



**COMMONWEALTH OF AUSTRALIA**

# **SENATE**

**ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS  
LEGISLATION COMMITTEE**

**Reference: Matters arising from Telstra annual report 1995-96**

**CANBERRA**

**Tuesday, 24 June 1997**

**OFFICIAL HANSARD REPORT**

**CANBERRA**

SENATE  
ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS  
LEGISLATION COMMITTEE

Members:

Senator Patterson (Chair)  
Senator Schacht (Deputy Chair)

|                   |                   |
|-------------------|-------------------|
| Senator Eggleston | Senator Lightfoot |
| Senator Lees      | Senator Lundy     |

Participating Members

|                     |                   |
|---------------------|-------------------|
| Senator Abetz       | Senator Crane     |
| Senator Allison     | Senator Harradine |
| Senator Bolkus      | Senator Hogg      |
| Senator Boswell     | Senator Faulkner  |
| Senator Brown       | Senator Ferguson  |
| Senator Calvert     | Senator Mackay    |
| Senator Carr        | Senator Margetts  |
| Senator Bob Collins | Senator Murphy    |
| Senator Colston     | Senator Neal      |
| Senator Coonan      | Senator Tierney   |
| Senator Cooney      |                   |

Matters arising from Telstra annual report 1995-96.

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SENATE  
ENVIRONMENT, RECREATION, COMMUNICATIONS AND THE ARTS  
LEGISLATION COMMITTEE

*Matters arising from Telstra annual report 1995-96*

CANBERRA

Tuesday, 24 June 1997

Present

Committee members

Senator Patterson (Chair)

|                   |                 |
|-------------------|-----------------|
| Senator Eggleston | Senator Schacht |
| Senator Lundy     | Senator Tierney |

Participating members

|                 |                |
|-----------------|----------------|
| Senator Allison | Senator Carr   |
| Senator Boswell | Senator O'Chee |
| Senator Calvert |                |

The committee met at 7.10 p.m.  
Senator Patterson took the chair.

**CHAIR**—I declare open this hearing of the Senate Environment, Recreation, Communications and the Arts Legislation Committee. This hearing is being held pursuant to the committee's power to examine matters arising from Telstra's annual report, under standing order 25(21)(b). It has been agreed by the committee that the hearing will be limited to progress on the CoT and related cases, with specific reference to the administrative problems revealed by Telstra's handling of those cases.

The committee prefers all evidence to be given in public but witnesses may at any time request that their evidence, part of their evidence or answers to specific questions be given in camera and the committee will consider any such request.

I welcome Senator the Hon. Richard Alston, the Minister for Communications and the Arts. I now invite you, Minister, to address the committee and at the conclusion of your remarks I will ask the others who are present to introduce themselves.

**Senator Alston**—I do not think I am here to participate formally in proceedings but I want to say a few things, which I hope will be taken in a constructive vein. I have provided you with a letter outlining the history of these matters and the current state of play.

*Senator Schacht interjecting—*

**Senator Alston**—I think that is one of the problems in this area so I endeavoured to make it reasonably succinct, but, to the extent that can be done in these circumstances, I think it gives you a reasonably good overview of what has transpired.

I think the committee would be aware of my views in relation to the merits of the arguments, because at various times these issues have surfaced in the public arena, and I do not propose to go into those views in any detail. I have put them on paper to Mr Blount and I do not propose to add to those remarks.

I want to say a few words, if I might, about the conduct of proceedings. I was somewhat concerned, sitting here last time on 12 June, to hear the way in which certain matters were put to the representatives of Telstra. I want to make it plain that, without in any way wanting to canvass the merits of the arguments, I think it is very important to understand that Mr Ward and his colleagues are here as representatives of the company but they are also individuals who have their own entitlement to respect. They are all, in my firsthand experience, doing their very best to assist not only the company for which they work but this committee and other committees of the parliament on a regular basis. I therefore think that it is very important that any exploration of the issues should be done as coolly and as factually as possible.

I am referring, in particular, to the circumstances last time around, when it was suggested at one stage that witnesses had behaved in a disgraceful manner. I do think that that is going too far. I do not think that witnesses ought to be subject to personal attack. To the extent that they are questioned about the facts of the matter, then I expect them to cooperate with the committee. But I want to put it on the record that, without in any way seeking to judge the matters that are before the committee tonight, it would be my sincere hope that all members of the committee would respect the fact that these witnesses, and indeed all witnesses, are here in good faith doing their best and are entitled to respect.

I do not want to say any more than that. I am grateful for the opportunity to speak. I am not a participant and, therefore, I will not be staying around for the deliberations.

**CHAIR**—Thank you, Minister. I appreciate the matter.

**Senator SCHACHT**—So they are on their own from now on?

**Senator Alston**—This is not an estimates hearing.

**Senator SCHACHT**—In response to the minister's remarks: I have just got a copy of the letter, which I think is a standard letter that the minister would write anyway. On the comment about the previous hearing and some of the remarks made: first of all, it was made by no member of the opposition and so on. However, never let it be said that I am in here defending the National Party—I do not want to be expelled from the Labor Party for defending them and I have to say that I think some of the remarks made by Senator Boswell, which I think he withdrew, were a bit excitable, to say the least—but there was a level of frustration starting to emerge in the hearing, Minister, that would test the patience of most of us.

In particular, the question I wanted to ask you, Minister, before you left—I have not had a chance to read in detail your letter—is this: a letter was tabled by, I think, Senator O'Chee or Senator Boswell, which was a letter that you had written to Telstra saying, 'Please pay,' indicating your support for the payment of the CoT court costs for Mrs Garms. It has now been a week and a bit since we had that discussion, and even the chair tried to get some information from Telstra in view of the fact that some people could be having financial difficulty. I just want to know, Minister: have you chased up with Telstra formally, and/or have Telstra paid the money as you requested them to, to follow through on the arbitrated case that Mrs Garms should get her money? I think that was what was frustrating some senators. I would like to know what has happened on that. It was your letter and, I have to say, it did look a bit irresponsible—if that is the correct word—of Telstra to ignore a letter from the minister, who has a statutory responsibility. Even at the table, Telstra would not actually say that they were going to pay the money.

**Senator Alston**—The position is this: I did write a letter to Mr Blount. That letter is not meant to be in the public arena and I regard it as private correspondence. I understand that Telstra have replied to that letter. I do not think I have seen a copy, but I understand that one has been forwarded. As far as I am concerned, that is a matter which Telstra can take into account, but it is not a matter for me to be making that letter available.

**Senator SCHACHT**—I do not know whether the letter was improperly put before the committee, then. I think Senator Boswell or Senator O'Chee tabled it. They had a copy of it; I did not understand that it was a confidential letter. But the real point is that in the letter as it was read out to me it was clear in your letter, as a result of that, that you believed Telstra should pay the money without delay. Mr Ward here at the same time, obfuscated—to put it politely—around whether Telstra would pay the money forthwith. It is now nearly two weeks on. Minister, the Telstra reply has not yet been received by you, but if it has and you have been passed something, does it say that they have paid the money?

**Senator Alston**—Again without canvassing the correspondence, I think it is fair to say this: my letter speaks for itself and I do not propose to elaborate on it in the public arena. I understand that the reply from Telstra maintains its previous position—in other words, they are not prepared to pay the money. I have said as much as I can say.

**Senator SCHACHT**—It is going to be a long night.

**Senator Alston**—Senator Schacht, those are matters that you can no doubt pursue at as much length as you choose, but I would just say that I think it is one thing to ascertain what Telstra has done and why. I just hope that that will not descend into arguments of bad faith or, as you say, obfuscation. I do not think that was the intention. I think it was more a matter of saying that Telstra had not replied at that stage, but clearly Mr Ward will be prepared to go into chapter and verse with you about the reasons for the position they have taken.

**Senator SCHACHT**—Before Senator Alston goes I want to ask some more questions.

**CHAIR**—I have a question of Senator Alston. Senator Alston, when you wrote that letter, were you aware of the essence of the content of the letter that Mr Ward tabled about the agreement that had been arrived at?

**Senator Alston**—Having made some inquiries, I was aware of the history. My letter, in fact, recited the various positions and reasons why I think there had been at least some misunderstandings between various parties.

**CHAIR**—Thank you.

**Senator SCHACHT**—Minister, from what you have indicated to me, and Mr Ward may wish to amplify it and give us a bit more information, it seems that Telstra has still refused to pay the money despite a letter that I saw tabled which was unequivocal from you saying that Telstra should pay those legal costs to Mrs Garms, irrespective of her appeal. If two weeks after that they are still saying no, will you take it any further with Telstra? For example, you have the power to direct the board of Telstra, under the act. Will you go as far as considering to direct Telstra to pay the money?

**Senator Alston**—You would be acutely aware of the history of that power of direction. You know that it has never been used and you know that it was not in the bill that was introduced into the parliament. You sought to put it back—

**Senator SCHACHT**—Thank God we did!

**Senator Alston**—We made it very clear, following your successful amendment, that we did not propose to use that, and that was a very important indication to the market in relation to the extent to which we would intervene. Everyone understands that you would be intervening on a regular basis. That is a matter for you, but that is not the approach we take. I have made my position clear to Telstra on this issue, but at the end of the day it is their call and they are here to answer for their own actions. I do not propose to take any further steps. I have made my position abundantly clear, and I have spelt out the reasons for doing that. Beyond that, it is a matter for Telstra.

**Senator SCHACHT**—Minister, you are dead right. We have made it clear that we believe that the power to direct should be in the act and I am glad that it is. We made it clear that from time to time, when we see it necessary in government, we would use the power to direct. If Telstra thumbs its nose at the elected minister and the parliament of Australia, I think that is a case to send a direction publicly to Telstra to pay the money. Irrespective of the other merits of the case, you have already indicated that you believe it should be paid, but you are not willing to follow through. You are a paper tiger.

**CHAIR**—Senator Schacht, you have made your point. I think we need to ask other questions. Thank you, Senator Alston, for your appearance.

I will call witnesses to come to the table. It has been an arrangement we have had in a couple of other committees where we have all the witnesses around the table. I remind those witnesses that the standing orders of the Senate apply in a committee and I will call people to speak. I will not tolerate two people speaking at once. If I stand, then I expect everyone else to keep quiet. They are the rules of the Senate and I will adhere to them strictly. If this committee becomes disorderly or out of control we will take a short adjournment.



I am warning people that I will not tolerate the hearing degenerating, because it reflects badly on the Senate and it reflects very badly on the process. That is a very clear warning. I will not say it again. I hope everyone is listening. When I speak, nobody else will speak, and nobody else will speak until they are called. I warn that the committee is sitting during the sitting of the Senate and if a division bell goes or a quorum is called, I will have to absent myself and therefore the committee will be automatically suspended.

[7.23 p.m.]

**PINNOCK, Mr John, Telecommunications Industry Ombudsman**

**WYNACK, Mr John, Director of Investigations, Office of Ombudsman**

**ARMSTRONG, Mr John, Customer Affairs Counsel, Telstra**

**BENJAMIN, Mr Ted, Director, Consumer Affairs, Telstra**

**FRUEH, Mr Peter, National General Manager, Sales and Customer Service, Telstra**

**LEVY, Mr Roger, Principal Consultant, Difficult Network Fault, Analysis Group Service Operations, Telstra**

**MEAD, Mr Stephen, Deputy General Counsel (Legal Matters) Officer of the General Counsel, Telstra**

**MOUNSHER, Mr Neil, Manager, Customer Response Unit, Telstra**

**WARD, Mr Graeme, Group Director, Regulatory and External Affairs, Telstra**

**O'SULLIVAN, Mr Barry, Insurance Loss Adjustor**

**WHITE, Mr Lindsay, Communications Consultant**

**GARMS, Mrs Ann, Member, CoT**

**HONNER, Mr Anthony**

**SCHORER, Mr Graham, Member and Spokesperson, CoT**

**CHAIR**—Mr Honner, in what capacity are you appearing today?

**Mr Honner**—As a witness for CoTs.

**CHAIR**—Are you actually a CoT witness?

**Mr Honner**—Yes.

**Senator SCHACHT**—Are you a member of CoT or do you just put yourself in that category as a consumer who has a difference of opinion with Telstra?

**Mr Honner**—I do not think there is any membership, but the problems that I have

incurred are sort of Casualties of Telecom problems.

**Senator SCHACHT**—You have a claim against Telstra?

**CHAIR**—That would be a more accurate description—that you have a claim against Telstra?

**Mr Honner**—Yes. Thank you.

**CHAIR**—This morning Mr Schorer and Mrs Garms sent me a letter agreeing to the lifting of the confidentiality provisions in the arbitration agreement between them and Telstra. I have taken advice on this and confirm that the confidentiality agreement which they have entered has no application in relation to Senate committee proceedings. I table the Clerk's advice. The advice confirms the committee's power to ask and, if necessary, compel the provision of answers to its questions. Any attempt by any other party to enforce the confidentiality provision or to intimidate or prevent the witness in any way from giving evidence would constitute a contempt of parliament.

I remind all witnesses—I said this earlier but I will reinforce it and restate it—that it was agreed by the committee that the hearing will be limited to the progress on the CoT and related cases, with specific reference to the administration problems revealed by Telstra's handling of those cases. We are looking at the progress of the CoT and related cases. Mr Ward, do you or your Telstra colleagues have anything to add to the minister's remarks?

**Mr Ward**—I have an opening statement. Thank you for the opportunity to appear tonight and to put Telstra's position on several of the CoT issues. I trust that this special hearing of the committee will permit a balanced and reasoned public discussion of the processes surrounding the CoTs and their arbitrations. At the outset, I think it would be useful to define who we are talking about when we refer to the so-called CoTs or Casualties of Telecom.

**CHAIR**—We are looking at CoT and related cases.

**Mr Ward**—Yes, I understand. The CoTs are a group of claimants who were subject to an investigation and report by Austel, the industry regulator, in 1994. Included in the recommendations was a requirement to set up an arbitration process. Ultimately it was agreed that the claims of 16 customers should be processed by arbitration. It is this group of 16 claimants who comprise the CoTs.

In relation to the CoTs arbitrations, the features of the scheme were that the arbitrations were to be administered by the TIO—it was not a Telstra scheme—the arbitrators were to be appointed by the TIO and the arbitrations were to be funded by Telstra, including the funding of the arbitrator's technical and financial resource units to

support the arbitration.

Four claimants were covered by so-called fast-track rules. These rules were negotiated by the then Chairman of Austel, Robin Davey. Twelve claimants were covered by special rules. We believe Telstra agreed in that process to significant concessions in favour of the claimants in these rules. For instance, in the fast-track rules, Telstra agreed to waive its statutory immunity from suit, and agreed that the arbitrators could recommend that Telstra should pay, even though it had no obligation to pay. Telstra committed in advance to abiding by such a recommendation.

In addition, Telstra agreed to relax the usual rules of evidence and agreed to meet the cost of an independent technical and accounting resource unit to assist the arbitrator. There was to be no cross-examination of witnesses and if Telstra appealed against an arbitrator's award Telstra would pay the claimant's costs of that appeal.

One of the criticisms of Telstra's role in this process has been the length of time taken in these arbitration proceedings. We acknowledge that, before the arbitration process was agreed in April 1994, Telstra had difficulties in processing the claims. Since the arbitration process was put in place, the timetable has been set by the arbitrator. Importantly, 11 of the 16 claims have been resolved to finality. Four claims are currently in arbitration and decisions are expected this year. One claim has been awarded but is on appeal by the claimants.

Why has it taken so long? It has been a new process and it has set a new approach in alternative dispute resolution. We can argue about the success of that. However, we see that a number of factors have contributed to the time frames. The claims were complex and, in some cases, required examination of evidence stretching over a decade. The very large amount of many of the claims required detailed examination and ultimately proved to be largely without foundation. Claimants were granted wide latitude in complying with the processes and there have been extensive delays in the submission of claims by some claimants. There has been time taken by the resource units to produce comprehensive reports and, again, time for the arbitrator to make decisions in very complex cases.

The other charge levelled at Telstra has been that we have been overly legalistic in our approach. Let me deal with that. As previously indicated, Telstra waived its statutory immunities and agreed to a relaxation of the rules of evidence. The CoTs claims were not insubstantial. They totalled in excess of \$44 million. Telstra cannot responsibly accept any such claims without scrutiny and careful review. The board and management of the company have a responsibility to act in the best interests of the company and that means not accepting without question large claims that are simply asserted. Again, the arbitration rules were administered by the TIO and Telstra was bound by the directions of the arbitrator.

The 12 claims that have been settled or that have received arbitrator's awards total

\$24.8 million. After an independent arbitration process, which resulted in three claims being settled by negotiation and awards being made in eight claims, the total of settlements in awards was \$1.74 million. This represents an average recovery of 6.9 per cent of the total amounts claimed.

You can make your own judgment about the veracity and the basis of the original claims. The total amount of the four claims currently in arbitration is \$19.6 million. As a separate measure, Telstra also agreed to an ex gratia reimbursement of claimants' costs in December 1996 at the completion of the claim process. There was no requirement for Telstra to do so but it did so as an act of fairness. \$1.2 million has been provided for the TIO to determine costs and reimburse claimants. Seven claimants have been paid costs, five remaining have been assessed and Telstra expects the payments to be made this year at the conclusion of these actions. Three claims were settled by negotiation and the settlement figures were inclusive of costs. They were not covered by this agreement.

In relation to the current legal position—and this was written before I heard the statement from the chair, but I do not think it is inconsistent—Telstra and the CoT claimants are bound by confidentiality agreements. Telstra has written to the claimants, who it was advised would be attending this meeting, seeking their agreement for release from the confidentiality undertaking to permit—

**Senator SCHACHT**—Seeking their agreement?

**CHAIR**—This is now all irrelevant, given the advice from the clerk.

**Mr Ward**—There is one relevant aspect.

**Senator SCHACHT**—You imposed the confidentiality in the first place so it is a bit rich writing to them saying that you now seek agreement, when you imposed it. You just had to say, 'We no longer require it.'

**CHAIR**—Let Mr Ward finish and then you can ask him questions.

**Mr Ward**—The additional point I really want to make is that the telecommunications industry ombudsman, the TIO, and the arbitrator have indicated to us their strong opposition to confidentiality being waived. Whilst it is acknowledged that Senate procedures, as you have outlined, allow for answers to be made to questions despite the confidentiality undertaking, in light of the serious concerns expressed by the TIO and the arbitrator, Telstra requests clarification of the position of the parties as a threshold issue for this evening's proceedings.

One claim is also being appealed in the Supreme Court of Victoria and therefore we are concerned not to stray into matters that are properly in the province of the courts. The strong point in those comments is the representations made to us by the TIO and the

arbitrator.

I also understand there is another claimant here today who is not included as a CoT and who does not have a claim in arbitration. In respect of Mr Honner, confidentiality obligations were attached to the mediation of his claim. These obligations have been waived by all parties concerned so that the concerns expressed by the TIO and the arbitrator do not apply to Mr Honner.

Telstra has given full consideration to Mr Honner's claim consistent with Telstra's obligations. As agreement could not be reached, Telstra would support the claim going to arbitration under the industry standard rules and again administered by the TIO. These industry standard rules have proved successful in the 2½ years since their introduction in that there have been two arbitrations which were both resolved by negotiation. Short of agreeing in full to every aspect of every claimant's case, Telstra considers that it cannot be more accommodating than this.

The CoT issue has been a very difficult one for the company and we recognise that it has been equally so for the claimants. We are now coming to the end of the independently administered arbitration process. No doubt many of the claimants would have wished that their claims, as asserted, had been fully accepted by the arbitrator but the claims, by and large, could not withstand that scrutiny and the expectations of some claimants were not met. We believe that supports Telstra's decision to engage in the arbitration process.

In summary, Telstra is keen to see that these claims are resolved as soon as possible. It has been an expensive and difficult process for all involved. We are interested in seeing the remaining claims concluded and moving on to more productive activities. As requested at the last Senate estimates committee meeting, I will attach a copy of the costs incurred by Telstra in the CoT arbitrations to this opening statement. Thank you.

**CHAIR**—Mr Pinnock, I believe you would like to make a statement, given a claim that was made at the estimates committee.

**Mr Pinnock**—Yes. It is a statement directed to one particular aspect but, of course, I am before the committee in relation to any questions that may be raised and I will be happy to deal with those. I have had the opportunity of reading the *Hansard* of the committee's proceedings on 12 June and I would like to refer in particular to a comment during those proceedings which is recorded at page 389 of *Hansard*.

It was a remark directed by Senator Boswell to Mr Ward, in which the senator suggested that Mr Ward 'might have put the weights on the TIO'. It is not completely clear from the *Hansard* but it appears that Senator Boswell had made that suggestion in the context of, or in relation to, a letter which I had written to Mr Ward on 11 June this year and which I understand Mr Ward had tabled during the proceedings of the committee,

with that being recorded, I think, at page 386.

