# CAV
# CHRONOLOGY
# LGE

# Exhibits 701 to 756

95/0000-117

2nd attempt at sending!

270.

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URGENT

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

Telecommunications Industry Ombudsman

URGENT

# Facsimile Cover Sheet

PRIVATE & CONFIDENTIAL

TO: Norm O'Doherty

Company: AUSTEL

Fax: 820 3021

FROM: Pia Di Mattina

Company: TIO

Fax:

Date: 22.6.94

Pages: 12 (including cover sheet)

Comments:

Norm,

Copy of fax received from Telecom, as discussed, and for your information (and comment, ASAP!)

Regards,

Pia

701

-95/0600-02

Telecom AUSTRALIA

Commercial & Consumer
30th Floor
242 Exhibition Street
Melbourne Vic 3000
Australia

Telephone (03) 632 7770
Facsimile (03) 632 3241

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22 June 1994

Mr Peter Bartlett
Minter Ellison Morris Fletcher
By Facsimile: 617 4666

Dear Peter

**Special Rules for Arbitration of 12 Claims Referred to Telecom by Austel**

I refer to our meeting at the TIO's office last Friday, 17 June 1994.

1. **Rule 9.3**

Telecom has reviewed rule 9.3 and agrees to delete this provision from the rules, provided that rules 4.8, 5.2, 5.4 and 9.2 are amended as marked up in the enclosed set of rules.

It is Telecom's view that these amendments simply expressly state what the arbitrator's powers to make directions pursuant to rules 4.8 and 5.4, already cover. Since these provisions only apply after a claimant is given an opportunity to remedy its default under the procedure, they would not affect bona fide claimants who lodge genuine claims. Telecom considers that expressing the amended rules in this way will act as a useful deterrent and safeguard against claimants lodging and pursuing claims which are not genuine.

2. **Letter to the claimants which is to accompany the rules of arbitration**

A draft letter to be sent to the relevant claimants with the rules of arbitration, is enclosed for your consideration and comment.

3. **Timetable**

A timetable for the commencement of the arbitrations is also enclosed. The proposed operation of the timetable is as explained in the draft letter to the claimants.

4. **Pool of Arbitrators**

I note that the pool of arbitrators to be used to conduct the arbitrations, is still to be finalised.

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Please contact me once you have had an opportunity to consider the above, in order to discuss finalisation of the rules.

Yours sincerely

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

cc: Warwick Smith, TIO

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DRAFT 95/0600-02

[Letter to Relevant Claimants re Special Rules of Arbitration] 126

Dear X,

**Special Arbitration Procedure**

The TIO and Austel have established with Telecom a special arbitration procedure to assist the resolution of a small number of Telecom customer disputes. Your dispute is one of these.

The procedure has been designed to meet the following objectives:

- to operate in accordance with the principles of natural justice;
- to allow the arbitrator to relax certain rules of law if necessary;
- to resolve the disputes as quickly as justice to all the parties reasonably permits; and
- to operate cost-effectively.

A copy of the relevant rules of arbitration are enclosed. You should read these rules very carefully. Briefly, from the date of commencement of your arbitration, you will have six weeks in which to submit a complete claim. Telecom will then have six weeks in which to submit a defence to your claim. You will then have up to three weeks in which to submit a reply if you wish. The arbitrator will then make a determination on the dispute. The arbitrator has certain discretions to vary the procedure in the interests of fairness, where appropriate. The arbitrator's award will be binding on you.

Arbitration is not compulsory or automatic. You have up to XX days in which to consider whether you wish to submit your dispute with Telecom to arbitration under this procedure. To submit your dispute to arbitration, you must send a completed application (see Schedule A of the Rules) to the TIO.

In order to ensure that the procedure operates effectively, the TIO and Austel have reached the following agreements with Telecom.

1. **Timetable for arbitration**

The commencement of arbitrations under this procedure will be determined according to a fixed timetable. Your dispute is currently scheduled for commencement starting XX.

You must send a completed application to the TIO by XX if you wish to preserve your priority in the timetable. If your application for arbitration is not received by then, your place in the schedule may be made available to another claimant and you may lose it. You will still be able to apply for arbitration under this procedure after XX, provided you apply before XX. In that case, you will be advised of the scheduled commencement date of your arbitration after your completed application is received.

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2. **Documents Telecom will provide you without charge**

In order to assist you in preparing your case for arbitration, Telecom has agreed to provide you without charge, within XX days of the commencement of your arbitration, all of the following records Telecom has on your telephone services which are the subject of your dispute with Telecom:

(a) Fault histories available from Telecom's Leopard and Service Plus databases;
(b) Call data records (to the extent that they exist);
(c) Files of the Customer Services Manager handling your dispute; and
(d) Individual reports prepared by Telecom's Network Operations, National Network Investigations and Commercial & Consumer sections, on your telephone services.

These records will be provided based on the telephone service numbers you set out in the application for arbitration as being the subject of the dispute. It is therefore important for you to specify each telephone service number which relates to the dispute, in your application for arbitration.

? Telecom may, if it chooses, apply the exemptions set out in the Freedom of Information Act ("FOI Act") to the records it releases, as if they were documents being released under the FOI Act. Telecom has agreed that for each document from which information is deleted, it will provide to you details of the nature of the information deleted, the sections of the FOI Act relied upon, and Telecom's reasons for applying those exemptions. You will also be given a list of the documents exempted in total, which will contain the same details in respect of each of those documents.

Neither the TIO, Austel nor Telecom represent that these are all the documents which you will require for the preparation and conduct of your case. Whatever documents you choose to rely upon to prepare and conduct your case is a matter for you alone to decide.

Under the arbitration procedure, you will be able to ask the arbitrator to direct Telecom to provide you with any further relevant documents you require. The arbitrator would normally consider such a request after you have filed your claim, so that the arbitrator can determine the relevance of your request to your claim. You may also choose to apply to Telecom for any documents under the Freedom of Information Act, independently of the arbitration process.

If, after you have read and considered the enclosed rules, you wish to submit your dispute to arbitration under this procedure then you should send a completed application to the TIO as soon as possible, but in any case before XX.

Yours sincerely

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# TIMETABLE FOR SPECIAL ARBITRATION

95/0600-02

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Commencement of Arbitration: 20.07.94

1. "Lowey's Restaurant"
2. "Gourmet Revolution"
3. "Ralphies Pasta & Pizza"
4. "J & A Pine Products"

Commencement of Arbitration: 14.09.94

5. "Glenwaters Fish Farm"
6. "Nelson Bay Cranes"
7. "Dawson's Pest and Weed Control"
8. "Michael Weigmann Drafting Service"

Commencement of Arbitration: 09.11.94

9. "Barham Bridge Motel"
10. "Therese Trzcionka's Hairdressing Salon"
11. "Bentinck Country House"
12. "Ringwood Lake Motor Inn"

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# SPECIAL RULES FOR ARBITRATION OF 12 CLAIMS REFERRED TO TELECOM BY AUSTEL

95/0600-02

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## 1. Nature of the Procedure

1.1 These Rules ("the Rules") provide an arbitration process (the "Arbitration") to resolve individual disputes ("the Dispute") between Telstra Corporation Limited ("Telecom") and the customers listed in Schedule C, which is designed to:

1.1.1. operate in accordance with the principles of natural justice;
1.1.2. allow the arbitrator to relax certain rules of law if necessary;
1.1.3. resolve the dispute as quickly as justice to all the parties reasonably permits; and
1.1.4. operate cost-effectively.

1.2 The Arbitration will be subject to the Commercial Arbitration Act 1984 (Victoria), as amended ("the governing Statute"), except to the extent of any inconsistency with these Rules. The Arbitration will be administered independently by the Telecommunications Industry Ombudsman or his nominee ("the Administrator").

## 2. Application for Arbitration

2.1 A customer listed in Schedule C who wishes to refer a Dispute to arbitration under these Rules ("the Claimant") must send to the Administrator a completed application form as set out in Schedule A ("Application").

2.2 Upon receipt of an Application from the Claimant, the Administrator will forward the Application to Telecom. Upon receipt of the Application from the Administrator, Telecom shall sign and return the Application to the Administrator within seven days.

2.3 Upon receipt by the Administrator of an Application signed by both parties, the Administrator will without delay:

2.3.1 dispatch notice to both parties that the Arbitration will proceed;
2.3.2 nominate a single arbitrator ("the Arbitrator") to hear and determine the Dispute from the pool of arbitrators established by Telecom and the Telecommunications Industry Ombudsman for the purpose of these Rules; and
2.3.3 distribute notices to both parties confirming the nomination of Arbitrator.

2.4 An application for arbitration under these Rules does not relieve a Claimant from any obligation the Claimant may have to pay Telecom any amounts which are due and which are not part of the Dispute, and Telecom does not waive any rights which it has to pursue payment of such amounts.

## 3. Commencement of Arbitration

the admin. to notify the parties in accordance with rule 2.1

3.1 The Arbitration commences for the purpose of these Rules when the Application is received by the Administrator in accordance with rule 2.1.

3.2 Upon commencement of the Arbitration the parties will be deemed to have waived their respective rights to commence proceedings in any court or in any other forum in respect of the facts and matters the subject of the Dispute. Subject to the parties' appeal rights under the governing Statute, any decision made by the Arbitrator in respect of the Dispute pursuant to these Rules, including any decision to dismiss the Claimant's Claim, shall be full, final and binding on the parties.

## 4. Arbitration Process

4.1 Subject to rule 6, the evidence tendered in the Arbitration will be by way of documents and written submissions only. All written evidence shall be in the form of a statutory declaration.

4.2 The Claimant shall send to the Administrator, in triplicate, within six (6) weeks of receiving notice from the Administrator pursuant to rule 2.3.1 that the Arbitration is to proceed, the Claimant's Points of Claim and any written evidence and submissions in support of that claim together with all further documents that relate to any issue in that claim ("the Claim Documents"). The Points of Claim shall, with sufficient particularity, include:

4.2.1 the identity of the Claimant or Claimants;

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4.2.2 the problems and faults in the telecommunications service which are alleged to have occurred, including the dates and periods over which such faults allegedly occurred;

4.2.3 particulars of any efforts which have been undertaken by the Claimant to draw Telecom's attention to the problems and faults the subject of the Dispute, together with particulars of any subsequent response from Telecom;

4.2.4 particulars of how loss has been caused by Telecom; and

4.2.5 the loss suffered and particulars of how that loss is calculated.

4.3 Upon receipt by the Administrator of the Claim Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and Telecom.

4.4 Telecom shall send to the Administrator, in triplicate, within six (6) weeks of receipt of the Claim Documents, Telecom's Points of Defence and Counterclaim (if any) and any written evidence and submissions in support of that Defence and Counterclaim, together with all further documents that relate to any issue in the in the Points of Claim, Defence or Counterclaim ("the Defence Documents"). The Points of Defence shall, with sufficient particularity, state the following:

4.4.1 Telecom's answers to the allegations referred to in the Points of Claim; and

4.4.2 any affirmative defence which Telecom will seek to rely upon.

4.5 Upon receipt by the Administrator of the Defence Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and the Claimant.

4.6 The Claimant may send to the Administrator, in triplicate, within three (3) weeks of receipt by the Claimant of the Defence Documents, a Defence to any Counterclaim made by Telecom and/or Reply to the Points of Defence (if any) together with any written evidence and submissions in support of that Defence or Reply and all further documents that relate to any issue in that Defence, Counterclaim, Defence to Counterclaim or Reply (the "Reply Documents"). Any such reply will be restricted to points arising in the Points of Defence, and may not introduce any new matters, points or claims.

4.7 Upon receipt by the Administrator of the Reply Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and Telecom.

4.8 If the Claimant does not send to the Administrator the Claim Documents within the time allowed and does not remedy this default within two weeks after dispatch to the Claimant by the Administrator of written notice of that default, the Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including dismissing the Claimant's claim and/or determining that the Claimant shall pay all or part of the administrative costs of the Arbitration to the Administrator.

4.9 If Telecom does not send to the Administrator the Defence Documents within the time allowed and does not remedy its default within two weeks after dispatch to Telecom by the Administrator of written notice of that default, then the Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including a direction that the Arbitration will proceed and be decided by the Arbitrator by reference to the Claim Documents only.

4.10 Either party may, prior to the expiry of any of the deadlines specified in these Rules, request the Arbitrator (by writing to the Administrator) for an extension of time to meet a deadline. Subject to rule 4.12.1, no request for an extension made after the expiration of a deadline will be allowed. The other party will be notified of such request forthwith in writing by the Administrator and if there is any objection then the Arbitrator will be asked to give directions and the Arbitrator may make such direction as to the grant of further time as the Arbitrator deems appropriate in the circumstances.

4.11 The Arbitrator and Administrator shall conduct and progress the Arbitration as quickly as justice to all the parties reasonably permits.

4.12 The Arbitrator may in the Arbitrator's discretion (having regard to the objectives of the Arbitration set out in Rule 1.1):

4.12.1 vary rules 4, 5 and 6; and/or

4.12.2 seek a direction from the Administrator that, in order to assist the Arbitrator to make the Arbitrator's decision, the Arbitrator may use an independent expert resource unit to examine documents, inspect premises or systems, or carry out other enquiries or research.

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**Production of Further Documentation or Information, and Directions**

5.1 Without limiting any rights the parties may have to obtain documents or evidence under the governing Statute, at any time after the commencement of the Arbitration, either party may send a request in writing to the Arbitrator to:

5.1.1 require the other party to produce further documents or information;
5.1.2 require the other party to provide further particulars of claim or defence; or
5.1.3 make directions generally in relation to the conduct of the Arbitration.

A request under this rule 5.1 must be supported by written reasons. A copy of the request and the written reasons shall be sent by the party making the request, to the Administrator and the other party at the same time that it is sent to the Arbitrator. The other party will be afforded an opportunity to make written submissions in relation to the request within such time as the Arbitrator reasonably prescribes.

5.2 If the Arbitrator reasonably believes that the further documents, information and/or particulars requested by a party under rule 5.1 is or are relevant to the Arbitration, or that the directions requested are appropriate having regard to the objectives of the Arbitration set out in Rule 1.1), or if the Arbitrator requires any further documents, information and/or particulars to assist the Arbitrator to make the Arbitrator's decision, the Arbitrator will:

5.2.1 require the other party by a specified date, by notice in writing, to provide the further documents, information and/or particulars; and/or
5.2.2 require the parties to attend for directions.

provided that the Arbitrator may not require the production of documents protected by legal professional privilege or which are required to be kept confidential pursuant to any statute or any subordinate legislation.

5.3 A party receiving a notice from the Arbitrator pursuant to rule 5.2.1 will within such time as the Arbitrator has prescribed in the notice send to the Administrator in triplicate either:

5.3.1 the further documents or information and/or particulars, as the case may be, in which case the Administrator will immediately send a copy of those documents to the Arbitrator and the other party, and the other party will be afforded an opportunity to make written submissions in relation to them within such time as the Arbitrator reasonably prescribes; or
5.3.2 a reasonable explanation for non-compliance with the notice.

5.4 If either party does not comply with a notice from the Arbitrator pursuant to rule 5.2.1, the Arbitrator shall immediately stay the Arbitration until either the notice is complied with or the Arbitrator determines that the party receiving the notice has given a reasonable explanation for non-compliance. In the event that the notice is not complied with and no reasonable explanation is given for a period of four (4) weeks after the date specified in the notice for compliance, then the Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including, if the Claimant is the party in default, dismissing the Claimant's claim and/or determining that the Claimant shall pay all or part of the administrative costs of the Arbitration to the Administrator in [illegible].

6. **Oral Hearings**

6.1 Either party may send a request in writing to the Arbitrator for oral hearings to take place. A request under this rule 6.1 must be supported by written reasons. A copy of the request and the written reasons shall be sent by the party making the request, to the Administrator and the other party at the same time that it is sent to the Arbitrator. The other party will be afforded an opportunity to make written submissions in relation to the request within such time as the Arbitrator reasonably prescribes.

6.2 If the Arbitrator reasonably believes that a hearing requested by a party under rule 6.1 would enable new evidence or submissions relevant to the Dispute to be presented by a party to the Arbitrator in a manner that fulfills the objectives of the Arbitration as set out in rule 1.1 more effectively than would written submissions, or if the Arbitrator requires hearings to assist the Arbitrator to make the Arbitrator's determinations pursuant to rule 7, the Arbitrator will direct that an oral hearing take place.

6.3 If the Arbitrator directs an oral hearing to take place, the Arbitrator will, after consulting with the parties, advise the parties of a date, time and venue for the hearing.

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6.4 Any oral hearing will not be open to the public nor any other non-parties to the Arbitration save that the Administrator or his or her delegate shall be permitted to attend oral hearings in order to observe the conduct of the hearing, and any legal or financial advisers to the parties shall also be permitted to attend oral hearings, conduct hearings, and make submissions on behalf of the relevant party, provided that each individual adviser signs a confidentiality undertaking in the form set out in Schedule B and sends that confidentiality undertaking to the Administrator prior to receiving any Confidential Information.

6.5 Any oral hearing shall be limited to legal submissions and clarification of technical engineering issues already raised, cross examination of any deponents of sworn evidence filed in the Arbitration, and any reply to such cross examination.

6.6 All oral evidence given at a hearing shall be on oath or affirmation. A transcript of the oral evidence and submissions given at a hearing shall be made. The cost of the transcript shall be an expense of the Administrator incurred in relation to the Arbitration for the purposes of rule 9.

7. **The Award**

7.1 The Arbitrator will determine loss and Telecom's liability.

7.1.1 In relation to loss the Arbitrator will make a determination:

7.1.1.1 taking into account the documents, evidence and submissions submitted by the parties and, if applicable, any oral evidence presented to the Arbitrator by the parties;

7.1.1.2 taking into account what proportion of the Claimant's demonstrated loss is attributable to faults or problems in the Claimant's telephone service and what proportion is not so attributable, and Telecom shall only be held responsible for loss attributed to faults or problems in the Claimant's telephone service; and

7.1.1.3 giving due regard to the normal rules of evidence and legal principles relating to causation, subject to any relaxation which is required to enable the Arbitrator to make a determination on reasonable grounds as to the link between the Claimant's demonstrated loss and alleged faults or problems in the Claimant's telephone service, and to make reasonable inferences based upon such evidence as is presented by the Claimant and by Telecom.

7.1.2 In relation to Telecom's liability if any, to compensate for any demonstrated loss on the part of the Claimant the Arbitrator will:

7.1.2.1 take into account Telecom's legal liability (if any) to the Claimant including any contractual or statutory limitations on Telecom's liability, and any limitations on Telecom's liability to the Claimant as determined by Austel from time to time pursuant to section 121 of the Telecommunications Act 1991;

7.1.2.2 give due regard to the normal rules of evidence and legal principles relating to causation, subject to any relaxation which is required to enable the Arbitrator to make a determination on reasonable grounds as to the link between the Claimant's demonstrated loss and alleged faults or problems in the Claimant's telephone service, and to make reasonable inferences based upon such evidence as is presented by the Claimant and by Telecom;

7.1.2.3 take into account any amounts paid or rebates granted to the Claimant by Telecom to date.

7.2 The Arbitrator will make an award ("the Award") according to the Arbitrator's determinations made pursuant to rule 7.1. The Award shall be compensatory and not punitive, and shall not include any heads of damage not recoverable at law. The Arbitrator's reasons will be set out in full in writing and referred to in the Award.

7.3 The Arbitrator will send copies of the Award to the Administrator and to each of the parties to the Arbitration.

7.4 Unless directed otherwise in the Award or the parties otherwise agree, within three weeks of dispatch to the parties of the Award, payment shall be made of any monies directed by the Award to be paid. Such payment shall be made by the party liable direct to the party entitled, and not through the Administrator. The Administrator shall be advised in writing by the party liable that such payment has been made.

7.5 The Award shall be final and binding on the parties, subject to the appeal provisions of the governing Statute.

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8. **Confidentiality**

8.1 For the purposes of these Rules, "Confidential Information" means information relevant to the Arbitration (including the subject matter and conduct of the Arbitration, the Claim Documents, Defence Documents, Reply Documents any other documents provided or oral evidence given in the Arbitration by either party, and any Award) other than:

8.1.1 information which at the time of disclosure to a party to arbitration is in the public domain,

8.1.2 information which, after disclosure to a party to the arbitration, becomes part of the public domain otherwise than as a result of the wrongful act of the party to whom the information was disclosed,

8.1.3 information which was received from a third party, provided that it was not acquired directly or indirectly by that third party from a party to the arbitration, or;

8.1.4 information properly obtained under the Freedom of Information Act 1982.

8.2 The Confidential Information shall at all times during the Arbitration be kept strictly confidential by the Administrator, the Arbitrator, and the parties to the Arbitration. A party may disclose Confidential Information to the party's legal or other advisers notwithstanding this rule 8.2 provided that the party has first ensured that every such individual adviser has signed a confidentiality undertaking in the form set out in Schedule B and has sent that confidentiality undertaking to the Administrator. If there is any disclosure of the Confidential Information by a party, then the Arbitrator may take such steps as the Arbitrator thinks appropriate including the dismissal of the Claimants' claim in the event of a disclosure by the Claimant.

8.3 The Confidential Information shall at all times be kept strictly confidential by the Administrator, the Arbitrator, and the parties to the Arbitration, provided that:

8.3.1 the Administrator or Arbitrator may provide copies of documents relevant to the Arbitration which are sent by the parties to the Administrator or Arbitrator respectively, to an independent expert resource unit, on the basis that the independent expert resource unit signs a confidentiality undertaking in the form set out in Schedule B and sends that confidentiality undertaking to the Administrator prior to receiving any Confidential Information;

8.3.2 the Administrator may retain copies of the Award and the documents relevant to the Arbitration which are sent by the parties to the Administrator, for the purpose of maintaining a precedent library for the sole and confidential reference of arbitrators in future arbitration cases; and

8.3.3 the Administrator may, after the Arbitrator has made an Award, publicly release general information to the effect that disputes have been fully and finally resolved applying the Rules, but the Administrator may not publicly release any information which is reasonably capable of identifying the parties to the Arbitration or the quantum of the Award, or of undermining in any way the determination of the Arbitrator.

8.4 Any party may seek injunctive relief or make a claim for any damages suffered as a result of any disclosure contrary to this rule 8.

9. **Costs**

9.1 Each party bears its own costs of preparing and submitting its case.

9.2 Subject to rules 4.8 and 5.4 ~~9.3~~, the Arbitrator's fees and expenses and the Administrator's expenses in relation to the Arbitration ("the administrative costs of the Arbitration") shall be paid by Telecom in accordance with a separate agreement between the Administrator and Telecom.

~~9.3 If the Claimant does not establish to the Arbitrator that the Claimant had reasonable grounds to bring the Dispute to arbitration under these Rules (having regard to the quantum claimed by the Claimant, the Award and any steps taken to resolve the Dispute including any settlement offer made to the Claimant by Telecom), the Arbitrator shall make a determination that the Claimant shall pay to Telecom all or any part of the administrative costs of the Arbitration and in such case that part of the administrative costs of the Arbitration shall be deducted from any monies payable by Telecom to the Claimant (if any) pursuant to the Award. In the event that the monies payable by Telecom to the Claimant under the Award are less than the administrative costs of the Arbitration, the Arbitrator may determine that the Claimant shall pay to Telecom all or any part of the difference.~~

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10. **Notices**

10.1 All documents letters and notices sent to a party, the Administrator or the Arbitrator in relation to these Rules shall be delivered by hand or sent by certified mail, courier or facsimile.

10.2 All documents letters or notices sent to Telecom in relation to these Rules shall be addressed to:

National Manager - Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000.
Facsimile: (03) 634 8441

11. **Liability of Administrator, Arbitrator and any Independent Expert Resource Unit**

11.1 Neither the Administrator nor the Arbitrator shall be liable to either party for any act or omission in connection with the Arbitration save that the Arbitrator and the Administrator shall be liable for his or her own fraud or deliberate wrongdoing.

11.2 The liability of any independent expert resource unit used by the Arbitrator, for any act or omission on their part in connection with the Arbitration, shall be limited to $250,000.00.

12. **Return of documents**

12.1 If either party has sent documents in support of its case to the Administrator or Arbitrator, that party may within six weeks of publication of the Award request the return of those documents, provided that nothing in this rule shall prevent the Administrator retaining a copy of documents for the purposes of maintaining a precedent library for future arbitrators, in accordance with rule 8.3.2. Subject to that, all documents relating to the Arbitration held by the Arbitrator will be delivered to the Administrator, and the Administrator may retain any documents relating to the Arbitration and may in due course dispose those documents in accordance with the Administrator's policies from time to time.

