact that I do not so engage should not in any way be taken as acquiescence in relation to any of those assertions or allegations.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'John Pinnock', with a large, stylized flourish at the end.

JOHN PINNOCK
Ombudsman

cc: Mr Alan Smith



AUSTEL
AUSTRALIAN
TELECOMMUNICATIONS
AUTHORITY

ORIGINAL OF FACSIMILE TRANSMISSION
SENT BY AUSTEL ON 6/12/95

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

94/269

6 December 1995

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

Dear Mr Smith

CHARGING DISCREPANCIES RELATED TO TELSTRA'S 008/1800 SERVICE

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

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

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

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

Your assistance in this matter would be appreciated.

Yours sincerely

Darren Kearney
Senior Policy Analyst
Carrier Monitoring Unit

CMU/21/DK

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

1. Name of the person
2. Address
3. City
4. State
5. Zip
6. Country

STANDARD MAIL PERMIT NO. 12345
NEW YORK, N.Y. 10001



Mr. J. Edgar Hoover
Federal Bureau of Investigation
Washington, D.C. 20535

THE FIRST OF TWO COPIES OF THIS LETTER IS BEING SENT BY AIR MAIL

Dear Sir: I am writing to you regarding the information that was provided to me by your office on 10/15/77. I am enclosing for your information a copy of the letterhead memorandum (LHM) dated 10/15/77, which was received from the New York Office of the Federal Bureau of Investigation (FBI) on 10/15/77.

The LHM contains information regarding the activities of the New York Office of the FBI, which was received from the New York Office of the FBI on 10/15/77. The LHM contains information regarding the activities of the New York Office of the FBI, which was received from the New York Office of the FBI on 10/15/77.

I am enclosing for your information a copy of the letterhead memorandum (LHM) dated 10/15/77, which was received from the New York Office of the Federal Bureau of Investigation (FBI) on 10/15/77.

I am enclosing for your information a copy of the letterhead memorandum (LHM) dated 10/15/77, which was received from the New York Office of the Federal Bureau of Investigation (FBI) on 10/15/77.

Very truly yours,
J. Edgar Hoover

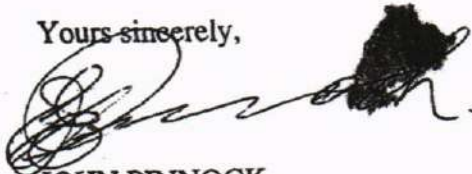
Enclosure
10/15/77
J. Edgar Hoover
Director, FBI

STANDARD MAIL PERMIT NO. 12345
NEW YORK, N.Y. 10001

When such assertions or allegations are able to be rebutted by reference to earlier correspondence, or other records, they do no credit to those making those assertions or allegations.

It is not my role, nor do I have the time or resources, to rebut each incorrect assertion or allegation being made by Mr Smith. I have on numerous occasions explained to Mr Smith why I am unable to engage in continuing correspondence with him in relation to his arbitration. The fact that I do not so engage should not in any way be taken as acquiescence in relation to any of those assertions or allegations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Pinnock', with a large, dark, irregular ink smudge or stamp over the right side of the signature.

JOHN PINNOCK
Ombudsman

cc: Mr Alan Smith

DMR CORPORATE

DMR

DMR Corporate Pty Ltd
40 Market Street
Melbourne
Victoria 3000
Australia

A.C.N. 063 564 045
Facsimile (03) 9629 4598
Telephone (03) 9629 4277
Mobile 018 635 107

6 December 1995

Senator R Alston
Level 2, Suite 3
424 St Kilda Road
Melbourne
Vic

Dear Senator Alston,

Re: Casualties of Telecom ("COT") - A Smith

Over the last 2 years I have acted as an independent accountant for Alan Smith and I prepared the independent assessment of his losses and damages which formed part of his submission to the arbitrator, Dr G Hughes.

In response to accounting documents and evidence submitted to the arbitrator, he appointed Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") to support him in assessing the losses and damages.

The FHCA report was inaccurate and incomplete. I have since been advised by a staff member of FHCA that a large amount of information was excluded from their final report at the request of the arbitrator. This has left the report in an incomplete state and it is impossible for anyone to re-calculate or understand how the FHCA loss figures were determined. This effectively meant that it was impossible to challenge the assumptions, calculations and the time periods used in the FHCA report.

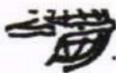
After receiving a copy of the FHCA report I responded with a letter dated 9 May 1995 and a copy of that letter is attached for your information. I have never been provided with a response or any further details in respect of this letter.