I understand the suggestion that Mr Ward might have put the weights on the TIO to mean, in effect, that he had sought to influence me improperly in the exercise of my duties as Telecommunications Industry Ombudsman and perhaps that I may have succumbed to that improper influence, in so far as the contents of my letter of 11 June are concerned. I want the committee to understand the suggestion is not only incorrect but it is without any foundation whatsoever.

I wrote the letter on 11 June—I also sent copies to the minister and to Mrs Garms—to place on record an error which I, and I alone, had made in the course of preparing a document setting out procedures agreed to between the TIO and Telstra for the assessment by me of any claims for an *ex gratia* payment by Telstra of legal, technical, financial and accounting costs incurred by the CoT claimants during the arbitration of their respective disputes. Neither Mr Ward nor any other officer or employee of Telstra asked me to write that letter, much less did any officer or employee of Telstra suggest what the contents of that letter should be.

Before proceeding further, it might be pertinent to outline, in as encapsulated a form as possible, the events which led to my writing that letter. I digress a little, in terms of history, to put it properly in context. Within a few months of my appointment as TIO, I became concerned not only at the time taken to bring the various arbitrations to finality but also that neither of the arbitration procedures—the fast track or special—made any provision for the payment of costs incurred by the claimants, irrespective of the fact that they might receive an award in their favour.

In this regard, on 9 October 1995 I wrote to Mr Steve Black, who was then the group general manager of customer affairs at Telstra. In that letter, I noted that the arbitrations had been ‘far slower, more legally technical and far more expensive than originally envisaged.’ I also stated that I believed ‘the significant delays and the impact these delays have had on the claimants’ resources, coupled with the palpable imbalance between the resources available to claimants and those upon which Telstra is able to call, has led to a situation which is clearly inequitable’. I proposed in that letter a scheme for an *ex gratia* payment of those costs by Telstra to the claimants.

Mr Black responded to my letter on 13 November. While he disagreed with my assessment of the lack of equity and with my proposal for a specific *ex gratia* payment, he advised that he would review those issues further when the fast track arbitration process had been finalised by the issue of awards. During the course of 1996, I held numerous discussions with Telstra on this particular issue. There were also a variety of exchanges of correspondence between the TIO and Telstra, between the minister and the TIO, and between Senator Boswell and the TIO. Following those discussions, Mr Ward wrote to me on 20 November 1996. His letter set out a number of aspects which had been discussed of a concrete proposal for an *ex gratia* payment of costs.

I responded to Mr Ward on 22 November, agreeing to those proposals and suggesting that it was an appropriate matter on which to brief the minister. On 19 December 1996, I met the minister in his office, together with Mr Ward and Mr Benjamin. The minister's adviser, Mr Paul Fletcher, was also present. I specifically recall that that meeting was arranged with the minister at fairly short notice because of the minister's then hectic schedule. I also recall that I had only recently completed drafting a procedures document to be sent to the claimants by me, incorporating the proposals for the *ex gratia* payment of costs.

I handed a copy of that procedures document to the minister, under cover of a short letter. Mr Ward gave a precis of the proposal. But neither the procedures document that was presented on that date nor the precis by Mr Ward made any specific reference to the position of Mrs Garms in any particular way at all or, indeed, discussed any individual claimant by name or their individual positions, other than that some were still in arbitration and some had been completed.

As my letter of 11 June makes perfectly clear, I do not have a perfect recollection of whether I handed a copy of that procedures document which I had drafted to Mr Ward or Mr Benjamin. Having looked back on my file, there is certainly nothing on it which would show that I had provided a copy of that. Again, I do not recall whether I had a copy of Mr Ward's detailed letter of 20 November with me during the meeting. But I am certain that neither the letter nor the contents of that letter were referred to during that meeting.

My specific recollection is that the minister was concerned to discuss a number of matters, the most important of which was whether the sum of \$1.2 million would be sufficient to meet or make a reasonable contribution towards the reasonable costs of the claimants—that is to say, legal, accounting and technical costs. In this regard, Mr Ward agreed with a request or a suggestion by the minister that should I, after full consideration of all the claims, conclude that a larger amount would be needed, Telstra would look favourably at such a proposal. I subsequently confirmed that matter in writing to the minister.

Following the meeting with the minister, I wrote to all eligible claimants on 20 December advising them of the arrangement and enclosing a copy of the procedures document which I had drafted. There was a considerable delay in all of the eligible claimants submitting their respective claims and, ultimately, one claimant did not submit a claim at all. I notified that claimant that, notwithstanding that the agreed procedures document required all claimants to submit their claims, I proposed, in the event that no claim was submitted, to proceed with assessments of the other matters, and I did so.

I advised Telstra and all eligible claimants on 2 May in writing that I had made assessments of their respective claims. I advised those claimants whose arbitrations had been included, including Mrs Garms, of the actual assessment. Those claimants who had



arbitration still outstanding in which no award had yet been made were not advised of the quantum of what obviously was an interim assessment.

Having regard to the fact that Mrs Garms had lodged an appeal, I specifically advised Telstra in relation to her claim for costs as follows:

In this regard, I note and have considered the fact that Mrs Garms has appealed against the award of the arbitrator. I have also noted that Telstra has not lodged any cross-appeal. I have concluded that, whatever the outcome of the appeal, the costs as assessed by me in respect of Mrs Garms' claim have been incurred in the arbitration and should be paid in accordance with the procedure as agreed.

This approach is in accordance with the general rule of civil procedure that, if there is a judgment which includes an order for costs, then that order can be enforced, notwithstanding that the judgment has been appealed, unless there is a specific application, the judgment be stayed pending the appeal.

In the present case, Mrs Garms has appealed the award and has requested that the award be stayed pending the outcome of the appeal. However, she has proceeded with her claim for costs, as she is entitled to do in accordance with that procedure. In these circumstances, I believe Mrs Garms is entitled to her claim for costs and there are no legitimate grounds for refusing payment of her reasonable costs.

The procedures document provided for Telstra to pay those costs as assessed within 14 days—that is to say, on or before 16 May.

On or about 16 May of this year, as a result of receiving a copy of a facsimile from Mr John Armstrong, the Customer Affairs Counsel of Telstra, to Mrs Garms' solicitors, I became aware that Telstra believed that the procedures outlined in the document that I had prepared and sent to the claimants were not in accordance with the proposal put by Telstra to the TIO. I was somewhat perplexed by this suggestion, but it was not until some time afterwards when my attention was drawn to the terms of Mr Ward's letter of 20 November 1996 that I realised that I had made an error.

Having spent considerable fruitless time in reviewing the TIO files in an attempt to understand how that error came to be made, my first step was to contact the minister's office and advise of the mistake. I understand that, by that stage, there had already been an exchange of correspondence between the minister and Mr Blount. Thereafter, in short order, firstly I received a telephone call from Senator Boswell, asking whether I would be attending a forthcoming meeting of the Senate estimates committee—the words 'estimates committee' were specifically used—at which the question of the payment of the assessment of Mrs Garms's claims was likely to be raised.

I advised Senator Boswell that I was uncertain of whether I was entitled to give evidence before such a committee, as I was not an employee of the Commonwealth, nor was the TIO a Commonwealth department or instrumentality. I specifically advised Senator Boswell, however, that I would certainly attend if invited to do so by the committee. It is a matter, I assume, of record that no such invitation was extended to me.

Secondly, on 6 June I was provided with a copy of Mr Blount's letter of 4 June to the minister. That letter concluded with the remarks, 'However, I have asked Mr Graeme Ward to work with the TIO and your office to agree a way forward on costs for the remaining CoTs and to make recommendations to me for further consideration.' Shortly thereafter, Mr Ward and Mr Benjamin met me on 11 June 1997. At that meeting, Mr Ward advised that Telstra wanted to explore possible ways to resolve the impasse that had developed—namely, that I had in effect said straight out that Mrs Garms should be paid and that that had been done on the basis of a mistake by me and that Telstra, at that stage, had not paid her.

I advised Mr Ward, however, that I did not want to discuss that particular issue at that time. I told him that in view of the fact that the matter was likely to be raised at what I understood was to be the Senate estimates committee—and that would have been on 12 June—and in view of the fact that I had not, at that stage, been invited to attend the committee's meeting, it was my intention immediately to write to the parties advising of the error which I had made. I wrote that letter and I sent a copy of it to the minister and a copy to Mrs Garms, and I gave leave to Mr Ward to table the letter before the committee.

That outline contains the salient facts and circumstances leading to my writing that letter. Whilst I have directed my remarks in this statement to the particular comment made by Senator Boswell, because I regard that comment made in my absence as reflecting on my integrity both personally and in my role as TIO, I am well aware that the committee has an interest in matters of a broader perspective concerning the CoT arbitration procedures. To the extent that I am able, I am more than happy to respond to senators' questions on those matters.

Finally, I am aware, of course, of the prerogatives of the Senate and of its committees and I take cognisance of the Clerk's advice concerning the question of confidentiality. I must say, however, that I have this reluctance in relation to discussing matters which might impinge on the specific role of the arbitrator himself, in relation to both the remaining fast track arbitration which is afoot—in which the arbitrator is required to make a decision—and the arbitration which is the subject of appeal. Although the defendant named in that appeal is Telstra, many of the grounds of the appeal—and it is a matter of public record—relate to the conduct by the arbitrator of the arbitration and may well involve him being required either orally or by affidavit to give evidence as a witness.

I have a personal reluctance to discuss any of the details of matters to be canvassed in that appeal, because the appellant has notified me that it is her intention to join me as a party to those proceedings. In those circumstances, as I say, I am somewhat reluctant to canvass those particular issues.

**CHAIR**—Thank you, Mr Pinnock. Mr White, I believe that somebody advised me that you have indicated that there was incorrect evidence provided to the estimates committee at the last meeting. Is that correct?

**Mr White**—You would have to be specific. I am not quite sure.

**CHAIR**—I was advised that you had made a comment—and I may not be right—that evidence was given to the committee which was incorrect and misleading. Is that the case?

**Mr White**—I spoke to Senator O’Chee earlier about a number of issues, but I am not sure that that was one.

**CHAIR**—Are you aware of any evidence having been given to this committee which was misleading or incorrect?

**Senator O’CHEE**—Madam Chair, maybe I can assist.

**CHAIR**—I am sorry; I am asking Mr White a question.

**Mr White**—There seem to be some inconsistencies. I did speak to Senator Boswell and Senator O’Chee earlier. I am not aware of the full history of this inquiry. I have been brought here to answer questions, as far as I know.

**CHAIR**—You are not making a claim that the committee has been misled?

**Mr White**—No, not personally.

**CHAIR**—That is quite a serious claim to make, and I wanted to clarify that before we started. You believe there are some inconsistencies. Would you like to outline those?

**Senator O’CHEE**—Can I—

**CHAIR**—No, Senator O’Chee; I am asking Mr White a question.

**Senator O’CHEE**—Well, unless he is—on a point of order—

**CHAIR**—Senator O’Chee!

**Senator O’CHEE**—On a point of order—

**CHAIR**—Mr White, would you please answer my question?

**Senator O’CHEE**—Can I make a point of order here?

**CHAIR**—No.

**Senator O’CHEE**—Hang on! Are you saying that I am not allowed to raise a

point of order?

**CHAIR**—I am ruling your point of order out of order while I am asking a question of Mr White. Could you please answer my question, Mr White.

**Mr White**—I find it difficult to answer the question without specifics.

**CHAIR**—Mr White, have you made a claim outside of here that evidence has been given to this committee which is inconsistent?

**Mr White**—I have not made claim like that.

**Senator BOSWELL**—He said that he did not make a claim.

**CHAIR**—You have not made a claim that it is inconsistent. There has been no evidence given that is misleading and no evidence that is inconsistent. Mr White, have you made a claim outside this committee that evidence has been given to the committee which is inconsistent?

**Mr White**—No, I have not made a claim.

**CHAIR**—Thank you very much, Mr White.

**Senator O'CHEE**—Could I make my point of order?

**CHAIR**—Yes; you may make a point of order.

**Senator O'CHEE**—It is difficult, as a point of order, for the witness to be asked to comment on the proceedings unless we first ascertain whether the witness has, in fact, seen a *Hansard* of the proceedings and is therefore in a position to comment.

**CHAIR**—No. The witness can advise the committee whether that claim has been made, irrespective of whether the person has seen the *Hansard* or not.

**Senator O'CHEE**—Yes; but I am raising the point of order that it might be difficult for the witness to answer the question unless they have seen the *Hansard*.

**CHAIR**—No. I did not ask whether it had been misleading; I asked whether he had made a claim that there had been misleading evidence, or whether a claim had been made that it was inconsistent.

**Senator O'CHEE**—You then also asked the witness whether he thought there was evidence which was inconsistent.

**CHAIR**—He can answer and tell me he has not read the *Hansard*. I think he is

able to answer for himself without needing your interpretation.

**Senator O'CHEE**—Fine, Madam Chair; that is fine by me.

**CHAIR**—Senator Schacht, I believe you had a question.

**Senator SCHACHT**—My question is to Mr Ward, following on my questions to the minister before he fled. Have you actually paid the money to Mrs Garms?

**Mr Ward**—No.

**Senator SCHACHT**—You have not paid it. Do you have any intention of paying it before the appeal is dealt with in the Victorian Supreme Court?

**Mr Ward**—The situation is as follows: the agreement that we had with the TIO we have met in full, as my statement and the TIO statement have said. I have written back to the TIO in response to his letter—of 11 June, I think—and said that I would be happy to meet with him to discuss a way forward from a very difficult situation that has come about by, I guess, some communication issues that the TIO has fully addressed. I have met with the TIO since, as he has explained, and he did not want at that stage to pursue any options for a way forward. So, at this point in time, I cannot give you a definitive answer to your specific question. I am prepared to meet with the TIO and discuss a way forward from a very difficult situation.

**Senator SCHACHT**—I would have thought it is very simple: get a cheque book, write the amount in, get Frank Blount to sign it, and put it in the mail to Mrs Garms. Ethically, you are required to do that. Mr Pinnock has explained that there was an error in his letter and we accept all of that, but it was pointed out in the evidence he gave that it is usual practice that the costs, once assessed, are paid, even if you are having a later appeal. I cannot see why ethically Telstra cannot accept that and just send the money.

**Mr Ward**—The position is unfortunately not as simple as that. We have a written agreement with the TIO which we have honoured that has been endorsed by Telstra management and the board. We have put on record twice that we are prepared to meet with the TIO and discuss options that he thinks are fair and what might be a way forward and I am prepared to do that.

**Senator SCHACHT**—That is again obfuscation, it is a convenient excuse for Telstra. I came late to this case and I suspect we are going to be bedevilled by these cases for quite a while yet. You are refusing to pay. You reached an agreement, the costs were assessed, but you are not paying because Mrs Garms exercised her right as a citizen of Australia to make an appeal to a higher court.

**CHAIR**—Mr Pinnock, have you got anything you can say that would facilitate or move us forward on this issue?

**Mr Pinnock**—The first thing is that it is correct, as I emphasised, that I was not prepared to discuss any particular way forward with Telstra until I had first corrected what I regarded as, if you like, a misconception or an error in the record, namely, that a mistake had been made and that it was my mistake. It follows from that, in my view, that to the extent that the impasse has been created by that mistake, that it falls to me to try to resolve the issue. I am not trying to cut across Senator Schacht's questioning of Mr Ward, but the issue is one which, if it is to be resolved, has to be resolved it seems to me by me.

Secondly, it would be a matter where it would seem to me appropriate that I would not just discuss the matter with senior officers of Telstra, but also with Mrs Garms. As to whether I have a specific solution to the current problem, no, Senator, I do not at this stage.

**CHAIR**—I do not think it really ought to have come to this situation, but given the fact that you are saying that it is not Telstra's decision to make the payment and it lies back in your court, and we are now talking about—

**Mr Pinnock**—In my court to the extent that it was my error.

**CHAIR**—We are now talking about the estimated costs reimbursement, or the assessed costs reimbursement. We are not talking about the other money, we are talking about the costs reimbursement assessment—

**Mr Pinnock**—That is correct.

**CHAIR**—How long will it take to resolve this issue?

**Mr Pinnock**—It depends on whether the parties are prepared to, I suppose in matters of this nature, accept some sort of compromise. Telstra on the one hand is saying, 'We are not going to pay', and on the other hand Mrs Garms has what could be regarded as a quite legitimate expectation that she should be paid. It is rather like asking can I get the parties to sit down with me and come to agreement. I do not know whether I can do that.

**CHAIR**—Mr Pinnock, you have just told us it is not in Telstra's court, it is in yours, and then in the next breath you say to me that Telstra is not going to pay and therefore you—

**Mr Pinnock**—I am saying that, given that the parties have those positions, it is a matter for me to try to resolve that particular impasse. You have asked me when and how I can do that and I am simply saying that at the moment I do not quite know. For instance, I have not even had an opportunity to sit down and discuss this matter with Mrs Garms at all. All I can say to the committee is that I will do everything I can to ensure that there is a resolution reached which satisfies both parties.

**CHAIR**—What sort of time frame are we looking at, Mr Pinnock?

**Mr Pinnock**—I am not interested in this matter hanging around to bedevil not only this committee and the parties but me also. I would be looking to try to resolve this matter in the next seven to 14 days.

**Senator SCHACHT**—Mr Pinnock, do you have the \$1.2 million in an account to pay Mrs Garms's costs?

**Mr Pinnock**—The TIO has never had those funds.

**Senator SCHACHT**—So it has not actually been paid into a trust fund to you?

**Mr Pinnock**—No.

**Senator SCHACHT**—So you are still waiting for the cheque to arrive or to note that it has been sent from Telstra to Mrs Garms. Is that correct?

**Mr Pinnock**—Yes.

**Senator SCHACHT**—Right. You have corrected the error. You have explained at great length here tonight the error that has been made, so we have cleared the deck on the error. Do you believe—yes or no—that Telstra should send the cheque via you or direct to Mrs Garms forthwith for the assessed costs?

**Mr Pinnock**—I cannot answer that directly because, if I make that statement, the fact of the matter is that it was not within the contemplation of Telstra when they first entered into the agreement with the TIO. When I advised Telstra, in my letter relating to the assessment of Mrs Garms's costs, that she should be paid notwithstanding the appeal, I was working on a misapprehension in terms of what the procedures document should—

**Senator SCHACHT**—You have cleared the air on that. We accept that error. It has been cleared up. All I am asking you—

**Mr Pinnock**—Do I think they should pay?

**Senator SCHACHT**—They have the assessed costs under the arbitration system. Mrs Garms has—as she is entitled—gone to the Victorian Supreme Court to appeal it. You have said in your evidence here tonight that the standard practice is that once the costs are assessed they should be paid.

**Mr Pinnock**—Yes.

**Senator SCHACHT**—Do you believe—yes or no—that Telstra should pay the

money to Mrs Garms forthwith?

**Mr Pinnock**—On those principles, yes.

**Senator SCHACHT**—Thank you very much. Mr Ward, the TIO has now said that on that principle you should pay. When will you send the cheque to Mrs Garms?

**Mr Ward**—The agreement that we reached—

**Senator SCHACHT**—With whom?

**Mr Ward**—With the TIO about how we would contribute to the costs of the CoTs was very specific and a balanced agreement in our view. To respond to your question, I need to sit down with the TIO and revisit the balance of that agreement and—

**Senator SCHACHT**—He has just told you, in a public hearing that has privilege—and actually if you tell lies here you can come before the privileges committee in the parliament, so it is the same as a sworn statement—that you should pay. Will you pay the money?

**Mr Ward**—What I will commit to is to meet with the TIO tomorrow to discuss the issue, and that is all I can commit to at this point in time.

**Senator SCHACHT**—I have to say, Mr Ward, if you have that meeting as a result of that, that I will move at the end of this hearing tonight that this hearing adjourn till a later date until we find out what you are up to. This is just not good enough!

**Mr Ward**—I am prepared to meet with him tomorrow to discuss the matters that we have exchanged in correspondence.

**Senator SCHACHT**—Thank you for that. That may be, I think, some marginal progress, but I would not hold my breath, given the way this has been handled by Telstra for a long time. I want to ask the next question about commercial-in-confidence. As I understand it, in all the agreements that have been arbitrated, it is Telstra that has insisted on commercial-in-confidence being applied to all those settlements. Is that correct?

**Mr Ward**—I defer to my colleagues.

**Mr Benjamin**—The agreements were negotiated before anyone here was connected with these matters, but my understanding is that there was a mutual agreement in respect of confidentiality.

**Senator SCHACHT**—We told you 13 days ago that this hearing would take place. I raised the issue of commercial-in-confidence at the previous hearing. You have had 13 days to go into the institutional memory—however good that is—in Telstra to actually



find it! To come here tonight, Mr Benjamin, and say, 'None of us were here before they were signed and we do not know,' is not good enough.