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# TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

# STANDARD ARBITRATION RULES

## *OVERVIEW OF ARBITRATION*

### Rule 1

**How Does Arbitration work?**

These rules provide an informal and inexpensive Arbitration procedure as a method of resolving disputes between a Customer and a Carrier.

The object of the Arbitration is for the Arbitrator to make an Award.

While the Arbitration will primarily be by an exchange of documents and written submissions (See Rule 15), the Arbitrator can order that an oral hearing be held (See Rule 24), to allow the parties to also put their arguments in person.

The Arbitration is designed to:

a) operate in accordance with the principles of natural justice;
b) allow the Arbitrator to relax certain rules of evidence as needed;
c) resolve the dispute as quickly as justice to all the parties reasonably allows; and
d) operate with minimal cost to the Customer - the only cost to the Customer is the Customer's own costs of preparing his or her submissions for the Arbitrator (see Rules 6, 7, 10, 13, 14, 17 and 29).

### Rule 2

**Who controls the Arbitration?**

The Telecommunications Industry Ombudsman (TIO) is responsible for the development of procedures, such as these rules, for the fair, just, economical, informal and speedy handling of complaints regarding telecommunications services.

The TIO is independent of governments, carriers, and other interested bodies. Representatives from consumer groups, small business, and all general and mobile telecommunications carriers are members of the TIO Council.

These rules are administered by the Telecommunications Industry Ombudsman (or a person he or she appoints) who is called the "Ombudsman" in these rules.

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## Rule 31

**Liability of the Ombudsman, the Arbitrator and any independent expert assistant or advisor to the Arbitrator.**

The Ombudsman or the Arbitrator is not liable to either party for any act or omission in connection with the Arbitration. However, the Arbitrator or the Ombudsman is liable for his or her own fraud or deliberate wrong doing in connection with the Arbitration.

The liability of any independent experts used by the Arbitrator is limited to $250,000 for any act or omission on their part in connection with the Arbitration.

## Rule 32

**Return of documents**

If either party has sent original documents to the Ombudsman or the Arbitrator, that party may request the return of those documents within six (6) weeks of being notified of the Arbitrator's Award.

Otherwise, the Arbitrator must deliver all documents relating to the Arbitration to the Ombudsman. The Ombudsman may keep any documents relating to the Arbitration as long as they remain confidential as set out in Rule 28, and may dispose of those documents, in accordance with the Ombudsman's policies, after one (1) year of the Arbitrator having given his or her Award.

The parties may retain those documents provided to them during the course of the Arbitration, but must be mindful of their obligations of confidentiality (see Rule 28), which continue to bind them even after the conclusion of the Arbitration.

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6/9

Jan Collwer — 55265264
2 Persons Dinner

Bob Ong.
Faxed info $400 beyond front heater

Kalina — Problem with truck. deliver tomorrow

7/9 PHONE FAULT REPORT TELSTA 12pm
JOB No. S 1096-96122
Eileen — Faults centre.
Tuesday 9-12pm
Unplug each appliance + try line.

ANDREW. HUMPERSTONE
526~~8844~~

(RING Shane) No Sent INFORMATION
MONDAY OVER-NIGHT BAG

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Max Dolman
Coastal Real Estate

**Darren and Jenny Lewis**
**Cape Bridgewater Coastal Camp**
**RMB 4408, Cape Bridgewater**
**Portland, 3305**
**Phone: 03 55 267 267**

1st September 2004

David Hawker MP
Federal Member for Wannon
190 Gray Street
Hamilton 3300

Dear Mr Hawker,

Thank you for your letter of 26th July 2004, and for your continued support since my wife and I purchased our Holiday Camp in December 2001. I must also reiterate my thanks for the pressure you put on Telstra late in 2002 – I believed it was this that finally forced them to re-wire the Kiosk at the Camp and disconnect the faulty telephone alarm bell which local Telstra employees believed could have been causing some of the problems with incoming calls.

Although the incoming calls increased dramatically once the re-wiring had been done, the trauma of the first year we were here has not gone away. Ploughing all our energy into attempting to establish a name in the business while dealing with the appalling level of telephone service has taken an enormous toll and, though Telstra and others may well believe that all the phone faults have now been fixed, we still wonder every time the level of incoming calls drops. The stress has been so intense that I have now been forced to seek professional counselling.

When we came to Cape Bridgewater, all my wife and I wanted was a clear twelve months to establish the business properly. In October 2001, when Alan Smith, the previous owner, told us all the phone faults had been fixed, we truly believed him but information and camp records left behind by Mr Smith show that he and Cathy were still complaining about the faults, to Telstra, you and Senator Alston, only weeks before we took over in the December. While I understand why Alan lied to me about the phone faults, that knowledge doesn't compensate for the trauma we have had to suffer – Jenny and I now believe our dream of running this business successfully was destroyed before we even had a chance.

The psychologist I am seeing has advised me to sell up because he is seriously concerned about my mental health, which he believes is at breaking point. We have therefore decided to put the Camp up for sale this week, so your advice that the local exchange will soon be upgraded is of little help to us now.

Again, thank you for looking into these matters on our behalf.

Sincerely,

D. Lewis

Darren Lewis.

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Telecom Australia

# Minute

File HA - AC 4/1/18 Subject GRADE OF SERVICE COMPLAINT
MR ALAN SMITH 055-26 7267

Phone 055-73 0200 From MARK ROSS - CUSTOMER SERVICES
MANAGER - HAMILTON

To MANAGER - CSU's VICTORIAN COUNTRY REGION
ATTENTION: JOHN M^CCREERY

John

As requested, full history of customers complaint.

Mr Smith has had an on going "Grade of Service" complaint, originally raised in March of 1991, complaining of not receiving calls.

Special Inspection was carried out which found no faults present. An interview of customers on the Cape Bridgewater exchange found only one other customer had experienced this problem.

In August 1991, customer complained of calls receiving engaged tone when calling, even though called party's line was not busy.

A report from the Exchange O.I.C., advised that Mr Smith's service had been full investigated, with a change of cable pairs, and replacement of customer equipment.

No positive reason for fault could be found. Tests on incoming STD calls showed service working correctly.

Congestion between Cape Bridgewater and Portland had been prevalent as only five Junctions available. This situation was to be upgraded with the cutover of Cape Bridgewater RAX to an RCM parented back to Portland AXE 104.

On 17 March 1992, a trouble report was received from Mr Smith complaining customers were receiving recorded message advising that his number 055 267267, was disconnected. Similar faults were reported from two other Cape Bridgewater customers.

Investigations by technicians at Portland found that in one of the two switching exchanges in Melbourne, incorrect data was present for Cape Bridgewater.

This fault was rectified on 1 March 1992. Mr Smith again reported trouble on 25 March 1992, with calls from the Greyhound Express Terminal in Melbourne receiving the recorded message. However, subsequent tests carried out on the 26 March 1992 found no fault.

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K02604

# Minister for Communications

The Hon. David Beddall, MP

9 DEC 1993

Senator Michael Baume
Senator for New South Wales
PO Box 473
WOLLONGONG EAST NSW 2520

Dear Senator Baume

Thank you for your representations of 5 November to Senator the Hon Bob Collins, Minister for Transport and Communications, on behalf of Mr Alan Smith, Cape Bridgewater Holiday Camp, RMB 4408, Cape Bridgewater, Victoria, concerning the standard of service he has received from Telecom Australia. Senator Collins has referred your letter to me in view of my responsibility for matters relating to telecommunications.

I wrote directly to Mr Smith on 10 November 1993 with regard to this issue.

Let me say that the Government is most concerned at allegations that Telecom has not been maintaining telecommunications service quality at appropriate levels. I accept that in a number of cases, including Mr Smith's there has been great personal and financial distress This is of great concern to me and a full investigation of the facts is clearly warranted.

I have personally communicated these concerns to the Chairman and Chief Executive Officer of Telecom and asked them to take a direct interest in the resolution of the so-called "Casualties of Telecom" (COT) cases.

You may be aware that AUSTEL, the independent telecommunications regulatory authority, has a clear function of safeguarding consumer interests. It has powers under the Telecommunications Act 1991 to investigate consumer complaints about the supply of telecommunications services.

AUSTEL is currently conducting a thorough investigation to determine the exact nature and extent of the problems experienced by some Telecom customers. AUSTEL expects to finalise its report shortly.

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Parliament House, Canberra, ACT 2600 Telephone (06) 277 7440 Facsimile (06) 273 4134

Telecom, for its part, has deployed a dedicated customer service review team to work with affected customers to rectify their problems. It has also commissioned independent experts to assess Telecom's technical and administrative responses to complaints of this nature, and to recommend changes to improve its complaints handling procedures.

I will be giving close attention to AUSTEL's report on the results of its investigations and proposed action to address these issues.

Yours sincerely

DAVID BEDDALL

The fast track settlement proposal, with Dr Gordon Hughes at the helm, had foundered during November and December 1993. By March 1994 TELSTRA were using their corporate strength to force the C.O.T. members into expensive and time-consuming legal processes. If TELSTRA could not get the arbitration process they had wanted since September 1993 it appeared that they would pick up their ball and go home.

EVENT planning ... Cape Bridgewater tourism operators discuss options including an annual major event on New Year's Day. Form left: Kim Ount, Jenny Lewis, Will Ount, Darren Lewis, Dennis Carr, Sarah Berry and Jo Austin. Picture: PHILLIP BIGGS

# Plans afoot to attract tourists

By BILL MELDRUM

THE Cape Bridgewater Tourist Association is planning a major annual swimming event each New Year's Day in a bid to attract more tourists to the area.

Association spokesman Jo Austin said planning of the event was in its early stages, but that there would be significant benefits to the area along with Portland.

In other developments the association has written to Glenelg Shire Council seeking a delegation of councillors and senior managers on site to inspect the problems associated with the Bridgewater Bay public toilet block.

Several tour operators have threatened to withdraw from sending tour parties to the Cape Bridgewater area unless there is a substantial upgrade of the toilet block.

The council allocated $5000 for design work on a new toilet block in this years budget and has foreshadowed $100,000 in grants to build the block the in three years time.

However, the association is pushing for faster action, with members frustrated and angry the issue has been on the agenda for more than 10 years.

At their meeting on Tuesday, association members also expressed continuing problems with telecommunications into the area.

One operator Dennis Carr said that in recent times, his business had received 16 phone calls where the phone had rung but there had been no-on there when he answered, and attempts to retrieve the calls had proved fruitless.

He said he had been told Telstra was rectifying the problem.

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*Contrary to your advice Mr Smith is claiming to be experiencing on-going problems.*[14]

22 In fact, Mr Smith had made a number of recent complaints to the Commercial Vic/Tas area, and it appears that the local Portland Telecom staff were also dealing with his complaints at this time. A file note made by a Telecom Commercial Vic/Tas officer on 10 February 1993 states that he has contacted that a local Portland officer then dealing with Mr Smith's complaints who informed him that he believes:

> *he has exhausted the full extent of his knowledge with regard to Mr Smith's problem and he would appreciate some assistance from a specialist area.*[15]

23 It is difficult to discern exactly who had responsibility for Mr Smith's problems at this time, and how information on his problems was disseminated within Telecom. Information imparted by the Portland officer on 10 February 1993 of suspected problems in the RCM "caused by a lightning (sic) strike to a bearer in late November" [16] led to a specialist examination of the RCM on March 2 1993. Serious problems were identified by this examination. (The RCM issue is discussed in detail under Allegation 3.) A co-ordinated approach to Mr Smith's problems would almost certainly have led to a more rapid discovery of this source of problems on the Cape Bridgewater Holiday Camp service.

24 One can sympathise with Alan Smith when he comments on the frustration of dealing with multiple areas of Telecom and often not being sure actually who was dealing with his complaints. [17]

**Adequacy of Response**

25 It should also be noted that during the period of time covered by this chronology of significant events it is clear that -

---

[14] 746

[15] Customer Complaint Form print out - Smith Monitoring folder.

[16] Customer Complaint Form print out - Smith Monitoring folder.

and 7 October 1992, with the effect being that a small percentage (2.5% of Portland area traffic) to CBHC was affected;

- damage was caused to Cape Bridgewater RCM equipment by a lightning strike on 21 November 1992, resulting in a variety of complaints which affected services for 4 days before restorative action was taken. The restorative action "may have been less than successful";

- the claimant's services were affected for at least 50 days (probably 70 days) in early 1993 whilst RCM1 problems were tracked down and work specifications to correct known design faults were carried out;

- there is evidence that in March 1993, because Warrnambool AXE was under provided with call supervision devices ("CL-Blocks"), calls would drop out after one burst of ring during high traffic periods. This affected calls sourced from this area, estimated to be in the order of 10% of Cape Bridgewater Holiday Camp traffic;

- on 29 March 1993, all Cape Bridgewater services were off the air for 9 minutes due to a software fault in Portland AXE Exchange;

- between 3 April and 5 June 1993, network faults caused a range of problems;

- there is evidence of problems arising from a Malicious Call Trace (MCT) facility placed on the claimant's line in May 1993. Although normally used by Telecom to assist customers in identifying unwelcome callers, the MCT was placed on the claimant's service at the Portland exchange in an attempt to determine who was calling the claimant so that this information could be matched against complaints. David John Stockdale states that Telecom "inadvertently caused a fault ourselves as part of implemented testing procedures", that is, the MCT. Problems arising from this process included the fact that calls could not be made or received for a 90 second period following hang-up. This problem existed until early August 1993;

- there is evidence that congestion on the Warrnambool to Portland Exchange route may have caused "false busies" between March 1993 and April 1994;

- there is evidence that calls from coin operated pay phones connected to the Portland AXE104 would drop out on answer when calling a 008 number between June and August 1993. This condition affected calls to CBHC 008 number from pay phones in the Portland area and calls from the gold phones to 008 numbers;

# The Institute of Arbitrators Australia

(Incorporated in the Australian Capital Territory)
A.C.N. 008 520 045

LEVEL 1
22 WILLIAM STREET
MELBOURNE, VICTORIA, 3000.
TELEPHONE: (03) 9629 6799
FAX: (03) 9629 5250

10 September 1996

Mr Alan Smith
Cape Bridgewater Holiday Camp
PORTLAND
VIC 3305

Dear Mr Smith,

I acknowledge and reply to your letter dated 21st August received by fax. I am disturbed that you feel aggrieved following the arbitration proceedings between yourself and Telstra.

I note that you have referred the matter to the Telecommunications Industry Ombudsman and that you have also obtained advice from Law Partners, Barristers and Solicitors of Melbourne. I see that they have expressed a view on the basis of your discussions with them that it may be possible that the arbitrator's decision may be set aside. No doubt they can advise you on how best that may be achieved and what other avenue of appeal may be open to you under the relevant legislation..

This Institute is a learned society whose principal function is the training, examination and grading of arbitrators. It will also nominate suitable arbitrators from its lists of graded, practising arbitrators if requested to do by the parties. It selects nominees of appropriate technical expertise and grading (i.e. experience) from its published lists.

I am advised by our Chief Administrative Officer that no reference was made to us in the appointment of the arbitrator in the matter in which you are involved and there is always a risk in these circumstances.

I much regret that it appears that we are powerless to assist you.

Yours faithfully,

J.I.Muirhead.
President.

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THE
INSTITUTE of
ARBITRATORS & MEDIATORS
AUSTRALIA

Your ref:

*Conflict Management Expertise*

30 January 2002

Mr A Smith
Seal Cove Guest House
RMB 4409
Cape Bridgewater
Portland Vic 3305

Dear Mr Smith

**Re – Complaint against Dr G Hughes, Arbitrator**

As Chairman of the Professional Affairs Committee of the Institute of Arbitrators and Mediators Australia (IAMA), your correspondence making a complaint against Dr Hughes has been referred to me for my Committee's consideration.

At the outset, I indicate to you that Dr Hughes is known to me, both personally and professionally. I am satisfied nonetheless that I and the Committee which I chair can consider your complaint impartially and fairly. In the arbitral community in Australia many of the senior arbitrators are well known to each other. If you have any objection to me being involved, please let me know.

It is perhaps also important at the outset to indicate that IAMA does not in any way act as a "Court of Appeal" or body to review awards made by its members. Such rights as the parties to an arbitration may have in that regard are set out in the Commercial Arbitration Act. IAMA is not able under its memorandum and articles to do other than review the conduct of its member arbitrators.

At this stage I have been provided with 4 letters from you, 3 of them dated 10 January 2002, one dated 22 January 2002. I am not sure why you have chosen to write three separate letters on 10 January. It does not help to give me an overall understanding of your concerns.

I will not at this stage attempt a detailed analysis of the material contained in those letters, as there is plainly a large background which is not known to me.

I will attempt to make some preliminary comments on each of your letters so that I can better understand what it is that you are saying, and when I have your response I, and my committee, will proceed to consider your complaint in respect of Dr Hughes' conduct.

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PO Box 184 North Adelaide SA 5006
Telephone: (08) 8274 2160 Facsimile: (08) 8274 2135 Email: iama@intrinsiccorporation.com.au

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However, in the meantime will you kindly send me:

1. The arbitration agreement
2. Dr Hughes award
3. The documents upon which you rely to say that Dr Hughes was "your Arbitrator".

In relation to item 3 above, I suspect that you may mean that Dr Hughes was the arbitrator in your dispute with Telstra which was conducted pursuant to an arbitration agreement, which is a contract entered into between yourself and Telstra. In most circumstances it would not be appropriate for Dr Hughes to be described as "your Arbitrator" any more than it would be appropriate for him to be described as "Telstra's Arbitrator". Perhaps you can tell me what it is that you intended to convey.

I will try to assist you by referring to a number of specific matters against each of the letters you have written.

1. Letter one of 3

   1.1 You will need to identify the principles of natural justice which you say were breached.

   1.2 You say that your arbitrator deliberately misled and deceived you a number of times during your arbitration thereby perverting the course of justice. Will you please provide details of what it is that you say the arbitrator did to deliberately mislead and deceive you, and how that perverted the course of justice? Unfortunately your attachments are not clearly marked and it would be desirable to send me a clearly marked set of attachments if in fact those attachments demonstrate that Dr Hughes deliberately misled and deceived you.

   1.3 It is also important to explain that it is necessary for you to identify what it is that you say Dr Hughes has done that warrants criticism. Your letters descend into a great deal of detail about which I simply have no knowledge, but you need to be explicit in your complaint.

   1.4 At page 4.7 you say "my Arbitrator prematurely brought down his award". Presumably he did so either pursuant to a timetable or because he was asked to do so. Did you ask him not to do so? Can you please let me have details of such a request if you made it?

2. Letter 2 of 3

   2.1 It is not clear to me how this demonstrates anything involving criticism of Dr Hughes. Perhaps you will identify what the criticism is, and where it arises.

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2.2 In response to the last paragraph of your letter, it is not the role of IAMA to suggest a course of action for you. Nevertheless, I do suggest that you will probably be assisted if you seek the advice of a solicitor who has experience in arbitration. By way of example you appear to have seen something sinister in Dr Hughes letter of 23 January 1996. In my view, and without discussion with Mr James or anyone else, there may well be a perfectly innocent explanation for that letter having been written. It derives from the confidentiality of private arbitration, and I suspect that that may well be one of the issues to which Dr Hughes was referring.

3. Letter 3 of 3

This does not appear to raise a new matter in relation to Dr Hughes.

4. Letter 4

4.1 At page 1.5, would you please specify the conduct you complain of, and the rules and procedures to which you refer?

4.2 At page 2.3, in the normal course of events it is not for the arbitrator to seek documents from a party. That is a matter which is "inter partes", meaning that it is a matter for one party to sort out with the other. The arbitrator may order the parties to make discovery. If a party has complaints about the compliance with that order by the other side, they need to raise that with the arbitrator. Did you ask for an order for discovery? I assume that you were at no stage represented. Did you seek representation? Did you complain about non compliance?

4.3 At pages 2.5 to 2.6, it is not clear whether you are making a complaint about Dr Hughes at this point. He does not appear to have made a comment adverse to you.

4.4 At page 2.8, did you ask Dr Hughes not to make a determination? If so, when and how did you do so?

4.5 At page 3.12, this appears to be a description by Dr Hughes of inadequacies in the time frame provided in the arbitration agreement made with the benefit of hindsight.

Would you please let me know whether you requested that he should not finalise his award because you have not been provided with documents requested under FOI or by way of discovery in the arbitration. Do you have a letter making that request, or a note of having done so? What was the result?

It should be understood that if in fact the arbitration procedures were impracticable under the present arbitration agreement as you allege, that is normally not a matter for which the arbitrator can be held responsible.

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My reading of your letters reflects a great deal of detailed personal knowledge on your part of what has presumably been a very difficult matter for you.

Unfortunately, at this stage, those letters do not identify in what way the arbitrator is said not to have carried out his role in accordance with the Victorian Commercial Arbitration Act.

It should be clearly understood that the Institute's role is to take seriously complaints which are articulated against its member arbitrators. We will do so here. Unfortunately the material supplied so far, while indicating that there was a very substantial dispute hard-fought between the parties, does not make it clear in what way you allege that Dr Hughes' conduct was inappropriate or a failure on his part to carry out his role as arbitrator.

Will you please treat this as a preliminary response to your letters? It is important that if you have a complaint you should spell out exactly what the complaint is, and show how the papers support it.

I have provided a copy of your letters to Dr Hughes, and invited his response.

I will await hearing from you.

Yours faithfully

Ian Nosworthy
**Senior Vice President**
**IAMA**

712

INSTITUTE of
ARBITRATORS & MEDIATORS
AUSTRALIA

Your ref:

*Conflict Management Expertise*

10 April 2002

Mr A Smith
Seal Cove Guest House
RMB 4409
Cape Bridgewater
Portland Vic 3305

POSTED 10/4/02

Dear Mr Smith

**Re – Complaint against Dr G Hughes, Arbitrator**

I refer to my letter of 30 January 2002.

Dr Hughes has written to me expressing uncertainty as to whether he was a member of the Institute of Arbitrators Australia at the time of the arbitration. Although our records indicate that he was a member, he was not at the time a graded arbitrator within the Institute, and was not included on the Register of Practising Arbitrators until well after he delivered the award in your matter on 11 May 1995.

This makes no difference to his ability and power to arbitrate your dispute, but it may be that such jurisdiction as the Institute has in relation to its members is not appropriately exercised in the present circumstances.

Nevertheless I did consider the various issues raised by you in your correspondence, and make the following points:-

1. At no stage have you properly articulated your complaints as requested in my letter of 30 January 2002.

2. In relation to the various complaints and criticisms which you have articulated, to the extent that I understand them, they confuse disciplinary procedures with the rights of a party on appeal in arbitration. I pointed this distinction out on page 1 of my letter of 30 January 2002.

3. I did not form the view that the conclusions which you had drawn from a variety of documents and other circumstances were either the correct conclusions, or indicative of corrupt conduct on the part of Dr Hughes.

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PO Box 164 North Adelaide SA 5006
Telephone: (08) 8274 2160 Facsimile: (08) 8274 2135 Email: [illegible]

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4. You appear not to understand that when Dr Hughes acts as an arbitrator he was not a person acting on your behalf. As his award discloses you were awarded a substantial amount of money by Dr Hughes in the arbitration.

I note that your most recent actions have involved making a complaint to the police, alleging fraud – at least on the part of Telstra – and I do not propose to conduct any further enquiry in relation to the matter if you are pursuing police action. I do not say this to dissuade you from taking that action if you wish. That is a matter for you.

I have returned your papers to Mr Peter Condliffe, the Chief Executive Officer of the Institute of Arbitrators and Mediators Australia. Will you kindly contact him to make arrangements to collect them?

Yours faithfully

Ian Nosworthy
**Senior Vice President**
**IAMA**

713

The Hon. Michael D. Kirby AC CMG

9 July 2009.

Mr. Alan Smith,
Seal Cove Guest House,
1703 Bridgewater Road,
PORTLAND VIC. 3305

Dear Mr Smith,

On 2 July 2009, you wrote to me raising a complaint concerning the conduct of an arbitrator who is a member of the Institute of Arbitrators & Mediators Australia. You wrote to me in my capacity as President of the Institute.

In accordance with established procedure, I have referred the complaint to the Ethics and Professional Affairs Committee of the Institute.

In due course, you will be informed following this reference.

Please direct future correspondence to the Chief Executive Officer of the Institute, Mr. Paul Crowley, PO Box 1364, Law Courts, Melbourne, Vic. 8010.