I consider that a grave miscarriage of justice has occurred in relation to the A Smith arbitration and that without a full and open inquiry it may be impossible to ever determine how the arbitrators award was calculated.

Yours sincerely

Derek Ryan

17B


Hunt & Hunt
LAWYERS

23 January 1996

Our Ref: GLH
Matter No:

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

Dear Mr Pinnock

INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH

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

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

Yours sincerely


GORDON HUGHES

Encl.

cc P Bartlett

Partner
Peter J. Davis
Peter D. Francis
James M. Lightowler
Wayne S. Cahill
Neville G.M. Dobson
Grant D. Sefton
Charles Veivers
William P. O'Shea
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DMR CORPORATE

DMR

DMR Corporate Pty Ltd
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Melbourne
Victoria 3000
Australia

A.C.N. 063 564 045
Facsimile (03) 9629 4598
Telephone (03) 9629 4277
Mobile 018 635 107

22 December 1995

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

Dear Mr Pinnock,

Re: Alan Smith

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

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

I worked all day Saturday and Sunday with Alan Smith trying to interpret the FHCA report. After this work I considered that the report was incomplete as the calculations of the FHCA loss figures were not included in their report.
2. On 8 May 1995 I telephoned FHCA and spoke to John Rundell and requested a meeting to discuss how the FHCA loss figures were determined. He was reluctant to talk to me at that time however we set a tentative date of 17 May 1995 for us to discuss this matter again. I have a note in my diary for the 17 May 1995 - John Rundle - Ferriers -604 5188.

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

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

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

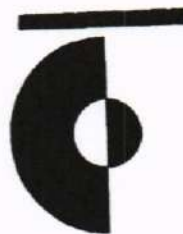
Yours faithfully

Derek Ryan

17B

CONFIRMATION
OF FAX

10 January 1996



Telecommunications
Industry
Ombudsman

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

John Pinnock
Ombudsman

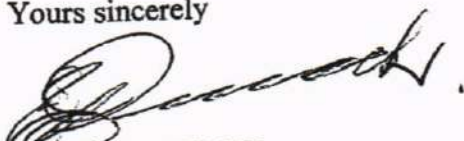
Dear Mr Smith

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

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

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

Yours sincerely


JOHN PINNOCK
OMBUDSMAN

502

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National Headquarters
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Melbourne Victoria

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Collins Street East
Melbourne 3000

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Fax Freecall 1800 630 614

John W Rundell
95 Dendy Street
BRIGHTON VIC 3186

Private & Confidential

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

COPY

13 February 1996

Dear John

Fast Track Arbitration Procedure - Alan Smith

Other matters: D M Ryan letter of 22 December 1995

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

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

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

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

Contact with Mr Derek Ryan

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

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

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

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

Other Matters

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

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

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

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

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

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

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

1.07

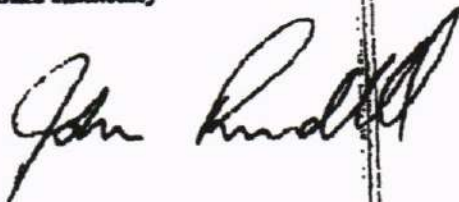
FERRIER HODGSON
14-2-90

FAX NO. 96420070
FAX 1510 3015

11-4-90

Please do not hesitate to contact me directly at KPMG should you wish to discuss any matters associated with these arbitrations. My direct line is 9288 5457.

Yours faithfully



John W Rundell

cc

Ms Susan Hodgkinson
Project Manager
Resource Unit
Ferrier Hodgson Corporate Advisory

10-10-50

PAY NO. 26420000

THEIR JODGSON

Please to the best of your knowledge, to certify if the above named person was or was not a member of the organization at the time of the above named event.

Yours faithfully,



J. R. [illegible]

Mr. J. R. [illegible]
[illegible]
[illegible]
[illegible]

RECEIVED



Hunt & Hunt

LAWYERS

15 February 1996

Our Ref: GLH
Matter No: 5122795

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

Dear Mr Pinnock

ALAN SMITH

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

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

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

I await your response.

Yours sincerely

Gordon Hughes
GORDON HUGHES

Encl.

*See covered with Lia
To speak to Gordon re 3 matters X
Letter in support to be prepared.*

24/2

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Hunt & Hunt
LAWYERS

Our Ref: 5122795

Matter No: 5122795

16 February 1996

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

Dear Mr James

COMPLAINT - ALAN SMITH

I acknowledge receipt of your letter dated 18 January 1996.

It is difficult for me to comment on a number of the matters raised by Mr Smith because of the confidentiality which surrounds not only his own claim but also numerous related claims which are still current.