**Mr Benjamin**—The agreements were signed by both parties, Senator.

**Senator SCHACHT**—Yes, but were the agreements signed on the basis—

**CHAIR**—Senator Schacht, just let Mr Benjamin finish.

**Mr Benjamin**—The agreements have been signed by both parties and one would assume that both parties entered into that on a voluntary basis. We did write to the parties asking whether they would waive that agreement. The parties—that is, Mrs Garms and Mr Schorer—wrote to us indicating that they were not inclined to waive those rights.

**Senator SCHACHT**—What! Mr Benjamin, let me go back one step. You said that none of you was around when they were signed, but I would have thought you could have found out in the intervening 13 days since our last hearing whether Telstra asked for the commercial-in-confidence to be on all the agreements, or did any of the claimants insist that it be declared commercial-in-confidence?

**Mr Benjamin**—I think it was probably Telstra that asked for that.

**Mr Mead**—If I may add, Senator: I have the same difficulty, I guess, as the other Telstra members have. I was not here at the time that the agreement was signed and was not party to that.

**Senator SCHACHT**—Are there not any records kept anywhere in Telstra?

**Mr Mead**—The confidentiality agreements I believe are mutual and, in that respect, they also protect the confidentiality of quite private and personal information of the claimants. So to that extent—

**Senator SCHACHT**—Okay, Mr Mead. Mr Benjamin has admitted he thought that it was before his time, but the commercial-in-confidence was raised, insisted upon and argued by Telstra. You are in the position of people negotiating money. I can imagine that is like having your arm half broken to get an agreement—you will settle for that.

The next thing is: would you have no objection if people, even those that are not here today, sent any CoT case or any agreement that has been reached anywhere over these similar matters in the recent past to this committee? That material could be made public if they so wish and Telstra would have no objection?

**Mr Ward**—In the opening statement that I read onto the record, I expressed the concern of the TIO and the arbitrator about our initiative to waive those confidentiality

agreements. We would retain the concerns I expressed in the opening statement, as expressed to us by the TIO and the arbitrator.

**Senator SCHACHT**—But the agreement has been reached and signed by both sides. It is supposedly all finished other than the cases like Mrs Garms or Mr Honner. Negotiations are completed. You should have no problem if they do not have any objection to having the documents made public.

**Mr Ward**—You are asking me for those that have been finalised?

**Senator SCHACHT**—Yes, finalised.

**Mr Ward**—I think the concerns expressed to us by the TIO and the arbitrator really referred to those that are on foot and therefore my response would be that we would not have concerns about those others.

**Senator SCHACHT**—Good. One last question on another matter, and I hope this can be answered because I raised it at the last meeting: how many legal firms does Telstra employ or have on retainer to handle all its legal matters including CoT cases?

**CHAIR**—That question was asked in the estimates, wasn't it?

**Senator SCHACHT**—Yes, and they have not answered yet. Further information has come to my attention that this question is now relevant to this particular hearing.

**Mr Mead**—I had understood—and this may be my mistake, for which I am sorry—that the questioning last time was specific to law firms handling the CoT cases, but I can offer quite a close approximation. I may be out slightly in the numbers, but we have a panel of lawyers which would contain domestically perhaps 45 firms across Australia and internationally more—perhaps 20 to 25 firms that would handle work for us in overseas countries. That panel appoints particular individuals within law firms who have been chosen for their skill.

We have a group of lawyers—perhaps a couple in each state—who would handle personal injuries claims for us. We have a very much different group probably handling employee relations or industrial relations matters. We have different firms that handle major commercial strategic work for us. Specific to the CoT cases, there are the three firms that I mentioned in my last answer.

**Senator SCHACHT**—If a member of a CoT or anyone in a legal dispute with Telstra over their bill approached one of those legal firms other than those in your panel for CoT cases, would that legal firm say, 'I can't take your case because I am already on a retainer doing business with Telstra and therefore there is a conflict of interest'?

**Mr Mead**—They might. They could have either a legal or what would loosely be called a commercial conflict. The legal conflict would simply be where they are already acting for Telstra and, clearly, they would not act against us on broader matters. It may be that a firm would answer that they would prefer not to act against an existing client, and that would depend upon the strength of the relationship. But under the panel terms that we have—and this happens not infrequently—a law firm can contact us and ask us to be happy for them to waive the conflict, in effect, and to act against us.

**Senator SCHACHT**—Have any firms contacted you either to seek a waiver or to discuss with you the fact they had been approached by a citizen who wants to take up a CoT case or a similar matter?

**Mr Mead**—On CoT cases, I am not aware of any, although Mr Armstrong might—

**Mr Armstrong**—No, not to my knowledge.

**Mr Mead**—On other matters generally, it happens not irregularly at all.

**Senator SCHACHT**—It has been put to me that one of the problems some people have had is that, when they have approached any firm that has had any experience in telecommunications to deal with this, they have found that they were already on a retainer for Telstra and the firm has said, ‘Sorry, we can’t deal with it.’ Therefore, they have to go and find somebody who has got no previous experience. What has happened is that Telstra has created a bit of a monopoly of locking out firms that have expertise in areas of telecommunications. It is not an unknown technique. I noticed that in the late 1980s and early 1990s Alan Bond got every QC he could get hold of and put them on a retainer so they could not be used by the other side to have a go at him over some commercial matter. I trust that Telstra is not accidentally, at least, operating on the same basis.

**Mr Mead**—Senator, we certainly do try to keep loyal to us a very small number of large firms that act on strategic matters, trade practices matters, Telecommunications Act issues and competition law matters. In relation to other matters, it is a less specialised field. I am not aware—and I have been employed by the corporation for most of the time that the panel existed—of any attempt to establish a panel in a way which would limit the ability of CoT claimants to engage lawyers.

**Senator SCHACHT**—So if someone approached one of those firms that deal with strategic matters, such as advice on interconnect arrangements, if the major legal advice was in that area only and if the firm said to you that they had been approached by somebody who wants to take up an equivalent of a CoT case, you would waive the conflict of interest provision?

**Mr Mead**—Almost certainly we would not if it were one of the firms that acted on those matters or if it were one of the firms that are already acting for us in the CoTs.

But we are talking there of a very small number of firms.

**Senator SCHACHT**—That is three or four firms.

**Mr Mead**—Three or four firms on CoT. That would probably extend to six or seven in relation to major strategic matters, but not the 45—

**Senator SCHACHT**—So that means there are about 35 left. On those 35 firms who act for you in other areas but not in CoT, if they spoke to you, you would waive the conflict of interest?

**Mr Mead**—I would have to look at the particular firm and the particular type of work that they do for us. But, for example—

**Senator SCHACHT**—Mr Mead, you have given me a reasonable answer, but I would like you to take it on notice and come back to us with a more detailed explanation about how these arrangements work on conflict of interest and how you advise firms. It does seem to me that, even by accident, you may be creating a monopoly for yourself which disadvantages other people seeking legal firms with expertise and skill in telecommunications. It is another form of the old monopoly, I suspect.

**Senator O'CHEE**—Mr Mead, on 12 June I asked you how much you had spent in total on CoT cases; I asked you how much you paid to each of Freehill, Mallesons and Holding Redlich; I asked you also for your total other disbursements, for example to consultants, technical advisers, loss adjusters and so on; and I asked you for your internal costs in dealing with CoT case matters. Can you now advise those figures?

**Mr Mead**—I can table those figures. By explanation, I would say that this chart shows an allocation to Telstra's internal costs for case managers, internal legal staff, internal engineering, technical staff and management staff in addition to their on-costs. It details the cost of external contractors, engineering and technical, including Bell Canada, Coopers & Lybrand, and the Austel precursors; it details the external legal fees paid to those three firms and the external accounting fees paid to Deloitte Touche Tohmatsu; and it also details the costs paid to various lawyers retained by the arbitrators in the process. The chart is broken down over the various financial years.

The point to make in relation, for example, to the arbitration cost, is that that is a cost of a different colour, if you like, in the sense that it is a cost which is incurred by the arbitrators. But I have that chart.

**Senator O'CHEE**—What is the total? Do you have one copy for me?

**Mr Mead**—You may have this copy. The total costs of Telstra, which are for the internal cost, the external contractors, the external legal and the external accounting, from

the 1993-94 financial year to 1996-97—the current year—are \$14,285,951. The total cost paid in the arbitration process to the independent arbitrators was \$4,446,341.

**Mr Ward**—I tabled that with my opening statement, Senator.

**Senator O'CHEE**—I am waiting to see a copy. So your total internal costs were \$3.2 million, being \$425,000 in the 1993-94 year; \$1.673 million in the 1994-95 year; \$707,000 in the 1995-96 year; and \$399,000 in the 1996-97 year to date. Is that correct?

**Mr Mead**—Yes, Senator.

**Senator O'CHEE**—On top of that you have another \$3 million for external contractors before we consider legal and external accounting. Is that correct?

**Mr Mead**—Yes, Senator.

**Senator O'CHEE**—Is it true that you actually formed teams of people to deal with each individual CoT case?

**Mr Mead**—Senator, I might ask Mr Armstrong to answer that.

**Mr Armstrong**—If you mean by teams in terms of preparing a chronology, a case history of each case and the complaint: particular groups of people with either accounting or engineering expertise would review the documents and attempt to write those histories.

**Senator O'CHEE**—How long were those teams together?

**Mr Armstrong**—They started in late 1994, when the first of the claims were due. A much smaller group is still in existence, the technical resource unit, to respond to questions from the arbitrators.

**Senator O'CHEE**—So they were not just there to put together a chronology? Each team was there to deal with a particular complainant's case?

**Mr Armstrong**—No. There was a group of technical and engineering people assisted by some staff from Deloitte's. Obviously, particular people would work on a particular case. But, no, it was not a group put together that would exist for four years while this case was going. People would move from one to another—

**Senator O'CHEE**—Mr Armstrong, you are avoiding the question. Were there teams of people—the personnel in those teams might change—assigned to deal with specific complainants' cases?

**Mr Armstrong**—There was a group to deal with all the cases.

**Senator O'CHEE**—Was that group divided in teams?

**CHAIR**—Senator O'Chee, would you let Mr Armstrong finish.

**Mr Armstrong**—There was a group of people with those areas of expertise who dealt with all the cases. Within that group, particular people or more than one person might deal with a particular case.

**Senator O'CHEE**—Thank you. How many people were in that group?

**Mr Armstrong**—Offhand, I do not know the numbers over the whole period. But their costs, or their wages plus oncosts, are reflected in the internal costs.

**Senator O'CHEE**—Did you have external contractors working full time with that group of people?

**Mr Armstrong**—Yes. There were people who were not Telstra employees working there.

**Senator O'CHEE**—And they were basically working there full time?

**Mr Armstrong**—For a period; yes.

**Senator O'CHEE**—In fact, you actually had a specific floor of a building allocated to dealing with CoT cases, didn't you?

**Mr Armstrong**—All those dealing with the CoT cases were on a floor.

**Senator O'CHEE**—How many people were on that floor? Was it five, was it 10? Was it like a netball team? Was it an Aussie rules team or was it the whole VFL?

**Mr Armstrong**—Again it varied over time, as the internal cost figures would indicate to you: in 1994-95, obviously, that is the highest figure; in 1995-96 the costs fall; in 1996-97 the costs continue to fall. I do not know the exact numbers of people. If I took a notional figure for someone's wages plus 35 per cent for on-costs and divided it into those figures, I could come up with it. I do not know. I would have to check and come back to you.

**Senator O'CHEE**—If somebody is earning \$40,000 and you add 35 per cent for their on-costs—this is your figure—that person is probably costing you about \$55,000. In 1995-96, that would suggest that you probably had around 14 Telstra staff working full time there.

**Mr Armstrong**—If that is how the division comes out.

**Senator O'CHEE**—What instructions were given to those people? Were they told what the terms of the fast-track and special arbitration processes were?

**Mr Armstrong**—They were certainly aware of the process, that there was an arbitration process and that they were preparing documents to be used in that process.

**Senator O'CHEE**—Were they told to prepare documents that were fair and accurate?

**Mr Armstrong**—Yes.

**Senator O'CHEE**—If somebody reviewed a particular complaint and said, 'This particular matter is a perfectly reasonable complaint', you would accept that? You would accept that document from your working team?

**Mr Armstrong**—As we reviewed the documents, if a fault had been reported, Telstra had tested for that fault, and it had proved that there was a fault; yes, that would be in the chronology.

**Senator O'CHEE**—If the Telstra internal staff sat down and they said, 'This is reasonable,' you would accept it?

**Mr Armstrong**—How do you mean would I accept it?

**Senator O'CHEE**—Mr Black was heading that group of people at the time. If somebody came up with a document that suggested there may be something reasonable in a claim, Mr Black would accept that?

**Mr Armstrong**—That would go in the defence documents. We would append those documents to our defence documents. There would be reference made to it.

**Senator O'CHEE**—They would never be told to go away and re-work them, because it seemed too reasonable towards the complainant?

**Mr Armstrong**—No. Not to my knowledge, no.

**Senator O'CHEE**—May I ask a question of one of the other witnesses, Madam Chair?

**CHAIR**—Yes.

**Senator O'CHEE**—Mr White, you worked in the group which has been referred to by Mr Armstrong?

**Mr White**—That is correct.

**Senator O'CHEE**—What was your capacity in Telstra before you were seconded to that group?

**Mr White**—I was the national process change manager for the service plus fault reporting system. I work for the C&G section of Telecom—corporate and government section. My role there was to mould the service plus system into a more useable product for Telecom.

**Senator O'CHEE**—When were you seconded to the group that we have just been discussing?

**Mr White**—It was late 1993, to the best of my knowledge.

**Senator O'CHEE**—Late 1993?

**Mr White**—Yes. I am sure it was before Christmas 1993.

**Senator O'CHEE**—Did Mr Alex Black head that group at that time?

**Mr White**—Who?

**Senator O'CHEE**—Who was the head of that group?

**Mr White**—Steve Black was the head of that group, I believe.

**Senator O'CHEE**—Were there teams of Telstra's people and external consultants assigned to deal with particular cases?

**Mr White**—Yes, there were.

**Senator O'CHEE**—There were?

**Mr White**—Originally, we were housed in the Freehill's building in Collins Street in Melbourne.

**Senator SCHACHT**—The Freehill's building?

**Senator O'CHEE**—What part of the Freehill's building?

**Mr White**—I think we were on the 51st floor, from memory. This is two years ago.



**Senator SCHACHT**—It can't be higher than that, can it?

**Senator O'CHEE**—Where did you move after the Freehill's building?

**Mr White**—Into the TAC building in Exhibition Street. Mr Levy, who is here tonight, could confirm that.

**Senator O'CHEE**—Telstra paid for that floor, did they?

**Mr White**—It was the Telstra office and I was the Telstra employee.

**Senator O'CHEE**—So how much of the floor did your group take up?

**Mr White**—Our group took up half of that floor. The FOI unit was in a part of it and John Armstrong was in a part of it also.

**Senator O'CHEE**—So it was not just that group. There was also an FOI group and Mr Armstrong's group as well?

**Mr White**—Yes.

**Senator O'CHEE**—Which team were you on?

**Mr White**—I was on the Schorer team.

**Senator O'CHEE**—How many people were assigned to Mr Schorer's case?

**Mr White**—That varied. In the early days there were four technical specialists and about six Deloitte's people.

**Senator O'CHEE**—So in the early days there were 10 people in a team working just on Mr Schorer's case?

**Mr White**—Yes.

**Senator SCHACHT**—Were the Deloitte's people all lawyers—or accountants?

**Mr White**—They were accounts people. They were there to assist quantum.

**Senator SCHACHT**—Assist on what? They were not in charge of the building operation.

**Mr White**—No. My role and my counterparts' role were to decipher documents presented to us, and the Deloitte's people—

**Senator SCHACHT**—By Mr Schorer in this case? Which documents?

**Mr White**—The documents that were delivered to us by Telstra, that had been through the FOI process, needed to be deciphered. Some of those were in technical form, code form, and needed to be documented as to what they were.

**Senator SCHACHT**—Can I just ask—

**CHAIR**—Hang on. Senator O’Chee.

**Senator SCHACHT**—I have just one question.

**CHAIR**—I think Senator O’Chee had the floor.

**Senator SCHACHT**—Okay, fine.

**Senator O’CHEE**—So Telstra had masses of documents relating to each of these cases. Your job in the team was to interpret those documents and explain to—what, lawyers—what those documents meant?

**Mr White**—They were committed to an Excel file. My job was to determine what the documents were, who they were from, who they were to, what value they were. They were put on an Excel file and that was put on the Telstra mainframe system. The legal people used them; Deloitte’s took what they wanted out of it, I would imagine. What happened to them after I had deciphered them, I do not know.

**Senator O’CHEE**—Are you aware of any of those listings, those explanations of the FOI documents, ever being made available to the complainants?

**Mr White**—It was not a part of my responsibilities.

**Senator O’CHEE**—I will put to you some of the descriptions that were given here, two weeks ago, of the process of providing documents. I will just read you two and I will ask you to comment on them, because they are really quite important.

**CHAIR**—Do you have the Senate *Hansard* page number?

**Senator O’CHEE**—Yes, I do, Madam Chair. At page 377, Mr Benjamin said this in relation to Mrs Ann Garms’s complaint:

Telstra acknowledges that it could have done better in respect of providing some of those documents under FOI. The situation was subsequently rectified over a period. But in our view that did not impact on the arbitration because under the arbitration procedures there was an opportunity for those documents to be requested and the arbitrator could have directed us to do so.

At page 380, Mr Benjamin said, again of Mrs Garms’s case:

. . . she had ample opportunity to request any documents she wanted which she thought pertinent and have the arbitrator take her position if that was necessary to require us to produce those documents.

Do you see the sorts of documents that Telstra was providing to the complainants?

**Mr White**—All of the documents that I saw would have been available to the complainants if they had applied for them, I believe.

**Senator O'CHEE**—Did they get everything, and did they get information that described what they received?

**Mr White**—Could you elaborate on that, please, Senator O'Chee?

**Senator O'CHEE**—When they made a request for information, were they automatically provided with every relevant document, or was there sometimes some internal discussion as to whether a document should or should not be made available?

**Mr White**—I only know of one instance.

**Senator O'CHEE**—What was that?

**Mr White**—That was a box of documents in Peter Gamble's office that was not made available, or Peter Gamble said—and I quote—'It's staying there.'

**Senator O'CHEE**—So, irrespective of whatever was in there, he said that it was not going to be moved out of his office?

**Mr White**—Yes. Mind you, you could have lost the *Titanic* in that office.

**Senator O'CHEE**—Is it the case that Mr Benjamin's description is not quite accurate because you actually had to know what document to request before you were given it?

**Mr White**—That would be a fair enough assessment.

**Senator O'CHEE**—Thank you. Did Telstra ever tell people what document they were receiving when they received it?

**Mr White**—I can only quote my own efforts to get FOI material on behalf of a client, and I cannot get it.

**Senator O'CHEE**—Did you ever prepare an Excel file describing some or all of the documents pertaining to Mr Schorer?

**Mr White**—Yes.

**Senator O'CHEE**—What was on that Excel document? Was it just a simple description of each of the documents or did it contain commercial information?

**Mr White**—It was a description of the documents. It contained a chronology of events, who the document was from, who it was to, what it was, and whether or not it had any indication of quantum on it. That was the type of thing that was contained in that Excel file. My early role in the first three to five months was to go through those mounds of information and commit those to that file.

**CHAIR**—Mr White, you said that you could not get information on FOI for a client. Is that client a person who is in a CoT or related case?

**Mr White**—He will be.

**CHAIR**—Would you be prepared to say what that information is that you have requested and not been given?

**Mr White**—I had hoped to bring a letter with me tonight but I was unable to pick it up, due to the short notice about being here. I can get it faxed to you. I asked for a lot of information on this client's service and I was very specific in what I wanted. The letter that came back from a line manager, in my opinion, was not written by a line manager, it was clearly a legal paper wanting to know exactly, specifically, in minute detail, what I wanted. What I asked for to start with was quite reasonable and I believe easily provided.

**CHAIR**—Mr Benjamin, do you know the case to which Mr White is referring?

**Mr Benjamin**—Is this a request that came in under the FOI or under the arbitration?

**Mr White**—He has applied for this under FOI.

**Mr Armstrong**—Unless I know the name I am unaware of the details.

**CHAIR**—Are you prepared to say the name of the client, Mr White?

**Mr White**—The client is named William Dunn.

**CHAIR**—Has Mr Dunn got a claim against Telstra?

**Mr White**—He has the claim ready to submit but until we can get some information it is pointless submitting the claim.

**Mr Armstrong**—I am generally responsible for FOI. I am not aware of that FOI request. The FOI requests are—

**Mr White**—He has paid his \$30 or whatever it is, the amount of money to get FOI information, and to date not one bit of information—

**Senator SCHACHT**—How long ago did he pay his \$30?

**Mr White**—It would have been a couple of months ago.

**CHAIR**—Mr Armstrong, are you not aware of that FOI claim?

**Mr Armstrong**—I am not aware of it. We get well in excess of 100 FOI requests each year. The FOI requests are dealt with by delegates under the act.