Yours sincerely,

Cc Mr. Paul Crowley

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Level 7, 195 Macquarie Street
Sydney NSW 2000 Australia
Website: www.michaelkirby.com.au

Telephone: +61 2 9231 5800
Facsimile: +61 2 9231 5811
E-mail: mail@michaelkirby.com.au

**From:** Richard Atherton
**To:** capesealcove
**Sent:** Tuesday, October 20, 2009 9:49 AM
**Subject:** RE: Registered Documents

Dear Mr Smith,

I can confirm that all the documentation has been received into the IAMA office and passed to Mr Crowley.

Regards,

Richard

**From:** capesealcove [mailto:capecove12@bigpond.com]
**Sent:** Monday, 19 October 2009 3:47 PM
**To:** Richard Atherton
**Subject:** Registered Documents

Attention Mr Paul Crowley
Chief Executive Officer
Institute of Arbitrators
Melbourne

Dear Mr Crowley

Please find attached confirmation that I registered a parcel on 5 October 2009 which was not received by your office and/or the Law Courts Post Shop until 13 October 2009. I am concerned that perhaps your office might not have received the documentation I sent and would appreciate confirmation what your office actually received. Your office should have received the following three documents:

1. An 8 page letter to you titled: *Final Submission to Mr Paul Crowley dated 29th September 2009;*
2. A bound submission dated 28th September 2009 with accompanying ***Exhibits***
3. A bound submission dated 29th September 2009 with accompanying ***Attachments***

I appologise for any inconvenience this extra work will cause your office staff but I am sure you will understand my concerns.

An email concerning this matter will allievate my concerns.

Thank you
Alan Smith

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## Alan Smith

**From:** "Richard Atherton" <Trust@iama.org.au>
**To:** "Alan Smith" <capecove12@bigpond.com>
**Sent:** Wednesday, 21 October 2009 9:16 AM
**Subject:** RE: Registered Documents

Thank you Mr Smith.

Regards,

Richard

**From:** Alan Smith [mailto:capecove12@bigpond.com]
**Sent:** Wednesday, 21 October 2009 9:13 AM
**To:** Richard Atherton
**Subject:** Re: Registered Documents

Dear Mr Atherton

I confirm that my two submissions dated 28 and 29 September 2009, and the accompanying 8 page letter to Mr Paul Crowley on 29th September 2009 is my final submission to the IAMA Ethics and Professional Affairs Committee. My letter of 5th October 2009 to Mr Paul Crowley was sent only to clarify that while I suspected facsimles were intercepted by a third party during my arbitration, I only have documented evidence showing documents were being intercepted i.e. after leaving my business and residenace for the dates between 1998 and 2001. I appologise if my 5 October letter confused the IAMA.

I again thank the IAMA for investigating my matters.

Sincerely
Alan Smith

----- Original Message -----
**From:** Richard Atherton
**To:** Alan Smith
**Sent:** Tuesday, October 20, 2009 5:55 PM
**Subject:** RE: Registered Documents

Dear Mr Smith,

Further to our correspondence below; please can you confirm that these documents are final submissions in regard to your complaint.

Regards,

Richard

**From:** Alan Smith [mailto:capecove12@bigpond.com]
**Sent:** Tuesday, 20 October 2009 10:44 AM
**To:** Richard Atherton
**Subject:** Re: Registered Documents

Dear Mr Atherton

Thank you for your prompt response

Kind regards
Alan Smith

----- Original Message -----

715

## Alan Smith

**From:** "Alan Smith" <capecove12@bigpond.com>
**To:** "Richard Atherton" <Trust@iama.org.au>
**Sent:** Wednesday, 21 October 2009 9:12 AM
**Subject:** Re: Registered Documents

Dear Mr Atherton

I confirm that my two submissions dated 28 and 29 September 2009, and the accompanying 8 page letter to Mr Paul Crowley on 29th September 2009 is my final submission to the IAMA Ethics and Professional Affairs Committee. My letter of 5th October 2009 to Mr Paul Crowley was sent only to clarify that while I suspected facsimles were intercepted by a third party during my arbitration, I only have documented evidence showing documents were being intercepted i.e. after leaving my business and residenace for the dates between 1998 and 2001. I appologise if my 5 October letter confused the IAMA.

I again thank the IAMA for investigating my matters.

Sincerely
Alan Smith

----- Original Message -----
**From:** Richard Atherton
**To:** Alan Smith
**Sent:** Tuesday, October 20, 2009 5:55 PM
**Subject:** RE: Registered Documents

Dear Mr Smith,

Further to our correspondence below; please can you confirm that these documents are final submissions in regard to your complaint.

Regards,

Richard

---

**From:** Alan Smith [mailto:capecove12@bigpond.com]
**Sent:** Tuesday, 20 October 2009 10:44 AM
**To:** Richard Atherton
**Subject:** Re: Registered Documents

Dear Mr Atherton

Thank you for your prompt response

Kind regards
Alan Smith

----- Original Message -----
**From:** Richard Atherton
**To:** capesealcove
**Sent:** Tuesday, October 20, 2009 9:49 AM
**Subject:** RE: Registered Documents

Dear Mr Smith,

I can confirm that all the documentation has been received into the IAMA office and passed to Mr Crowley.

Regards,

715

**Alan Smith**

**From:** "Richard Atherton" <Trust@iama.org.au>
**To:** "Alan Smith" <capecove12@bigpond.com>
**Sent:** Wednesday, 21 October 2009 12:50 PM
**Subject:** RE: Alan Smith - Document issue

Dear Mr Smith,

Presently, IAMA does not require this further documentation to be sent. However, the investigating persons will be notified of these documents and may request them at a later date.

Regards,

Richard

**From:** Alan Smith [mailto:capecove12@bigpond.com]
**Sent:** Wednesday, 21 October 2009 12:16 PM
**To:** Richard Atherton
**Subject:** Alan Smith - Document issue

Dear Mr Atherton,

Since I confirmed that my submission to the IAMA is now complete I have been advised that I should also have clearly explained that I have a large file of documents that confirm that, between 1998 and 2001, at least fifty-two Telstra/arbitration related faxed documents were intercepted by a third party after the faxes had been sent from either my residence or my business premises. Since these faxes were not sent during my actual arbitration, this material has not been included in my submission to the IAMA.

If you refer back to ***pages 137*** and ***138*** in my Administration Appeals Tribunal (AAT) Statement of Facts and Contentions, a copy of which was provided to the IAMA on 20th July 2009, you will see that, two professional technical consultants have stated that, in their opinion, (the faxed material provided to them) confirmed they <u>were</u> intercepted and then redirected to their intended destination.

If Mr Paul Crowley believes this file would be of assistance during the IAMA investigation, (the intercepted faxes are all related to my Telstra/arbitration matters, please let me know and I will arrange to send it to the IAMA. I must confirm again though, that the evidence in this file only confirms the interception of faxes that were sent <u>after</u> the end of my arbitration.

As I stated earlier today, my IAMA claim is now complete.

Sincerely,
Alan Smith

715

## Alan Smith

**From:** "Richard Atherton" <Trust@iama.org.au>
**To:** "capesealcove" <capecove12@bigpond.com>
**Sent:** Friday, 27 November 2009 2:00 PM
**Subject:** RE: Mr Paul Crowley 23 November 2009 - Letter

Dear Mr Smith,

Your email has been forwarded to Mr Crowley.

Regards,

Richard

**From:** capesealcove [mailto:capecove12@bigpond.com]
**Sent:** Friday, 27 November 2009 6:50 AM
**To:** Richard Atherton
**Subject:** Mr Paul Crowley 23 November 2009 - Letter

Dear Mr Atherton

On Wednesday 25 November 2009, I mailed the attached letter dated 23 November 2009 (and 4 attachments) from Mt Gambier in South Australia to Mr Paul Crowley, via overnight mail. I now realise that I failed to make it clear at the end of the letter that, if it would be helpful to the IAMA Ethics and Professional Affairs Committee as they assess my current claims, I could provide the original facsimile transmission (and attachments) that Mr Michael Shand QC sent to Dr Hughes at Lander & Rogers on 15 June 1990, regarding the letter Mr Shand suggested that Graham Schorer send to Telstra's Mr Ward. I can also supply the original letter dated 19 September 1990 to Graham Schorer from Dr Hughes at Lander & Rogers.

I would be grateful if you would please pass this message on to Mr Crowley.

Kind regards
Alan Smith

715

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone: 03 55 267 170

20th July 2009

Mr Paul Crowley
Chief Executive Officer
C/o the Ethics and Professional Affairs Committee
Institute of Arbitrators and Mediators Australia
PO Box 13064, Law Courts
Melbourne 8010

Dear Sir,

My letter to you on 16th July advised that the following documents would be hand-delivered to you. These reports are now attached for your information:

1. Service Verification Tests (SVT) – Telstra's Misleading and Deceptive Conduct – Part 1, pages 1 to 38 (August 2008);
2. Bell Canada International (BCI) – Telstra's Misleading and Deceptive Conduct – Part 2, pages 39 to 50 (September 2008);
3. 008/1800 & Fax Billing Issues – Telstra's Misleading and Deceptive Conduct – Part 3, pages 1 to 23 (3rd October 2008);
4. Statement of Facts and Contentions as submitted to the Administrative Appeals Tribunal (26th July 2008);
5. Nine bound spiral bound volumes of exhibits 339 in total have been provided in support of my AAT submission, numbered as 1 to 47; 48 to 91; 92 to 127; 128 to 180; 181 to 233; 234 to 281; 282 to 318; 319a to 323; and 324 to 339;
6. A document titled Questions to the (IAMA) and accompanying 58 ***Exhibits;***
7. A draft manuscript titled the *"COT CASE" One of the stories from the "Casualties of Telstra' saga'*. <u>This document has been provided to give a human interest side of the saga.</u>
8. Draft & Final Arbitrators Award,
9. Lane Technical report dated 6th April 1995;
10. Draft DMR & Lane Report dated 30th April 1995;
11. Formal DMR & Lane Report dated 30th April 1995;
12. Letter of Claim submitted to arbitration 15th June 1994;
13. The Arbitration Agreement faxed on 19th April 1994, from Dr Hughes' office to Mr Alan Goldberg AO (Now a Federal Court Judge), please note page 12 of this agreement shows clauses 24, 25 and 26 was firmly in place when this document was received.
14. The Arbitration Agreement I signed on 21st April 1994, showing clause 24 exonerated Peter Bartlett and the Resource Unit – both clause 25 and 26 regarding the liability clause have been deleted (i.e. do not match the agreement faxed to Mr Goldberg).
15. Report to the Senate Environment, Recreation, Communications and the Arts Legislation Committee (Ministers Office) from John Pinnock (TIO) dated 26th September 1997, noting on page 4: *"Firstly, the Arbitrator had no control over the process because it was conducted outside the ambit of the Arbitration Procedures"*. Senate Hansard (attached) noting the same.

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16. Report titled Dr Gordon Hughes – Interception of Telephone Conversations not addressed during Alan Smith's Arbitration, Prepared for the IAMA July 2009;
17. Report titled Dr Gordon Hughes, Arbitration, Prepared for the IAMA July 2009
18. Report titled Dr Gordon Hughes, Arbitration Billing Issues Not Addressed, Prepared for the IAMA July 2009;
19. Report titled Dr Gordon Hughes, Arbitration Service Verification Tests (SVT) Prepared for the IAMA July 2009;
20. Report titled Dr Gordon Hughes, Conspiracy to Pervert the Course of Justice, Prepared for the IAMA July 2009;
21. Report titled Dr Gordon Hughes' Resource Unit, Conspiracy to Pervert the Course of Justice, Prepared for the IAMA July 2009

The exhibits on the enclosed CD (point 5, above) should be read in conjunction with the AAT Statement of Facts and Contentions (point 4, above) – the appropriate exhibits are referred to in the AAT submission, with each number preceded by my initials, i.e. AS1, AS2 etc.

The documents at points 1 to 4, and the exhibits on the CD (point 5, above) were all provided to the Administrative Appeals Tribunal (AAT) between August and October 2008, in support of my AAT Statement of Facts and Contentions.

Although the document at point 6 (above) was not provided to the AAT, it will be useful to the Ethics and Professional Affairs Committee during their investigation into my matters because it includes a detailed explanation of the way our arbitration agreement was secretly altered.

The Ethics and Professional Affairs Committee should also know that, during my arbitration, I raised the problems with the arbitration SVT tests, and the ongoing billing problems associated with my 008/1800 phone service, with Dr Hughes, but not only did he fail to investigate my complaints, he also made no mention of them in my arbitration award. The award did mention that both AUSTEL and the COT claimants complained, in general, about the BCI testing process but did not note that BCI could not possibly have carried out the 13,000 test calls they record in their report on the Cape Bridgewater RCM Exchange. Dr Hughes did not instruct the arbitration technical resource unit to investigate any of the three issues covered by the enclosed reports, even though all three were registered in my claim documents.

I was telephoned late this afternoon by a representative (Alan) of the IAMA Ethics and Professional Affairs Committee of the Institute asking whether I had provided all the relevant information concerning my complaint against Dr Gordon Hughes.

I have attached here and in my previous correspondence to the Ethics and Professional Affairs Committee, all the information I consider relevant to my claims. However, I trust that if the IAMA require any further information that they might see is important to their investigations they will in fairness under the circumstances see a need to request any further documentation that they require.

I have also attached copies of Dr Hughes draft Award and final Award along with the 6th April 1995, draft Lane technical report and the Dr Hughes' copy of the DMR & Lane draft 30th April report as well as the final DMR & Lane 30th April 1995 formal technical report. My Letter of claim submitted 15th June 1994 to Dr Hughes, has also been attached as background information.

Please note: because some of the reports such as the Ferrier Hodgson Corporate Advisory financial draft and final report along with Telstra's interrogatories are voluminous they have not been attached. If any documentation along these lines is needed for assessment purposes please request for the information to be forwarded.

Sincerely,

Alan Smith

GOLDEN
Messenger

493-495 Queensberry Street North Melbourne Victoria 3051
Postal Address PO Box 313 North Melbourne Victoria 3051
Telephone (03) 9287 7099 Facsimile (03) 9286 0066
Website www.goldenmessenger.com.au

30 July 2009

copy

Mr Crowley
Chief Executive Officer
Institute of Arbitrators and Mediators Australia
C/- The (IAMA) Ethics and Professional Affairs Committee
P O Box 134 Law Courts
MELBOURNE VIC 8010

Dear Sir

I am aware that the (IAMA) Ethics and Professional Affairs Committee are investigating Alan Smith's arbitration matters.

During my role as the CoT's (Casualties of Telstra) spokesperson, I was constantly briefed by the CoT participants during their respective TIO administered Fast Track arbitration procedures.

I clearly recall having many discussions with Alan Smith over his facsimiles that went missing/lost during his arbitration.

A copy of the letter dated 4 August 1998 that I sent to Alan Smith is enclosed.

Also enclosed is my statutory declaration addressing these matters in order to assist the IIAMA in their current investigation into the Smith arbitration matters.

Yours sincerely

Graham Schorer

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# C.o.T. Cases Australia

493-495 Queensberry Street
P.O. Box 313
North Melbourne VIC 3051

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

4 August, 1998

Our Ref: 3915.doc

Alan Smith
Cape Bridgewater Holiday Camp
RMB 4408
Blowholes Road
Portland VIC 3305.

FAXED 4/8/98

By facsimile: (0355) 267 230.
Total pages (including this page): 2.

Dear Alan,

**Re: Facsimiles transmitted to Hunt & Hunt, Melbourne Office, addressed to Dr Hughes, the appointed Arbitrator of the Telstra-TIO arbitrations.**

Further to my telephone conversation with you on Saturday, 1 August 1998, I am confirming in writing what I was told by Dr Hughes in the early part of 1994, in response to an alleged missing facsimile.

During the period between late January and mid-April 1994, I had reason to have direct discussion with Dr Hughes on the contents of correspondence sent to him re the proposed Telstra-TIO arbitration.

On one occasion during this period, I rang Dr Hughes before 9:00AM on his direct telephone number to discuss contents of facsimile I had just sent to him. The facsimile had not been received at Hunt & Hunt, Melbourne's Office.

Dr Hughes, after making inquiries, informed me, expressed in words to the effect, the following:-

- Hunt & Hunt Australian Head Office was located in Sydney.
- Hunt & Hunt Australia is a member of an international association of law firms.
- Due to overseas time zone differences, at close of business, Hunt & Hunt Melbourne's incoming facsimiles are night switched to automatically divert to Hunt & Hunt Sydney office, where someone is always on duty.
- There are occasions on the opening of the Melbourne office, the person responsible for canceling the night switching of incoming faxes from the Melbourne Office to the Sydney Office, has failed to cancel the automatic diversion of incoming facsimiles.
- The diversion of incoming faxes to Hunt & Hunt Melbourne to Sydney Head Office has also been taking place when the Melbourne fax machine has been out of paper or when all of the incoming fax lines are busy.

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- It is the duty of Hunt & Hunt Sydney Office to redistribute received facsimiles to theintended State Offices it had received after hours and before commencement of the next day of business.

- The onforwarding of after hours facsimiles transmitted to State Offices received at the Sydney Office is not taking place.

- Thank you for drawing this matter to my attention, as the Management of incoming facsimiles to Hunt & Hunt Melbourne are not satisfactory.

- New procedures will be introduced to rectify this deficiency.

I have read all of your correspondence regarding missing facsimiles, interception of facsimiles and telephone calls. I have examined all of the documents attached to your correspondence, which in my opinion, support many of your assertions.

Alan, what you have managed to piece together by examining your telephone account, in conjunction with other people's telephone accounts, together with Telstra documents received under FOI and/or arbitration, is alarming. I believe you have produced a picture that demonstrates your telephone service has been illegally interfered with, before, during and after your arbitration.

I note you have allowed your findings to remain open when there is insufficient independent evidence to support what appears to be apparent.

I believe the incident that I experienced and explanation I received from Dr Hughes could be a reason and explanation why Dr Hughes did not receive all facsimiles sent to him.

What I experienced does not identify all of the reasons Telstra received 43 submissions less than what you sent to Dr Hughes.

In closing, I draw your attention to the testing performed by Telstra on yours and my facsimile machines in late 1993, as a result of our complaints about my office receiving blank pieces of paper, with the funny symbol on the top when you were faxing documents to me. As you will remember, Telstra, on completion of the tests, asserted there was nothing wrong with the telephone lines nor our facsimile machines.

Should you require further information, please do not hesitate to make contact.

Yours sincerely,

Graham Schorer

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# OATHS ACT 2001

## STATUTORY DECLARATION

I, Graham Schorer of 493 Queensberry Street, North Melbourne,

do solemnly and sincerely declare on oath that my letter dated 4 August 1998 to Alan Smith of Cape Bridgewater Holiday Camp, Portland, Victoria 3305 and my correspondence dated 30 July 2009 to Mr Crowley, Chief Executive Officer, Institute of Arbitrators and Mediators of Australia are both a factual account of events that have taken place.

I make this solemn declaration under the *Oaths Act 2001*.

Declared at .....North Melbourne.....
*(place)*

on .....30 July 2009.....
*(date)*

.....
*Signature*

Before me,

.....
*(Justice, Commissioner for declarations or authorised person)*

GARY BOHMER
Pharmacist 8132

GARY BOHMER PHARMACY
Approval No. 2MM7G
29 JUL 2009
NORTH MELBOURNE 3051
Ph: 9328 1960 Ph/Fax: 9328 1531

717

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone: 03 55 267 170

17th February 2011

The Hon Michael D Kirby AC CMG
Level 7, 195 Macquarie Street
Sydney, NSW 2000

Dear Mr Kirby

In your letter dated 9th July 2009 you advised that, in accordance with established procedure, you had referred my complaint to the Ethics and Professional Affairs Committee of the Institute of Arbitrators and Mediators Australia, because I had written to you in your capacity as President of the Institute. You also asked me to write in future to the Chief Executive Office of the Institute, Mr Paul Crowley. From the end of July until November 2009 I therefore submitted a number of important reports to Mr Crowley, with many supporting exhibits. Between the 20th and 23rd of October 2009 I received emails advising me that Mr Crowley had accepted my material and asking me to confirm that I had then completed my submission. I replied by advising Mr Crowley, via the IAMA Secretary, Mr Richard Atherton, that my submission was indeed complete but, because some of my matters were then still outstanding, and I was still waiting for Freedom of Information documents that were well overdue, I asked Mr Crowley if I could submit updated information in relation to the ongoing affect of the failed arbitration procedure which means that, in 2011, I am still vainly attempting to get access to Telstra FOI documents that the arbitrator and the TIO promised me (and a number of Senators) would be provided if I would just accept Dr Hughes as an arbitrator instead of an assessor. Since Mr Crowley has not asked me to refrain from sending more information I have continued to update him regarding this ongoing saga. The attached Statement of Facts and Contentions dated 9th February 2011 shows I am appealing, through the Administrative Appeals Tribunal, against the Australian Communications and Media Authority, in relation to FOI issues connected to some of the documents that clearly should have been given to me under the agreed arbitration process, back in 1994.

I am now writing to you because I have twice written to Mr Crowley in late 2010, asking if he could let me know when the IAMA Ethics and Professional Affairs Committee might hand down their findings in relation to my matters, or at least advise me whether or not the IAMA believe I should continue to provide them with further material when it becomes available under FOI. Unfortunately Mr Crowley has not responded to my written request for this information. I now have three different letters from three different Presidents of the Institute, from between 1996 and 2001, all advising that they are investigating my matters but I have not received anything to indicate what the result of those investigations might be. I am sure you will understand my concerns now that I haven't heard from the IAMA since late 2008.

I understand that this matter may have taken so long to assess because of the many documents I have submitted but I would still be most grateful if you could ask Mr Crowley if he could at least suggest a possible time frame for the completion of this investigation. I would be grateful if Mr Crowley could even just confirm that it is the number of documents being assessed that is causing the delay.

Thank you for all your help.

Sincerely,

Alan Smith

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone: 03 55 267 170

24th October 2010

Mr Paul Crowley
Chief Executive Officer
Institute of Arbitrators and Mediators Australia
PO Box 13064, Law Courts
Melbourne 8010

Dear Mr Crowley,

The two attached letters to the AAT, dated 20th and 22nd October 2010, prove that my TIO-administered arbitration was not the natural justice process claimed by the then-TIO, Warwick Smith, in his media release on 12th May 1995. Mr Smith's media release was distributed less than two hours after Dr Gordon Hughes, the arbitrator, had written to Mr Smith, declaring that the Arbitration Agreement he had used just the day before to deliberate on and hand down his award in relation to my case was not a credible agreement to use for future COT arbitration claimants.

As you already know, the Hon Michael Kirby AC CMG wrote to me on 9th July 2009, as President of the Institute of Arbitrators, advising that: *"In accordance with the established procedure, I have referred the complaint to the Ethics and Professional Affairs Committee of the Institute. Please direct future correspondence to the Chief Executive Officer of the Institute, Mr Paul Crowley"*. On 20th July 2009, following this letter and in accordance with your phone call, I personally presented a large submission to Mr Richard Atherton from your office.

On 28th and 29th September 2009 I submitted further evidence in support of my claim and, on the morning of the 20th October 2009 I received an email from Mr Atherton confirming that my: *"... documentation has been received into the IAMA office and passed to Mr Crowley."* At 5.55 pm that same day I received a second email from Mr Atherton asking me to: *"... confirm that these documents are final submissions in regard to your complaint"*. At 2.07 pm on 23rd October 2009 I emailed more material to the IAMA, explaining that this was not *"... new material"*, but that I was: *"...only clarifying information that I have already submitted"*. At 3.39 pm that same afternoon Mr Atherton responded, advising that: *"This document will be accepted. I have been advised that the final day for your submission is October 30"*. I then submitted a number of other supporting documents before the expiry date of 30th October 2009.

Since then, having received further evidence in relation to my matters, in particular confirmation that the ACMA and the TIO have not dealt appropriately with my matters, I attempted to access other documents from the TIO, under FOI. I believed it was appropriate that I copy some of the more relevant of those letters on to you, even though I did not manage to secure the documents I was asking for, not so that you would accept those letters as further documents to be added to my submission but purely so you were kept up to date with the progress (or lack of progress) of my case and so that you could see that these matters are still ongoing and unresolved.

I am now wondering if you could advise me as to when you believe the IAMA Ethics and Professional Affairs Committee might reach a decision regarding my case. I would appreciate a response to this enquiry at your earliest convenience.

Thank you,

Alan Smith

The Hon. Michael D. Kirby AC CMG

21 February 2011

Mr. Alan Smith,
Seal Cove Guest House,
1703 Bridgewater Road,
PORTLAND VIC 3305

Dear Mr Smith,

**YOUR COMPLAINT TO IAMA**

Thank you for your letter of 17 February 2011, just received.

When I wrote to you in July 2009, I served as President of the Institute of Arbitrators & Mediators Australia.