Smith's Letter of 15 January 1996

There is no evidence of which I am aware to suggest that the arbitration rules were not followed or that either party was denied natural justice.

Mr Smith's recollection and interpretation of events surrounding the commencement of the arbitration in April 1994 are incorrect. He makes reference to the involvement of Peter Bartlett of Messrs Minter Ellison. I am enclosing a letter from Mr Bartlett to the Telecommunications Industry Ombudsman (the administrator of the arbitration procedure) dated 17 January 1996 which is self explanatory. I do not believe it is necessary for me to add more.

Mr Smith's assertion that the technical report of an expert witness has not been signed is incorrect. A copy of the signed cover letter to the document, dated 30 April 1995, is attached.

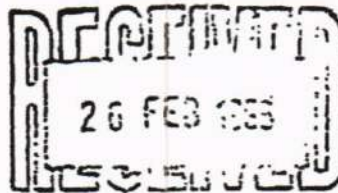
The assertion that another expert witness attached to the Resource Unit, John Rundell, deleted material from his report at my request is incorrect and misconceived. The allegation was first raised in a letter from Mr Smith's accountant, Derek Ryan, to the Telecommunications Industry Ombudsman, dated 22 December 1995. In this regard, I enclose copy of a letter from Mr Rundell (now of KPMG) to the Telecommunications Industry Ombudsman dated 13 February 1996 which addresses the allegation. Again I do not believe it is necessary for me to add more.

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Document - "One Example of Incorrect Statements"

Mr Smith forwarded you a document headed "One Example of Incorrect Statements Made by the Technical Unit Attached to the FTAP". I am not convinced that this document contains any allegations to which I need respond. I note, nevertheless, some suggestion that evidence was ignored at an oral hearing. If, in paragraph (b), Mr Smith is referring to the oral hearing which took place on 11 October 1994, the transcript reveals no reference to "four exercise books" as he claims. Reference is made to "diaries" which contained evidence of complaints and these were in fact placed into evidence.

D M Ryan Letters

I have noted the two letters from D M Ryan Corporate dated 6 December and 22 December 1995. I have already commented on one of the letters above. Apart from being inaccurate, they reveal a misunderstanding by Mr Ryan of the arbitration agreement. He does not appreciate the unique role given to the "Resource Unit" comprising Ferrier Hodgson Corporate Advisory and DMR Group Inc (Canada). Perhaps Mr Ryan was not adequately briefed by Mr Smith in this regard.

Letter to Senator Evans

Mr Smith provided you with a copy of a letter to Senator Gareth Evans dated 4 January 1996. I presume you require me to comment on those aspects of the letter which reflect upon my conduct as an arbitrator.

The letter to Senator Evans is littered with inaccuracies. Some examples are:

- contrary to Mr Smith's assertion on page 3, his 24,000 (sic) documents were all viewed by me, Ferrier Hodgson Corporate Advisory, DMR Group Inc. (Canada) and Lane Telecommunications Pty Ltd in accordance with the arbitration procedure. Mr Smith was provided with a list of documents in a technical report from the Resource Unit dated 30 April 1995. This list summarised the major documents culled from the 24,000 documents and upon which the findings of the technical experts were based;
- Mr Smith's assertion on page 4 that a technical expert, Mr Read, refused to discuss technical information at his premises on 6 April 1995 is correct - in this regard, Mr Read was acting in accordance with his interpretation of my direction which prohibited him from speaking to one party in the absence of the other party at any site visit;
- if, on page 5, Mr Smith is disputing that I worked in conjunction with the Resource Unit throughout the weekend of 29 to 30 April 1995, he is incorrect;

the remainder of the letter deals with matters which have either been addressed above or which are generalisations of little or no relevance to my conduct as an arbitrator.

Smith's Letter of 18 January 1996

I have noted Mr Smith's letter to you dated 18 January 1996. This does not raise any matter which is not dealt with above.

Comment

I sympathise in many respects with Mr Smith. This level of sympathy was reflected in my award and the reasons which accompanied the award. In essence, Mr Smith suffered financially and emotionally as a result of investing in a business which was in some respects, and to some extent, poorly serviced by Telstra.

Mr Smith was previously awarded a sum of money by Telstra in an out-of-court settlement. Telstra agreed to reopen his claim and submit his grievances to a dispute resolution process which ultimately took the form of an arbitration. I was asked by the Telecommunications Industry Ombudsman if I would act as arbitrator, and both parties subsequently acquiesced. As a result of the arbitration, Mr Smith was awarded further compensation.