**Senator SCHACHT**—That is two a week. You can't remember two a week?

**Mr Armstrong**—I am not across each FOI request that comes in, but in any event if a document is not provided under FOI then reasons are given.

**CHAIR**—Mr Armstrong, I think it would be appropriate if you were to take on notice a question that asked when that FOI request was received and if you believe that the FOI request was responded to appropriately. You could give the committee a full outline of your response to Mr White's claim about your response to the FOI claim.

**Senator O'CHEE**—Mr White, when you were in the group, were there regular meetings that were convened by Mr Steve Black of all of the teams together?

**Mr White**—Not Steve, generally Mr Levy would convene those meetings on a weekly basis.

**Senator O'CHEE**—What was the purpose of those meetings?

**Mr White**—The purpose initially was to give a weekly run- down on how the cases were going. A report would go to all so we would know basically how all the cases were going.

**Senator O'CHEE**—If somebody on one of the teams had prepared a document which might have been reasonably sympathetic or might have in some way assisted a complainant's case, Mr Armstrong has told us that that document would, as a matter of course, be made available to the complainant and it would just be accepted as it was. Was that your experience when you were working in the group?

**Mr White**—My experience working in the group was to do the job to the best of my ability, and that was to refute the claims of the complainants.

**Senator O'CHEE**—Refute them?

**Mr White**—Yes.

**Senator O'CHEE**—So you were not there to review this and see what was reasonable and, if there was something reasonable, as Mr Armstrong told us, you would admit it?

**Mr White**—It was not my role. My role was a technical role. My role was to explain away problems and, if there was a problem that could not be explained, find out why.

**Senator SCHACHT**—Was that a particular job you had, to use the phrase 'explain away the problem'? Was that a briefing you had?

**Mr White**—No, 'explain away' is not the right term. It was to provide a technical explanation of what the problem may have been. What happened to it after I gave a description to it, I do not know.

**Senator SCHACHT**—But were you to right the problem on the claim that came in? Was it your understanding, either directly or indirectly, that you had to find a way of providing an explanation to refute the claims of the person in dispute to show that there was not a problem and therefore that their claim for losses could be refuted by Telstra? Did you have that role or did you understand that that was your role?

**Mr White**—My role, as I have already stated, was to explain what the problems were. How they affected the complainant commercially was not my problem.

**CHAIR**—But you were not influenced in any way to try and make it seem as though there was not a problem when you believed there was?

**Mr White**—There were times when I was told to do it better.

**Senator SCHACHT**—When you say 'do it better', did that mean to reduce the costs against Telstra, in effect?

**Mr White**—That is not what I said.

**Senator SCHACHT**—I know, but is that the implication of it when they say 'do it better'?

**Mr White**—As I said, my role was to do the best job that I could do with the information available.

**Senator O'CHEE**—Can I ask you a number of questions, Mr White. When you entered the group, did you get an induction briefing?

**Mr White**—Yes.

**Senator O'CHEE**—And what were you told in that induction briefing about the group's role?

**Mr White**—In the first induction—and I was one of the early ones, and probably the earliest in the Freehill's area—there were five complainants. They were Garms, Gill and Smith, and Dawson and Schorer. My induction briefing was that we—we being Telecom—had to stop these people to stop the floodgates being opened.

**Senator O'CHEE**—What, stop them reasonably or stop them at all costs—or what?

**Mr White**—The words used to me in the early days were that we had to stop these people at all costs.

**Senator O'CHEE**—So when you were told to do a document better, that meant to do a better job of stopping them at all costs?

**Mr White**—I would say explaining the information available to the best of my ability. That is the best way I can explain it.

**Senator O'CHEE**—To the satisfaction of—

**Mr White**—The team leader.

**CHAIR**—Mr White, were you ever expected to fabricate information or to misinterpret the evidence?

**Mr White**—No.

**CHAIR**—So you were asked to explain to the best of your ability, if this could be explained not as Telstra's mishandling of it but as an error that could be explained?

**Mr White**—I was never ever coerced to do something that was immoral or illegal.

**Senator O'CHEE**—Mr Pinnock, you just heard evidence of this group being established after the fast-track arbitration process was set up.

**Mr Pinnock**—I am not sure whether the evidence was that it was after it was set up. I understood it was to be at the same time. But in the event, I take your point on that, Senator.

**Senator O'CHEE**—You have just heard evidence about the activities of this

group. Do you think that Telstra's conduct in this is consistent with a simple, fast, non-legalistic approach to resolving the problem?

**Mr Pinnock**—I have never said that I believed the fast-track arbitration procedure or the special arbitration procedure, as it developed, was either speedy or unlegalistic or anything else. I am on the public record as to my comments in detail about both of the arbitration procedures, not only in the annual reports that I have published, both in 1995 and in 1996, but I have expressed my views to Austel. It has reported those views in its quarterly reports in relation to Telstra's following up of the 41 recommendations that were in this original Austel CoT report.

**Senator O'CHEE**—Do you think that the CoT case people who agreed to the fast-track and special arbitration processes thought that they were going to be dealt with honestly and fairly?

**Mr Pinnock**—Frankly, Senator, that is a loaded question. The question implies a suggestion that they have not been dealt with honestly and fairly. They were told that they would be dealt with speedily, they were told that the process would not be legalistic and they were told that, in addition to there being arbitrators to make the final decisions and to hear the claims, there was a resource unit set up to provide both technical and financial advice to each of the two arbitrators who were subsequently appointed.

I do not apprehend anything I have heard here yet to say that Telstra has behaved dishonestly. It may be the case; I do not know. I do not understand Mr White's evidence to suggest that Telstra has behaved dishonestly—

**CHAIR**—Mr White, could I just—

**Senator O'CHEE**—Mr Pinnock, what about—

**CHAIR**—I am actually chairing this, Senator O'Chee.

**Mr Pinnock**—Apart from the comment in relation to Mr Gamble, of which I know nothing.

**CHAIR**—I have a question for Mr White. I just want to get this very clear, because it is vitally important. If you are working for a company and claims have been made against the company, and it is a public company and people are paying their telephone bills, and the costs of claims add up and increase the cost of telephone bills, do you believe that in the request that was made of you to do the best possible job to protect Telstra against vexatious or inappropriate claims you were asked to behave in any way inappropriately? You were not asked to do anything immoral, you said; you were not asked to do anything that you believed was wrong. Do you believe it was appropriate for Telstra to say to you, 'Do your very best job to protect the company' against a claim that



may have been incorrect?

**Mr White**—I was proud to be a part of the Telecom organisation, and I believe that—how could I put this? Sorry, Senator, could you just repeat that?

**CHAIR**—What I am saying is that you said that you were told to do your best. The implication could be to do better, to show that these people who were making a claim and they had a legitimate claim, but ‘Let’s try and find our way around it.’ I think you clearly said that that was not the case but I just want to make sure, because this is vital and a very important fact. My opinion is that, if a public company is charging me for telephone bills and all those bills add to the CPI and the cost of everything in Australia, you just cannot have people making illegitimate claims. What the company would be doing is saying, ‘We want you to make sure that these are legitimate claims, and we want you to do your very best to make sure that the claim is a genuine claim.’ Is that what you were being asked to do?

**Mr White**—I was being asked to interpret the data available and explain it in the best possible way, accurately. That is the best way I can—

**CHAIR**—Not just to the advantage of Telstra, but the best possible way you could, irrespective of what the outcome was?

**Mr White**—As a member of Telecom at the time, I believe it was in my interest to interpret the data as accurately as possible to represent Telecom in the best possible light.

**CHAIR**—But never were you asked to interpret it in any way that would disadvantage the client by your saying something that was stretching the truth?

**Mr White**—No. For example, Mr Schorer’s flexitel system was prone to having power problems, overloads. I would have spoken to probably every service technician that ever went there, and asked why it happened. Some of them said that the place was dirty; some of them said there were things stacked on top of the unit which caused an overheating problem. The fact is that there were consistent problems.

**Senator SCHACHT**—Mr White, you said earlier, in an answer to Senator O’Chee about some sort of induction thing when you joined the unit, that you were given an outline that these five cases, if they were not dealt with and so on, could lead to a lot more claims against Telstra. I presume you were, in a sense, paraphrasing that process of induction, or was it specifically put in front of you that your job was, ‘Get these cases dealt with as quickly as possible and out of the way, so that we get no more in the future’? Is that the impression you were left with?

**Mr White**—There was never any reference to time, ‘as quickly as possible’, but the induction process was, as I said before, that the first five had to be stopped at all

costs.

**Senator SCHACHT**—‘Stopped at all costs’—that was the phrase. Can you tell me who, at that induction briefing, said ‘stopped at all costs’?

**Mr White**—Mr Peter Gamble, Peter Riddle.

**Senator SCHACHT**—Who?

**Mr White**—Mr Peter Gamble and a subordinate of his, Peter Riddle. That was the induction process—

**Senator SCHACHT**—Do you know whether they are still in those positions in the—

**Mr White**—I have no idea. I have been out of Telstra for two years.

**Senator SCHACHT**—Mr Ward, are those two gentlemen that Mr White has named still in those positions?

**Mr Ward**—I believe Mr Peter Gamble has left the company. I am not aware of the other—

**Mr Benjamin**—Mr Riddle is still in the company.

**Senator SCHACHT**—Is Mr Riddle still in the area, Mr Benjamin?

**Mr Benjamin**—Mr Riddle is still in the area, yes.

**Senator SCHACHT**—He is not present at the moment, is he?

**Mr Benjamin**—No.

**Senator SCHACHT**—Do you have any comment to make about Mr White’s remarks that, at the induction ceremony, as he describes it, or briefing, it was said that these five cases had to be stopped at all costs?

**Mr Benjamin**—I am not personally aware of those remarks being made.

**Senator SCHACHT**—Mr Benjamin, it might be useful, if Mr Riddle is still an employee, to bring to his attention this evidence, and also to raise, not just with him but with other people, still employees, who were involved in those units, what they say about Mr White’s evidence. Mr White has given his evidence and I fully support the right of people to respond if they have a different view about it, and I also reserve the right at a

later stage when we may wish to call Mr Riddle.

**CHAIR**—I think Senator O’Chee might just be next, and then Senator Carr. Senator O’Chee.

**Senator O’CHEE**—I had hoped to be able to ask a couple of quick questions. Mr White, did you ever discuss Mr Schorer’s case with Mr Levy?

**Mr White**—Quite often.

**Senator O’CHEE**—Did you ever ask Mr Levy how he expected Mr Schorer to be able to deal with and interpret the material that was being given to him by Telstra?

**CHAIR**—Excuse me, we do not have the witnesses talking to the senators. It is really not appropriate. We will not have this round table if that continues, thank you. It is not the witness’s fault—the senators should know better.

**Senator O’CHEE**—I will ask that question again. Did you ever ask Mr Levy how he expected Mr Schorer to interpret or deal with the information as it was provided to him by Telstra?

**Mr White**—Yes, I did. That came about as a result of this: I believe Mr Schorer at one stage asked for technical assistance to decipher the volumes of documents he was given, and I said, ‘How in the hell is he going to do that when we are having trouble?’ At that stage we could not get the technical specialists we needed either.

**Senator O’CHEE**—What was Mr Levy’s response?

**Mr White**—I think he laughed. At that stage we were having trouble ourselves getting people who had the experience over the time frame. Two of those people were brought back from retirement.

**Senator O’CHEE**—Did you ever see the final technical reports which were provided by Telstra to the CoT case people?

**Mr White**—They were constantly evolving. I have not seen the final ones, no. They were still evolving when I left Telstra in March 1995.

**Senator O’CHEE**—Mr Schorer, reference was just made to the fact that Telstra had a listing of all the technical documents, describing those documents. You have just heard Mr White say that he prepared an Excel spreadsheet describing all of the technical documents which Telstra had. Did you receive that spreadsheet when Telstra provided you with the information?

**Mr Schorer**—No. I have sought that constantly under FOI. I was refused that particular document on the grounds that they were claiming legal professional privilege, and I have applied for it under arbitration. Again they have claimed legal professional privilege. While they are still claiming legal professional privilege, there is the document, because all those black marks are what they have taken out. I am going to meet with the—

**Senator SCHACHT**—It looks like a piece of modern art.

**Mr Schorer**—It is, actually. Would you like to have a look at it?

**Senator SCHACHT**—I think you should table it. I move that it be tabled.

**Mr Benjamin**—Madam Chair, could we be given an opportunity to explain this situation?

**CHAIR**—Yes, you will. Senator Schacht, are you moving to table that?

**Senator SCHACHT**—I think it probably best for the *Hansard* record that it be incorporated.

**CHAIR**—No, I think it is difficult to incorporate it. The document will be tabled.

**Senator O'CHEE**—May I suggest that we get copies made so that the Telstra executives and the members of the committee have copies and also maybe one given to Mr White to see if that is, in fact, the document that Mr White prepared.

**CHAIR**—It has been tabled so it will be circulated to the committee.

**Mr Schorer**—At the time this document on which they are claiming legal professional privilege was being created, it was back in December 1993 and January 1994 which is the time that I was requesting my documents under freedom of information so I could go through this non-legalistic, commercial assessment process. Telstra, as they told the Commonwealth Ombudsman, had picked up all these documents and given them to Freehill, Hollingdale and Page so that they could go through the documents and apply, wherever possible, deletions and exemptions of the documents so they did not have to supply them to me.

Freehill, Hollingdale and Page was picking up those documents and giving them to the likes of Mr White to interpret them as to what category those documents came into so that they could perform the function that they were asked to do on behalf of Telstra. Now they are claiming that that file is legal-professional privilege. The source of that file was to assist Freehill, Hollingdale and Page to decide how many documents I was not going to get under freedom of information—

**CHAIR**—Thank you, Mr Schorer. Mr Benjamin, you requested the right to reply to that claim.

**Mr Benjamin**—Yes, if I could ask Mr Armstrong to respond.

**Mr Armstrong**—Again this is prior to my time of starting at Telstra, but I am reasonably sure that what I am saying is correct. We have provided to Mr Schorer—if I can just check—approximately 66,000 or 67,000 pages of documentation pursuant to his FOI requests.

**Senator SCHACHT**—Were they the right pages?

**CHAIR**—Senator Schacht, just let Mr Armstrong finish.

**Mr Armstrong**—With respect, Senator, they were the documents which fell within the scope of his FOI request. They were the documents that he asked for and, pursuant to our obligations under the act, we provided them. Obviously, that is a very large volume of documentation that had been created within Telstra which dealt with Mr Schorer's complaints. Indeed, Mr Schorer's complaints covered a very long period.

The documents that these teams were working on were the documents that had been collected and provided to Mr Schorer under FOI. Just as Mr Schorer had an onerous task to go through those documents, likewise Telstra. In preparing that defence chronology, Madam Chairman, Telstra—at the request of its solicitors—established this spreadsheet in order to have an index of those documents. That is why the spreadsheet is legally professionally privileged. But there is the arbitration process and we have submitted that document in a clean form to the arbitrator so he can make a decision as to whether or not it is properly covered by privilege and ought to be provided or not.

**Senator SCHACHT**—Is this the document we are talking about that has now been tabled and that you have in front of you? Is this the spreadsheet?

**Mr Armstrong**—Yes.

**Senator SCHACHT**—And the black parts—a substantial part of the document, I must say—have got columns E, H, I, J, K, L, M, N and O blocked out with black. What was in those that is legal-professional in confidence? What was there that is so disastrous to your position or to Mr Schorer's position that he was not entitled to read what was now blacked out?

**Mr Armstrong**—If I could go back a step: the entire document is legally-professionally privileged because it was created at the request of solicitors for the purpose of the preparation of defence—

**CHAIR**—Can I just ask a question: where it has 'Description', is that when he keeps ringing and nobody answers—I do not know what sort of stuff would normally be

in there—or what sort of information would be in there?

**Senator SCHACHT**—‘Schorer is a nitwit’ or some other four-letter word has been written in by some frustrated technician. Is that right?

**CHAIR**—Senator Schacht! But is it technical stuff? When it says ‘Fault Report’, does that indicate the fault that was reported under the description?

**Mr Armstrong**—It would describe what is in that document.

**Senator SCHACHT**—In the document No. L01?

**Mr Armstrong**—Yes.

**CHAIR**—So this is a summary of documents. Is that right?

**Mr Armstrong**—It lists each document that is there, it describes what is in each document and in the subsequent columns there might be some analysis or assessment of those documents.

**CHAIR**—And Mr Schorer was never given the documents; he was only given the summary blacked out.

**Mr Armstrong**—He has certainly been given the documents.

**CHAIR**—So he has been given this document, for example, which is dated 16/07/93 and is entitled ‘L01, 000399, Fault Report’. He has been given a document which relates to that?

**Mr Armstrong**—I cannot say that he has been given each and every document in that list but I can certainly say he has been given—

**Senator SCHACHT**—There is a fair chance he would have been.

**Mr Armstrong**—He has most certainly been given by far the bulk of it.

**Senator SCHACHT**—If he has been given the document, why did you black it out here? You are trying to tell me that there is no significance of all that blacked-out page.

**Mr Armstrong**—No, I am trying to say that the blacked-out part is a little deceptive because by far the bulk of it is blank in any event.

**Senator SCHACHT**—But why blank it out?

**CHAIR**—Excuse me, Mr Schorer, have you been given this actual document? You

tabled it, but have you been given this document?

**Mr Schorer**—I got that in disk form and that is a print-out of the disk. That is the way the whole disk is—all blacked out like this.

**CHAIR**—So you got it in disk form?

**Mr Schorer**—In disk form, and I have printed this out. This is the way they are all blacked out. The other point I would like to make—

**Senator SCHACHT**—Could I just ask Mr Armstrong, because I want to get this straight—

**CHAIR**—Hang on, just let Senator Schacht finish.

**Senator SCHACHT**—The chairperson has asked you what would be written in the description, and you have said that most of them are blank anyway. So I cannot see why you have painted them out, even through the floppy disk or whatever it was. What would be written there that is so sensational that it has to be blacked out, if you have given him the whole document anyway?

**Mr Armstrong**—Sorry, I am not saying that the description columns might be basically blank. It is columns H to O, where the vast majority would be blank.

**Senator SCHACHT**—What is in any of those columns from H to O that is sensationally different, if he has been given the full document anyway?

**Mr Armstrong**—There may be some analysis or comment on the document.

**Senator SCHACHT**—What sort of comment? Have you seen this stuff unblanked?

**Mr Armstrong**—I have, but I certainly have not read the entire volume. It is a very large volume because it deals with—

**Senator SCHACHT**—I think, Mr Armstrong, before we go to this division—

**CHAIR**—Order! The committee is suspended for the duration of the division.

**Senator SCHACHT**—When we come back I will go to the next question.

### **Short adjournment**

**CHAIR**—I call the committee to order. Senator Schacht, I think you were asking questions.

**Senator SCHACHT**—Mr Armstrong, just before we went to that division you

indicated that the real area of concern to Telstra on this document that has been tabled, which is a spreadsheet, was columns H to O, which may have little remarks written in these columns that had to be kept in—what you call it?—legal-professional in confidence or anything. Could you please give me some idea what could actually be written in such a small square that was so damaging to Telstra's interests?

**Mr Armstrong**—Can I just go back to absolute basics. The document has been provided to the arbitrator in Mr Schorer's arbitration, and he is currently considering whether or not the whole of that document ought to be released to Mr Schorer.

**Senator SCHACHT**—I do not care what the arbitrator is doing at all, quite frankly. I want you to tell me and this committee what is in these sorts of columns. I am not asking you to give me an exact example by saying that in column H, in the first row, the words were 'Mr Schorer is a dill' or something. I want you to tell me what is normally written in these squares that in any way could be construed as being damaging to Telstra's legal professional confidentiality.

**Mr Armstrong**—It is not being put forward on the basis of commercial-in-confidence or confidentiality; it is being put forward—

**Senator SCHACHT**—Why is it blacked out?

**Mr Armstrong**—Because we say that it is legally-professionally privileged. The reason is that the whole of that document was prepared for the purposes of preparing Telstra's defence in these arbitrations. That would mean that Telstra is entitled to not disclose the entirety of that document—the whole of it, none at all. Mr Schorer's concerns were that Telstra had documents that he did not have and he was asking for a copy of this list.

The simplest way to address his concerns was to provide what we provided to him, which lists each document by number so he could check off whether there is something we have that he does not, providing that part, in my understanding, addressed what it was Mr Schorer was concerned about. As to the information deleted, again I stress that the entire document is legally professionally privileged. We would not have been obliged to provide it at all but we made a concession by providing this information. Rather than going through those blacked-out columns which were an assessment of the documents and attempting to determine—it was simpler to black out the whole lot and say to Schorer, 'Here, you are; here is that list.'