In June 2010, I stepped down from this position. Mr. Warren Fischer was elected in my place.

A possible explanation for your not hearing from Mr. Paul Crowley is that, not long after my retirement as President, he resigned as Chief Executive Officer of IAMA.

I will send your letter and the attachment to Mr. Fischer and request that he respond to your enquiry.

With kind regards

Yours,
Michael Kirby

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Level 7, 195 Macquarie Street
Sydney NSW 2000 Australia
Website: www.michaelkirby.com.au

Telephone: +61 2 9231 5800
Facsimile: +61 2 9231 5811
E-mail: mail@michaelkirby.com.au

Alan Smith
Seal Cove
1703 Bridgewater Road
Portland 3305
Phone: 55 267170

6th March 2011

Mr Warren Fischer
President
Institute of Arbitrators and Mediators Australia
PO Box 552 Ashgrove
Queensland 4060

Dear Mr Fischer,

On 21st February 2011, the Hon Michael Kirby AC CMG wrote to advise me that he has passed my letter of 17th February 2011 (copy attached) to you for your response. On 28th February the Hon Michael Kirby AC CMG again wrote to me to inform me he had provided my second letter to him onto you as the President of IAMA, the correspondence from me to the Hon Mr Kirby contained my 9th February 2011 AAT State of Facts and Contentions. As I am appearing before the AAT in Melbourne a date to be determined around April and May 2011, I decided to update my previous AAT Statement of Facts and Contentions which the Hon Michael Kirby provided to you therefore, I thought it appropriate you should also receive (see attached) the now updated version also dated 9th February 2011. I have supplied this document because it appears that the IAMA Ethics and Professional Affairs Committee have still not reached their findings on my matters and because some of those matters will be shortly discussed in the public arena once I attend the AAT Conference hearing.

I will now wait to hear from you regarding Mr Kirby's advice in relation to these issues.

Sincerely,

Alan Smith

*Copy to:*

*The Hon Michael Kirby, AC CMG*

THE
INSTITUTE of
ARBITRATORS & MEDIATORS
AUSTRALIA
*Australia's leading ADR organisation since 1975*

21 March 2011

Mr Alan Smith
Seal Cove Guest House
1703 Bridgewater Road
PORTLAND VIC 3305

Dear Mr Smith

I confirm receipt of your correspondence dated:

22 February 2011 (forwarded to me by the Hon Michael Kirby AC CMG under cover dated 28 February 2011);
6 March 2011; and
9 March 2011.

I advise that I have passed all of that correspondence to our Ethics and Professional Affairs Committee for reply to you.

Yours faithfully

**Warren Fischer**
**President**

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The Institute of Arbitrators and Mediators Australia
ABN 80 008 520 045
Level 9, 52 Phillip Street, Sydney NSW 2000
Telephone (02) 9241 1188 Facsimile (02) 9252 2911 Email ceo@iama.org.au Website www.iama.org.au

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*Australia's leading ADR organisation since 1975*

9 May 2011

Mr Alan Smith
Seal Cove Guest House
1703 Bridgewater Road
PORTLAND VIC 3305

Dear Mr Smith

I have to hand your correspondence dated 2 May 2011. I observe that in that correspondence you state that you "*have some concern that the IAMA Ethics and Professional Affairs Committee has not yet responded to my claim against Dr Gordon Hughes, which was lodged in July 2009*".

I advise that my receipt of your other recent correspondence, dated 17 April 2011, caused me to enquire of the IAMA CEO as to the status of this matter as I had understood that the IAMA Ethics and Professional Affairs Committee had concluded its deliberations and notified you accordingly. In response to that enquiry, I was advised by the CEO that a response was dispatched to you in late December 2010.

In light of your most recent correspondence, I have today requested that the CEO forward you a further copy of that correspondence.

Yours faithfully

**Warren Fischer**
**President**

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The Institute of Arbitrators and Mediators Australia
ABN 80 008 520 045
Level 9, 52 Phillip Street, Sydney NSW 2000
Telephone (02) 9241 1188 Facsimile (02) 9252 2911 Email ceo@iama.org.au Website www.iama.org.au

THE
INSTITUTE of
ARBITRATORS & MEDIATORS
AUSTRALIA

Dear Mr Smith

Copy of letter sent to you on December 21st, 2010

Regards
Peter Shaw

The Institute of Arbitrators & Mediators Australia, A.C.N. 008 520 045. Incorporated in the ACT.
Level 9, 52 Phillip Street, Sydney, NSW 2000. Telephone: (02) 9241 1188. Facsimile: (02) 9252 29 Email: nsw.chapter@iama.org.au

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THE
INSTITUTE of
ARBITRATORS & MEDIATORS
AUSTRALIA

ARBITRATORS MEDIATORS ADJUDICATORS

Alan Smith
Seal Cove
1703 Bridgewater Road
Portland Vic 3305

December 21st, 2010

Dear Mr Smith,

The Ethics and Professional Affairs Committee advises that this complaint was dealt with eight years ago. We enclose a copy of our letter dated April 10, 2002 communicating our decision.

We remind you that IAMA's involvement is restricted to examination of the professional conduct of its arbitrators, not to the correctness or otherwise of a decision or to the conduct of other parties.

Regards

Peter Shears
CEO

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The Institute of Arbitrators & Mediators Australia, A.C.N. 008 520 045. Incorporated in the ACT.
Level 9, 52 Phillip Street, Sydney, NSW 2000. Telephone: (02) 9241 1188. Facsimile: (02) 9252 2911. Email: nsw.chapter@iama.org.au

Alan Smith
Seal Cove
1703 Bridgewater Road
Portland 3305
Phone: 55 267170

9th August 2011

Mr Peter Shears
CEO
Institute of Arbitrators & Mediators Australia
Level 9
52 Phillip Street
Sydney, NSW 2000

Dear Mr Shears,

I last wrote to you on 20th May 2011, explaining that I had not received your letter from December 2010 until you sent me a copy in May 2011, but you have not yet replied to my correspondence. I would therefore be grateful if you could respond to this letter dated 9th August 2011 (see below).

Your December 2010 letter notes that my matters were assessed in 2002 and, if that is true, then I find it most disturbing that the IAMA allowed me to continue to send submissions right through to December 2009, and follow-up correspondence through to the end of 2010, before advising me that your Ethics and Professional Affairs Committee was not investigating my matters any more, even though IAMA emails sent in October 2009 asked if my 2009 claim was then completed. I am appalled that the IAMA allowed me to out lay thousands of dollars in secretarial fees to prepare my 2009 submission – at the request of Paul Crowley who was then the CEO of the IAMA, when he must have known that, a year or so later, I was going to be told that the IAMA had decided on their findings in relation to my matters in 2002.

Your letter, various other IAMA letters and at least five IAMA emails have been assessed by professional people interested in my matters who all agree that allowing me to continue to submit material in relation to my claims regarding Dr Hughes' behaviour during my arbitration, when the IAMA had no intention of addressing that claim material, suggests that the IAMA Ethics and Professional Affairs Committee need training in how to deal with matters such as mine. I am therefore now asking that the IAMA please return to me all twenty-one of the submissions and reports that I provided to the IAMA on 20th July 2009, plus the three reports I forwarded in October and November 2009. All twenty four of these reports were listed in a detailed schedule that was sent with them and I would be grateful if you would also prepare a detailed schedule of the documents you are returning to me. Please let me know when the documents have been collated and I will arrange for Golden Couriers of North Melbourne to collect them and provide you with an official receipt.

I would appreciate your attendance to this matter as soon as possible.

Thank you,

Alan Smith

COPY

# Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Harrowell
Christine A. Galley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Dubney
Grant D. Sutton
Charles Veevers
Andrew Logie-Smith

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Salt
Randal P. Williams

2 May 1994

Our Ref: GLH
Matter No:
Your Ref:

BY HAND

Mr John Rundell
Ferrier Hodgson
Chartered Accountants
Level 11, 459 Collins Street
Melbourne VIC 3000

Dear Sir

**TELECOM AUSTRALIA - COT CLAIMS**

As you are aware, Maureen Anne Gillan signed (through her power of attorney) the Request for Arbitration on 8 April 1994.

Ann Garms (on behalf of herself and other related claimants), Alan Smith and Graham Schorer (on behalf of himself and other related claimants) signed the Request on 21 April 1994.

Mr Steve Black signed each agreement on behalf of Telstra Corporation Ltd.

Pursuant to clause 5 of the "Fast-Track" Arbitration Procedure, the Administrator, Warwick Smith, has formally notified the parties and me in writing that he has received completed and signed Request for Arbitration forms from both parties in each instance. Pursuant to clause 7.2 of the Fast-Track Arbitration Procedure, each claimant must, within four weeks of receipt of Mr Smith's notice, send to Telecom and to me its Statement of Claim together with supporting claim documents.

I have been advised by the Administrator that formal notice pursuant to clause 5 was delivered to Garms, Smith and Schorer on 27 April and to Gillan on 3 May 1994.

I am anxious for these matters to proceed as expeditiously as possible. In the circumstances I believe it would be appropriate for the Resource Unit to familiarise itself with documentation which will unquestionably be placed in evidence, namely:

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

11241692_GLH/AK

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

The Australian Member of Interlaw, an International association of law firms • Asia Pacific • The Americas • Europe • The Middle East

1. Bell Canada International Inc, "Report to Telecom Australia", 1 November 1993;

2. Coopers & Lybrand, "Review of Telecom Australia's Difficult Network Fault Policies and Procedures", November 1993;

3. Telecom Australia, "Response to Coopers & Lybrand Report and Bell Canada International Report", December 1993;

4. AUSTEL, "The COT Cases: AUSTEL's Findings and Recommendations", April 1994.

I believe a thorough understanding of this documentation will assist you in anticipating the scope and extent of investigations which the Resource Unit may be called upon to carry out.

I suggest also that you familiarise yourself with the *Commercial Arbitration Act* 1984 (Vic).

Yours sincerely

**GORDON HUGHES**

cc P Bartlett, W Smith, M Gillan,
A Garms, A Smith, G Schorer, P Rumble

11241692_GLH/AK

95/0594-01

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

141

93/507

9 December 1993

Mr Ian Campbell
Managing Director - Commercial Business
Telecom

Fax 634 3876

Dear Mr Campbell

**BELL CANADA INTERNATIONAL REPORT**

This letter is to convey to you advice to the effect that while AUSTEL was -

- consulted on the terms of reference for the Bell Canada International (BCI) audit of Telecom's testing and fault finding capability, and study of its network, to determine if there is a fundamental network fault

- of the view that the proposed testing would provide a useful *snapshot* of current network functionality and that the terms of reference allowed for sufficient flexibility to produce results relevant to a consideration of issues raised by *COT Cases* (without drawing conclusions on an individual customer's complaint),

on a preliminary analysis the report fails to live up to the expectations raised by the terms of reference.

**Findings must be qualified**

The BCI study concluded that "*...customers served from the test originating and test terminating exchanges receive a grade of service that meets global network performance standards...*" (sixth paragraph of the Executive Summary). Any findings to that effect must be qualified by the fact that the BCI audit focused on only one part of what is commonly called "*the network*", namely Telecom's exchange-to-exchange operations. BCI's audit did not extend to an equally significant part of "*the network*", namely the customer access network.

To put it another way, the tests conducted by BCI neither were nor purported to be "*end-to-end*" testing, but involved testing of part of the network only - the inter-exchange network. The tests were not applied in a manner designed to check complete end-to-end network performance from a customer's perspective. They were made from exchange equipment to exchange equipment and, except in one case, did not traverse customer lines or use customer premises equipment. The conclusions which may be drawn from the

727

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

study cannot go beyond the inter-exchange network. The findings cannot be presented in the way they were in the Executive Summary to suggest that they embrace the network as a whole, including the customer access network.

**Test call patterns not typical of COT Cases**

The test calling patterns adopted apparently reflected the main network traffic streams relevant to the exchanges currently providing services to the *COT Cases* and related customers, but did not necessarily reflect typical traffic patterns experienced by those customers. While the results can be considered indicative of the general switched public network performance of the exchanges involved, they cannot be guaranteed to be representative of calling performance from typical client locations to the exchanges serving the *COT Cases* and related customers.

Also for whatever the reasons, such as time constraints, the testing undertaken by BCI appears very narrowly focused. For example, in Melbourne BCI undertook test calling from only seven exchange localities out of the 100 or more in the Melbourne metropolitan area, with only selective test calling from the Western suburbs. This is particularly disappointing in that both of the Melbourne businesses included in the testing claim to have experienced difficulties with respect to calls from Western suburbs based clientele.

**Testing of PBX ("rotary") search facility**

Particular concern has been expressed by *COT Cases* dependent on older (cross bar) exchange technology, in relation to periodic faults of the rotary search facilities which are designed to allow calls dialled to a single number to be offered to a group of access lines appearing in the customer's premises.

With the benefit of hindsight, exchange-to-exchange network integrity tests for *COT Cases* traffic cannot be considered comprehensive without the inclusion of testing of this facility in the terminating exchanges serving the relevant *COT Cases*.

I understand that BCI is currently undertaking further testing to redress this shortcoming in its report.

**008 services**

Also with the benefit of hindsight, given the concerns expressed by certain of the *COT Cases* the realistic testing of network performance should have included test calling via any relevant 008 number.

**Retrospectivity**

The report itself highlights the fact that the tests provide only a *snapshot* which does not necessarily reflect the problems that *COT Cases* have experienced in the past - see paragraph 5.00 of the report which *"... recognises that the tests performed by BCI ... look at the network at a specific point in time. The results therefore, may be completely different from those obtained at some other point in time. Furthermore, as troubles are cleared when found, it is unlikely that the same trouble conditions will show up in subsequent tests".*

**In summary**

Having regard to the above, I am of the opinion that the BCI report should not be made available to the assessor(s) nominated for the COT Cases without a copy of this letter being attached to it.

Yours sincerely

Cliff Mathieson
Specialist Advisor - Networks

## Holmes, Jim

From: Newbold, Greg
To: Beattie, Ken; Humrich, Alan; Pinel, Don; Blake, Ed; Campbell, Ian; Law, Ann; Pittard, Rosanne; Mcburnie, Denise; Benjamin, Ted; Holmes, Jim; Hambleton, Dennis V; Hill, Trevor; Marshall, Ross; Long, Bernadette
Cc: Vonwiller, Chris; Anderson, Keith
Subject: Today's meeting
Date: Wednesday, 17 November, 1993 8:33AM

Peter Sekuless and I have prepared a draft news release, a one-page media aide for Ian Campbell plus the pre-emptive media strategy itself.

Am now raising with Sekuless the merits/demerits of holding back the BCI info for a "cleansing" program immediately after the mess of Coopers. My thinking is that it would draw the focus away from the Coopers stuff and on to our network that works.

Greg.

A05254



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I, John Sherard Main
OF Break-O'-Day Road Glenburn 3717 in the State of Victoria
do solemnly and sincerely declare
THAT

I spoke to Ms Pia Di Mattina from the Telecommunciations Ombudsman's Office at approximately midday today.

She advised me that the Bell Canada International Inc Report to Telecom Australia dated 1 November 1993 and the addendum dated 10 November 1993 were flawed documents.

JOHN SHERARD MAIN.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED AT LILYDALE in the State of Victoria this SIXTH (6th) day of November One thousand nine hundred and ninety five

Before me

J. SAVAGE
CONSTABLE 29345.

729

***END***

Internal Memo

Telecom AUSTRALIA

Network & Technology

To: Ian Campbell
Managing Director, Commercial

From: D. C. Campbell
Group Managing Director

Subject: Coopers & Lybrand Report on DNP Costs

Date: 9 November 1993

File

Attention

Australia
Telephone 03 632 6600
Facsimile 03 632 6072

Dear Ian.

I have perused the executive summary of this report and I am concerned that it does not reflect a professional, responsible approach and I believe that Coopers & Lybrand should be approached and requested to reconsider the entire tone and direction of the report.

Items like R10 and R11 on page 9 appear to go beyond their terms of reference and do not at first reading, appear to be commercially reasonable. Item 2.7 on page 24 at the end of the first paragraph in connection with testing by Telecom states that we could have pursued the testing further in spite of customer rejection. This conclusion ignores a letter from Aussel advising that they considered further testing inappropriate and the omission of this additional fact completely misrepresents the situation. I am concerned that this may reflect a sloppy, incomplete approach of the full report.

I believe that it should be pointed out to Coopers & Lybrand that unless this report is withdrawn and revised, that their future in relation to Telecom may be irreparably damaged.

D C CAMPBELL

telephone service provided by Telecom, when accessed by properly configured and operated customer premises equipment (which complies with the relevant AUSTEL specifications) meets these performance criteria and those in Telecom's specification 1529: Analogue Interface Conditions - Public Network, it can be considered to meet its performance obligations. It is a requirement that Telecom can demonstrate this performance.

## Difficult Network Faults

10. Difficult Network Faults is a generic term used in the Terms of Reference for this review. Faults which fall into this category are listed in Appendix A. Difficult faults of this nature are defined as those which Telecom is unable to resolve to the satisfaction of the customer through the operation of routine fault clearance procedures. Use of the term Difficult Network Faults in this report does not implicitly or explicitly specify either the cause or location in the network of these faults. The scope and meaning of network must also be appreciated because it is commonly used by Telecom staff to describe only that portion of Telecom's infrastructure which is made up of the telephone exchanges and circuits which interconnect them. This is not our interpretation. For the avoidance of doubt, we have defined Network to mean all of the components from and including the calling customer's CPE (including payphones) to the called customer's CPE, ie the entire end to end system. The operation of CPE by customers is also included where appropriate and if it could contribute to the fault symptoms.

11. The nature of Difficult Network Faults must be appreciated to establish what Telecom can practically achieve, what the roles and responsibilities of Telecom and it's customers should be in respect of Difficult Network Faults and whether these align with the obligations which Telecom has under its Licence.

12. The Difficult Network Faults we have reviewed all relate to incoming calls to the Customer Premises Equipment - typically multi-line devices such as key systems or Small Private Automatic Branch Exchanges and, in at least one case, a facsimile machine. The point of origin of the call is therefore elsewhere in Telecom's network. By definition, only Telecom can adequately investigate, analyse and report on such faults. Telecom therefore has a responsibility to take all reasonable steps to identify and rectify such faults and inform customers of progress and outcome. For

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changed

Network, it can be considered to be fit for purpose. It is a requirement that Telecom can demonstrate this performance.

## Difficult Network Faults

left out

10 Finally, that nature of difficult network faults must be appreciated to establish what Telecom and its customers can practically achieve, what their roles and responsibilities should be in respect of difficult network faults and whether these align with the obligations which Telecom has under its Licence.

11 The difficult network faults we have reviewed all relate to incoming calls to the customers premises equipment - typically multi-line devices such as key systems or small private automatic branch exchanges and, in at least one case, a facsimile machine. The point of origin of the call is therefore elsewhere in Telecom's network. By definition, only Telecom can adequately investigate, analyse and report on such faults. Telecom therefore has a responsibility to take all reasonable steps to identify and rectify the fault and inform the customer of progress and outcome. For their part, customers need to operate their equipment properly and, when necessary, report faults through the proper channels and follow them up in the same way.

left out

12 A complication is introduced where the provision of customer premises equipment has been liberalised. If this equipment is owned and/or maintained by Telecom, it clearly has full responsibility. Where the customer premises equipment is owned by customers and maintained either by them or on their behalf by a third party, Telecom's responsibilities for difficult network faults should be confined to:

(a) identifying whether a fault exists and whether it is in its network or the customer owned equipment;

(b) notifying the customer of where it is and, if it is in the customer's equipment, its characteristics; and

(c) repairing any faults in its network as expeditiously as possible.

13 Licence Conditions (Declaration No 2 Clauses 7.2 and 7.3) require Telecom to carry out points 11(a) and 11(b) above. Clause 7.1 covers point 11(c).

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Draft Report

## Conclusion

Our conclusion is that while Telecom has expended considerable time, effort and resources in attempting to resolve these cases, there is evidence that its past approach, policies and procedures were not adequate, reasonable or fair.

Telecom had no established procedures for complaint handling for the first three years of the period covered by our review. Similarly, once these cases had been escalated and negotiations had started, settlement was attempted without clearly laid down guidelines or an objective procedure for achieving resolution.

Final Report

## Conclusion

Telecom has had a continuous responsibility to have in place policies and procedures that would enable Difficult Network Faults and complaints arising from them to be handled adequately, reasonably and fairly. Evidence from the case studies specifically reviewed by us indicates that Telecom's approach has not met the minimum requirements to achieve these criteria, primarily because:

> Telecom did not have established, national, documented complaint handling procedures for these situations up to November 1992;

**I have in my possession many instances that suggest Telstra officials used their influence and power to 'cleanse' criticisms and findings.**

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Senator Richard Alston - then Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications - wrote to the Chairman of Austel in September 1993 expressing his concerns. This letter is now reproduced in full:

PARLIAMENT OF AUSTRALIA THE SENATE

SENATOR RICHARD ALSTON

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

17 September 1993

Mr Robin C Davey
Chairman
Austel
5 Queens Road
Melbourne 3004

Dear Mr Davey

Thank you for your letter of 16 September enclosing a copy of your letter to the Minister of the same date.

I note that Austel is now "satisfied that the COT cases had received from Telecom an inadequate service", and I commend your decision to investigate and address these and similar concerns

The information being sought by Austel pursuant to section 400 of the Telecommunications Act 1991 is very important, particularly in relation to any internal or external investigations commissioned by Telecom which seeks to identify the technical causes of the complaints.

However I am very concerned at your suggestion that "even confining Austel's investigation to eight of the complaints is stretching Austel's resources" (paragraph 21).

It would be totally unsatisfactory, and certainly not in the public interest, if Austel's capacity to get to the bottom of these problems is in any way hampered by a shortage of financial, human or other resources and I would hope that, if it is necessary to do so, you will seek additional assistance from the Government.

In this context I am very disturbed to see that you appear to be content to allow Telecom to obtain the services of "an independent overseas network expert". If Austel's inquiry and findings are to be seen to be thorough and impartial it is essential that Austel, and not Telecom, should commission such a person. If lack of resources are a problem then Telecom could perhaps foot the bill. However at this stage I consider that such action may well be premature until it is established that Telecom has not in fact been able to identify the cause of the problems.

.../2



Canberra Office:
Parliament House, CANBERRA ACT 2600
Phone (06) 277 3605 Fax (06) 277 3308

Electorate Office:
Illoura Plaza, 424 St Kilda Road, MELBOURNE VIC 3004
Phone (03) 866 3455 Fax (03) 866 3105

With regard to Telecom's proposed "deployment of a special team to review the history of each of the (COT) cases from a fresh perspective" it would be quite unsatisfactory it any member of such team had previously been involved with any of the COT cases in an administrative capacity. Again I do not see why the independent regulator should not be the one to carry out such a task.

Finally I note that Telecom proposes to engage one of the "Big Five" accounting firms to audit its handling of the COT cases with Austel merely having unspecified access to the consultants and its output.

If such an audit is to have any legitimacy it is essential that it should be commissioned and paid for by Austel. To allow one party to litigation to select and pay - undoubtedly generously - for the judge would not be tolerated in any judicial proceedings. It should not be tolerated here.

Yours sincerely

Richard Alston.

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

RKR/aw

R10409

Please note that Austel did not commission the tests. Both were financed by Telstra.

GOLDEN
Messenger

493-495 Queensberry Street North Melbourne Victoria 3051
Postal Address PO Box 313 North Melbourne Victoria 3051
Telephone (03) 9287 7099 Facsimile (03) 9286 0066
Website www.goldenmessenger.com.au

1st July 2009

The Hon Alan Henry Goldberg AO
Federal Court of Australia
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne 3000

Dear Sir,

Alan Smith from the Seal Cove Guest House has informed me he has provided you with information regarding his Fast Track Arbitration Procedure (FTAP) that occurred in the period of April 1994 to May 1995 and of Golden Messenger's arbitration process for the period of April 1994 to July 1999.

After the end of Alan Smith's arbitration in 1995, Alan has continually registered his concerns with the appropriate regulators that his arbitration was not conducted in accordance with the official arbitration agreement, the agreement you assessed on behalf of Alan Smith and Golden Messenger in April 1994.

As Alan has already explained in previous correspondence sent to you, the arbitration agreement presented to Alan Smith & Golden Messenger for signature by the TIO special council Mr Peter Bartlett, was materially altered without our knowledge or consent, or your knowledge or consent, after both you and William Hunt (now deceased) had evaluated the arbitration document forwarded to William Hunt and yourself by Dr Hughes' (the arbitrator) secretary.