I awarded Mr Smith a sum substantially less than the amount he was claiming and substantially less than the amount which Derek Ryan apparently led him to believe he would recover. It was, nevertheless, a sum in excess of the damages recommended by Ferrier Hodgson Corporate Advisory in its capacity as an independent financial expert witness.

It seems Mr Smith can only rationalise the result of the arbitration by retrospectively finding fault with the agreed procedure, by alleging a "conspiracy" between me and Telstra and by asserting that I have overlooked relevant information contained in the 24,000 documents to which he refers. Put simply, he is wrong.

I consent to you disclosing this letter to Mr Smith, save that I do not consent to the disclosure of the attached correspondence from third parties.

Yours sincerely

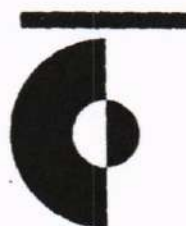


GORDON HUGHES

Encl.

cc J Pinnock (Telecommunications Industry Ombudsman)

COPY



14 February 1996

Mr Alan Smith
RMB 4409
CAPE BRIDGEWATER
PORTLAND 3305

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

By facsimile: (055) 267 204

Dear Mr Smith

In your letter of 3 February 1996 you state that in your letter of 31 January 1996 you had asked "What the TIO was going to do about the fact that Telstra [had] disconnected [your] Gold Phone Service because [you had] not paid the account".

In response on 1 February 1996, I noted that you had stated in your letter of 31 January 1996 that the claim you submitted under the Fast-Track Arbitration Procedure dealt with the continuing problems on your Gold Phone. In that letter you also discussed reasons why you believe that the assessment of your claim under the arbitration procedure was faulty. You also stated that your Gold Phone has been disconnected as you dispute the statistics produced by the Resource Unit, and have consequently not paid your Gold Phone account.

I consider that your letter is taking issue with findings of the Resource Unit under the arbitration procedure. You know that I will not become involved in discussions which amount to an investigation of that arbitration procedure.

If you had intended by your letter of 31 January 1996 to seek my assistance in relation to the disconnection of your Gold Phone, then I am unable to help you, as your Gold Phone constitutes customer premises equipment. The jurisdiction and functions of the TIO do not extend to complaints concerning the provision or supply of customer premises equipment. I enclose a booklet regarding the jurisdiction of the TIO for your information.

In your letter of 3 February 1996 you also claim that:

"[the TIO] office has stated, in writing, that Dr Hughes and others associated with the FTAP omitted this Addendum Report because Dr Hughes awarded [you] \$16,679.30 - the amount owing on [your] business outgoing service (267 230) as incorrectly charged calls and billing discrepancies noted in [your] claim."

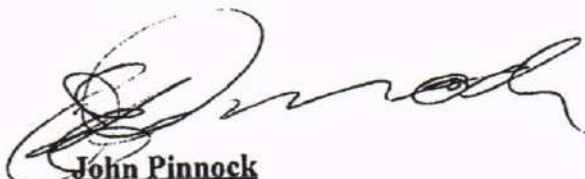
This is incorrect. I have not stated this in writing to you at all.

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

I wrote to you on 28 November 1995 regarding your concern over differences between the Resource Unit's Technical report which you received in May 1995, and what seemed to be a copy of that document, (which referred to a possible addendum) and which was among the material you collected from the Arbitrator's office in August 1995. I enclose a further copy of that letter for your information. You will see that I do not make any statement in that letter resembling that which you have attributed to me in your letter of 3 February 1996.

You also persist in your letter of 3 February 1996 in raising allegations concerning the arbitration procedure and the decision of the Arbitrator, and ask what I intend to do with these allegations. As you well know, there is nothing I can or will do. This office is not an appropriate or legitimate avenue for you to seek to appeal the Arbitrator's decision.

Yours sincerely



John Pinnock
Ombudsman

Encl.

I am in receipt of your letter of 28 November 1955 regarding your concern over differences between the Research Unit's findings and your own in May 1955, and in reply to your letter of 28 November 1955. I am sorry that I cannot give you a more definite answer at this time, but I am sure that you will understand the necessity of further investigation. I am sure that you will be satisfied with the results of the investigation. I am sure that you will be satisfied with the results of the investigation. I am sure that you will be satisfied with the results of the investigation.

I am in receipt of your letter of 2 February 1956 regarding your concern over the results of the investigation. I am sorry that I cannot give you a more definite answer at this time, but I am sure that you will understand the necessity of further investigation. I am sure that you will be satisfied with the results of the investigation. I am sure that you will be satisfied with the results of the investigation. I am sure that you will be satisfied with the results of the investigation.

Yours sincerely,



Yours