**Senator SCHACHT**—Have you ever heard of a movie called *An Investigation into a Citizen above Suspicion*, where you do not tell him what he is charged with, you give him no evidence but you lock him up in gaol? What you are saying is that he cannot have access to the information contained in here. He does not know what is in it. You will not tell him. Therefore, how does he know whether it is of value to him in his case?



**CHAIR**—Senator Schacht, we are now straying from the process and I do not think, with all due respect, either you or I are qualified in terms of whether this working document is a document that ought to be handed over in an FOI request. I do not know the answer to that.

**Senator SCHACHT**—I just wanted to find out: without giving away anything, can anybody from Telstra here at the moment give me some idea of what would be written in those little squares normally that is of concern to you or would affect your case? What do they actually say? Is it an initial or is it—

**Mr Mead**—I would say that things that are protected by legal-professional privilege are not necessarily adverse or helpful to your case, they are just privileged. By virtue of that aspect—

**Senator SCHACHT**—Who decides they are privileged?

**Mr Mead**—There is a whole lot of law which determines whether or not something is privileged, and then the solicitor handling the matter will make a decision.

**Senator SCHACHT**—So a lawyer in Telstra said that these are legally professionally privileged. Is that right?

**Mr Mead**—Although it has gone to the arbitrator now for a determination of that very issue.

**Senator SCHACHT**—Does he get it blacked out?

**Mr Mead**—No, he gets it unblacked out.

**Senator SCHACHT**—But a lawyer in Telstra decided these were legal professional privileged documents; right?

**Mr Mead**—And asserted the privilege, and now it is before the arbitrator to determine whether Telstra is right or wrong.

**Senator SCHACHT**—I still find it very strange indeed that you cannot even give me a description of what was in those columns.

**CHAIR**—A quorum has been called for in the Senate. If I could just explain to the officers and witnesses present: the government is required to keep the quorum. If the quorum is not present the Senate is closed down. I was asking my colleagues in the opposition if they would go but obviously I was not making myself clear enough.

**Senator SCHACHT**—I want you to take it on notice back to your lawyers in

Telstra because I would like to see an example of what is in those squares. If you want to keep it in confidence to the committee and it is to the members of the committee only, fine, but I find it strange that you cannot give me the description. Are there any other witnesses around the table who have any idea? Mr White, do you have any idea what was in those columns H to O?

**Mr White**—I wrote it.

**Senator SCHACHT**—You wrote it?

**Mr White**—Yes, I wrote a lot of it. This seems to be an early one. The later merged file was—

**Senator SCHACHT**—Which one?

**Mr White**—The later merged file. It was sorted out chronologically. These dates do not appear to be consistent. I think there is a later file than this.

**Senator SCHACHT**—The information in the columns for the first line reads ‘16/07/93, L01, 000399, Fault Report’. There is a description blanked out, columns F and G are headed ‘To’ and ‘From’, and then there were H to O. Can you recollect in any way, or give us some idea, what was written in H to O?

**Mr White**—Some of them I could. You must realise that it is well over two years ago. To start from the left-hand side, with the date and then L01: I am not quite sure but I think that ‘L’ stands for me—my name is Lindsay. Okay, that is the first one; I could be wrong there, but I do not think so. The next one is the FOI reference number. ‘Fault Report’ would indicate that that was a report that Mr Schorer would have made to the fault reporting bureau, whichever one it was at the time.

The description would have detailed what exactly it was—the analysis of the fault report. That fault report could have been something like ‘NRR’, which is an acronym for ‘not receiving the ring’. For the description of that report we would have worked out exactly what the problem was.

As to those ‘To’ and ‘From’ references, if it was a letter—for example, take line 4—the report would have said, in column F, to somebody from somebody.

**Senator SCHACHT**—Within the system of Telstra?

**Mr White**—Yes, either in Telstra or from Telstra to Schorer or Schorer to somebody. In H to O there was a lot information, whether there was a quantum that the Deloitte’s people would have wanted to establish—for example, whether a not receiving ring problem would have affected it in any way. They would use that to establish a

minuscule amount of quantum.

**Senator SCHACHT**—So the description in H to O could have been useful to Mr Schorer in his claim, in deciding what the impact of the faults was?

**Mr White**—That description came from technical analysis. Mr Schorer did not have the assistance of technical analysts.

**Senator O'CHEE**—Could I put the question—

**CHAIR**—Senator O'Chee.

**Senator O'CHEE**—Thank you, Madam Chair. Could I put the question to you another way, Mr White. Without being able to see the description of the document, would Mr Schorer be able to actually understand what the document was?

**Mr White**—In a large percentage of cases, no.

**Senator O'CHEE**—So by deleting the description, what Telstra has done has made it extremely difficult for Mr Schorer to actually understand the documents he has received under FOI?

**Mr White**—If he had the same boxes of information that Telecom presented me and my colleagues with, he could not have sorted them out on his own.

**Senator O'CHEE**—So deleting this—

**Mr White**—Would have made it harder, yes.

**Senator SCHACHT**—Could I just make it clear to Mr Armstrong: can you get for us not only the material but also a reason from your lawyer, the legal people who actually decided why this had to be made—what do you call it?—professional legal in confidence.

**Mr Mead**—Legally-professionally privileged, Senator.

**Senator O'CHEE**—So, with reference to this document here, this spreadsheet, there was one of these for Mr Schorer's file eventually? It was like a master document, was it?

**Mr White**—A merged file, yes.

**Senator O'CHEE**—So the merged file was one of these, and it described every document—

**Mr White**—At one stage there were up 10 of us, all screening documents. The

Deloitte's people would bring them to me or somebody like me and say, 'What is this?' You would tell them what it was; they would go away; they would enter it into their computer. At the end of the day the Freehills person would come along, collect the disk and create a merge file. When all those documents were entered into this report, it was chronologically sorted.

**Senator O'CHEE**—So there was eventually one merged file for each CoT case?

**Mr White**—Yes.

**Senator O'CHEE**—And it contained descriptions of what all of this data was?

**Mr White**—Yes.

**CHAIR**—I just remind honourable senators that the committee is due to retire at 10.30.

**Senator O'CHEE**—Mr Schorer, have you actually received that one master document, in clean form, that lets you understand the information that Telstra has provided to you?

**Mr Schorer**—Have I received the master one?

**Senator O'CHEE**—Have you received the merged file that Mr White says exists, which describes and makes it possible for you to understand what you have been given by Telstra?

**Mr Schorer**—I have. I have received the file but not in such a format. I have received it like this. In other words, no, I cannot decipher or understand the descriptions, because they are all blanked out like this. The whole set of files is like that.

**Mr Benjamin**—But, Senator O'Chee, Mr Schorer has requested, through the arbitrator, that we provide the document in full. We have provided the document in full, not blanked out, to the arbitrator and left it in the hands of the arbitrator to determine whether he upholds our legally-professionally privileged position or whether we make it available in full to Mr Schorer. If he rules that way, we will make the document available.

**Senator O'CHEE**—This is—

**CHAIR**—Senator O'Chee, I just remind you—and I remind everyone—that the purpose of this is to look at the progress of these cases. I am not sure that to get into the nitty-gritty as we are now doing is taking us very far. Mr Benjamin has indicated that it has gone to Mr Pinnock—

**Mr Benjamin**—To the arbitrator.

**CHAIR**—To the arbitrator, I mean, to make the decision, and that decision will be made. I think that would be more appropriate. That is the process. We are not now trying to reinvent the process.

**Senator O'CHEE**—Thank you, Madam Chair. Mrs Garms, you are another CoT case complainant. Were you ever told that there was one of these merged files that described all of the documents that you received from Telstra?

**Mrs Garms**—I was told the day I received the award, by an ex-Telecom employee in charge of national network investigations, by the name of Paul Middleditch, who rang me to reveal that some of the complaints I had been making were in fact true. He had given a stat dec and not mentioned the fact that the Albion TAB had been causing me immense problems—

**CHAIR**—Would you clarify what caused the problems.

**Mrs Garms**—The Albion TAB, the betting agency. He had not mentioned that this had been withheld from me in the arbitration and that it was true that congestion caused by the TAB had been a major part of my problems on Wednesdays and Saturdays. He mentioned to me whether I had received the Excel file, and I did not know what he was talking about. I can tell you that I have never received the Excel file and I have never received that document or the subsequent document which Mr White is talking about.

**Senator O'CHEE**—Mr White said that there was a document created for each complainant. If that is correct, then this is a document which, in any form, has been withheld from you?

**Mrs Garms**—Yes, it has.

**Senator O'CHEE**—You have heard what Mr White had to say. Mr White said that this contained descriptions of the documents that you were handed. The chairman is concerned about how we processed these claims. If you had had a document that described each of the documents you received under FOI, would your claim have proceeded faster?

**Mrs Garms**—Much faster. In fact, my technical adviser, George Close, is on record as writing to the arbitrator not long after the arbitration commenced, telling him he had an incomplete trail of documents and he could not put them together.

**Senator O'CHEE**—If you had received this document, would it have reduced your costs in the arbitration?

**Mrs Garms**—It would not only have reduced the costs; it would have identified

for us the documents that were available to the defence.

**Senator O'CHEE**—So you were never given an identification of the documents that were available?

**Mrs Garms**—No, we were not. In fact, one of my complaints to the Commonwealth Ombudsman, Philippa Smith, was concerning the incomplete identification of documents.

**Senator O'CHEE**—What did the ombudsman have to say?

**Mrs Garms**—I think if you read Ms Philippa Smith's report you will see that she reported that it was impossible for me to identify the documents which I had been given.

**Senator O'CHEE**—Mr Benjamin, you have just heard not only that Mr Schorer has not received this Excel file but also that Mrs Garms was never made aware that there was an Excel file that would have helped describe the documents, was never given it. You have heard also that it would have made it a lot easier for her to do the arbitration. You have heard also that it would have reduced her costs in dealing with it. Why was this document withheld?

**Mr Benjamin**—There was no deliberate intent to withhold any document. I think the point has been made that those documents were regarded as legally-professionally privileged. That was the advice we worked under. We provided every document that the arbitrator requested or directed us to provide.

**Senator SCHACHT**—Hang on. Did you tell, first of all, Mrs Garms that the Excel file existed—at any stage?

**Mr Benjamin**—I did not tell her that.

**Senator SCHACHT**—Did you tell the arbitrator it existed?

**Mr Benjamin**—No, I did not tell the arbitrator.

**Senator SCHACHT**—Well, this is the real question. How can ordinary people, taking on Telstra, defend themselves when they do not know what file exists and you do not tell them that it is even available to have an FOI put on it?

**Mr Benjamin**—They would provide descriptions of the types of files we would want; we would search our records, come up with any files that met that description and provide them.

**Senator SCHACHT**—Why don't you do something that I would have thought was

reasonable, as you actually are owned by the people of Australia—these people are going to be shareholders, actually, as customers—and just say, ‘These are all our documents that we have,’ including the Excel files. ‘Some of them we don’t think you should have access to,’ because of that legal phrase—but at least they get a full list. It seems to me a simple, fair process. Who took the decision not to make available a full list?

**Mr Benjamin**—There was no decision taken not to make available a full list—

**Senator SCHACHT**—So no-one—

**CHAIR**—Senator, just let Mr Benjamin finish.

**Mr Benjamin**—If there was a request received for any document, we would respond to that request.

**Senator SCHACHT**—Mr Benjamin, don’t you see the point I am getting at? If people do not know what is on the list, they cannot request it.

**Mr Benjamin**—They can request documents to deal with particular subjects. If they request a document to deal with a particular subject—

**Senator SCHACHT**—If they do not know the name, the title of the document, then they are having a stab in the dark about the subject. That gives you—obviously, now—plenty of opportunity to say, ‘Well, I think that’s this document. We’ll forget about that.’ And the box that was in Mr So-and-So’s office, of documents, that was never going to be made available, according to Mr White; your officers can refute that if they want to. This is the nub question.

**Senator O’CHEE**—Mr Benjamin, you have said that if a person requested a document it would be provided to them, but you are not telling them what documents are there. If they do not know the name of the document how are they supposed to get it? Are they supposed to find out that a document exists by having a seance?

**CHAIR**—Senator O’Chee, that is not necessary.

**Mr Benjamin**—Through the arbitrator they would ask for documents dealing with a particular subject matter: ‘Are there any documents dealing with the subject matter?’

**Senator SCHACHT**—What are the subject matters that would cover all the areas of your document? Tell me now, off the top of your head, off the cuff, what are the subject headings that they would have to give you that would cover all the documents you have available?

**Mr Benjamin**—I don’t know about a particular request that would cover

everything, but they would ask, for example, for fault reports covering an exchange. We would give them the fault reports.

**Senator SCHACHT**—Does that mean that Mrs Garms would get the Excel file? She didn't.

**Mr Benjamin**—She got the documents that described the fault reports for a particular exchange, or the fault history—whatever type of document she requested she got, if she described the particular purpose for which a document was required.

**Senator SCHACHT**—How would she would know what to describe?

**Mr Benjamin**—She would know, for example, whether she was maintaining that the Fortitude Valley exchange was not performing up to scratch—

**Senator SCHACHT**—And she would know it was the Fortitude Valley exchange?

**Mr Benjamin**—She certainly knew that, yes.

**Senator O'CHEE**—In fact, isn't it the case that the arbitrator asked Telstra to provide documents relating to the Fortitude Valley exchange?

**Mr Benjamin**—Yes, and we provided every document that we were directed to by the arbitrator.

**Senator O'CHEE**—So which documents relating to the Fortitude Valley exchange did you not provide?

**Mr Benjamin**—If we did not provide a document, we would raise that matter with the arbitrator. If the arbitrator ruled that it was not relevant, then he would rule that we did not have to provide it. Every document that the arbitrator ruled we should provide, we provided.

**Senator SCHACHT**—And did you tell him of all the documents? How did the arbitrator know which documents to ask for?

**Mr Benjamin**—The arbitrator would ask for documents connected with a particular situation, and we would provide the documents we had that pertained to that situation.

**Senator SCHACHT**—Did Telstra at any time feel obliged to say, 'Listen, Mr Arbitrator, actually there are a few other documents here you have not asked for that would be—



**Mr Mead**—If I may assist with that: in any dispute between any parties, they will create in the course of that dispute, as no doubt the CoT claimants have also on their own side, a whole series of documents which are not discloseable to the other side because they are privileged. Such documents commonly include briefs to counsel, legal advice, correspondence with their lawyers, and the document—

**Senator SCHACHT**—Just a minute, just stop. I am not talking about legal—

**CHAIR**—Senator Schacht, let Mr Mead finish.

**Senator SCHACHT**—This is getting ridiculous.

**CHAIR**—No, I am sorry, Senator. Mr Mead.

**Senator SCHACHT**—We are talking about your accounts, your billing, your technical documents—

**CHAIR**—Senator Schacht, let Mr Mead finish.

**Senator SCHACHT**—I am not talking about—

**CHAIR**—Senator Schacht!

**Senator SCHACHT**—Legal advice from your QC or their QC.

**CHAIR**—Order! Mr Mead, will you finish the answer that you were giving.

**Mr Mead**—The point I was going to make—perhaps I misunderstood the flow of the questioning—is that, in relation to these documents which are summary documents, they were put together for the purposes of the legal advice. On that basis, they fall into exactly the same category as legal advice that we receive, or correspondence that we have with our lawyers. In that respect, they are privileged. It is a very common basis for retaining documents which are essentially private.

**Senator SCHACHT**—So these documents which, when they are not blacked out, are a summary of all the other documents with fault reports on them and so on, you now say are actually lawyers' legal documents and are not the actual working documents in Telstra?

**Mr Mead**—Senator, documents that are created for the purpose of obtaining legal advice are privileged, and this is such a document.

**Senator O'CHEE**—Can I ask a question of Mrs Garms?

**CHAIR**—I think Senator Carr has been waiting very patiently.

**Senator CARR**—Yes, but we have got a division in the Senate.

**CHAIR**—We will just see if it is a division.

**Senator O'CHEE**—Mrs Garms, did Telstra provide the arbitrator with the documents relating to the Fortitude Valley exchange that were requested?

**Mrs Garms**—No, they did not. Fortitude Valley exchange came under Central West EMG from November 1991 and those documents were not provided. There was a very scant reference to central west. There was an enormous amount of correspondence generated on this matter.

On 9 August 1996, the day after the arbitrator brought down his award, I received this letter from Rod Kearney, manager of FOI. What I had done was this: on 29 March 1996, I was forced to place an FOI request on Telstra for the documents which had not been provided under arbitration. No amount of correspondence to the arbitrator or Telstra solved my problem of getting these documents. I will just read you one paragraph here of Telstra's:

However, I understand you to be saying in your letter of 2 August 1996, that you have not received Central West EMG records from November 1991 which deal with the Fortitude Valley exchange. In this regard, would you please note that all of the Central West EMG records which Telstra has been able to locate, which deal with the Fortitude Valley exchange for the period from November 1991 to October 1993 are listed in Attachment 4 to my letter to you of 2 August 1996. Telstra is not maintaining that this list represents a complete set of those documents for the period in question. In particular, Telstra has been unable to locate any further more general Central West EMG records, such as monthly management reports and leaders' meeting minutes, other than those files listed in Attachment 6 to my letter to you of 2 August 1996. I am satisfied that all reasonable steps have been taken to locate the remainder of those documents for that period, but that such documents cannot be found or no longer exist and have been disposed of by Telstra in the usual course of business.

Madam Chair, this was during an arbitration. We are talking about these documents disappearing during an arbitration, and they were very important to my case. When Telstra connected the Austel directed monitoring to my restaurant service in September 1993, my call rate went overnight from 69 calls a day up to almost 300 calls a day. There had been evidence of physical interference on my service, of which the police said there was insufficient evidence to find the culprits.

I ask you, Madam Chair: these documents from Central West EMG were very, very important yet Telstra here is making this statement. I have got a scant few documents like this, whereas the Central West EMG, particularly Fortitude Valley, from November 1991, would have been well documented as to what problems were occurring in that

exchange.

I may just say that the Commonwealth Ombudsman's report has noted a matter of mine specifically. I think it was 6 August 1992. My staff complained of not receiving a ring at 10.30 a.m. and this answers Mr Benjamin's earlier answer which was incorrect. Mr Benjamin said we would get exchange documents. That was an incorrect statement by Mr Benjamin, and the Commonwealth Ombudsman has stated in her report that we were entitled to those documents.

But getting back to 6 November 1992, when my staff reported on this problem, they were told there was no problem with our lines. In Telstra's defence, they noted my complaint and said, 'Conclusion: the Tivoli's telephone lines were tested and there was no fault with the lines.' Under arbitration, I sourced a document that showed the whole Fortitude Valley exchange had collapsed at that time. There was no exchange. Now Telstra knew that the exchange had collapsed and that I could not get a service. But in their defence they say: 'Conclusion, no problem with the Tivoli lines.'

If this committee cares to read Philippa Smith's report, you will see that the network and exchange documentation which caused problems was excluded. During the arbitration, I sourced documents from the viewing room, which subsequently disappeared. When I put the matter to the arbitrator that these documents had disappeared, the arbitrator said that he was not going to do anything about that problem because they were faults experienced in common with other customers.

Madam Chair, I put it to you and the committee here that the big cover-up within Telstra has been the network problems and the software problems. Telstra misled Austel during their inquiry. The police told me that my problem at the Tivoli was a software problem. Telstra went back to Austel and said there was no connection. I have received documents which show there is a connection. Unfortunately, Professor Fels has told me that it is too late now because the three years are up and no-one from the Australian Competition and Consumer Commission can do anything about it.

**Senator SCHACHT**—Do you want to table those documents, Mrs Garms?

**Mrs Garms**—Yes, I do.

**CHAIR**—Are there any objections to those documents being tabled? There being no objection, leave is granted.

**Senator O'CHEE**—Mr Wynack, I understand that you were the investigator who looked into Mrs Garms's case; is that correct?

**Mr Wynack**—That is true, yes.

**Senator O'CHEE**—Did you also have an involvement in Mr Schorer's case?

**Mr Wynack**—I also investigated Mr Schorer's complaint.

**Senator O'CHEE**—Do you think that Telstra provided documents to CoT complainants in a fashion in which they could be readily interpreted?

**Mr Wynack**—One of the ombudsman's criticisms was that the information provided to the CoTs by Telstra was not provided in a way which would enable the CoTs to make a decision as to whether their FOI requests had been complied with. They did not provide explanations, for example, of documents for which they had claimed exemptions—not adequate descriptions.

**Senator O'CHEE**—In the FOI Act, if there is a document withheld the agency have to actually identify that there was a document withheld and describe it, do they not?

**Mr Wynack**—Yes, they have to provide an adequate description of the document and the reasons for the decision not to disclose that document.