These covert alterations clearly favoured the TIO's Special Counsel and the Arbitration Resource Unit over the claimants and placed us, the claimants, in a position where we were defenceless, as the TIO Special Council and the personnel within Arbitration Resource Unit are no longer liable for their respective negligence and or wrong doing.

I am aware that, in some circles, it is believed that I was correctly compensated in July 1999 for my business losses as a result of a Senate investigation conducted during the period of September 1997 to March 1999.

While it is true that Golden Messenger did receive some compensation in July 1999, William Hunt's files and transcripts of conversations with other parties associated with Telstra identify how I was forced to accept less than 30% of the losses that I could substantiate. The limited quantum of Golden Messenger's substantiated losses was a direct result of Telstra's refusal to supply documents that identified the call losses Golden had incurred during the period of May 1985 to April 1994. None of these limited claimed losses included cost of preparation of claim, legal and technical expenses which amounted to numerous hundreds of thousand of dollars over the period of April 1985 to July 1999 nor any of the financial losses incurred due to lost calls during the period April 1994 to July 1999.

Golden Messenger's telephone service difficulties problems and faults (incoming call losses) extended well beyond April 1994 which was the claim period ending under the FTAP process, as we were still experiencing these problems up to 1998 and beyond.

In October 2008, in response to a Golden Messenger FOI request placed upon ACMA, the Regulator supplied to Golden Messenger the Telstra and Regulator documents that identified the Telecommunications Industry Regulator and Telstra's management and auditors knowledge the Golden Messenger claim was understated as a direct consequence of Telstra's failure to correctly supply documents sought under FOI and under the discovery process of the FTAP process.

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GOLDEN
Messenger

493-495 Queensberry Street North Melbourne Victoria 3051
Postal Address PO Box 313 North Melbourne Victoria 3051
Telephone (03) 9287 7099 Facsimile (03) 9286 0066
Website www.goldenmessenger.com.au

These recently obtained Telstra and ACMA documents indentify Telstra's recording and knowledge of Golden's incoming call losses exceeding 5,000 lost calls per week during the 1980's and the 1990's.

This information is being directly forwarded to you because Alan Smith and Golden Messenger have both experienced the involvement of vested interests of the respective parties and organisations in maintaining the concealment of conduct and events that occurred during the respective arbitrations conducted under the FTAP process, who consistently assert our claims of misconduct and the failure of the arbitration process are without foundation.

I am confident the information Alan Smith has forwarded to you, demonstrates that our joint claims of misconduct that occurred during the Alan Smith and Golden Messenger arbitrations, including the people who engaged in the conduct to pervert the course of justice, is a factual complaint and cannot be considered by a fair minded person with a knowledge of law, to be a frivolous or vexatious complaint.

Since I was the claimant who asked William Hunt to contact you on 19th April 1994, to obtain your legal opinion in relation to whether or not we should sign the FTAP agreement, I feel I am obligated to inform you, that the FTAP agreement you assessed for William Hunt on behalf of Alan Smith and Golden Messenger was covertly altered, without Alan Smiths's and Golden Messenger's consent, after you had assessed the said document, and conveyed your recommendations to William Hunt (solicitor) who was acting for Golden Messenger and Alan Smith.

To date, none of the parties directly and or indirectly associated with Telstra, the office of the TIO, Telecommunications Industry Regulator (both current and past) are prepared to address any of these substantiated issues of wrong doing during the respective the Alan Smith and Golden Messenger's FTAP processes.

Sir, given that the Hon William Hunt and yourself are the only two people who can give direct evidence as to the reason you advised Golden Messenger and Alan Smith to enter into the FTAP process as per the document supplied to William Hunt and yourself by Dr Hughes' secretary, and only you can verify the content of the supplied FTAP document your legal opinion was given upon.

As the Hon William Hunt is now deceased, I believe Golden Messenger is dependant upon obtaining direct evidence from yourself as to what was contained within or what constituted the alleged final draft of the FTAP document forwarded to you.

I will appreciate receiving your response.

Yours Sincerely,

Graham Schorer.
Managing Director
GOLDEN MESSENGER

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# Department of Justice

Civil Law Policy

Level 24
121 Exhibition Street
Melbourne Victoria 3000
Telephone: (03) 8684 0800
Facsimile: (03) 8684 1300
www.justice.vic.gov.au
DX 210077

12 OCT 2011

Our ref: CD/11/467259

Mr Alan Smith
Seal Cove
1703 Bridgewater Road
**PORTLAND VIC 3305**

Dear Mr Smith

**Interception of Facsimiles**

Thank you for your recent letters to the Attorney-General the Hon. Robert Clark MP. The Attorney-General has asked me to respond on his behalf.

I regret that the Department of Justice and the Attorney-General are not able to assist you with the facsimile interception matter outlined in your correspondence.

It appears from the extensive documentation you have included with your recent correspondence that you have exhausted all available avenues where your claims may be investigated. Accordingly, I am not able to suggest an agency that may be able to assist you further. You could consider obtaining legal advice as to what avenues might be available to you if you haven't already done so. You may wish to contact your local community legal centre for advice:

South West Community Legal Centre
79 Liebig St
Warrnambool 3280
1300 361 680

Yours sincerely

**Susan Coleman**
Acting Director
Civil Law Policy

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Victoria

to the Governor-General to replace her and yet it takes six months or more to replace Mr Arena.

**Senator Collins**—Just before Mr Hutchinson responds to that, I just want to say that that is not unusual in terms of the sort of different mix of skills that you are looking for. I must also say that quite often what happens in my experience in this portfolio is that you approach a large number of people and find that, because of other obligations, they are not available.

Just in passing, I noted a senior executive from one of our major companies on the ABC the other day making this point, and it certainly has been my experience in the case of women particularly, I guess because of the lower numbers involved, that it is particularly difficult because the ones that are of obvious note and skills get so many requests. I actually heard this fellow say the other day that a lot of the senior corporate women executives are approached on an average of once a week to fill directorships and so on on boards. The reason I am saying that is that quite often you can fill one particular appointment very quickly, because the first person that you go to says, 'Yes, I can do that', and in other cases on other boards it can take months, because you approach a whole series of people and they then have to think about it eventually come back to you and say, 'No, I cannot do it because I have got too much on my plate at the moment'.

**Mr Hutchinson**—In the case of Mr Tuckwell's appointment to Austel, I would not want the conversation in any way to be interpreted as that somehow being a last resort. As the minister has effectively said, good people are very difficult to find and sometimes you have to wait until they are available. Neil Tuckwell has a contract with Clear Communications and it was a condition that he imposed on accepting the position that he would fulfil his contractual obligations to Clear. Given that he had the attributes that the minister was seeking for this appointment, the government decided to wait to make the appointment until Neil Tuckwell was available, and that is why it is taking so long for him to take up duty.

**Senator BOSWELL**—Mr Davey, would you agree with the previous officer that was at the table when he said that the payments made to the COT cases were goodwill, or would you say they were compensation?

**Mr Davey**—My understanding of them was that they were paid by way of compensation. I have seen a cheque butt or a cheque slip that so described the payment, as a compensation or out of a compensation account.

**Senator BOSWELL**—So you disagree with the previous gentleman. How long have the COT cases been going on?

**Mr Davey**—They first came to Austel's attention, as is set out in the letter dated 12 August, in August last year. At that time we were trying to facilitate those settlements that have been referred to. Some of them took place sooner and some took longer. What has happened since those settlements is that the faults have continued, or they are said to continue, and that is possibly one of the more disturbing aspects of the thing, that the payments have been made but the faults continue.

**Senator ALSTON**—And in some instances payments were made on the basis that there would not be any future problem.

**Mr Davey**—Austel has not been privy to the actual terms of settlement, but that is what has been conveyed to me.

**Senator BOSWELL**—Does Austel, in your view, have any power to resolve the difficulties? Are you happy with the power that you have under the legislation, or do you feel frustrated that you are not able to accommodate these people?

**Mr Davey**—Depending on what the findings are, I think we can see a way forward. We do not have the power to order a monetary sum settlement and I think you would understand that, as I said before, that would be usurping the power of the courts.

**Senator Collins**—The only people that really can fix it, Senator, and I am sure you agree, at the end of the day are Telecom.

**Senator BOSWELL**—Yes, I know that in a perfect world that would be the way it would happen, but we do not live in a perfect world and any small business that wants to take the might of Telecom on is not going to stay the distance very long. There has been one that tried and it cost him a lot of money. They just wait you out. So we do not live in a perfect world. We have not got the choice of taking our telephone business to another provider of service; Telecom is the only one that provides a domestic service. So what I am suggesting to you, Mr Davey, if you have not got the power to act as the watchman and provide some justice, is that perhaps you ought to make an appointment to see Senator Collins and point out to him that you need to have an adequate act to provide the—



**Senator Collins**—I do not think that is correct at all, Senator, as Mr Davey's letter makes very explicitly clear in terms of remedies that are available.

**Senator BOSWELL**—If Mr Davey cannot give a payment commensurate with the loss, and the only alternative is to go to the court to get that payment, then justice is not going to be—

**Senator Collins**—With the greatest respect, I disagree. That is the situation at the end of the day that we are in in most situations. At the end of the day the courts—

**Senator BOSWELL**—No, that is nonsense. If I do not want to deal—

**Senator Collins**—I mean in terms of getting money. Mr Davey can answer the question, but just as a general proposition—

**Senator BOSWELL**—I can tell you where your proposition falls down. If I go to a provider of a service and he does not give an adequate service, I can then leave him and go somewhere else. But in the case of Telecom I am stuck; I cannot get any other service.

**Senator Collins**—Mr Davey can certainly answer. I was responding to your particular concern that you raised a minute ago about getting legal redress. I just pointed out that the change that was made to the act in 1991 in that respect was very deliberately done, and it is referred to in the Austel letter.

**Mr Davey**—We have legal advice which I am quite prepared to make available to you, Senator—I apologise that I have not got a copy with me at the moment—to the effect that, if we were to find misleading and deceptive conduct, as distinct from sheer incompetence, then we could direct Telecom to engage in an assessment process to assess the quantum. Having assessed the quantum, we do not have the power to enforce the quantum, but I am sure that at that point that would not be necessary. I think there would be such a moral persuasion at that point—

**Senator ALSTON**—It might be aided if you actually make public your finding in the first instance.

**Mr Davey**—As I indicated before, we intend to make public, after having given the relevant people the opportunity to be heard—

**Senator Collins**—Madam Chair, I know the hour is late but in fact Mr Davey has provided all that information previously.

**Mr Hutchinson**—Senator, can I perhaps add to that answer by drawing attention to sections 121 and 122 of the Telecommunications Act. Section 122 provides for there to be a limit on the amount of damages that a telecommunications customer can seek from the telecommunications company. That limit is imposed by a determination made by Austel. Austel has in fact made no such determination. Therefore, by not making such a determination, Austel has provided scope for people with cause of action against Telecom to use their rights under the act to sue. I am no lawyer but the word here seems to be tort. So there is a link there between Austel's powers and the amount that is recoverable in an action.

**Senator BOSWELL**—If you were BHP or one of the big companies, you may be able to afford to take that response in court. But what we are talking about here is small business that unfortunately in real terms cannot do that.

**Senator Collins**—If he was BHP he would not be here.

**Senator BOSWELL**—No, if he was BHP, he would not be here. Do you believe that the cash payments made to the COT case members realistically reflect the business losses, assuming at the moment that these losses were as a result of an adequate phone service?

**Mr Davey**—I personally do not have knowledge of the amounts paid to the COT victims. I know of one amount. It has been

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Mr Davey—I have got the general manager of the consumer affairs branch and one of his people. John MacMahon and Bruce Matthews are working almost full time on this.

Senator BOSWELL—What about all these other people that are coming in?

Mr Davey—The other complainants?

Senator BOSWELL—Yes.

Mr Davey—What we are trying to do is reasonably well set out in the directions we have given Telecom. We are trying to analyse the documentation that Telecom is being asked to produce in that direction. If I could take you to that direction, it is the letter dated 12 August—

Senator BOSWELL—We have got that—we are multiplying paper here.

Mr Davey—It is the letter of 12 August to Homes. If you go over to page 3, paragraph 14, we have asked for a series of documents to be produced by Telecom and we will be pursuing those documents in any areas that might lead out of there. One of the allegations that has been made and made by a number of people in this series of cases is that Telecom tells them, 'You are the only one in the district that has this complaint, you are unique—

Senator BOSWELL—That has been told to me by at least eight or nine people, that Telecom seems to have a standard reply: you are the only one, you are unique; you do not know how to use the phone; it is your commander system and you need a new system. It seems just to go on as though they have been given a sales memo to recite.

Senator ALSTON—Are you able to identify whether that is the case?

Mr Davey—This documentation we have sought should give us hard information to determine that issue. What we are looking for is the hard information upon which we can prepare a report which we will publish, to the extent that privacy and commercial-in-confidence issues allow, and people can test that. Telecom will be given the opportunity to comment on that report before it is put into the public arena. People who are affected by that report will be given the opportunity to comment.

Senator ALSTON—What ultimate sanctions are there for either unethical practice or, as you said in that earlier letter, misleading and deceptive conduct?

Mr Davey—That raises a very interesting question. In terms of the Austel powers to investigate either anti-competitive practices or consumer protection issues, the way the act is structured we are given the investigation power and it is made very clear in the course of that that we refer appropriate matters to the Trade Practices Commission or to the ombudsman, depending on which way it is appropriate. We have certain powers of direction; we have sought advice on our powers of direction.

I do not have a copy of the legal advice that we have received on it, but there are certain courses open. If misleading and deceptive conduct as distinct from sheer incompetence is shown, then we may be able to move down some tracks. We cannot order Telecom to pay a certain amount of compensation, or we would be usurping the power of the courts. But we have received advice to the effect that we can direct them to engage in an assessment process. At the end of the day, as I said, I do not want to prejudge the outcome of any findings that we might make. All I am outlining is a possible course of action.

Senator ALSTON—But take that case where the regional manager says that under the act they are not liable which, on the face of it, would seem to be clearly untrue. Is that something that could lead to a prosecution of Telecom?

Mr Davey—I am not sure on what grounds in a prosecution it is a misleading or deceptive conduct. I do not see how it would fit under the criminal provisions of the Trade Practices Act. The letter is written without prejudice to any action that might be taken. It is put in now as, 'Put your hand up. Stop doing that sort of thing'. Then, before I decided, I would want to hear Telecom's side of the story. That is only one side of the story.



Senator ALSTON—Indeed, and obviously you cannot make the next decisions. But what options do you have? Can you refer it to the TPC, and are they able to take action?

Mr Davey—I have had a preliminary discussion with the TPC about the matter. That has only been a oral discussion. Again, when we get Telecom's side of the story, we may—

Senator ALSTON—Let us be theoretical for a moment. Just take a situation where an untrue statement is made by Telecom to a customer. Is that then able to be dealt with by way of prosecution or not?

Mr Davey—Possibly a prosecution under the Trade Practices Act. But it would have to fit one of the categories of the conduct that is prohibited under the Trade Practices Act. In terms of the Telecommunications Act which Austel administers, it probably is not able to be prosecuted, unless it is deemed to be in some way a breach of one of the licence conditions.

Senator BOSWELL—Mr Davey, did you refer Mrs Garms's case to the Trade Practices Commission, or did she take it there herself?

Mr Davey—My recollection is that she approached the Trade Practices Commission herself. The COT cases approached the Trade Practices Commission in a group and my recollection is that the chairman indicated to them that he would probably be unable to help their particular case; he saw it not so much as misleading and deceptive conduct but more maladministration or incompetence.

Senator Collins—In view of information that has been provided already by Mr Davey and the fact that I will ask Mr Beddall to take this matter up directly with the chairman of the board tomorrow, I wonder if we can take it much further tonight.

Senator ALSTON—Can I just deal with another matter. When does Mr Tuckwell take up his duty?

Mr Hutchinson—Sorry, I was just checking. The fact is that Mr Tuckwell's appointment has in fact been made and therefore we can discuss the matter. Mr Tuckwell will take up his appointment on 8 November.

Senator ALSTON—How long will that be since Mr Arena left?

Mr Hutchinson—February 5.

Senator ALSTON—And when does Ms Plante leave?

Mr Davey—24 September.

Senator ALSTON—And is Mr Horton already designated as an acting member to replace her?

Mr Davey—If your concern is the loans, I do have associate members that I can call on to tide us over in the interim.

Senator ALSTON—Minister, can you provide—

Senator Collins—I can. The matter is in fact being progressed now, but it has not actually gone to the Governor-General. It is in the process of doing so.

Senator ALSTON—A replacement for Ms Plante?

Senator Collins—Yes.

Senator ALSTON—A full-time replacement?

Senator Collins—Yes that is correct. I was just checking whether it actually had been signed off. It has not yet been.

Senator ALSTON—Can you provide any satisfactory explanation for that six-month gap? Surely, it is an unsatisfactory situation. As I recall Mr Beddall's ATUG speech in May, he said it would be an act of the highest priority, so it is going to be six months after that date before the actual replacement becomes a reality.

Senator Collins—That is true. It is just hard to find good help these days.

Senator ALSTON—Are you not offering enough? I understand your situation.

Senator Collins—No, that is the reason. I have to say that it is often a difficult problem, not just with respect to this appointment but in many others, to actually find the people that you are really looking in terms of their skills for these positions. I think that that is literally the case here.

Senator ALSTON—But you are just telling me that, within a matter of days of Ms Plante's foreshadowed departure, you are off

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PARLIAMENT OF AUSTRALIA · THE SENATE

SENATOR RICHARD ALSTON

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

28 October 1993

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

Dear Robin

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

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

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

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

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

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Canberra Office:
Parliament House, CANBERRA ACT 2600
Phone (06) 277 3805 Fax (06) 277 3308

Electorate Office:
Mount Plaza, 424 St Kilda Road, MELBOURNE VIC 3
Phone (03) 866 3466 Fax (03) 866 3105

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

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

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

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

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

Yours sincerely

Richard Alston

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

RKR/aw

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CAPE BRIDGEWATER Holiday Camp
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Cape Bridgewater
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Victoria's first permanent settlement

22nd November, 1993

23✓

The Minister for Communications,
The Hon. David Beddall, M.P.,
Parliament House,
Canberra,
A.C.T., 2600.

Dear Minister

Thank you for your letter dated 10th November, 1993, regarding my telecommunication problems.

It appears we are nearly at the end of a long road of many years of issues emanating from these communication faults, as I have accepted Telecom's offer as a solution to this ongoing saga.

You will see, from the accompanying letter to Mr. Holmes, Corporate Secretary, Telecom, that I understand Mr. R. Davey, Austel Chairman, has given his assurance that the unethical manner in which C.O.T., and myself, were misled and deceived, either knowingly or through corporate bungling, will be taken into consideration by the appointed Assessor, the Telecommunication Ombudsman, when assessing our claims.

Other considerations to be taken into account are the adverse impact on the health of those concerned and the future losses caused through customers being deluded into believing that these businesses were poorly run and improperly managed — School camps being an example. The Education Department (Victoria), School Principals and Teachers, alike, having tried, on numerous occasions, to make contact with Cape Bridgewater Camp would hear either: a repeated recorded message stating that this number was not connected, or a ringing phone which they believed was not being answered (when, in fact, the phone here did not ring), or a dead line.

School Principals and Teachers meet regularly to discuss various topics regarding the welfare of students. School Camps would doubtless be one of those topics — need I say more?

So, Mr. Minister, on being p[illegible]nt at the two meetings last week in Austel's Office, I understand that this type of 'fu[illegible]on loss' will be taken into consideration by the Assessor. C.O.T. fully understands the reason why this will not be written into the agreement — it could create a precedent for future claims, if any.

On these assurances and in good faith, I have signed the document presented by Mr. Holmes, Corporate Secretary, Telecom, that the points raised by myself will be taken on their merit.

Again I thank you, and your Government, for intervening on behalf of C.O.T (Casualties of Telecom).

Sincerely,

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ALAN SMITH

Alan Smith - Seal Cove
1703 Bridgewater Road
Portland 3305
Victoria – Australia
Email capecove@bigpond.com

9th June 2011

The Most Reverend and Right Hon Dr Rowan Williams,
Archbishop of Canterbury,
Lambeth Palace,
London - SE1 7JU
England

Dear Sir,

The two attached letters, dated 1st and 9th June 2011, and the copy of my 9th February 2011 Administrative Appeals Tribunal Statement of Facts and Contentions are forwarded in support of the claims made in this letter that my government endorsed arbitration was not conducted transparently according to the principals of natural justice. One of the other major issues that has prompted me to write to you today is the latest media hype regarding police in Victoria (Australia) having their private phone conversations intercepted and/or recorded: even the Victorian Premier and the Police Minister are now asking why the privacy of these people has been violated. As you will find, from the documents attached here and the information below, a small group of small-business-people, including me, have been pleading with the Government Telecommunication Regulators for years in an attempt to get someone to investigate our claims of harassment and ongoing, illegal interception of, in-confidence documents faxed between our offices to Government agencies, and in some cases, interception of Supreme Court information between client and lawyer, but no-one has come to our aid. From reading the local news though, it is clear that, when the police are involved, the situation is different and no stone is left unturned in an effort to properly investigate the matter.

I would like to begin my story by noting that I was confirmed at the St Andrews Church of England in Church Lane, Kingsbury, London, in 1957 and I still hold firm to the beliefs that were instilled into me at that time. This means that I sincerely hope that this letter and the information attached to it will convince you, and somehow also finally convince our Government, that I am telling the truth.

I understand that you and your staff may have trouble believing my story and so I have also attached a letter dated 18th August 1997, from Sister Maureen Burke, IBVM, Principal of Loretto College, Ballarat, Victoria. Sister Burke had trouble believing my story at first too but, as her letter explains: *"Only I know from personal experience that your story is true. I would find it difficult to believe. I was amazed and impressed with the thorough detailed work you have done in your efforts to find justice."*

The attached letter dated 9th June 2011, to the Hon Mr Robert McClelland and the Hon Robert Clark, refers to a report I have prepared, detailing the entire seventeen year saga that ruined my business, my health and the health of my partner. The report referred to consists of some 258 A4 pages and approximately 780 attached exhibits, and it is part of the manuscript I provided to Sister Burke: I would be perfectly happy to send it to you, on a CD, when it has finally been proof read as a testament to the truth of what really happens in Australia if you dare to challenge a Government-owned corporation. A brief summary of the details of my experience begins in February 1988 when I purchased a business that I then discovered had a seriously faulty telephone line: the story then continues when, in 1992, I helped to bring

together a group of four other small-business-people who all had similar telephone and fax problems, and we began to pressure the Australian Senate to investigate our claims that we could not get any help from Telstra (then called Telecom). In this letter I will refer to the organisation as Telstra. We called ourselves the 'Casualties of Telecom' (COT), and this later became the 'Casualties of Telstra'.

During the fifteen turbulent years that I owned the Cape Bridgewater Holiday Camp on Victoria's south-west coast (April 1988 to December 2001) the business suffered from constant, damaging phone problems that meant no-one was able to contact my business, either by phone or fax, unless they persisted and persisted. The Camping Association of Victoria (CAV) has records of the problems I struggled with because I sent flyers to all the different organisations and groups that I hoped to entice to stay at the Camp, which could sleep up to 120 people in bunk-style accommodation. I was forced to include information in the flyers explaining about the phone problems and asking anyone who was interested in booking to write to us, or be prepared to try, try and try again on the phone or the fax. Many people, of course, decided that was all too difficult but Sister Maureen Burke (see above) was determined to reach me and, finally, she drove for three hours from Ballarat to confirm the number of people she was bringing to stay. Sister Burke decided to make this trip when she couldn't get through on the phone because, with the assistance of McCain's Foods in Ballarat, Clarks Pies of Mortlake (Victoria) she had helped to organise a number of groups of underprivileged children so they could holiday at the camp, where I provided the accommodation for free in off-peak periods when there were fewer school and social groups booked in – so she knew I was still operating the camp. In fact, in 2000 when I donated accommodation so that the underprivileged 'Red Skins' Basket Ball Club could come to stay from Broadmeadows (a Melbourne suburb), our present Victorian Premier, Ted Baillieu, (his family holdings) provided financial assistance so Les Twentyman, a well-known Melbourne youth worker, could organise the trip. The coordinator for the 'Red Skins' trip, also had major problems reaching the holiday camp by telephone in 2000 regardless of a government endorsed assessment process having been facilitated on 23rd November 1993 that was supposed to have fixed these ongoing problems (see page 4 below).

After my arbitration process with Telstra, not one single Government agency was prepared to help me with the phone problems during this time, not even the Telecommunications Industry Ombudsman, and no-one would take up a position that would force Telstra to fix the constant, ongoing phone and fax problems. I believe this was because a proper investigation would have shown that the arbitration process I had been through with Telstra in 1993/95 had failed completely, because it had not achieved any of the primary aims of that process, i.e. investigating and fixing the ongoing telephone problems.