**Senator O'CHEE**—Were you ever aware of these Excel files that described all of the documents?

**Mr Wynack**—No. To my knowledge they have not been provided pursuant to the FOI Act, nor am I aware of any decisions being made to exempt them.

**Senator O'CHEE**—If a document existed which described all of the documents that Telstra held, the existence of that document would at least have to be made known to the complainant in the FOI case, would it not?

**Mr Wynack**—Having listened to the statements by Telstra that the document is subject to legal professional privilege and not having had the opportunity to examine the document or the circumstances in which it was created, I cannot comment on whether Telstra would have been able to assert an exemption on the grounds of legal professional privilege. I might add that, if the ombudsman were required to make a judgment as to whether that exemption was properly claimed, the ombudsman would also consider not only whether it was legally available but also whether it was reasonable for Telstra to assert that privilege. In making that comment, it is open to Telstra to waive such a privilege. Under the FOI Act, the ombudsman would consider whether they should waive that privilege if, for example, the information in the document is non-contentious, if it does not impact on people's personal affairs, if it does not contain information which is commercial-in-confidence—and those sorts of decisions.

**Senator O'CHEE**—But you could not make that decision unless you knew that that Excel file existed?

**Mr Wynack**—No.

**Senator O'CHEE**—And Telstra never bothered to tell you that they had this Excel file that described, for each CoT complainant, every one of the documents?

**Mr Wynack**—I was not aware of its existence, no.

**Senator O'CHEE**—So not only could the complainants not know that the document existed, but you could not know either, because Telstra did not tell them and they did not tell you.

**Mr Wynack**—Precisely. That being said, it is possible that Telstra did make a decision on that document, but some of the descriptions provided by Telstra were not sufficiently specific to enable somebody to identify a document. I do not know, for example, how Telstra would describe that document.

**Senator SCHACHT**—The Excel document, is that the one you mean? You would not know how they would describe that?

**Mr Wynack**—‘Excel’ would be meaningless to me, Senator. I suspect it might be to other people also.

**Senator SCHACHT**—It is so to us.

**Senator O'CHEE**—Do you think that the actions of Telstra on FOI, on things like Excel files, have had the effect of increasing delays and costs to people like Mr Schorer and Mrs Garms?

**Mr Wynack**—The ombudsman recorded in her public report on her investigation of Mrs Garms's complaint that it is the ombudsman's opinion that Mrs Garms did incur unnecessary costs because of delays by Telstra in making decisions and the manner in which some of the decisions were conveyed to Mrs Garms.

**Senator O'CHEE**—You heard that Mr Benjamin said that, where there were documents relating to the Fortitude Valley exchange, they were all provided to Mrs Garms. But it is the case that the ombudsman said:

It is my opinion that Telstra was aware that the Fortitude Valley exchange contained documents which were relevant to Mrs Garms's telephone service and that Telstra acted unreasonably in failing to adequately search for those documents.

Is that not in fact—

**Mr Benjamin**—Could I just clarify that? My statement was—

**Senator O'CHEE**—What the ombudsman's comment was on Mr—

**CHAIR**—Just let Mr Wynack finish, and then go on.

**Mr Wynack**—That is true; the ombudsman did form that opinion. It was the ombudsman's opinion that Mrs Garms's application was such that it did embrace those documents. Telstra believed that Mrs Garms's application did not cover such documents. As I say, the ombudsman found that, in her opinion, Telstra should have provided those documents—or decisions on those documents.

**CHAIR**—Mr Benjamin.

**Mr Benjamin**—My comments were directed at requests made by the arbitrator in respect of documents to be provided by Telstra in Mrs Garms's case.

**CHAIR**—The other thing is that, when Senator O'Chee has finished asking Mr Wynack questions, I would be interested in Telstra's response to Mrs Garms.

**Senator O'CHEE**—I am finished asking questions of Mr Wynack.

**CHAIR**—Mr Ward?

**Mr Ward**—Comments, John?

**CHAIR**—Mr Armstrong.

**Mr Armstrong**—Thank you, Madam Chair. There is no doubt that there were criticisms of Telstra in the Commonwealth Ombudsman's report. One of the recommendations that the ombudsman made was that Telstra ought to compensate Mrs Garms for any financial loss which she suffered as a result. Telstra agreed to do that, and indeed Telstra agreed and offered to do that well before the report was established. Likewise, the ombudsman's report was released well prior to the arbitrator's award in Mrs Garms's case. That report was submitted to the arbitrator and the arbitrator had the opportunity to consider the report. There have been processes there to deal with those matters and they have been dealt with. We have seen that there are processes there to compensate for those past errors.

**CHAIR**—Thank you, Mr Armstrong.

**Senator SCHACHT**—The cheque is in the mail?

**Senator BOSWELL**—Mr Pinnock, I put it on record that anything that I said in the heat of the moment should be treated as such and—

**Mr Pinnock**—I understand that, Senator.

**Senator BOSWELL**—I do say that you are one person that has been continually helpful.

**Mr Pinnock**—Thank you, Senator.

**Senator BOSWELL**—Mr Pinnock, were you aware of these Excel files?

**Mr Pinnock**—No; at least not until recently. I became aware of them after—

**Senator BOSWELL**—Who is aware of the damned things, then?

**Mr Pinnock**—I became aware of them following our meeting with Mr Schorer. In particular, it highlighted, as far as I was concerned, an issue relating to FOI where my views depart from those of just about anyone else related to the CoT procedures. But that is another matter, and it might be a matter that I could perhaps comment shortly about later to the committee. Mr Schorer raised with me the issue of—

**CHAIR**—Are you indicating that you wish to do that in camera?

**Mr Pinnock**—No.

**CHAIR**—What were you indicating?

**Mr Pinnock**—It is simply that I have a totally different approach to the way in which documents ought to be provided for the purposes of these arbitrations, and I have made that clear publicly on a number of occasions. I have commented, because of my experience previously with FOI, as deputy ombudsman in New South Wales, that a much better procedure was for the provision of these documents within the arbitration, as provided by the arbitration procedures. That is a matter on which I could talk at length.

However, the fact of the matter remains that, after discussing the matter with Mr Schorer, I urged him and his legal representative—because of the position that he was in so far as obtaining documents under FOI went—to in fact make an application to the arbitrator for the provision of the documents, as provided by the arbitration procedure itself. We have heard the outcome of that—namely that the arbitrator, I believe, directed Telstra to provide them.

Telstra claimed legal-professional privilege. After seeking legal advice, the arbitrator ordered Telstra to produce the documents to him. I say ‘documents’, but they were originally in the form of disks. I believe the actual order was for the production of the disks, and not so much a hard copy, but with nothing blanked out—so that the arbitrator could make a decision on whether, in his view, the claim of legal professional

privilege was well based.

There is plenty of authority to show that a court is entitled to require a party to proceedings to produce documents where there is a claim of legal-professional privilege, so that the court can see whether the claim is well founded. Relying on those authorities, the arbitrator required the production of the documents. The arbitrator, I believe, is yet to make a decision on those. But I have never been aware, until Mr Schorer raised it with me, of this particular type of document, an Excel document; and I certainly was not aware of it—

**Senator BOSWELL**—I put it to you that you do not know, the clients do not know and the arbitrators do not know. Who does know? It is a well-kept secret.

**Mr Pinnock**—Clearly, only Telstra knows.

**Senator BOSWELL**—It is a well-kept secret. I am on my best behaviour tonight. I will ask—

**CHAIR**—You need to be, Senator Boswell.

**Senator BOSWELL**—I will ask Mr Schorer a question. We have heard that it cost Ann Garms \$500,000 to get into a fast-track, inexpensive, non-legalistic arbitration commission. How much has it cost you?

**Mr Schorer**—According to my solicitor—

**Senator BOSWELL**—Just very quickly.

**Mr Schorer**—A rough estimate of approximately \$300,000 is the money I owe.

**Senator BOSWELL**—You owe your legal—

**Mr Schorer**—Legal and others, yes.

**Senator BOSWELL**—You owe \$300,000. That ought to get you a fair way down the track to lodging a claim. Ms Garms has lodged hers at \$500,000. You are coming in at \$300,000. How far have you got?

**Mr Schorer**—I have been denied key documents, and that has prevented me from doing the normal supporting evidence or putting evidence into my claim. I have been threatened that I will be thrown out of the arbitration—the arbitration that I did not want and did not agree too. So, I have put in financial figures only and no other supporting documents, which Mr Benjamin was concerned I would not make known tonight. If there is no proper resolution as a result of the Senate's interest in these CoT matters, I will not



be able to afford to proceed with my claim—and Telstra will have had another win.

**Senator BOSWELL**—Let us just leave it at that. You have spent \$300,000 and you are not to the starting post yet?

**Mr Schorer**—I am still trying to get out of the starting blocks.

**Senator BOSWELL**—Mr O’Sullivan, you have tried to assess both these claims, and I know you have a very successful arbitration business in the insurance industry. Could you describe what is happening? We are relying on you for professional advice. Could you give us a two-minute run-down?

**Mr O’Sullivan**—First of all, in the case of Graham Schorer, our office was appointed by Mr Schorer to attend to the preparation of his claim, from memory, in the latter part of 1994. One of our senior investigators attended in Melbourne and was there for about a week and a half before I was summonsed to look at the documents that Graham had received. I spent a week with our senior investigator. At the end of about two and a half weeks, we had to go to Graham and indicate to him that we could not be of any assistance to him in the preparation of his claim because of the inadequacy of the documents that had been provided. We were not qualified to interpret the documents or understand what they meant. Largely, they were very technically base.

I have to say that there has been some evidence here tonight that has been of a great deal of interest to me. I have a benefit over the Telstra representatives in that I was involved in the discussions that led to at least four of the claimants signing the fast-track arbitration agreement in April 1994. I spent about four hours in a meeting with Mr Robin Davey of Austel, a Telstra representative and Dr Hughes, who was to become the arbitrator, and Mr Peter Bartlett, who was or is special counsel to the TIO.

All the claimants had expressed identical concerns about accessing their documents. They had all suffered frustration with the FOI process to that point in time. This issue remained as one of the major stumbling blocks in their signing the arbitration document itself. We spent almost two hours with Mr Peter Bartlett in a boardroom at Minter Ellison. The claimants very clearly articulated to him their serious concerns about whether they would be able to access the documents or be given sufficient documents to prepare their claim.

Mr Bartlett actually left the room and returned and reported to us that he had spoken to Dr Hughes and that he had been given an assurance by Dr Hughes that all documents requested by the claimants in the process of the preparation of their claims would be provided. All I can tell you from that date forward is that a combination of requests to the arbitrator and under freedom of information have failed in any way to allow the claimants, at least the ones that we have dealt with, to prepare their claim in a conventional manner. In fact, the irony of it was that at the end of the day I recall that

Garms received the outcome of her arbitration award on a Friday or a Thursday morning, and the final boxes of her FOI application arrived that afternoon, some four hours after the thing had been determined.

**Senator BOSWELL**—Is Mr Schorer still getting FOI information?

**Mr O’Sullivan**—I cannot answer that; I do not know.

**Senator BOSWELL**—Mr Schorer, are you still getting FOI—

**Mr Schorer**—I am still getting documents from time to time from Telstra to do with my 1993 FOI application.

**Senator BOSWELL**—So, from 1993 to now, you are still getting FOI information?

**Mr Schorer**—Yes.

**Senator BOSWELL**—That is very helpful. Mr O’Sullivan, this X-file schedule here, if you had—

**CHAIR**—I think it means Excel, not X-file, Senator.

**Senator BOSWELL**—Sorry.

**Mr Schorer**—It may as well be an X-file!

**CHAIR**—You have been watching too much television.

**Senator BOSWELL**—It is all drama, isn’t it? If, as an assessor, you had had that particular file from Mrs Garms and Mr Schorer, would it have made it any easier to assess them?

**Mr O’Sullivan**—There is simply no doubt that the preparation of their claim would have been far more surgical in that we would have only turned our attention to assessing those documents that had a potential to contribute to the preparation of the report. In fact, one of the ironies again of the issue was that when we submitted the initial claim to Telstra, every statement that was published in our report was sourced, to the extent that at the end of a paragraph we would say, ‘Refer to a letter between Mr So-and-So of Telstra and Mrs Garms, dated such and such.’

When the first set of interrogatories were returned to us—and let me say we then put in appendages of some 20,000 or 30,000 documents behind the report—we were put to the task again to physically go back and provide Telstra with further information to tell

them where to find their own documents in their own files. I wish I had known that this document existed or was being prepared as early as late 1993—and we are talking about late 1994 and the early part of 1995. They were sending us back to go and find copies of their letters and correspondence that we had referred to in our initial report. The costs were enormous.

**CHAIR**—Thank you, Mr O’Sullivan. I have had an indication that Telstra need to respond.

**Mr Armstrong**—Thank you, Madam Chair. As we mentioned earlier, the arbitration process was set up as a result of a recommendation by Austel, the industry regulator. It was noted in Austel’s report that Telstra’s record keeping was deficient, that there were records of faults and testing that had not been retained by Telstra. Consequently, the arbitration rules contained the relaxations of the sort that were referred to earlier, particularly the relaxation of the rules of evidence. Again, with the matters that are being put, the claims have been able to be put to the arbitrator and the arbitrator has been able to take those matters into account. A process was established to address those concerns and, in Mrs Garms’s case, that process is ongoing.

**Senator SCHACHT**—Mr Honner, I will declare my interest in that you are a constituent of mine and you have spoken to me on a number of occasions in my office about your claim against Telstra. You have not chosen to use the arbitration arrangements that have been established in recent years to deal with the CoT cases. I think you yourself are not a member of CoT itself; you have been dealing with the issue on your own. Why have you chosen not to go through the arbitration procedures that have been outlined and adopted by some of the other members of CoT? I suspect that tonight they may well have regretted going through the arbitration system. Nevertheless, why did you choose not to go through arbitration and try to take legal action yourself?

**Mr Honner**—I like to know what I am letting myself in for when I go into anything, and arbitration, in my opinion, seems to have failed anybody who has been into it. I have been to the ombudsman every six months since 1993 to try to get an update as to what the rules are and so forth. But it really has not delivered the goods, so I have preferred to stay out of it.

**Senator SCHACHT**—Did Telstra ask you to go to arbitration to settle the commercial dispute you have with them?

**Mr Honner**—They have always suggested that they would recommend my case for arbitration.

**Senator SCHACHT**—Arbitration within the arrangements that have been recommended by Austel or a separate arbitration?

**Mr Honner**—The TIO arbitration.

**Senator SCHACHT**—Where is your case at the moment? Are you in a legal forum to get a remedy to your action?

**Mr Honner**—I guess the first approach, which is a TIO recommendation to negotiate the case with Telstra—

**Senator SCHACHT**—Negotiate yourself direct with Telstra?

**Mr Honner**—Yes, which is a TIO recommended process; the other one is arbitration. We had acceptance that we had lodged our wish to negotiate but, in actual fact, from thereon it was ignored.

**CHAIR**—On what date did you do that, Mr Honner?

**Mr Honner**—It would have been in the middle of 1995. A year later, Telstra did come to us and offer mediation.

**Senator SCHACHT**—You may choose not to answer this but I hope you do: what is your claim against Telstra for your losses, which I think you claim go back over many years, for a faulty service at the motel you own at Stansbury on Yorke Peninsula in South Australia?

**Mr Honner**—Yes, 12 years. We have a core claim of \$1.6 million which is totally related to the business—

**Senator SCHACHT**—That includes economic loss?

**Mr Honner**—Yes.

**Senator SCHACHT**—What has Telstra offered you to settle? What is their offer to you?

**Mr Honner**—Just before I answer that, there is an additional claim for legal costs and tax and so forth.

**Senator SCHACHT**—Yes. So \$1.6 million?

**Mr Honner**—It is up to \$2.4 million.

**Senator SCHACHT**—Plus another \$2 million for legal costs?

**Mr Honner**—No, the total is \$2.4 million.

**Senator SCHACHT**—So it is \$800,000 for legal costs?

**Mr Honner**—No, it is also the taxation situation.

**Senator SCHACHT**—How much do you think your legal costs are?

**Mr Honner**—Up to a year ago, my costs were \$200,000.

**Senator SCHACHT**—You claimed \$1.6 million for the loss over 12 years. What did Telstra offer you?

**Mr Honner**—In mediation—and I think confidentially is not a requirement at the moment—they offered \$75,000 but said they believed there was no fault on their part as far as the phone service was concerned.

**Senator SCHACHT**—When they offered the \$75,000, they said they would settle on the basis that they did not accept that there was a phone fault?

**Mr Honner**—That is right.

**Mr Benjamin**—That is not my understanding.

**Mr Honner**—If it is not your understanding, I presume you were involved, Mr Benjamin, in making the offer.

**CHAIR**—Mr Benjamin, could you put Telstra's position, please?

**Mr Benjamin**—We do not claim that our network is fault free. We have never claimed that the network is fault free. Every telecommunications network—

**Senator SCHACHT**—It would be a pretty absurd claim if you did.

**Mr Benjamin**—Of course—and I would not claim that Mr Honner's service was fault free. What we did do was that, at a certain time, there was a test done of Mr Honner's service over 100 days. In those tests, in any calls which were borderline cases, or where you could have had explanations other than faults for that type of call, we gave the benefit of the doubt to Mr Honner. Given all that in Mr Honner's favour, the results we came up with showed a fault rate which was only marginally above a normal fault rate. Doing our calculations on that basis, we came up with an offer which I actually increased, over and above the advice that was given to me as to what the loss would be, on the basis that Mr Honner had had certain interactions with Telstra that were less than we would have hoped for.

There were other factors involved in Mr Honner's motel's operation of the PABX

which could have been a contributory factor in the level of faults that he had, and also in the way in which Mr Honner advertised his auxiliary lines which could have also led to some of the problems that were indicated in Mr Honner's service. What we tried to do, on the basis of tests we ran, was to have a look at the fault rate, give the benefit of the doubt to Mr Honner and come up with an offer that was consistent with that.

**Senator SCHACHT**—So you ran a 100-day test for fault. What year was that?

**Mr Benjamin**—It was 1993. It was when the old exchange was in operation, the exchange which Mr Honner complained of.

**Senator SCHACHT**—So that was 100 days, in 1993, in a 12-year period, when Mr Honner makes a claim of difficulty going back many years, into the 1980s I suppose?

**Mr Benjamin**—He makes the claim going back over a number of years, but 100 days is a fairly long period.

**Senator SCHACHT**—Mr Honner, we have had earlier evidence that the Excel file and all these sorts of things with other cases were not clearly made available to a number of the CoT case members. In your dealings did you have access to similar documents or were you satisfactorily told which documents were available from the Stansbury exchange?

**Mr Honner**—The same story and the same blackouts as have been described tonight. Also, there were two 100-day tests. One was in July 1993 and we had a huge amount of faults during that period. At the end of that three-month time Telstra said, 'Look, the ELMI 10s have malfunctioned, we have to do this test again.' Having fixed all the lines up and then tested our service when everything was going, that is the result that Ted is referring to.

**Senator SCHACHT**—So there were two tests?

**Mr Honner**—Two tests.

**Senator SCHACHT**—Do you agree with that, Mr Benjamin?

**Mr Benjamin**—There could have been two tests. The test I am referring to was the—

**Senator SCHACHT**—Mr Benjamin, you have just told us there was one test and now it may be that there were two tests.

**Mr Benjamin**—There was a series of 100 days and we relied on the information provided in that 100-day period. I think Mr Honner is acknowledging that there was—

**Senator SCHACHT**—You told me there was one 100-day period of tests. Mr Honner has said that he thinks there was at least another one where there were a lot of faults. How many 100 days? Napoleon only had 100 days the second time around. It looks like Telstra is asking for a third time round.

**CHAIR**—Senator Schacht, I think we have explored that. We have been looking at the process, but now we are really verging on the nitty-gritty of the case.

**Senator SCHACHT**—I do not want to get into the arbitration; I want to get the process right. This is a simple matter of the information available. Mr Benjamin says that there was a 100-day test. Mr Honner has disagreed. Now Mr Benjamin is saying, ‘Maybe there was a further test.’ To me, it gives evidence that the process is still not clear for what Telstra is doing.

**Mr Benjamin**—I was provided with the results of a 100-day test of Mr Honner’s service.

**Senator SCHACHT**—This test was before you joined?

**Mr Benjamin**—That is right. On the basis of that, we made an assessment. As I say, it was a generous assessment of the loss rate. The offer was based on that assessment of that loss rate.

**CHAIR**—On the 100-day test?

**Mr Benjamin**—On the 100-day period of testing, yes.

**Senator SCHACHT**—Mr Honner has just said that, before that, there was a test period of 100 days, which had a lot of faults. You then rectified the system and then had your 100 days. I think that is what Mr Honner has said. Do you disagree with that?

**Mr Benjamin**—He said that we ran some tests where we claimed that the testing equipment was playing up. I think that is what you said, Mr Honner.

**Mr Honner**—Yes.

**Senator SCHACHT**—Mr Benjamin, I am saying this as a layman. It is your testing equipment, and you get a result that says there are a lot of faults. Then you say that the testing equipment is crook. I would have to say that, sooner or later, you will get to a level where we are not sure what you are telling us. It is like when the goal umpire gives the wrong decisions and you say that you lost the match because the referee was crook. You are now saying your own testing equipment was faulty.

**Mr Benjamin**—I am prepared to go back and have a look at the other body of

testing. It has not been brought to my notice. I am prepared to go back and have a look at that and make a further assessment.

**Senator SCHACHT**—Mr Benjamin, again I draw your attention to this: I think you were aware that Mr Honner was coming here tonight.

**Mr Benjamin**—Yes.

**Senator SCHACHT**—So surely you could have at least got yourself a bit better briefed so as to know whether you could answer some of these questions. This is getting to be unsatisfactory. We are going on and on, trying to find out information from you.

**Mr Benjamin**—The information I was given was in respect of a 100-day test. I am saying that, if there was a mistake made, I am prepared to look again at the situation.

**Senator SCHACHT**—But you told us that you knew something about the previous test: you said that the equipment was faulty.

**Mr Benjamin**—No; I was going on what Mr Honner was saying. I was saying that, if Mr Honner said that there was a previous series of tests—

**Senator SCHACHT**—And you do not know whether that is correct?

**Mr Benjamin**—No, I do not.

**Senator SCHACHT**—We would appreciate it if you would prepare some answers by checking all of that for us. The next thing is that, if Mr Honner does not settle for arbitration, it will be fought out in the courts. Is that right?

**Mr Benjamin**—The options are that we have an offer to Mr Honner to go to arbitration under the standard rules. If he does not go to arbitration, what are the other alternatives?

**Senator SCHACHT**—It will go to the court.

**Mr Benjamin**—That seems to be the only other alternative.

**Senator SCHACHT**—People can draw their own conclusion here, but you offered \$75,000 and he wants \$1.6 million. There is a fair gap in between. I do not know whether Mr Honner has any other matter he wishes to raise about access to material.

**Mr Honner**—We have a request for freedom of information files, but they have not come through.



**CHAIR**—When did you put those requests in, Mr Honner?

**Mr Honner**—It was before mediation, which was about a year ago.

**CHAIR**—And you have had no information at all?

**Mr Honner**—Yes, we had some at the time of mediation, but we have had none since then. There are still outstanding requests.

**Senator SCHACHT**—Can Telstra explain, if that is correct, why it takes a year to respond to an FOI request?

**Mr Armstrong**—Again, I do not know the particular circumstances of Mr Honner's request; but, if you are saying documents have been provided to you, are you saying that we have said there are more to come but you will have to wait? Or is it that we have said we have fulfilled the request, but you disagree with that?

**Mr Honner**—I have correspondence that has gone on between Telstra and ourselves over quite a lot of years. Can I table that? Most of these stories will be in there.

**CHAIR**—The thing is that we are really not here going into all the processes. I am not sure that will help us with the process we are looking at. The question that Senator Schacht has asked you is this: do you believe that there is information outstanding from your request of 12 months ago?

**Mr Honner**—Yes.

**Senator SCHACHT**—Can I again put this to Telstra: you knew Mr Honner was coming here tonight. It is one of the four or five cases we indicated on the list. You were informed about that, were you not?

**Mr Benjamin**—Yes.

**Senator SCHACHT**—I find it slightly incredible that you knew who was coming here tonight and yet you are still saying to us, 'We don't know about this. We don't know about that. We don't know about the details of the FOI.' It has been in place for a year. I would have thought that you would have briefed yourselves a little bit in your own good name to make yourself look a bit better, but this is consistently happening all night. I just wanted to ask: is there an Excel file or document for Mr Honner?

**Mr Benjamin**—I do not know the existence of one. Given that this matter has not been to arbitration, probably there is not one.

**Senator SCHACHT**—There isn't one?

**Mr Benjamin**—Yes.

**Senator SCHACHT**—For all the arbitrated cases, there is an Excel file.

**Mr Benjamin**—No, I did not say that. As far as Mr Honner is concerned, I do not know of the existence of a file of that nature.

**CHAIR**—Do you have a list of all the documents pertaining to any one case, without the description and the H to O on it. Do you have just a list of all documents such as fault reports, letters, et cetera? Is there a document that lists all information on any case that is under investigation?

**Mr Armstrong**—Is one created as a matter of course?

**CHAIR**—When you realise it is beginning to be an issue?

**Mr Armstrong**—No. We have prepared those lists specifically in relation to the CoT arbitrations, because of the larger volume of documentation.

**CHAIR**—So when Mr Honner applies for information under FOI, you do not then make up a list of all documents that are available and then make a decision as to which ones he has asked for under FOI?

**Mr Armstrong**—No.

**CHAIR**—So how do you go about working out which ones he has asked for if you have not got a whole list of all the documentation?

**Mr Armstrong**—If someone makes an FOI request, you would need to assess what documentation falls within the scope of that request. You would then make inquiries of the different areas that might hold those documents and ask them, ‘Do you have any documents which fall within that description?’

**CHAIR**—I think the best thing you can do is to reply to us on notice as to whether there is any outstanding documentation under the FOI request that Mr Honner made. Can you give us any date?

**Mr Honner**—Yes.

**CHAIR**—Can you just go through your documentation there and Mr Honner will give you the date he put in the FOI request. What the committee ought to know is: is there any outstanding FOI information? I do not know whether it is appropriate for Mr Pinnock, the ombudsman, to then assess whether that is undue delay in the process. Because that is the thing we are actually looking here, whether Mr Honner could have

expected to have received that documentation. Is that within your purview or responsibility?

**Mr Pinnock**—My colleagues at the table.

**CHAIR**—Mr Wynack, is it within your responsibility to assess whether the delay has been undue in terms of somebody getting back information under freedom of information?

**Mr Wynack**—If Mr Honner were to complain to the ombudsman, that is certainly a judgment which the ombudsman would make, as to whether to form an opinion that there was an inordinate delay. To my knowledge, Mr Honner has not complained to the ombudsman. The section I work in is what they call a major project section. We have offices throughout Australia which receive complaints.

**Senator O'CHEE**—I think he might by the end of the week.

**Mr Honner**—We did seek help probably back in 1993, but we were tended to be referred away from the Commonwealth Ombudsman as being the right source to go to.

**Mr Wynack**—The short answer to your question is, yes, if we receive a complaint from Mr Honner, we will certainly consider it.

**CHAIR**—Mr Honner, you have heard that. Telstra, we would like a response from you as to whether you believe there is any outstanding documentation, why there has been a delay and when Mr Honner can expect to receive that outstanding information. I think that would be the appropriate way to deal with it.

**Senator SCHACHT**—Mr White said earlier this evening that in the CoT cases there were teams of people put together made up of any number of people—a dozen or half a dozen—which also included legal people, firms, employers, consultants, accountants and so on. Is there a standing team put together in Telstra in the labyrinth somewhere that is dealing with Mr Honner's case?

**Mr Benjamin**—There have been people amongst those staff who would have constituted some of those other teams who have looked at Mr Honner's case from time to time, but there is no team in existence at this stage.

**Senator O'CHEE**—So you admit there were teams now?

**Mr Benjamin**—There were people in the groups that dealt with the CoT cases.

**Senator SCHACHT**—If the chief executive of Telstra decided he might want to get a bit more information about Mr Honner's case, if he rang you up, would you put him

in touch with a particular person and say that, from the Telstra side, this person has all the details of the Honner case so far?

**Mr Benjamin**—Yes, there are people I would go to in Telstra to ask for that information.

**Senator SCHACHT**—No. Is there a person who is responsible?

**Mr Benjamin**—On the technical side there is a person and then on the general claims management side, there is a person.

**Senator SCHACHT**—Those people would be handling the FOI at the moment?

**Mr Benjamin**—No, that would be handled separately. The FOI is handled through a different process.

**CHAIR**—Thank you very much. Senator Calvert has been sitting here for some time and he has some questions he would like to ask. Do you have one question, Senator O’Chee?

**Senator O’CHEE**—I have one question to Mr Ward and Mr Benjamin. The ombudsman says that Ms Garms was delayed and disadvantaged by Telstra’s conduct. We have heard tonight that these Excel files were denied to Mr Schorer, they were denied to Mrs Garms, they were denied to Mr Pinnock and they were denied to the ombudsman. This is a product of a policy which Mr White has described as ‘stop at all costs’ to ensure the floodgates are not thrown open.

**CHAIR**—Senator O’Chee, what is your question?

**Senator O’CHEE**—Will you now accept the fact that you should pay these costs, that these are a direct consequence of your conduct and that your conduct has been to ensure that these people never get access to information? They can never bring their claim.

**CHAIR**—Mr Armstrong actually made a comment earlier about whether that was included. Could you repeat the comment that you made earlier, Mr Armstrong?

**Mr Armstrong**—I am sorry. I am not sure—

**CHAIR**—I believe you made a comment that there had been an assessment of that delay in the arbitrator’s assessment.

**Mr Armstrong**—Mrs Garms has complained about delays in the provision of documentation which are referred to in the Commonwealth Ombudsman’s report. In

relation to the FOI process, if those delays have caused her to incur further expenses over and above those which have been talked about as arbitration costs, Telstra has agreed to compensate her for those expenses.

**Senator O'CHEE**—There can only be one set of expenses. They are the expenses in the arbitration. They are a consequence of your conduct. Will you now pay?

**Mr Armstrong**—If Mrs Garms believes that those delays have prejudiced her in the arbitration or in her ability to seek an award in the arbitration. Again, the Ombudsman's report was published prior to the arbitrator's award being delivered. Mrs Garms presented that report to the arbitrator. Consequently, there are three processes: arbitration to assess loss, another assessment process to assist any costs incurred because of defective FOI, and another process to assess arbitration costs.

**CHAIR**—Mr Ward, you have agreed that you will talk to the ombudsman regarding the payment of the assessment costs?

**Mr Ward**—In relation to the third category which has been the subject of earlier dialogue tonight, I have offered to meet with the TIO tomorrow to try and progress that forward.

**Senator CARR**—Mr Ward, what do you believe have been the savings to Telstra of the strategies that you have employed with the CoT cases? How much money have you saved by this process?

**Mr Ward**—I would have to ask my colleagues who are across the detail.

**Mr Mead**—I suppose the only way that can really be answered is to say that the total amount—as I think Mr Ward said in his opening statement—of the claims asserted against Telstra was \$44.5 million. The arbitrated results have totalled \$1.74 million so far, although there are still five claims.

**Senator CARR**—Although your costs have been some \$14 million, plus the arbitrator's costs. In fact the CoT cases have probably cost the taxpayer \$18½ million. They should be included.

**Senator SCHACHT**—Without the payment of any settlement costs.

**Mr Mead**—That would go to an extra \$1.74 million.

**Senator SCHACHT**—So on top of that \$18.8 million, you have actually paid out \$1.7 million in payments to the CoT case people for damages or settlement, whatever you want to call it. Is that right?

**Mr Mead**—Yes. The \$18 million figure includes the arbitration costs, which are not really costs incurred by Telstra. They are costs incurred by the arbitrator.

**Senator CARR**—I understand that. But in terms of the public purse, as officers of the Commonwealth, even though through a statutory corporation, you have an obligation to protect the Crown's interest in these matters. This is public money, after all. Your claim essentially is that because there were claims against Telstra of \$44 million and you have only had to pay out \$1.4 million, you have saved the Commonwealth considerable sums of money. Is that essentially the argument?

**Mr Mead**—Against the alternative of not incurring any costs and just paying out a figure of \$44.5 million, as was asserted.

**Senator CARR**—Given that in 1994, Mr Steve Black was head of the particular section at that time—was it commercial and consumer?

**Mr Benjamin**—He was the General Manager of the Office of Customer Affairs.

**Senator CARR**—That is right. According to the e-mail that I have here, he wrote to Krasnostein, who was your chief legal counsel at the time—

**Senator Schacht**—Rozencrantz and Guildenstern have turned up again!

**Senator CARR**—Suggesting, 'While at a personal level I am of the view that we should walk away, I do not believe that this option suits Telecom's wider strategy and that it would appear to lead directly to a Senate inquiry.' To what extent were you or the management of Telstra motivated by the concerns about the public purse? To what extent were you concerned about a Senate inquiry?

**Mr Benjamin**—I cannot answer that.

**Mr Ward**—I was not across these matters at the time that Mr Black was, but I—

**Senator SCHACHT**—Where is Mr Black now?

**Mr Ward**—He has left the company.

**Senator CARR**—He works for the Canberra Casino, doesn't he?

**Senator EGGLESTON**—He works for an energy company.

**Senator CARR**—I am sorry, I thought he was with the Canberra Casino.

**Senator SCHACHT**—Did he leave of his own volition or was he asked to leave

by the management in view of this mess?

**Mr Ward**—I do not believe it was the latter. I was not across the detail of Mr Black's leaving.

**CHAIR**—Senator Schacht, I do not think that is a reasonable question to ask. It reflects on Mr Black and I ask you to withdraw it.

**Senator SCHACHT**—I will withdraw that.

**Senator CARR**—Mr Blount, on 3 March 1994, suggested there should be some form of summit meeting held between Smith from Austel, Krasnostein, himself and others 'to put this foolishness behind us.' Was Mr Blount able to hold a summit and was he able to secure that strategy of 'putting this foolishness behind us'?

**Mr Ward**—Mr Benjamin might be able to comment about the timing of that meeting vis-a-vis the subsequent arrangements sorted out by Robin Davey that led to these processes. I do not know if one led to the other.

**Mr Benjamin**—You may be referring there to a meeting that took place of Senator Boswell, Mr Blount and other parties. I am not sure who else might have been there. I was not a party to that meeting.

**Senator CARR**—That brings me to: to what extent does Telstra's action cost the public purse rather than save its money? To what extent were you motivated by concerns about the prospect of a Senate inquiry? Given what we have heard tonight, I am wondering whether or not you think that a more flexible approach on the negotiations might have actually resolved these issues a lot more quickly.

**Mr Benjamin**—Are you suggesting that in respect of the CoTs that have been and gone because, as we have pointed out, 11 of those have had awards?

**Senator CARR**—I will come to those in a minute.

**Senator SCHACHT**—You have spent \$18.8 million and have paid out to defend these cases and argue over them. In total, the people have got settlements totalling \$1.3 million. Is that right?

**Mr Mead**—It is \$1.74 million.

**Senator SCHACHT**—It is \$1.7 million. So \$17 million was spent to pay—

**Mr Mead**—About \$18½ million.

**Mr Benjamin**—The claims were larger than that.

**Senator CARR**—Yes, I understand people make claims against the public purse all the time and there is an argument in government that says you have to protect the public purse. The point I put to you is: we have had this experience behind us. To what extent do you think you could have saved money by actually resolving these matters with a less legalistic approach?

**Mr Benjamin**—I believe that we have learnt from our experiences. The whole process was innovative. It was new. People were not certain where the process might lead. There was perhaps more caution taken than would be the case now. We have had two claims in 2½ years under the standard rules of arbitration. They have been solved, negotiated within a reasonable period of time. As we become more experienced in respect of handling these types of claims, we would handle them with more expedition.

**Senator CARR**—I just quote you the case for Mr Alan Smith from Portland. He has been through the arbitration process and, from the documentation that I have in front of me, he is a highly dissatisfied customer. It actually has not resolved much at all. The matter has not been completed, has it, because he is continuing his claims in various forms?

**Mr Benjamin**—He keeps raising issues that he raised in the arbitration and he does write to many people making that complaint. The complaints that he makes, from memory, would have been raised before the arbitrator. He certainly brought them to the attention of the TIO. We do not accept the complaints as valid, but the opportunity is there for people to whom he writes to take the issue up, if they believe that is warranted.

**Senator CARR**—In terms of the cases outstanding, do you still treat people the way that Mr Smith appears to have been treated? Mr Smith claims that, amongst documents returned to him after an FOI request, a discovery was a newspaper clipping reporting upon prosecution in the local magistrate's court against him for assault. I just wonder what relevance that has. I am sure you would be familiar with the documentation that he has distributed far and wide. He makes the claim that a newspaper clipping relating to events in the Portland magistrate's court was part of your files on him.

**Mr Armstrong**—I am not aware of the document that you have there. I have not seen that document. I am not aware of any such article being any part of our files.

**Senator CARR**—I draw it to your attention. Yes, that is fine. I will give you a photocopy of that.

**Senator SCHACHT**—It does seem odd if someone is collecting files. That is a matter that has nothing to do with his telecommunications business. It seems that someone thinks this is a useful thing to keep in a file that maybe at some stage can be used against



him. If it is true, I do not know why you would be collecting that information.

**Mr Benjamin**—I know of no-one who is collecting that information.

**Senator CARR**—Mr Ward, we have been through this before in regard to the intelligence networks that Telstra has established. Do you use your internal intelligence networks in these CoT cases?

**Mr Ward**—I think the issue that we were talking about at the estimates committee was in relation to market intelligence around the market and general competition forces, et cetera, not in relation to any such act.

**Senator CARR**—Would you not use them in regard to your customers?

**Mr Ward**—Certainly not. Senator, can I just say that the process that has resolved 11 out of the 16 was—

**Senator SCHACHT**—Eleven out of the 16?

**Mr Ward**—Eleven out of the 16 CoTs. The process was put together with Austel and the TIO. I think, if they were asked, they would still say that this process is the best to resolve these issues, and we are trying to keep faith with that process. You talked about what was driving us. As we said in the opening statement, the totality of the claims was a very material figure. Therefore, we have a responsibility to investigate fully those claims. The comparison of the \$18 million versus the \$1.74 million is, in hindsight, after the ball and after we have spent those resources to see the veracity of those claims.

**Senator SCHACHT**—The thing that really is annoying is that the lawyers got millions. You paid them millions to go through all of this process and the claimants got \$1.7 million. We know who won in this case.

**Mr Ward**—As recommended by the arbitrators.

**Senator CARR**—Yes, I understand that.

**Senator SCHACHT**—Yes, but you went through a process of hanging people out to dry for a long time.

**Senator CARR**—Mr Ward, is it not the case in regard to the particular matters I raised regarding Alan Smith that your own advice in documents that I have seen—they purport to be from the DRM Group Inc., Lane Telecommunications Ltd, dated 30 April. I think it is their document; I am not altogether certain so please do not let me misrepresent the matter. But I have a document here headed up ‘Telecom Secret’, which suggests that some time ago you were being advised that Mr Smith was likely to secure a substantial

payment through a legal arbitration process. Is it not the case that probably it would have been in your commercial interest to have settled long before you did?

**Mr Benjamin**—There were negotiations held with Mr Smith before the matter went into arbitration. We could not reach a final settlement with Mr Smith before the matter went to arbitration. It was then taken over by Austel in its investigations into what became the CoT report.

**Senator CARR**—But was it not the case that you were claiming immunity from prosecution under the old Telecommunications Act in terms of the shield of the Crown for Telstra? Was that the case or not?

**Mr Armstrong**—No, Telstra waived its immunity from suit for the purposes of these arbitrations.

**Senator CARR**—In fact, wasn't it the case that the immunity claim had never been tested in a court? The advice you were given was that the current immunity from paying losses of business compensation and so on, under section eight, is probably less clear in the case of Mr Smith. Wasn't that the legal situation that you were presented with?

**Mr Armstrong**—I do not know what document you are referring to. I do not know what advice it is.

**Senator CARR**—Fair enough. There is one other question.

**CHAIR**—Senator Carr, just make sure you are going to the issue of process.

**Senator CARR**—Yes, that is the process. It is exactly the question of process. The point on whether or not it actually cost more to resolve the matters, particularly from the terms of the legal fees, than it would have been through what your plaintiff suggests was not a fair negotiation process. Can I ask: what is the status of Ms Barbara Oldfield's claim? That is Barbara Oldfield of 1391 Bimbi Island Road, Ningi, in the state of Queensland.

**Mr Benjamin**—Ms Oldfield's claim has been settled by negotiation.

**Senator CARR**—She is satisfied as well, is she?

**Mr Benjamin**—She agreed to the settlement, so I presume she was.

**Senator CARR**—What was the offer?

**Mr Mead**—I understand from your opening comments that Mr Benjamin would

not be required by the committee to answer that.

**CHAIR**—Yes. Senator Carr, one of the problems is that you can require the information, but it is information that the person who has been in receipt of it may not wish people to know. Here it is on the public record. It probably is not \$1 million or \$1.5 million. But if it were, that could place that person in jeopardy and at risk from burglaries and all sorts of things. I think you need to be careful that we might be doing the person a disservice by asking it.

**Senator SCHACHT**—I think the point is reasonable. But I would ask Telstra to provide to this committee, in confidence, what she claimed, what you offered and what the arbitrated decision was.