For many years the Australian Communications Regulator (first AUSTEL, now the ACMA) and the Telecommunications Industry Ombudsman (the TIO) have constantly branded me a 'crackpot' and accused me of making 'frivolous' claims against Telstra and others, because they all have a vested interest in proving false my allegations that my arbitration administered by the TIO was part of a cover-up of ongoing telephone problems that I constantly and continually experienced for years before, during and after I lodged my arbitration claim against Telstra on 16th June 1994. As I have noted above, the primary aim of the COT arbitrations was to fix all the problems and then test the various telephone lines that were creating the problems to prove that the faults had been properly and fully fixed or, if the lines had not been fixed, then Telstra was directed to upgrade the telephone exchanges that the claimants' businesses were connected to, by installing new equipment. All of this was to be completed in full before the arbitrator handed down any of his arbitration findings because, after all, what would be the point of the arbitration process, or of any financial compensation that might be awarded as a result of any past problems that might be confirmed by the arbitration, if the problems were still ruining the various businesses?

Please now look at my attached 9th February 2011 Administrative Appeals Tribunal Statement of Facts and Contentions, on the back of pages 3 and 7; and on the pages opposite 4 and 8, regarding my EXICOM TF200 telephone. I cannot confirm any more strongly that, when Telstra collected that telephone from my premises on 27th April 1994, it was perfectly clean: it was certainly NOT dirty or sticky and neither did it

contain any sort of 'sticky substance' inside the body of the phone. Telstra's twenty-nine-page arbitration defence report (which can be supplied on request) brands me however as incompetent and unable to maintain or take care of a telephone, and insinuates that my 'drinking habits' or my carelessness contributed to the lock-up problems experienced with this telephone.

On pages 20 and 21 in the same Statement of Facts and Contentions you can see that documents I have received since my arbitration was declared to be finished prove that Telstra had redeployed (or were about to redeploy) some 350,000 of these EXICOM TF200 phones back into service, even though they knew full well that there were serious lock-up problems in this particular brand of phone if it was installed in moisture-prone areas. The business I then owned overlooks Cape Bridgewater Bay, which faces the Southern Ocean, and can therefore clearly be declared a 'moisture-prone' area and yet, as internal Telstra documents prove, Telstra chose to replace my faulty TF200 with a new EXICOM TF200. Other technical data, officially called CCAS, shows that, late in the afternoon after the new TF200 was installed, it locked-up for some 14,718 seconds but neither the arbitrator assigned to my case nor his technical unit reported on this lock-up problem Telstra stated had been caused due to my negligence. Was the lock-up problem caused by the faulty EXICOM or the faulty equipment that Telstra FOI document folio A13980 notes: *"... 'Lock-ups' are generally well-known as a problem in AXE exchanges, not only in Australia but in overseas countries as well"?*

Not long after the end of my arbitration in 1995 a small independent company that operated in Australia (Liberty USA) bought many of the faulty EXICOM TF200 phones from Telstra and sealed the 'hook switch membrane area' with a silicon coating to stop the phones from locking up, before they were shipped overseas.

Until today I have not mentioned to anyone involved in my claims against Telstra that my deceased father, Harold George Smith, received an Imperial Service Medal from one of Queen Elizabeth's representatives, for his many years of service as a senior technical officer for the GPO (now British Telecom). Over the years this personal connection to British Telecom has enabled me to enquire about certain testing communications equipment being used in Australia when it appears to have no longer been used in Europe or the UK. Since I am not on a witch hunt here I will not name the international communications company that supplied equipment that was then installed at my local AXE telephone exchange. Again, as I have mentioned previously, although I raised these lock-up problems with the arbitrator and his arbitration technical unit, pointing out that I believed it was this particular equipment that was causing at least some of the lost calls that were constantly contributing to lost business, neither the arbitrator nor his technical unit investigated and/or reported a finding regarding these ongoing faults that my business was experiencing during the period of my arbitration (this so easily can be proved by reading the technical report and arbitrators findings). I have since acquired TIO documents that confirm that, less than twelve months after the end of my arbitration, the company that operated as the arbitration technical resource unit during my arbitration was purchased outright by the company that manufactured the equipment they were assigned to investigate. Amazing as it seems, NONE of the arbitration claim documents I lodged with the arbitrator in regard to the lock-up problems created by this faulty equipment were ever provided back to me after my arbitration.

I believe, unfortunately, that you will probably not be able to assist me in this matter but, my hope is that by placing myself before you and the Church of England, the two Attorneys General that I am copying this letter to are more likely to believe my sincerity and the truth of my claims, eventually coming to believe me, rather than those parties who have, until now, protected the arbitrator, the TIO at all cost, to the detriment of my partner, myself and other COT members. The TIO-appointed resource units who were secretly exonerated from all liability for any act of negligence for their part played in my arbitration (see pages 9 and 10 in my 9th February 2011 AAT Statement of Facts and Contentions) have since admitted on 2nd August 1996, that they did withhold vital evidence from being addressed during my arbitration nothing has ever been done to address even this matter. Again I hope that, if someone from

your office was to ask for version of my manuscript, that request alone might be enough to sway the powers in Australia to listen to my story. I feel with this achieved, a full and transparent investigation into my valid claims would reveal my claims are valid.

To return to my arbitration story: as part of that process, Telstra visited my business on 29th September 1994 to carry out the arbitration-designed testing process, called Service Verification Testing (SVT), which was facilitated by the then-Government Communications Regulator (AUSTEL). In October 1994 my partner, Cathy Ezard, and I provided separate statutory declarations to the arbitrator, the TIO and AUSTEL, and then wrote letters (on 2nd and 10th October 1994), explaining that, when Telstra visited my business specifically to carry out the SVT process, their equipment failed and the exercise was a disaster. The rules of the arbitration included a clause directing that all my claim documents and correspondence were to be returned to me at the end of my arbitration but, although some of my documents were returned, these two statutory declarations and the two connected letters were not. I now have irrefutable proof (see attached letter dated 1st June 2011) that someone with access to Telstra's network has been intercepting faxes sent from my office over a seven-year period and I therefore believe that this is why, along with many other documents that I faxed during my arbitration (and before) the SVT documents never reached the arbitrator.

Even though AUSTEL (now called the ACMA) is aware that the SVT process was not conducted at my business according to the agreed mandatory testing procedure, AUSTEL still allowed Telstra to produce and then rely on sworn but false statements that the SVT process at my business HAD met all of AUSTEL's requirements, even though AUSTEL themselves had written to Telstra on 11th October and 16th November 1994 (well before the end of my arbitration in May 1995), warning that the testing had NOT met all of AUSTEL's requirements. The arbitrator then accepted Telstra's false statements that the SVT process proved that the Cape Bridgewater Network that my business was connected to was up to standard – and ignored my claims that it was not. This means that the arbitrator handed down his findings in my case without ever investigating my claims that the SVT process had failed and that this, in turn, meant that all my complaints about the problems that were still ongoing with my 008/1800 and fax lines, and the dead line and lockup problems being experienced on my 03 55 267-267 and 267 260 service, were not investigated either, although the TIO, AUSTEL (and now the ACMA) and others have refused to assess two single bits of paper (Telstra CCAS Data) that proves the Cape Bridgewater Holiday Camp SVT process was a fudged.

When the TIO and AUSTEL refused to force Telstra to transparently investigate the ongoing telephone complaints that continued to haunt my business after my arbitration, continued.

Eventually these problems forced me to put the business on the market, late in 1995. In December that year a prospective buyer put down a $50,000 deposit but then asked if the phone problems had been rectified and, because I had to say no, the purchaser then pulled out. After taking a copy of the deposit cheque (which I still have) I returned the cheque to the prospective purchaser. The estate agent who handled that transaction will confirm that, between 1995 and 2000 two other enquiries 'fell over' in the same way.

In October 2001, with my health and my partner's at risk, when another prospective buyer asked if the telephone problems had been fixed I lied, and told them yes. I must add here that by then I had come to believe that Telstra was deliberately running a campaign to push me out of business and had therefore done something to the unmanned telephone exchange at Cape Bridgewater, rather than fix the problems and I also believed that Telstra would therefore fix the problems for any newcomer, but not for me. Just about every one of the 11,000 residents of Portland, including all three legal firms based there, knew about my mammoth fight with Telstra – the local Federal Member of Parliament had actually praised me in the local press for my courageous stand – and the legal firms (no doubt because they were legally bound to) always advised any prospective purchasers, including these latest ones, Mr & Mrs Lewis, about the phone

problems I had been experiencing. It is on record that, in March 2003, I advised the Australian Federal Police (AFP) that I had knowingly misled the Lewis' into believing that the business phone problems had all been fixed.

Within three months of taking over the business the Lewis' began to write to the same local Federal Member of Parliament that I had been writing to since early in 1993 – and the Lewis' were complaining about exactly the same phone and fax problems that I had been complaining about since April 1988. Finally the business failed completely and, in 2009, the Lewis' were finally declared bankrupt. While it would be wrong to conclude that their failure to run the business successfully was entirely because of the communications problems, these ongoing faults that forced me to sell certainly contributed to Darren Lewis's failing health at the end.

If you do intend to reply to this letter, would you please use a plain envelope and send it via the attached c/o address. This is not unfounded paranoia – there has been a history of interception of faxes and mail in relation to Telstra matters, as the next paragraphs show.

During Darren Lewis' Bankruptcy hearing in Federal Magistrates Court of Australia (Melbourne) he wrote to the Registrar that *"On learning from Ms McCormick that the information discussed above in points 1 to 4 had not been received by the Federal Magistrates by the Federal Court I again had a stress attack seizure, a problem I have been suffering with quite some time due to the predicament I now find myself in and the disbelief that once again my mail has been intercepted."*

The mail referred to was Telstra related documents that I had prepared on behalf of Mr Lewis showing that Telstra had fudged both the Bell Canada International Inc (BCI) Cape Bridgewater tests and the Cape Bridgewater Holiday Camp Service Verification Tests (SVT).

In my *9th Statement of Facts and Contentions* (p. 16 – 17) I offered to provide two files of evidence of intercepted faxes. Most if not all of the intercepted faxes are some way related to my arbitration with Telstra. The COT cases are not alone in believing in this evidence - two professional technical consultants agreed that the COT Cases have had their faxes intercepted by persons with access to Telstra's network (see also (p. 16) in my *9th Statement of Facts and Contentions*

Telstra's own documentation proves that on at least one occasion during my arbitration on 23rd May 1994, claim material faxed from my office did not reach the arbitrator's office even though my Telstra facsimile accountant shows that information was transmitted. Telstra documentation (which can be supplied on requests) shows the arbitrator's secretary even advised Telstra that her office did not receive this information. Again, the Telecommunication Industry Ombudsman refused to investigate why this part of my claim went missing before the arbitrator viewed the value of the content.

The attached three-page letter from a Melbourne forensic accountant to a Melbourne Law Centre notes that he: *"...was in America when the Watergate investigations were on television and the events which occurred in Australia in relation to the COT cases is very similar to Watergate. It is not so much the original act as the cover-up which has taken place since that time that is my greatest concern."* The points that he has then listed are a clear testament to radical, serious problems with the way my arbitration was conducted.

Last June, after reading a draft of my report, a UK technical author commented that he had found my story 'overwhelming'.

I would be happy to visit England and bring my manuscript in person if you would prefer that, because I believe that this is a story that must be told. Some of those who have read the draft of the manuscript, which is referred to above, have also read a separate, almost completed document called JUSTICE (that

can also be provided to you) and have then suggested that my story would make a good book or documentary – or both, mostly because of the detailed records I have kept and the complicated research I have undertaken over the years. These people also tell me that if it wasn't for the multitude of exhibits I have collected that my story would be almost impossible to believe. As a result of these suggestions I have decided, should anyone offer to produce a book or documentary, that I will donate any proceeds to a recognised charity.

I am sure this letter, even though it is a very brief version of the whole story, shows that I have tried every single avenue I can think of in my search for justice and I want you to know that I adopted this country as my own 49 years ago, having come here from England, and I love Australia, but I am desperate for help in relation to these Telstra/arbitration matters. As I have said above, I sincerely hope that, by putting this before you and the Church, someone, somewhere will finally believe me and provide the assistance that I need.

Many thanks for taking the time to read this letter. I look forward to receiving any advice you might be able to offer in relation to where else I might take this matter. Perhaps a reputable investigative journalist might like to read my manuscript? Or it might even be that the UK Institute of Arbitrators might be interested in seeing how arbitrations are conducted in Australia. If you are able to provide any advice on how I could go about contacting any organisations you might think appropriate, it would be most appreciated.

Yours Sincerely,

Alan Smith

*Copies to:*

*The Hon Robert McClelland MP, Federal Attorney-General Canberra Australia*

*The Hon Robert Clark MP, Victorian Attorney-General Victoria Australia*

LAMBETH PALACE

**Ms Sue Parks**
*Project Officer*

Our Ref: 91978, 92533, 92963
Date of Reply: 26 July 2011

Mr Alan Smith
Seal Cove
1703 Bridgewater Road
Portland
Vic 3305
AUSTRALIA

Dear Mr Smith,

I have been asked to reply to your letters to the Archbishop of Canterbury and to acknowledge the receipt of the cd and other papers. Thank you for being in contact with the Archbishop.

The narrative you give and evidence you produce are fascinating and compelling. However, as you clearly understand, the Archbishop of Canterbury has no jurisdiction in such matters even in the UK. It is his practice not to comment on such cases.

In seeking to make known the facts of all that has happened to you – in the cause of public interest – it is probably better to look for ways to do so within Australia, as such cases tend not to 'travel' very well in terms of media interest. I am sure you have tried this avenue as your research is very thorough and your tenacity admirable. It may be, however, that when the matters have been fully resolved there might be interest in telling your saga more fully.

I'm interested to see that you were baptised in Kingsbury. I live on the edge of Kingsbury, having settled there when I came to London from Sydney some years ago.

Again, thank you for being in contact with the Archbishop.

Yours sincerely,

Sue Parks

Sue Parks

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Lambeth Palace, London SE1 7JU
*Direct Line:* +44 (0)20 7898 1218 *Switchboard:* +44 (0)20 7898 1200 *Fax:* +44 (0)20 7401 9886
*Email:* sue.parks@lambethpalace.org.uk
www.archbishopofcanterbury.org.uk

attributable to his own mis-operation or misunderstanding of his own equipment.

(d) I note the statutory declaration of David John Stockdale, Principal Technical Officer Grade 2 employed by Telecom, who concluded that Telecom had to his knowledge provided the claimant with a very high level of personal attention, at least between July 1992 and January 1993 and again between May 1993 and December 1993. This view was shared by Gordon Stokes, a former Telecom employee who had extensive dealings with the claimant.

(e) Also of relevance is the statement by Mark Adrian Ross, Customer Service Manager, Commercial Country Victoria, that "discussion with Portland technical and exchange staff revealed that despite thorough investigations, no further problems could be found with Mr Smith's telephone service...Mr Smith was nevertheless still complaining about his telephone service."

(f) For the claimant's part, he maintains that the network upgrade in 1991 was initially unsuccessful; the number of faults (if any) attributable to customer mis-operation was negligible; and the effect of any high level personal attention which he received from Telecom would have to be offset against the failure of Telecom to rectify his problems.

5.10 ***Misleading Conduct***

(a) The AUSTEL report notes a number of instances of misleading conduct by Telecom of the nature described by the claimant but not specific to the claimant. These include:

- potentially misleading advice given to customers regarding the outcome of monitoring;
- potentially misleading advice given to customers regarding the outcome of testing;
- a reluctance by some Telecom staff to admit faults, thereby hindering speedy and effective attempts to rectify the problems;
- a reluctance, earlier on, to admit to difficult network faults and to deficiencies in handling them;
- potentially misleading advice as to whether the existence of a fault had been positively excluded or simply not located;
- potentially misleading advice that faults were attributable to customer equipment when other causes had not been eliminated due to inadequacies in Telecom's monitoring/testing procedures;

- making statements to the effect that a customer's problem is unique before the causes have been identified.

(b) Coopers & Lybrand commented that Telecom unreasonably used its inability to adequately document faults and test for causes as a defence against claims.

(c) As indicated earlier, the claimant has not articulated the legal bases for his claim, nor did I expect him to do so. Had he done so, however, he may well have alleged some instances of misleading conduct by Telecom of the nature set out in the AUSTEL report.

5.11 ***Conflicting technical evidence***

(a) Understandably, the claimant places great reliance upon George Close's report.

(b) I have noted the content of a report from Telecom's Commercial & Consumer Office of Customer affairs, appended to a statutory declaration by Peter Henry Gamble but otherwise prepared by unnamed authors, which concludes that the "overall impact of the report prepared by George Close & Associates is severely undermined by an apparent lack of knowledge of standard network configuration, operation and practices", adding that the report "continually mis-interpreted basic information relating to testing and exchange performance".

(c) George Close responded, in a reply dated 20 January 1995, by admitting to some errors but attributing those errors in many instances to incorrect or unclear information obtained by the claimant from Telecom under FOI.

(d) It should be emphasised that George Close did not necessarily have available to him all of the correct technical information at the time of preparation of his report. Most, if not all, of that information could only be sourced from Telecom. The failure of George Close to produce a totally accurate report, in the circumstances, is in no way a reflection on the professional competence or expertise of the claimant's technical advice.

5.12 ***The Need for Resource Unit Technical Input***

(a) There is overwhelming evidence that the claimant has experienced trouble with his telephones. There is also overwhelming evidence that the difficulties the claimant has experienced with his telephones have occurred with greater consistency than one would normally expect.

(b) My task has been made difficult, however, by the unsubstantiated nature of some of the claimant's allegations and the divergence of opinions as between the claimant and Telecom in relation to the existence, cause or

(b) Clause 20 of the Arbitration Rules refer to payment of the Arbitrator's fees and expenses, whilst clause 21 deals with the administrative costs of the procedure.

(c) Clause 22 provides that "subject to clause 21, each party shall bear its own costs of the arbitration".

(d) There is no elaboration as to what constitutes the "administrative costs" referred to in clause 21. A logical interpretation, however, would be that this relates to the costs of the Special Counsel and members of the Resource Unit. I would find it difficult to include claim preparation costs in this category.

(e) I accept that the claimant is free to advance the argument that aspects of his claim preparation might be categorised as "consequential losses". I also reiterate my opinion that I have some degree of discretion in awarding compensation. Nonetheless, I am simply unable to overlook the wording of clause 22. On any interpretation, a requirement that each party "bear its own costs" must extend to costs associated with legal advice, accounting advice, expert technical evidence, medical reports and clerical assistance. These are all costs which, as far as I can determine, have been incurred as a direct response to the commencement of this arbitration.

7.14 ***Amounts Owed to Telecom***

(a) In making an award of compensation, it is necessary for me to take into account the amount paid by Telecom to the claimant by way of settlement on 11 December 1992. Particulars of this payment are set out in part 3.3 (a) of these Reasons. I have taken this payment into account.

(b) Pursuant to clause 10.1.2 of the arbitration agreement, I am required to set off against any amounts found to be otherwise owing to Telecom, any rebates granted to or services carried for the claimant by Telecom to date.

(c) In its amended defence, Telecom provides particulars of an invoice for $16,679.30 dated 21 March 1995 for service 055 267 230. The claimant has disputed that part of the telephone expenses which relate to the preparation of his claim. For the reasons stated in part 7.13 (e) above, I do not support the claimant on this issue.

.....

**GORDON HUGHES**
Arbitrator
This 11th day of May 1995.

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would have affected approximately one third of subscribers receiving a service of this RCM. Given the nature of Mr Smith's business in comparison with the essentially domestic services surrounding subscribers, Mr Smith would have been more affected by this problem due to the greater volume of incoming traffic than his neighbours. (A summary of the circumstances surrounding the RCM fault are detailed under Allegation (iii)).

47 Telecom's ignorance of the existence of the RCM fault raises a number of questions in regard to Telecom's settlement with Smith. For example, on what basis was settlement made by Telecom if this fault was not known to them at this time? Did Telecom settle with Mr Smith on the basis that his complaints of faults were justified without a full investigation of the validity of these complaints, or did Telecom settle on the basis of faults substantiated to the time of settlement? Either criteria for settlement would have been inadequate, with the latter criteria disadvantaging Mr Smith, as knowledge of the existence of more faults on his service may have led to an increase in the amount offered for settlement of his claims.

**Allegation (ii) Failure to keep clients advised**

**Introductory Comment**

48 AUSTEL has been hampered in assessing Telecom's dealings with Mr Smith by Telecom's failure to provide files relating to Mr Smith's complaints. A file from the local Telecom area who first dealt with Mr Smith's complaint has not been provided to AUSTEL, although documents from this file have been copied to other files. At the time of writing, no explanation for the failure to provide this file or other files has been received from Telecom.[30]

49 As a result of Telecom's failure to provide file documentation relating to Mr Smith some of the following conclusions are consequently based on insufficient information. The information which is available, however, demonstrates that on a number of issues Telecom failed to

[30] May need to be re-written if other information comes to light.

difficult to gauge the level of problems in the area which should have been to known to Telecom based on their own routine reporting data.

44 Given the range of faults being experienced by Mr Smith and other subscribers in the Cape Bridgewater it is clear that Telecom should have initiated more comprehensive action than the test call program. It appears that their was excessive reliance on the results of the test call program and insufficient analysis of other data identifying problems. Again, this deficiency demonstrated Telecom's lack of a comprehensive and co-ordinated approach to resolution of Mr Smith's problems.

**Conclusion**

45 It would appear reasonable to assume that given the history and circumstances of Mr Smith's complaints Telecom would take comprehensive action to ensure that his service was performing at an acceptable standard and continued to do so. Such action would have been mutually beneficial, as Mr Smith would have received an acceptable service and the number of complaints to Telecom from Mr Smith would have diminished. It is clear that action performed by Telecom was not sufficiently comprehensive to identify the faults on his service, and that greater consideration of customers' complaints would have assisted in the resolution of Mr Smith's problems. It also seems that the considerable number of testaments from callers experiencing problems contacting Cape Bridgewater Holiday Camp were similarly discounted by Telecom.

46 File evidence clearly indicates that Telecom at the time of settlement with Mr Smith had not taken appropriate action to identify possible problems with the RCM. It was not until a resurgence of complaints from Mr Smith in early 1993 that appropriate investigative action was undertaken on this potential cause. In March 1993 a major fault was discovered in the digital remote customer multiplexer (RCM) providing telephone services to Cape Bridgewater holiday camp. This fault may have been in existence for approximately 18 months.[29] The fault

[28] Run past Brian Morgan.

[29] Exact period needs to be clarified.

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77 It is assumed that the "interview" referred to is the March 1991 survey of 9 customers on this exchange identified above. If so, this statement was false. As noted previously, there were 3 other people who stated they had experienced the problem, with one subscriber identifying two other people experiencing the same problem. The context of the statement suggests that the survey was comprehensive, when in fact only 9 out of approximately 60 subscribers were surveyed. Imparting misleading and false information of this nature to Telecom's senior management diminished Mr Smith's credibility as a complainant. AUSTEL regards this misinformation as a very serious breach of ethics by Telecom's Customer Services Manager in this region, and behaviour that cannot be condoned. 138

**Failure to advise of PCM problem at Cape Bridgewater**

78 A number of points made in the preceding section are relevant to this issue, which is one of the most important issues relating to problems on the Cape Bridgewater Holiday Camp. The issue is discussed in detail in Allegation 3.[37], as is the advise provided to Mr Smith on this problem.

**Failure to advise on issues relating to RVA's on Cape Bridgewater Holiday Camp service**

Introductory Comment

79 Mr Smith has reported Recorded Voice Announcements (RVA) on his telephone service over an extended period of time. Telecom has admitted that RVA's occurred on his service over a given period, far shorter than that claimed by Mr Smith. The unravelling of the occurrences and causes of RVA's on the Cape Bridgewater Holiday Camp is one of the most complex issues in relation to Mr Smith's service difficulties. It is clear, however, that Telecom's communication with Mr Smith on the issue of RVA's occurring on his service was inadequate and served to aggravate an already contentious issue. It is necessary to examine the RVA issue in some

[37] Make sure cross reference is correct.

743

See response 25.8.94.

(File) Kimble Black Geary Chalmers Freehills.

# Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Harrowell
Christine A. Gailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debney
Grant D. Sefton
Charles Veevers
Andrew Logie-Smith
William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Seit

16 August 1994

Our Ref: GLH
Matter No:
Your Ref:

Mr Paul Rumble
Group Manager - Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne VIC 3000

Dear Mr Rumble

**ARBITRATION - SMITH**

I enclose copy facsimiles received from Mr Smith dated 12 August and 15 August 1994.