**Mr Benjamin**—It was a negotiated decision.

**CHAIR**—It was a negotiated decision.

**Senator CARR**—Bear in mind that I have before me a statutory declaration signed by Ms Oldfield, who I understand was a former senior police officer in the state of Victoria—and I presume not in the habit of making false statutory declarations—outlining some of the details of this particular arbitration process.

**Senator SCHACHT**—Negotiation process. I want to find out if you insisted on the commercial-in-confidence in the settlement. Or is that, again, a Telstra issue? Would Telstra accept that they asked for commercial-in-confidence in the settlement details? It was their doing?

**Mr Benjamin**—I am advised we asked for the confidentiality.

**Senator SCHACHT**—So you could also ask Ms Oldfield, apart from the figure or the amount that she may not wish to have publicly disclosed, whether she is quite happy to have all the other details made available to this committee in public? Can you contact us and respond on that.

**Senator CARR**—Madam Chair, can I just finish off? I have one question on this. I understand that the original offer to Ms Oldfield was \$52,000 and that the final settlement was \$100,000. I understand that Ms Oldfield, who has made representations through to me, was very unhappy about that settlement. Can you confirm that that is the case? Has Barbara Oldfield actually settled under duress?

**Mr Benjamin**—I would deny that she settled under duress. An offer was made and negotiations took place. As you have got there, from my recollection, we increased the offer on at least one occasion and she finally agreed to enter into the agreement.

**CHAIR**—Had she not agreed to that negotiation, could she have then gone to arbitration?

**Mr Benjamin**—Of course, yes.

**Senator SCHACHT**—What was her original claim?

**Mr Benjamin**—It was for \$482,804.

**Senator CARR**—Is it the case that she lost most of her superannuation through this affair?

**Mr Benjamin**—I do not know. She had business losses. I am not sure what is inferred by the loss of superannuation.

**Senator CALVERT**—As a participating member, I have been rather reluctant to come in here at this time of night, but I—

**CHAIR**—Don't stretch my patience!

**Senator CALVERT**—I have listened with interest to your comment about the perceived amount of money that Telstra spends on pursuing their claims. I had one for four years and they spent around about \$1 million over a matter of \$121 from Mr Geoff Meagher. But, anyway, that is in the past. I have got a matter in the present regarding what I believe is a CoT case with regard to a Ms Sandra Wolfe from Buderim in Queensland. I would like to ask Telstra: could you advise me of the current position with regard to the settlement of outstanding matters with Ms Sandra Wolfe from Buderim in Queensland?

**Mr Benjamin**—Yes, we made an offer to Ms Wolfe. As I understand it, she has not accepted that offer and she has come back with a counter-proposition.

**CHAIR**—Is this a negotiated offer or an arbitrated offer?

**Mr Benjamin**—This is negotiation.

**Senator CALVERT**—Would it be fair to say that—

**Mr Pinnock**—I just wanted to add that that matter was case managed in the TIO by the deputy ombudsman, Ms Wolfe having brought the matter to our office, but it is not in formal arbitration. It is not an arbitrated matter. The TIO is attempting to assist the parties to negotiate a settlement.

**CHAIR**—Has that happened in other cases? Did that happen in the case that

Senator Carr was just referring to or has the person got to come to you?

**Mr Pinnock**—The position of Ms Oldfield involves a number of considerations, not the least of which is that she was certainly unhappy, as I understand it, with the outcome of what I understood to be a mediated settlement because she maintained at one stage that in her absence, while she was being represented legally before the mediator, an offer was made by that solicitor acting outside what she said were her instructions in relation to the all-up settlement costs, including her legal fees.

The mediator dealt with the matter believing that what had been put to him as an appropriate negotiating stance was in fact that, and believed that ultimately the parties had resolved their differences. Telstra ultimately, as I understand it, drafted a deed of release, which is not uncommon in matters of this nature. At that stage, as I understand it—because the TIO had arranged for the mediation; we did not do it ourselves—Mrs Oldfield's understanding of the settlement figure was a particular sum which I think did not include legal costs—in other words, legal costs would be in addition to that.

As I understand it, Telstra understood that the amount was the total amount including legals and that that was the mediator's understanding as well because of what had been put to him in confidential session by her legal representative. In the end, as I also understand it, Mrs Oldfield accepted a final offer from Telstra, but I do not know the exact detail of it.

**Senator CALVERT**—With due respect, I am not interested in Mrs Oldfield. I am concerned about Sandra Wolfe.

**Mr Pinnock**—I understand that, but that is what, as I understood it, the chair asked me about.

**CHAIR**—I did ask.

**Senator CALVERT**—I am sorry.

**CHAIR**—I asked because I wanted to know whether—

**Senator CALVERT**—Mr Pinnock, now that you have made that point, didn't you express serious concerns as far as Ms Wolfe was concerned about Telstra's failure to provide documents sought by Ms Wolfe under Freedom of Information and a deliberate attempt made by Telstra to stonewall on that issue?

**Mr Pinnock**—No, I dealt with—

**Senator CALVERT**—Would you repeat that? You did not?

**Mr Pinnock**—No, my comments in relation to Telstra's provision of documents or their failure to provide documents were not made, as far as I can recall, in the context of FOI. The Telecommunications Industry Ombudsman has no jurisdiction in relation to Telstra and FOI. But, from time to time, there are issues arising within the TIO about the provision of documents to complainants. From time to time, yes, I have criticised Telstra in relation to the provision of those documents. But I do not deal with FOI applications per se, Senator; in fact, I never do. If you have a specific document that you are referring to, I would be happy to—

**Senator CALVERT**—So you are saying that in your position you have not expressed concerns about Telstra's failure to provide documents to Ms Wolfe?

**Mr Pinnock**—No, I did not say I have not expressed that. I understood your question to refer specifically to FOI. I have never, in the office, as far as I recollect, made any suggestion in relation to Ms Wolfe's matter of criticising Telstra in relation to FOI. I may well have done so in relation to provision of documents in relation to the TIO trying to assist Ms Wolfe to resolve her matter with Telstra. If you have a specific document, Senator, that you can refer me to I would be happy to deal with it.

**CHAIR**—Mr Pinnock, I think the question Senator Calvert is asking is: have you at any time thought that Telstra delayed unduly in providing information to the person to whom Senator Calvert was referring?

**Mr Pinnock**—I cannot recollect that specifically in relation to Ms Wolfe. I have certainly been critical of Telstra in relation to other aspects of its dealing with that particular complaint.

**Senator CALVERT**—I have not got the correspondence with me, but I have a lot of correspondence regarding this matter, I can assure you. Would you be aware, Mr Pinnock, of certain documents entitled 'Wolfe PT crime' that remained on Ms Wolfe's file until July 1995? And could you explain, or perhaps Telstra could explain, why Telstra destroyed those documents over a year after Ms Wolfe sought those documents from Telstra under FOI?

**Mr Pinnock**—I am aware that certain documents were created by Telstra which Ms Wolfe complained about—not so much just the documents themselves but what she contended they were evidence of. That particular document you refer to I cannot specifically recollect. As to whether or not it was destroyed, it may well have been, but that is a matter for Telstra to explain, Senator. I do not know whether any document specifically was destroyed in relation to any complaint that Ms Wolfe made which the TIO was looking at.

But she maintains that there are documents which were created—which were available to her under FOI and which I believe were provided to her under FOI—and

which revealed that there was a campaign on the part of Telstra to monitor her behaviour. I use 'monitor' in the broadest sense; I do not mean strictly in relation to the Telecommunications Act. That is part, as I understand, of her particular claim against Telstra and the consequences that flow from that.

**Senator SCHACHT**—What does the phrase 'monitor her behaviour' mean?

**Mr Pinnock**—The detail of it I cannot explain right now, because I was not on notice that that matter was going to be raised.

**Senator SCHACHT**—Do you know what it means?

**Senator CALVERT**—If you let me go, I can clarify it—

**CHAIR**—Order! Senator Schacht, you have asked the question, 'Do you know what it means?'

**Senator CALVERT**—I am trying to follow a line here and I did not interrupt you—

**CHAIR**—Senator Calvert—Order!

**Senator SCHACHT**—I am not trying to interfere—

**Mr Pinnock**—That is my paraphrasing of what I understand her claim to be. The detail of it I cannot comment on, I am sorry, because I do not have the matter with me. In fact, I was not aware that it was to be raised by Senator Calvert tonight at all.

**Senator CALVERT**—But you do not deny writing to Telstra expressing your concern about the fact that Telstra was being uncooperative in providing documents?

**Mr Pinnock**—No, of course not. I do not deny that. There would be no reason for me to deny it.

**Senator CALVERT**—Fair enough, that is what I was getting to. So obviously you were concerned. I would like to know whether did Telstra become involved in monitoring and intercepting Ms Wolfe's telephone line since 1986 and how does Telstra respond to allegations by Ms Wolfe that she has evidence of such actions. She has raised concerns with you about monitoring and interception of her phone calls since 1986 and she believes that she has evidence of those actions.

**Mr Mounsher**—In terms of the specific question raised by Senator Calvert, those issues have been considered as part of an attempt to negotiate a settlement with Ms Wolfe. The sum total of our liability with respect to that complaint was reflected in the offer we made to Ms Wolfe.

**CHAIR**—Have you had a letter from Mr Pinnock indicating that he was concerned about delay in documents going from Telstra?

**Mr Mounsher**—Yes.

**CHAIR**—What have you done in response to that letter?

**Mr Mounsher**—Some of the documents that Ms Wolfe was collecting required quite considerable investigation and, in fact, creation of documents. She was seeking statements from some of the people that had been associated with her case that did not exist; so we had to go to those people to get the necessary documents prepared and, in some cases, that has taken a considerable amount of effort.

**Senator SCHACHT**—How much time?

**Mr Mounsher**—Several months.

**Senator CALVERT**—My information is that Telstra refused to become involved in the attempt to mediate for Ms Wolfe. Why did you insist that Mr Pinnock's

representative, Mr Wally Rothwell, could not participate in the meeting between Telstra, Ms Wolfe and her legal representative?

**Mr Mounsher**—I was not involved in the case at that stage. I am not sure I can answer that question.

**Senator CALVERT**—I thought you said that you were trying to mediate. My information is that—

**Mr Benjamin**—Can we take the first part of the question about the arbitration? She did put in a request for arbitration, and we rejected that because the substance of the claim did not seem to lend itself to arbitration. It was not a claim for compensation for loss of business. She was making the claim that we had improperly intercepted her service.

**Senator CALVERT**—That was the letter that was sent to you by Peter Gorman on 30 April, the points of claim?

**Mr Benjamin**—Yes. In fact, we had done that—

**Senator CALVERT**—Have you replied to that?

**Mr Benjamin**—We replied and we also sent a letter to you, Senator Calvert, explaining our position in respect of these matters on 22 August 1996.



**Senator CALVERT**—No, I am talking about a letter that was sent to you on 30 April 1997. This is from Ms Wolfe's legal counsel, Peter Gorman, which expressed concern that you have yet to address the points of claim. I just wondered whether you had responded to that letter.

**Mr Mounsher**—Yes, we have responded to that letter. Mr Gorman's points of claim raised all the issues that had previously been put to us by Ms Wolfe, and we referred to that in the offer we made to her. I cannot remember the exact details of when the letter was sent, but we certainly referred to the points of claim in that letter.

**Senator CALVERT**—You did make an offer to Ms Wolfe in December 1996, didn't you?

**Mr Benjamin**—We did.

**Senator CALVERT**—Why did Telstra offer her counsel such a significant amount of money to settle the case and yet offered Ms Wolfe virtually nothing?

**Mr Mounsher**—The break-up of the offer was as discussed at a mediation session and seemed appropriate in the situation.

**Senator CALVERT**—I put it to you that there was certainly an anomaly between the amount offered to her counsel for the short period of time he was involved and the amount offered to Ms Wolfe.

**Senator BOSWELL**—How much did the counsel get and how much did she get?

**Senator CALVERT**—I would like to know the amounts, if that is possible.

**Mr Mounsher**—Ms Wolfe was offered \$30,000, her counsel \$10,000, and there was a range of other activities that amounted to about \$6,000. So Ms Wolfe's total would have been equivalent to \$36,000.

**Senator CALVERT**—Out of the \$36,000, could you repeat how much Ms Wolfe would get out of that?

**Mr Mounsher**—It was \$36,000.

**Senator CALVERT**—She got \$36,000?

**Mr Mounsher**—It is \$30,000 plus a number of other areas of support such as a mobile phone to help her shift house. There is a range of other activities.

**Senator CALVERT**—That is different from the information I have got here. Why

did you become involved in the warrant that was issued for Ms Wolfe's arrest?

**Mr Mounsher**—Telstra had no involvement in the warrant for Ms Wolfe's arrest.

**Senator CALVERT**—Well, that warrant was issued and contained names of Telstra employees. Do you deny that?

**Mr Mounsher**—As far as I understand, it was in their private capacity as neighbours of Ms Wolfe.

**Senator CALVERT**—It has been going on for quite some time. What do you intend to do about resolving this issue with Ms Wolfe?

**Senator SCHACHT**—The warrant?

**Senator CALVERT**—No, I am not talking about the warrant; I am talking about the whole issue.

**Senator SCHACHT**—Are you saying to us that Telstra employees in a private capacity were involved in a warrant against Ms Wolfe but that had nothing to do with Telstra's activities at all?

**Mr Benjamin**—It was a neighbourhood problem, and there were other people associated with that.

**Senator SCHACHT**—I want to get it on the record very clearly that that is your response: that Telstra had nothing to do with it, and it was coincidental that these people who were involved in the warrant were Telstra employees.

**Mr Benjamin**—Yes, there was no official involvement in the warrant.

**Senator SCHACHT**—A final question: were any of those employees, in their capacity in Telstra, in any way involved in Ms Wolfe's case?

**Mr Benjamin**—No, they were acting—

**Senator SCHACHT**—No, they were not involved in anyway in dealing with Ms Wolfe's case. Is that right?

**Mr Benjamin**—You mean subsequent to the warrant being issued?

**Senator SCHACHT**—No, when the warrant was issued and the names of these employees were on it, you are telling us that it was coincidental that they were Telstra employees.

**Mr Benjamin**—Yes, it was a neighbourhood problem.

**Senator SCHACHT**—Okay, one last question: were any of them involved in dealing with Ms Wolfe's case anyway?

**Mr Benjamin**—After the—

**Senator SCHACHT**—No, before the warrant was issued.

**CHAIR**—Or after.

**Senator SCHACHT**—It might have been after.

**Mr Benjamin**—Not that we are aware of, but we are happy to take it on notice.

**Senator SCHACHT**—Would you check that out, please, because I think this is a very serious allegation. We have to be absolutely clear that they were not doing this as a back way of bowling someone over.

**Senator CALVERT**—I have to accept those sorts of answers.

**CHAIR**—Senator Calvert, we do not need your sort of sideline comments.

**Senator CALVERT**—I would just like to know after all this time what steps Telstra intends to take to finally resolve this matter, because it has been going for quite some time. As you have heard tonight, Madam Chair, the ombudsman has been involved and has made certain requests and there has been mediation. Yet, similar to the case that Senator Schacht raised, it seems to me that Telstra seems to want to throw money at these things rather than resolve them—

**CHAIR**—We do not need that sort of remark.

**Senator CALVERT**—And I would like to know when we can expect this matter to be resolved.

**CHAIR**—Mr Ward, is that one of your cases that you saw as finished? Is that one that has been arbitrated?

**Mr Benjamin**—No, that is—

**CHAIR**—So that is still under negotiation and you may seek arbitration or whatever. Is it currently with you, Mr Pinnock?

**Mr Pinnock**—I only want to say that it has been a long while in trying to reach

resolution. It is a particularly difficult case, not the least because of the nature of the complaint made, but also because, unfortunately, it is one of those matters that you could say could have been better handled internally, initially. In other words, it is one of those things with a very long history. That affects not only the complainants' perceptions of the matter but also the perceptions of some people in Telstra, and if I might say in general, that that is one of the most difficult areas where the TIO has to try and mediate matters where, if you like, the parties are in their respective trenches and they will not get out of them.

**Senator CALVERT**—I have another case like that with a Mr Edward Saul from Crescent Head, but I do not want to go into that tonight because that would take us all night.

**CHAIR**—Senator Boswell has a question, it is 11 p.m. and we have gone half an hour beyond our time. When Senator Boswell has asked his question we should draw this to a close and the committee will decide what it will do then.

**Senator BOSWELL**—Mr Ward, Telstra spent \$18,732,292 on expenses to pay out \$1.74 million. If you add the \$1.74 million to the \$18 million you have saved \$500,000. Do you consider the \$500,000 that you saved was good housekeeping? You have put a lot of people through a lot of pain and suffering for a net gain for Telecom of \$500,000. Do you think this has helped Telstra's corporate image?

**Mr Ward**—Senator, in my opening statement I made the point that this was against the context of claims of in excess of \$44 million and that we complied with a process in coming to the outcomes that you have just described that was set up by Austel and the TIO and we have tried very hard to run to the tenets of that process. So, in looking back at the cost spent versus the 6.9 per cent average, if you like, of arbitrations, that is a perspective looking back and not put in the context of the totality of the claim.

**Senator O'CHEE**—Could I just clarify something. Mr Armstrong, when you referred to those Excel files you said that the reason why they were not provided was because of legal-professional privilege. Is that not the case?

**Mr Armstrong**—We were discussing specifically Mr Schorer's file. We said that we claimed legal-professional privilege for that Excel file.

**Senator O'CHEE**—Is that not because you received advice in September 1993 from Freehill, Hollingdale and Page? It said, in relation to these matters:

If reports are needed, i.e. technical, fault reports, and have not already been obtained these should be commissioned by the Corporate Solicitors Office and provided only to the Corporate Solicitors Office for the purpose of obtaining legal advice. This is in an attempt to create the initial protection of legal professional privilege for such reports.

Is that not the form of conduct which Telstra regularly uses to ensure that people do not get access to files?

**Mr Armstrong**—No, that is not the basis on which they claim privilege for those documents.

**Senator O'CHEE**—I would ask that this document be tabled.

**CHAIR**—Are there any objections to the document being tabled? There are no objections. There are two more questions. Senator Calvert wants to clarify something that was asked. He does not believe he heard the answer, because the acoustics in this room are very bad.

**Senator CALVERT**—I would like an answer in writing because I do not want to delay the committee. I did ask about Ms Wolfe's phone being tapped since 1986 and I would just like a written answer stating if it was, how many times, and is it still being tapped?

**Senator SCHACHT**—If it was tapped they are going to go to gaol, because it is illegal!

**Senator CALVERT**—I would just like to know for what reason.

**Senator BOSWELL**—They cannot tap—

**Senator CALVERT**—They did tap it; they tapped the phone.

**CHAIR**—Order! Senator Boswell—

**Senator CALVERT**—Well, can I say 'monitoring and interception'. Does that sound better?

**CHAIR**—Thank you very much. I think you understand the intent of Senator Calvert's question. Senator Schacht, you have one point of clarification and then I am going to—

**Senator SCHACHT**—Madam Chair, I do not know if Mr Ward was going to answer that. Are you going to make a comment?

**Mr Ward**—Just to agree absolutely that we will reply with a written response to the senator's question—as we always do.

**Senator SCHACHT**—I do not have a question but I want to say, as deputy chair of this committee, that I want to move that this hearing into the Telstra annual report,

which is the basis of how we had this hearing, be adjourned and that, until we get all the answers back from Telstra on notice and we also see the progress Telstra has made in settling these outstanding CoT cases, the committee reserves the right to hold another hearing on the evidence we receive back. In view of what we have heard tonight, I do not think anybody would argue that there are still many matters outstanding that we need information on and that a further hearing this way is a much better way to go than going to a fully fledged Senate inquiry, which I think even Telstra has lobbied against.

A hearing in this format has got to the bottom of a lot of stuff much more quickly. Perhaps we could adjourn this hearing until a later stage till we get all the evidence back and see whether we want to invite not only Telstra back, but anybody else back. If anybody who has attended tonight wishes to provide any other information to us, they should feel free to do so.

**CHAIR**—Senator Schacht, I think we should have a private meeting to decide whether to do that. I will adjourn the hearing now. I think we should decide that in a private meeting and it may require a vote.

I suggest to Telstra and anyone else that any questions that were asked on notice should be answered within four weeks of today's date. So we should expect them by close of business four weeks today, which is a Tuesday. I think that is a reasonable time for those responses. I thank the officers from Telstra who have attended and also Mr Wynack and Mr Pinnock. I also thank the witnesses who have come. Obviously, it could have been more difficult tonight, because it is a very emotionally charged thing. I appreciate the fact that people were controlled and that this was held in an orderly and appropriate way.

I thank honourable senators for their participation and cooperation, committee staff and *Hansard*. Thank you very much.

**Committee adjourned at 11.07 p.m.**