In his facsimile of 12 August, Mr Smith foreshadows the submission of his completed claim by 17 August 1994. In his later fax, he indicates that the submission will be delayed until 18 August 1994.

Although Mr Smith states no further submissions will be made after 18 August, I note he is simultaneously asking for a direction from me in relation to the production of certain raw data. This is consistent with the matters foreshadowed in the letter from George Close & Associates of 12 August which I have forwarded to you today by a separate facsimile. I will be asking Mr Smith to clarify whether he seeks to include the raw data or any analysis of the raw data as part of his submission.

If Mr Smith does seek to rely upon the raw data or the results of any analysis of the raw data, and if such information is to be made available to him, then I could not accept his submission as being "complete" as at 18 August 1994.

As requested in my covering facsimile enclosing a copy of Mr Close's letter, I would be grateful if you would provide me with your initial reaction to the request so that I can consider appropriate directions on the matter.

Mr Smith also makes a second request, that is, for me, the Resource Unit and certain claimants to view privileged information in the possession of Telecom. I am seeking further clarification of this request from Mr Smith but my inclination is to disallow it.

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

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

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telephone system about two months after he moved in. He was alerted to the problem by the poor response he received to a vigorous advertising campaign which he had undertaken shortly before taking up residency at the Camp. His concerns were subsequently borne out by persons who claimed they had been trying unsuccessfully to telephone the Camp.

(f) The precise nature of the faults alleged to exist is summarised later in these Reasons. In simple terms, the claimant asserts that intermittently callers were not connected or else were given the incorrect impression that his telephone was unattended or had been disconnected. He estimates that, during some periods at least, he lost approximately 50% of incoming calls. The claimant alleges that not only did these defects exist but also Telecom failed to respond adequately to his complaints, either by failing to acknowledge the existence of the problems or by failing or refusing to rectify them. In addition, the claimant asserts he was charged for calls not made or not connected. He says that, overall, the service provided by Telecom failed to meet normal network standards.

(g) Notwithstanding his criticism of the level of attention his complaints received, the claimant acknowledges that "Telecom has spent thousands upon thousands of dollars in equipment and man hours in attempts to identify and correct the problems". He obviously considers, however, that this was not time or money well spent. He says that whilst Telecom technicians on occasions acknowledged the existence of faults, "at a management level they [Telecom] have denied, negated and trivialised" his complaints.

(h) The claim includes an assertion that until August 1991, Cape Bridgewater was serviced by an unmanned analogue RAX (incorrectly described as ARK) exchange which was obsolete, outmoded and severely under-trunked. In August 1991 this exchange was replaced with a modern AXE 104 digital exchange at Portland together with a Remote Customer Multiplexer ("RCM") at Cape Bridgewater. This should have improved the level of service but, because the RCM's fault alarm was not connected until March 1993 and because of interworking problems between the RCM and the Portland AXE 104 exchange, the level of service did not improve. The claimant adds that he continued to suffer transmission problems after March 1993, although since July 1994 he has had relatively little cause for complaint.

(i) The claimant seeks to recover compensation for economic loss and for personal injury and suffering. He estimates that he has an entitlement totalling nearly $3,500,000.00. I deal with his alleged financial losses and his alleged health problems later in these Reasons.

(j) In support of his claim, the claimant has submitted a range of documents including Telecom documents obtained under FOI or pursuant to the arbitration process, contemporaneous diary notes,

(j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquiries on my behalf;

(k) on 30 April 1995, I received a technical report and on 3 May 1995 a financial report from the Resource Unit, each of which furthered my understanding of the issues in dispute;

(l) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit and both availed themselves of that opportunity.

2.2 In all, I have read in excess of 6,000 pages of documentary evidence submitted by the parties.

## 3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or that evidence into account. This part sets out an overview of the dispute only.

3.2 ***Overview of Claim***

(a) The claimant alleges that defective telecommunications services provided by Telecom have damaged his business and caused his health to suffer.

(b) The claimant is a chef by occupation and is now 51 years of age. In December 1987 he purchased as a going concern the Cape Bridgewater Holiday Camp, commencing occupancy in February 1988. The camp included a homestead, an old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.

(c) Cape Bridgewater is 20 kilometres from Portland. The claimant regarded the area as a significant tourist attraction and says there was no documented evidence of any decline or predicted decline in tourism at the time of the purchase.

(d) The former owner of the business now lives in India and has not provided evidence on behalf of either party in these proceedings. I know relatively little about the state of the business or the state of the telephone system used by the business as at the time of the purchase or beforehand. In any event, the claimant says he contemplated improving the existing facilities and hence the mix of clientele, thereby increasing revenue and profits.

(e) The claimant asserts that the ongoing viability of the business was to a significant extent dependent upon his ability to take telephone bookings. He states that he first became aware of a problem with his

COPY

# Hunt & Hunt
LAWYERS

Partners
David M. Scarlett
Edward S Boyce
James G.F. Harrowell
Christine A. Calley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Dobney
Grant D. Belton
Charles Vooverv
Andrew Logie-Smith
William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Collichio

23 January 1995

Our Ref: GLH
Matter No: 5126886
Your Ref:

BY FACSIMILE 055 267 230
Mr A Smith
Cape Bridgewater Holiday Camp
RMB 4408
CAPE BRIDGEWATER
Portland Vic 3305

Dear Mr Smith

**ARBITRATION - TELECOM**

I enclose copy letter from Telecom dated 13 January 1995 in response to your facsimile of 28 December 1994.

You will note Telecom does not consider it has any further information of relevance in its possession.

I invite you, within the next twenty four hours to respond to Telecom's submission. Specifically, I want to be certain that there is no confusion between the parties as to the documentation which is being sought.

Yours sincerely

**GORDON HUGHES**

Encl.

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

melbourne
sydney
sydney w
brisbane
canberra
newcastle
represented in
adelaide
darwin

11595732_ACZF/CF

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

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| | | | |
|---|---|---|---|
| FAX FROM: | ALAN SMITH<br>**C. O. T. (CASUALTIES OF TELSTRA formerly CASUALTIES OF TELECOM)** | DATE: | 3.9.95 |
| FAX NO: | 055 267 230 | | |
| PHONE NO: 008 816 522 | | NUMBER OF PAGES (including this page) | |
| FAX TO: | **MR JOHN PINNOCK<br>TELECOMMUNICATION INDUSTRY OMBUDSMAN<br>EXHIBITION ST<br>MELBOURNE** | | |

Dear Mr Pinnock,

Attached with this letter are copies of three letters from Austel, together with one from Telecom and one from the Cape Bridgewater Holiday Camp. These letters are self-explanatory and show that:

1. Dr Hughes was well aware of my 008 number (008 816 522) as not only being a source of incorrect charging, but also a source of faults where customers could not make a direct contact. My submission/claim included many pages of information regarding this matter and detailing the problems.

2. The letter from Austel, addressed to Dr Hughes and dated 8th December, 1994 states that Telecom had assured Austel that they would address the 008 issue in the Fast Track Arbitration Procedure. Neither Dr Hughes or Telecom did address this issue. Why?

3. A major fault existed in my area relating firstly to my 008 number and then translating to my 267 267 number. NO-ONE HAS RESPONDED TO THIS COMPLAINT.

4. The Austel letter to Mr Black, dated 4th October, 1994, states on page 2 at point 3 that Mr Jason Boulter of the Malaleuca Motel, 008 034 449, had complained of the same faults on his service as Mr Smith.

5. Mr Boulter's phone account, showing these short-duration calls, was included in my submission/claim.

6. Why has Dr Hughes chosen to disregard this complaint, which was included in my claim?

7. In the letter from Telecom to Mr Mathews of Austel, dated 11th November, 1994, Telecom states quite clearly (paragraph 3), that they will address this situation in their defence. THEY DID NOT.

8. ALL THESE LETTERS were in Dr Hughes' possession. I obtained them when I picked up my defence documents on Tuesday, 29th August, 1995.

*Mr Pinnock, what would you do in my place if:*

*(a) You had shown the Arbitrator letters and documents, including Defence Documents, that clearly indicate that those Telecom employees who signed "Witness Statements" have lied to Management over many years; that they have also lied in their Statutory Declarations to the Arbitration Process itself, yet the Arbitrator chooses to disregard this evidence?*

*AND*

*(b) Even though he is operating under the Arbitration Rules, the Arbitrator does not seek documents which are required to support your evidence.*

The enclosed letters should be enough to alert you to the fact that all is not right with Dr Hughes and his findings. He needs to explain his reasons for not acting on the contents of these letters.

I am now seeking your advice on a very difficult matter: What should I now do? I believe that my concerns are valid; there is other information, similar to that presented here, which clearly shows that the very inadequate phone service to Cape Bridgewater *was not investigated fully in the Arbitration Procedure.*

I await your response,

Respectfully,

Alan Smith

cc My John Wynack, Commonwealth Ombudsman's Office, Canberra, A.C.T.

| | | | |
|---|---|---|---|
| **FAX FROM:** | *ALAN SMITH*<br>*Cape Bridgewater*<br>*Holiday Camp*<br>*Portland 3305* | **FAX TO:** | **MR JOHN PINNOCK**<br>**TELECOMMUNICATION**<br>**INDUSTRY OMBUDSMAN**<br>**MELBOURNE** |
| **FAX NO:** | 055 267 230 | **DATE:** | 20.10.95 |
| **PHONE NO:** | 008 816 522 | **NUMBER OF PAGES** (including this page) | |

Dear Mr Pinnock,

I refer to your letter dated 18th October, 1995. In this letter you stated that you do not propose to address any of the specific allegations which I make in the future and that you will not reply to any letter I send which makes defamatory remarks.

Mr Pinnock, from the days of the Pharaohs through to Charles Dickens, and even now, in many Third World Countries, the man in the street has NO rights to challenge the bureaucracy - those in higher positions. I have today checked both the Collins Desk Top Dictionary and the Shorter Oxford English Dictionary to determine the exact meaning of 'defamatory': at NO time in my letter to you dated 18th October, 1995, was I defamatory. Truthful, yes - but not defamatory.

In late 1994 I became quite alarmed after hearing of a conversation Graham Schorer had had the night before with a couple of computer hackers who had broken into the E-mail system at Telstra House in Exhibition Street. The information they passed on concerned me so much that I rang Warrick Smith at the TIO's office as well as a Member of Parliament and an adviser to a Senator. As just one member of COT, I did not want to access or use illegal information gained during the FTAP. It was not what these fellows said on the second contact that alarmed me so much: it was a phrase that these lads used. This phrase has now come home to roost.

I am so disappointed in your attitude. To think that three of the four COT Case members who have presented their claims had come so far and been so close to the finishing line, only to be disqualified by the judge.

It is alarming that you should choose to use the word "defamatory" when I have produced facts to back up every allegation I have made, including:

1. Ferrier Hodgson's four page register of returned documents. Ferrier Hodgson received these documents via DR HUGHES but there were 39 documents missing: 39 letters which had been sent to Dr Hughes during the FTAP as evidence in support of my claim/submission.
2. Showing your office where Dr Hughes again broke his own Rules of Arbitration by not forwarding documents he received from Austel that also supported my claim.

The Technical Resource Team, Lanes Telecommunications and DMR, did not view this evidence which was presented by Austel to Dr Hughes and which validated my claim that others in my region had complained of phone faults similar to my own.

Dr Hughes made strong reference to a technician who had stated that I was the only business in the district that had complained of phone faults that were severe enough to be affecting my business but I proved, beyond all doubt, using Telstra's own Defence Documents together with FOI documents, that this technician lied. Now we see that Austel also supported my claim but Dr Hughes did not circulate this information to all the Parties within the FTAP. My own Resource Team were among those not provided with this evidence and this severely disadvantaged, firstly my claim and secondly my right to amend that claim.

I am enclosing just three letters which supply further information and which compliment the information supplied by Austel when they wrote to Dr Hughes. These three letters were not included in the documents returned to me from the offices of Dr Hughes and Ferrier Hodgson.

As yet another example of information not circulated correctly: there was evidence of further phone faults on my service in documents which accompanied a bound volume submitted to the FTAP. This information was not shown to the Resource Team either.

As well as all this, I have still not received my promotional video back from Dr Hughes and it is now four months since I originally asked his secretary to arrange its return.

I await your response,
Most respectfully,

Alan Smith

cc Mr John Wynack, Commonwealth Ombudsman's Office, Canberra, ACT

Commonwealth of Australia

STATUTORY DECLARATION

*Statutory Declarations Act 1959*

1 *Insert the name, address and occupation of person making the declaration*

2 *Set out matter declared to in numbered paragraphs*

[1] I, Graham Schorer, Managing Director of Golden Messenger, 493-495 Queesnberry St, North Melbourne, Victoria, 3051, make the following declaration under the *Statutory Declarations Act 1959:*

[2]In early February 1994, our premises were broken into and all computer cables including the power cables were severed, as well as all power connections to the main server which was in a specially constructed room. The perpetrators forced entry into the building in what the police described as a "ram raid", where something similar to pneumatic tyre attached to the front of a vehicle was used to hit the front door with enough force to dislodge the steel frame attached to the brick work. According to the time on the server backup battery, the power was cut just prior to 2am.

Part of the microfiche copier and viewer was stolen, as well as the PC on my desk which contained all of my COT information and correspondence between regulators, politicians, etc. Also stolen was a book that contained a catalogue of computer file numbers against their description.

The police who attended our premises the next morning stated that it was a professional job, where the invaders had a specific mission or were disturbed. As there was no alarm system to alert them, it was more likely that it was a specific mission. The police asked questions about any sort of irregular business we had been involved in and who we may have upset.

The same day I spoke to Gary Dawson, from Dawson Weed and Pest control (another COT Case) on the phone, who told me that his business premises in Sunshine had also been broken into just after midnight and burgled. The only thing stolen was the Dictaphone tape which held a recording he had made of a meeting between him and two Telstra executives on the previous day.

By this stage, I had already lodged and elevated a formal complaint with the Commonwealth Ombudsman regarding Telecom's refusal to supply requested documentation under the Freedom of Information Act and despite the verbal assurances that Robin Davey (Chairman of AUSTEL) had provided to the foundation COT members on behalf of Telecom as inducement to sign the FTSP.

After I signed the arbitration agreement on 21st April 1994 I received a phone call after business hours when I was working back late in the office. This call was to my unpublished direct number.

The young man on the other end asked for me by name. When I had confirmed I was the named person, he stated that he and his two friends had gained internal access to Telstra's records, internal emails, memos, faxes, etc. He stated that he did not like what they had uncovered. He suggested that I should speak to Frank Blount directly. He offered to give me his direct lines in the his Melbourne and Sydney offices, the numbers to in his Sydney and Melbourne vehicle phones plus his personal mobile phone number, plus the number for his Melbourne apartment at the Como Hotel and his home phone number in Sydney.

The caller tried to stress that it was Telstra's conduct towards me and the other COT members that they were trying to bring to our attention.

| | | | |
|---|---|---|---|
| **FAX FROM:** | *ALAN SMITH*<br>*Cape Bridgewater*<br>*Holiday Camp*<br>*Portland 3305* | **FAX TO:** | **MR JOHN PINNOCK**<br>**TELECOMMUNICATION**<br>**INDUSTRY OMBUDSMAN**<br>**MELBOURNE** |
| **FAX NO:** | 055 267 230 | **DATE:** | 20.10.95 |
| **PHONE NO:** | 008 816 522 | **NUMBER OF PAGES** (including this page) | |

Dear Mr Pinnock,

This letter is a formal request that the Office of the TIO investigate the following two phone faults:

1. SHORT DURATION CALLS IN TO MY BUSINESS

and

2. OVERCHARGING ON MY 008/1800 PHONE SERVICE.

From August 1991through to June 1994, I have continually complained of these short-ring-type of phone faults. Before 1991 I had passed on several complaints from different customers where they had experienced the following faults when ringing into Cape Bridgewater:

a. CONSTANTLY ENGAGED SIGNALS, WHEN THE LINE WAS FREE
b. DIAL OUT SITUATIONS, WHEN A STAFF MEMBER OR MYSELF WAS IN RESIDENCE
c. CUSTOMERS RECEIVING A RECORDED MESSAGE STATING THAT THE NUMBER THEY WERE RINGING WAS NOT CONNECTED WHEN, IN FACT, MY BUSINESS HAS AT ALL TIMES BEEN CONNECTED TO THE TELECOM NETWORK SERVICE (EXCEPTING FOR ONE OCCASION WHEN TELECOM CUT OFF MY SERVICE FOR FIVE DAYS BECAUSE I HAD REFUTED A VERY LARGE PHONE ACCOUNT. TELECOM EVENTUALLY 'STOOD OVER' ME UNTIL I PAID UP).

The complaints listed above at points 1 and 2 are separate issues and have nothing to do with the Fast Track Arbitration Procedure. In particular, the second complaint was only noticed early in February 1993, when I checked my 008/1800 Free Call account. I feel justified in making this statement for the following reasons:

*On the 4th of October, 1994, Bruce Mathews, Consumer Protection, Austel, wrote to Steve Black with regard to the short-duration-call faults on my service and the overcharging on my 008/1800 Free Call service.*

*On the 1st of December, 1994, Mr Ted Benjamin, National Manager, Telstra Customer Service, wrote to Bruce Mathews stating that these two faults would be addressed by Telstra in their defence, Smith-Telstra FTAP.*

*On the 8th of December, 1994, Bruce Mathews of Austel wrote to Dr Gordon Hughes stating that Telstra would address the issues I had raised concerning points 1 and 2 above.*

*During the FTAP I tabled many examples of customers complaining of short-duration calls, over many years. I also presented a large amount of documented evidence to support the incorrect charging on my 008/1800 Free Call service..*

**TELSTRA DID NOT ADDRESS EITHER OF THESE TWO FAULTS IN THEIR DEFENCE DATED 12TH DECEMBER, 1994.**

Dr Hughes, the Arbitrator of the FTAP, did not raise the issue of Telstra not addressing these faults, as they had said they would. His reasons for this omission are known only to himself (and perhaps Telstra).

It is a negligent act by the Arbitrator not to have passed on to me the three letters mentioned previously in this letter. If I had had Austel's supporting information, which was contained in these letters, and therefore had known that another business had also reported exactly these two faults, I would have been prompted to amend my claim and my own Resource Team could have then investigated further. Dr Hughes did not give us that choice.

The four letters attached contain evidence that supports my claim that others in the area also had phone faults. I draw your attention to the fact that the originals of these four letters were presented to the FTAP - these are copies only. However, I believe that the Resource Team never saw these letters since they were not among the Defence Documents that were returned to me. I would be most grateful if you, as Administrator of the FTAP, would ask the Resource Team if they have seen these letters.

This has digressed from the main point of this letter which is to seek the help of the TIO in investigating the two phone faults (points 1 and 2 at the start of this letter) which were not a part of the FTAP since they were not addressed by either Dr Hughes or Telstra.

I can supply your office with a variety of evidence supporting the significance of these calls right through the time periods mentioned. Also, it is mentioned in the Austel COT Report that, while Telstra was in attendance at my business in February 1993, a staff member had complained to the technician that many customers who had finally managed to reach her complained of experiencing dial-out calls when she knew she had been in residence. This staff member further noted that even on the day the technician was visiting she had experienced two short-duration calls by 10am: when she picked up the phone, the line was dead.

There is further evidence of a similar nature which can be supplied, as well as FOI documents which will all support these two complaints. I am however pleased to inform your office that there have been no complaints of this nature since late June 1994.

I await your response to the matters raised in this letter.

Sincerely,

Alan Smith

cc Mr John Wynack, Commonwealth Ombudsman's Office, Canberra, ACT

I queried whether he knew that Telstra had a Protective Services department, whose task was to maintain the security of the network. They laughed, and said that yes they did, as they were watching them (Telstra) looking for them (the hackers). He indicated that the Protective Services department was located somewhere in Richmond.

I then said that Telstra Protective Services would have the ability to track their calls. They said not in this case.

I queried why. They stated that they gained accessed to someone else's phone system and were using that system to gain internal access to Telstra's network, which would prohibit Protective Services from tracing them.

After this call, I spoke to Alan Smith about the matter. We agreed that while the offer was tempting we decided we should only obtain our arbitration documents through the designated process agreed to before we signed the agreement.

I informed them of our decision when they next rang. I requested that they did not ring again.

I was troubled by these events and after great deliberation I contacted Warwick Smith and informed him of the events.

After a considerable period of time had passed I asked Warwick Smith if there had been an outcome from the information I had supplied him. He told me that the hackers had been apprehended.

At the same time he shared with me information about a criminal organisation working out of Sydney who had accessed a Newcastle firm's PABX and used it to make out of hours calls and financial transactions to the USA (which turned out to be illicit transactions in gold bullion). They were only traced because the company had a non-standard billing period.

A short time later, I was at a barbecue where I met a gentleman who stated that he worked for the armed forces, but would not elaborate further.

As soon as I mentioned my name and Golden Messenger, he started paying closer attention and asked some leading questions about my dispute with Telstra.

I then described my problems with the Telstra service – the service faults, the ongoing problems and Telstra's conduct and interception of phone calls and faxes.

I mentioned the kids who had rang me, at which point his interest increased.

He asked several very pertinent and skilful questions about network vulnerabilities, call failures, etc and was clearly concerned about security within the Telstra internal network and the fact that Telstra was illegally intercepting calls of its customers who were in dispute with them.

He was deeply interested about the information I able to give him regarding the hackers and that their assertion they had been able to gain access to and infiltrate the Telstra Network Security, right down to their electronic monitoring the act ivies of Telstra Protective Service.

From memory, it would have been a considerable time when I asked Warwick Smith

about the information I had given him about the hackers. He told me that they had been caught and charged.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

*3 Signature of person making the declaration*

3

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

Declared at[4] Cheltenham on[5] 7th of[6] July 2011

Before me,

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

7

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

8

**Brett WALKER**
**Senior Constable 32031**

CHELTENHAM POLICE STATION
1224 NEPEAN HIGHWAY
CHELTENHAM 3192
DX 211453

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

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

October 30, 1995

Telecommunications
Industry
Ombudsman

John Finnock
Ombudsman

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

***By Facsimile: (055) 267 230***

Dear Mr. Smith,

I refer to your letter of 20 October 1995 in which you formally request that the TIO investigate your complaints concerning short duration calls to your business and overcharging on your 008/1800 phone service.

In that letter you assert that these complaints are separate issues and have nothing to do with the Fast-Track Arbitration Procedure. However, you then go on to state that:

> *"....During the FTAP I tabled many examples of customers complaining of short-duration calls, over many years. I also presented a large amount of documented evidence to support the incorrect charging on my 008/1800 Free Call Service."*

These are not matters which I can investigate, as they have been dealt with in the arbitration.

As you know, I am not in a position to investigate whether Telstra addressed these matters in its Defence, or how the Arbitrator dealt with these matters in his deliberations. I do note however that there appear to be references to these matters in the Arbitrator's Award.

I reiterate what I have been forced to point out to you on numerous occasions already. I am not in a position to investigate any continuing concerns you have with the arbitration, or the manner in which the Arbitrator dealt with your claim. You should seek your own legal advice as to the avenues available to you.

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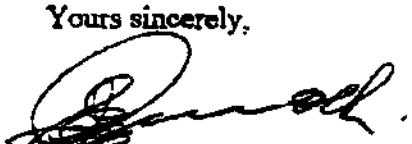
If you continue to request that I take action which amounts to an investigation of your arbitration, you will only be disappointed and frustrated by my inability to do so. I urge you to bear this in mind.

Yours sincerely,



John Pinnock
Ombudsman

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**Senator CALVERT**—We have now gleaned the fact that Telecom may have employed private investigators. Has Telecom ever received any complaints of private investigators acting illegally to collate information on people that they are investigating? Have you had any complaints?

**Mr Von Willer**—I cannot answer that question without checking the record.

**Senator CALVERT**—I understand that Telecom has an auditor's report, compiled by Sally Ann Ford in November 1992, in relation to a complaint made by Mr Geoff Marr. I am wondering whether I could receive an unedited copy of that report, Minister.

**Senator Collins**—I personally do not have any knowledge of that, but if the officers do they are perfectly able to reply.

**Senator CALVERT**—If you would take that on notice. Could you also take on notice this question: what are the full costs incurred to date, including for private investigators and legal expenses et cetera, by Telecom in pursuing a former employee, Mr Marr, over a $200 Cabcharge abuse?

**Senator Collins**—Certainly.

**Senator CALVERT**—Thank you.

**Senator ALSTON**—I have a question about ex gratia payments. Are you able to indicate the number of persons who have received ex gratia payments over each of the last three financial years and the total amounts of money involved?

**Mr Von Willer**—Are you referring to customers or individuals generally?

**Senator ALSTON**—Both, but I think primarily customers.

**Mr Von Willer**—That is again a question that we need to take on notice if you want the specifics.

**Senator ALSTON**—That is all right. Are you able to provide a list of the exchanges about which complaints have been made and the volume and nature of those complaints?

**Mr Von Willer**—That is a very general question. Can you narrow it down in terms of what types of complaints?

**Senator ALSTON**—Do you collate complaints information?

**Mr Von Willer**—We do.

**Senator ALSTON**—Do you then bring it down to an exchange by exchange basis?

**Mr Von Willer**—Often the complaint is not sourced to a particular exchange. It may be a complaint in respect of service difficulty, a billing, a line fault, customer premises equipment—

**Senator Collins**—I will interrupt here, Senator Alston, only for the reason that I have actually been in the work space and watched the procedure on complaints. I certainly know in the case of Darwin, which I was told at the time had one of the highest efficiency records in the world for chasing up complaints, that what normally happens is that the bank of telephonists receiving the complaints actually sit together with technicians in the same work space. I was told on that occasion that the majority of the complaints that are received are fixed almost immediately, within a matter of minutes, because they are exchange problems that the technicians are able to immediately remedy. I saw the speed at which this was being done, and I do not know whether they would be logged to that extent.

**Mr Von Willer**—They would certainly be logged. Do you mean by geographic areas or do you mean by the actual exchange as distinct from other parts of the telecommunications plant? Do you mean by area?

**Senator ALSTON**—I suppose I mean by exchange but also area if you have got that information.

**Mr Von Willer**—We will try and be responsive to you and maybe further dialogue in terms of the sort of breakdown that you are seeking would help us.

**Senator ALSTON**—I suppose the concern is to try to identify those areas where there seem to be chronic complaints. Without knowing any of the likely traffic patterns, one assumes that at some stage every exchange is subject to complaints, and it may well be you get quite a considerable number, without that suggesting that there is an endemic problem at one of the exchanges.

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**Mr Von Willer**—The payment was made on an ex gratia basis and I am confirming that. I am saying that, in regard to her phone service, if there were problems that were detected, they were dealt with as they were discovered. We certainly do not accept any liability as claimed by any of those COT cases in regard to their businesses.

**Senator ALSTON**—But the question was specifically whether that payment was simply a nuisance payment to get rid of the claim, or did it at least have some component which acknowledged the difficulties that she claimed to be experiencing?

**Senator BOSWELL**—But in no way acknowledged the loss that she incurred in her business because she did not have a phone.

**Mr Von Willer**—It did not acknowledge that.

**Senator ALSTON**—Just to be clear, did it similarly not accept that there was any problem in the exchange or technical problem with her telephone service?

**Mr Von Willer**—I cannot say that there were no technical problems with the service. What I am saying is where there were problems, they were dealt with and restored.

**Senator ALSTON**—If that were the case, then there would be no basis for compensation.

**Mr Von Willer**—Any compensation that was given was made ex gratia to maintain goodwill, as I said earlier.

**Senator BOSWELL**—I will ask you to be very careful about this because I want to remind you that this is a very serious matter. You maintain that the payment that Telecom made to her, when her phone was inadequate, was adequate and it provided her with a telephone that she could provide her business with.

**Mr Von Willer**—Let me make a general statement—

**Senator BOSWELL**—No, I do not want a general statement. You are trying—

**Senator Collins**—Just allow the officer to continue his answer.

**Mr Von Willer**—I am not prepared to go into individual cases for reasons of privacy. That is a position that Telecom will maintain in regard to any particular customer.

**Senator ALSTON**—Whose privacy are you protecting?

**Mr Von Willer**—We are protecting customer privacy generally.

**Senator ALSTON**—What if the customer waives it?

**Mr Von Willer**—It is a general principle which we have applied.

**Senator BOSWELL**—I can assure you that Mrs Garms wants her case fully discussed tonight. I could get you a fax—

**Senator Collins**—Not really in estimates. It has only just been set up and he has been appointed now and I have got no doubt he will pursue the matter aggressively.

**Senator ALSTON**—His jurisdiction is limited to $10,000.

**Senator Collins**—Before the jurisdiction question is talked about, do you know whether these complaints have been laid with the new ombudsman, who has certainly got the power to investigate?

**Senator ALSTON**—These are all well in excess of his jurisdictional limits by a factor of 10 or 30.

**Senator Collins**—That may well be the case, but I would have thought, in terms of trying to nail down who is saying what and whether a legitimate complaint exists, that that is the best course. That is the only point I am making. All I am saying is I know what I would be doing with it, no matter what his jurisdiction was, if I were a complainer.

**Senator BOSWELL**—What would you be doing, Minister?

**Senator Collins**—I would not be stopping whatever else I was doing, but if the industry have just appointed an industry ombudsman, I would be, along with everything else, lobbing on his doorstep as soon as possible and saying, 'You check this out too'.

**Senator BOSWELL**—This has been going on for some two years—

**Senator Collins**—But the industry ombudsman has only just been appointed.



**Senator BOSWELL**—Yes, I know, but I can read a letter that was addressed to you from Austel. It says:

> Austel has examined the documentation provided by Mrs Garms and Mrs Gillan, which consists of correspondence with Telecom, their own records of faults and documents gained under freedom of information. Based on this information, it is our opinion that the telephone service supplied to these customers has been inadequate and that advice given to these customers regarding their telephone service has been misleading.

That is the shuffle that has been going on for the last two years. You have been told by Austel that you have misled the person and you have not given her an adequate telephone. Minister, would you like a copy of that letter?

**Senator Collins**—I have got it, thank you. In fact, it is to Minister Beddall, not to me.

**Senator BOSWELL**—No, it is to you.

**Senator Collins**—This is a letter of 26 August.

**Senator BOSWELL**—This one is 9 February, to you, and there is another one here where you are virtually telling them to fix the complaint up.

**Senator Collins**—Yes. I recall it very well and I took action personally on the matter. That is perfectly true and my office did in fact action it. I am sorry, it was just a confusion of letters because there is one on the same subject of 26 August to Minister Beddall that I was referring to.

**Senator ALSTON**—What, relating to Mrs Garms?

**Senator Collins**—Yes. We personally contacted the senior management of Telecom.

**Senator BOSWELL**—Yes, I know you have tried to do your best, but all we have got is evasion. We have got tabled tonight an admission from Austel that Telecom has misled Mrs Garms and Mrs Gillan, which is a very serious charge, and they have not supplied her with an adequate telephone service. We have now heard from Mr von Willer that the Valley exchange is just like every other exchange in Australia. We have tabled a document from Telecom saying it is the greatest embarrassment to Australia, and Mr von Willer comes in here and tells us there is nothing wrong with Telecom. I have at least 400 people that have not been able to get a Telecom service and I am getting very damn annoyed with people like you trying to shuffle it around.

**Senator Collins**—I wonder whether we could just keep the personal abuse to a minimum.

**Mr Von Willer**—Senator, there is, as you know, an Austel investigation going on. We think that is a good next step. It will get the investigation established with some objectivity. We are working with Austel in regard to that and we will certainly make available any of the records or background data that they need for their investigation, and that seems to us to be the right place to handle the broad issues which you have raised.

**Senator BOSWELL**—It might be all right for you in a Public Service job; do you realise this woman has lost $2 million? You might feel very comfortable, but I can assure you that out there when you are in small business and you are fighting for survival and you cannot get an adequate telephone service to provide your business with a smooth flow, it is very different from sitting here in Canberra. I tell you this: I have had so many people ring my office with these complaints that it has just gone on too long.

**Senator ALSTON**—Are you able to table—I might have covered this before—the number and type of complaints received by Telecom in respect of service for the last three financial years?

**Mr Von Willer**—We certainly have that information. We make that available to Austel on a regular basis.

**Senator ALSTON**—Can it be made available to this committee?

**Mr Von Willer**—I believe we can certainly try and be responsive to the committee.

**Senator ALSTON**—Can I just ask, Minister, about a letter that you wrote to David Hore as chairman of AOTC of 19 February. You said you would appreciate advice on whether AOTC had formed a view on the nature of any technical problems with the exchange equipment concerned.

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**Senator Collins**—It may be helpful if Telecom provides the committee—I think it can do this very readily—with a broad breakup of the categories of complaints and the areas from which they come. Senator Alston may then be able to advise whether he wants a more detailed breakdown, rather than tying up the proceedings by trying to get a detailed breakdown immediately.

**Senator BOSWELL**—To pick up on Senator Alston's question, have you had any problems with the Valley exchange in Brisbane?

**Mr Von Willer**—There have certainly been some customer representations to us in that area—a very small number, I would have to say, less than a handful.

**Senator BOSWELL**—How many would you say?

**Mr Von Willer**—In terms of the longstanding complaints from Brisbane—I imagine you are referring to what has been referred to by these customers as the COT cases—

**Senator BOSWELL**—I have in my possession information from probably 40 or 50 people that have been unable to get an adequate telephone service in the Valley. Do you recognise that as a problem?

**Mr Von Willer**—We certainly are sensitive to that. We participated in a public meeting convened in Brisbane by Austel in late August. At that stage we did meet with and have discussions with a number of people—I think fewer than 20 attended that meeting—in regard to their service difficulties. Each of these we take on board and follow through. We will do testing if necessary, and try and localise what the source of their problem is.

**Senator BOSWELL**—How long has this been going on for?

**Mr Von Willer**—There has been a small number—I think two or three only—that have presented difficulties to us over a period of even some years, although I have to say that any widespread incidence—if you are talking of 10 or 20—that has emerged is quite a recent phenomenon.

**Senator ALSTON**—Is the Fortitude Valley exchange one that appears to be the subject of more complaints than others?

**Mr Von Willer**—In terms of the total context, that is not a large number of complaints when viewed against the total customer base. Again there is no particular pattern that indicates that the difficulties as represented in the Brisbane area in recent weeks are localised to any particular characteristic of that exchange. What we are doing is taking them on board one by one and, if there are any network loaded areas that can be attributed to Fortitude Valley exchange, they will be dealt with. At this stage we are not aware of any such difficulties that would be sourced to that.

**Senator BOSWELL**—I find that extremely difficult to understand. I do not know whether the communication is not reaching you but I have a document here obtained under freedom of information saying that the Valley exchange is the greatest embarrassment to Telecom that it has. I am sure that you would have seen that. If you have not seen it, you really have not come to this place prepared or you have been very badly briefed.

**Senator Collins**—Madam Chair, in order for us to respond to Senator Boswell in the most effective way possible, if he has got a document it would be helpful if he could give me a copy of it.

**Senator BOSWELL**—I think the minister is aware of this case too.

**Senator Collins**—Yes, I am, but I am not familiar with that document.

**Senator BOSWELL**—I will table that document, which was obtained under freedom of information.

**Senator Collins**—This is a Telecom document, is it?

**Senator BOSWELL**—Yes.

**Senator ALSTON**—Just to be clear, are you saying that, as far as Telecom is concerned, you do not regard the Fortitude Valley exchange as having any chronic problems?

**Mr Von Willer**—I am advised that we have conducted extensive testing on that exchange and the testing shows that it stood up very well in terms of our network standards.



**Senator ALSTON**—That is not quite the same thing as saying whether it has had ongoing problems and there have been customer complaints that have been occurring over a considerable period of time.

**Mr Von Willer**—The tests I am advised that we have conducted indicate that there are no systemic problems and, indeed, the level of performance matches other exchanges around the country.

**Senator ALSTON**—Are you saying that has always been the case, or has there been some significant modernisation work undertaken in recent times?

**Mr Von Willer**—I do not believe that there has been any significant change by us that has brought that about. Where we have had individual customers on that exchange represent difficulties to us—and there has been a small number of those—we have done extensive testing, some thousands of hours of testing on those customers, that is ongoing, trying to localise the faults that are presenting to them.

**Senator ALSTON**—Where there are people who have made complaints—I suppose particularly the COT cases—and you have reached financial settlements with them, have those payments been made purely on a nuisance basis? In other words, was it just a formal payment and you did not admit liability, but maintained that there was nothing wrong as far as you could see? It is worth your while to pay up, rather than have the thing drag on for a period of time? Is there a significant component in any settlement that actually acknowledges the difficulties that have been experienced?

**Mr Von Willer**—We have dealt with each of those cases one by one and we have sought, over an extended period, to try to come to terms with the difficulties they believe they are having. We do not believe that there are systemic and repetitive faults. If faults have been detected, they have been dealt with. We certainly do not accept legal liability in terms of those claims; we are quite firm in regard to that.

**Senator ALSTON**—I understand that, but if, for example, those cases had gone to court, is it your position that they would have failed because there would not have been any evidence of any consequence that could not have been rebutted by Telecom?

**Mr Von Willer**—That is certainly my understanding.

**Senator ALSTON**—So each of the payments made has been really to get rid of the matters?

**Mr Von Willer**—Where there have been ex gratia payments made—and there has not been a large number of those—it has really been done to maintain goodwill with those customers, on an ex gratia basis. We recognise that they have had difficulties in dealing with us sometimes in the past—often considerable times in the past—and, whilst we have accepted no liability and nor do we accept any systemic technical difficulties that are represented by those cases, we have, in some cases, chosen to make a settlement.

**Senator ALSTON**—I do not quite understand the formula. Is the amount that you are prepared to pay related to the size of the claim, or to the complexity of it, so that you make some judgment of what the cost of litigation might be?

**Mr Von Willer**—It has been the circumstances of the particular case. There has been no set formula that has been applied, and it has been a very small number of cases in which we have reached that settlement purely to maintain goodwill with those customers.

**Senator BOSWELL**—In the case of Mrs Garms, are you suggesting that there was nothing wrong with the phone service that you provided her, and you made the payment as a goodwill gesture?

**Mr Von Willer**—We are saying that, where we have discovered faults, we have dealt with those faults.

**Senator BOSWELL**—No. I asked a very specific question. If you did not understand it, I will repeat it. Are you suggesting, with the case of Mrs Ann Garms, that the compensation or the payment that you made to her was a goodwill gesture and that there was nothing wrong with her telephone system?

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PARLIAMENT OF AUSTRALIA • THE SENATE

BILL O'CHEE
SENATOR FOR QUEENSLAND
NATIONAL PARTY WHIP IN THE SENATE

PARLIAMENT HOUSE
CANBERRA ACT 2600
TEL: (02) 6277 3922
FAX: (02) 6277 3319

Mr Graeme Ward,
Regulatory and External Affairs,
Level 39,
242 Exhibition Street,
MELBOURNE, VIC 3000,

Dear Mr Ward,

**Report to the Senate Committee on Various Matters Relating to Telstra and CoT and CoT-related Cases**

I refer to your letter of 22nd June, 1998 to Senator the Hon. Richard Alston in relation to the above matter, and I thank you for your courtesy of copying same to me.

I note in your letter's last page you suggest the matter of the alteration of documents attached to statutory declarations should be dealt with by the relevant arbitrator. I do not concur. I would be grateful if you could advise why these matters should not be referred to the relevant police.

Alternatively, you might be able to clarify these matters by return and eliminate the need for any further action at this stage.

Yours sincerely,

BILL O'CHEE
Senator for Queensland and
National Party Whip in the Senate

Canberra, this 26th June, 1998.

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12-14 LAKE STREET
(PO BOX 7513)
CAIRNS QLD 4870
TEL: (07) 4031 3649
FAX: (07) 4031 3244

COMMONWEALTH PARLIAMENT OFFICES
1 EAGLE STREET
(GPO BOX 228)
BRISBANE QLD 4001
TEL: (07) 3244 4190
FAX: (07) 3229 4140

Commonwealth of Australia
STATUTORY DECLARATION
*Statutory Declarations Act 1959*

I, ~~Darren Lewis~~ DARREW William Lewis
OF 1721 Blowhole rd Cape Bridgewater VIC
Make the following declaration under the Statutory Declarations Act 1959

The following chronology can be supported by documentation which I have on file.

**PHONE & FAX PROBLEMS**

1. I purchased the Cape Bridgewater Holiday Camp (now Cape Bridgewater Coastal Camp) December 2001.
2. Within a week or so of taking over the business from Alan Smith, friends and new clients were stating they could not get through to us on successfully on the phone.
3. By mid 2002, my wife Jenny and I realised we were having major problems with in-coming calls and our out-going faxes were a major problem.
4. From discussions with the previous owners Jenny and I now fully understood that we had inherited some of the phone and fax faults Mr Smith had been reporting for some time.
5. Letters from us to our local Federal Member of Parliament, the Hon David Hawker, Speaker in the House of Representatives, led to Telstra visiting our business to investigate these continuing problems.
6. In November 2002, after Telstra realised there was in fact a Telstra related problem and not (customer related equipment) they informed us that the new wiring they were installing was worth thousands of dollars but not to worry as Telstra would pick-up the cost.
7. After Telstra rewired the business including disconnecting a Telstra installed faulty phone alarm bell, we were informed Telstra had found other problems and believed who ever had installed the wiring had done an unprofessional job.
8. Internal Telstra documentation provided to me by Allan Smith confirmed Telstra themselves had done the wiring.
9. Jenny and I noticed that although our incoming-call rate had more than doubled once this rewiring had taken place Telstra was still unable to provide a satisfactory reason as to why we were still having problems.
10. Telstra connected fault finding equipment called Customer Access Call Analysis (CCAS) to 55-267267 business line.
11. This CCAS data recorded numerous faults that could not be explained by the (Level Three) Telstra fault managers. Hand written notations on some of these CCAS data sheets, confirm even the Telstra technicians themselves were aware of the ongoing problems.
12. By 2004, with the problems not resolved I again sought help through the Hon David hawker.
13. Correspondence from Mr Hawker in August 2004, confirms Telstra had advised him that the local un-manned exchange was soon to be upgraded.
14. From 2004 until most recently still no upgrades.
15. In August this year we contacted Mr Hawker's office regarding the ongoing problems and advised his staff we have no real alternative but to sell the business.
16. Because we were with AAPT and it appeared they had no control over the faults being experienced we changed back to Telstra.

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17. From Tuesday to Thursday evening (August 2006), Telstra technicians were present at the Holiday Camp and surrounding area attempting to locate and fix the problems they had experienced themselves.

18. During this three day period even Telstra's own technicians couldn't understand why their own fault testing equipment was malfunctioning.

19. Telstra informed us we had what is commonly known in technical words as (a line in line lock-up rendering our business phone useless until the fault is fixed.

The technicians then in hook up consultation with outside office guru's did a fault graph reading on our 55 267267 line with the outcome that their office technical staff stated words to the affect the reading was impossible (couldn't be correct). It was then that the local technician became quite annoyed when the technical guru insinuated that the equipment the local tech was using must be faulty. The local tech then informed the technical guru that there was nothing wrong with the equipment at all.

It was then that the local technician informed me that as strange as it might seem he believed that because our business was on optical fibre and was so close to the Beach Kiosk (junction box) this could very well be part of the problem. Apparently either under powering over powering was also an issue He realised that after testing all the other optical fibre outlets with his testing equipment and still reached this impossible reading (according to the technical guru), he would have to move us off the fibre.

It was on this note that the technician informed me that although it was a back ward step he was going to investigate the possibility of moving the business off the optical fibre and back on to the 'old copper wiring'.

After investigating this possibility our business was then moved back onto the 'old copper wiring'. The above is more evidence of the continuation of the phone and fax problems my wife and I inherited when we purchased our business.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration for wilful and corrupt perjury.

DECLARED at Portland in the

State of Victoria this

day of Fourth day September two thousand } D. Lewis

and six.

Before me Senior Constable Richard Hutchinson
Constable of Police 34273.
Portland Police Station
Glenelg Street Portland.

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Michele Phillips
23 Murumba Drive,
SOUTH OAKLEIGH. 3167

Phone: (03) 563 7398, 5707436

8th November, 1994

Minister of Justice

ATTENTION MR. DUNCAN KERR

Dear Sir,

I am aware that there is a current investigation regarding allegations of unlawful interception of telephone conversations without Telecom client knowledge or consent.

I have provided the Federal Police with evidence and information that my incoming telephone calls are being intercepted and diverted to my competitoror in some cases just ringing out, people are having constant difficulty in reaching me on these numbers.

The Federal police have told me that this conduct is outside of their current investigation charter. I cannont accept nor do I believe it is correct for the Federal Police to refuse to investigate my complaint when somebody or something is causing my incoming calls to be intercepted and then diverted to my competitor.

I maybe a lay person but it's my understanding that somebody is gaining profit from an intercepted telephone call conversation.

Would you please advise what your department is prepared to do and when.

Yours Faithfully,

Michele Phillips.

M. Phillips

cc. Richard Bolt
Australian Democrats

cc. Graham Schorer
C.O.T.S.

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10.3.95

Dear Graham,

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

Yours Faithfully

M. Phillips

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28 January 2003

COPY

Telecommunications Industry Ombudsman

John Pinnock
Ombudsman

**Total Pages:** 19

Dear

**LEVEL 3 COMPLAINT**
**TIO reference**: 02/101638-1 - Mc Kenzie

The Telecommunications Industry Ombudsman (TIO) has received a complaint against Telstra Corporation from Mr & Mrs Darren & Jenny Lewis regarding telephone number 0355267267.

The TIO has raised this complaint at level 3 because of the complexity of the complaint and likelihood that extensive testing may be required. Mr & Mrs Lewis have advised the TIO that they have an on-going complaint with Telstra Corporation in relation to their telephone service and have as yet been unable to resolve this matter. The TIO has invested time assessing Mr & Mrs Lewis' correspondence and believes that further investigation is warranted.

Mr & Mrs Lewis claim in their correspondence attached:

- That they purchased the Cape Bridgewater Coastal Camp in December 2001, but since that time have experienced a number of issues in relation to their telephone service, many of which remain unresolved.
- That a Telstra technician "Mr Tony Watson" is currently assigned to his case, but appears unwilling to discuss the issues with Mr Lewis due to his contact with the previous Camp Owner, Mr Alan Smith.
- That on 27 September 2002 "Ian" advised him that an EMG was causing the faults at the local exchange and that a technician would be sent out to fix this.
- That on 28 September 2002 "Renea" advised him that that the local exchange could only handle a certain amount of traffic, that there was nothing that Telstra Corporation could do about the problem and that this problem was not new to Cape Bridgewater.
- That Telstra Corporation advised him on 26 November 2002 that the phone extension wiring was laid too shallow and was not installed correctly, thus it believed that Telstra Corporation had not installed that wiring. Mr Lewis also claims that it was suggested that the line had been tampered with.
- That Mr Alan Smith had provided him with documents confirming that Telstra Corporation did all the cabling and wiring in question.
- That the phone problems have decreased dramatically since Telstra Corporation rewired the business on 9 December 2002 and disconnected the phone alarm bell, however he is still

experiencing intermittent problems with receiving calls, and continued to have problems with his fax line.

- That Telstra Corporation have checked his fax machine and confirmed that it is working correctly.
- That he believes that as the same problem has been experienced when attempting to send or receive faxes from a number of locations, it is unlikely that the fault is with the other party's fax machine.
- That the problems experienced resulted in the frustration of his clients being unable to contact him to make bookings for his camp and are affecting the profitability of his business.

Mr Lewis has outlined a number of these problems on page 3 of his correspondence attached. In particular, Mr Lewis has identified the following concerns:

- That he has been contacted by a number of people advising that the telephone had not been answered when ringing previously, despite Mr Lewis' assertion that someone was there at the time.
- That many faxes sent to his potential clients have not been received at the intended destinations, despite his fax transmission records confirming that the fax had been successfully sent. Furthermore, Mr Lewis claims that he has been charged for each of these calls.
- That he has experienced problems receiving faxes from his clients.
- That when he uses *10# to retrieve missed phone calls, he is sometimes given numbers from days before which had not registered earlier.
- That people had reported that when attempting to call Mr Lewis' business they first hear a message that the telephone has been disconnected, but when trying again are connected through on the same number.
- That when picking up the receiver to make a call, he had intermittently heard another person's conversation quite clearly.
- That on 25 October 2002 a caller reported that when trying to contact Mr Lewis earlier, he heard only clicking noises on the telephone line, but the call did not connect.
- That a caller reported that they had called and heard an engaged signal, despite Mr Lewis having call waiting activated on the service to prevent missed calls.
- That another caller reported that every time he called he received a fax connection tone.
- That on 13 November 2002 he picked up the receiver and heard a deep breathing sound but no dial tone.

The TIO asks Telstra Corporation to present its perspective on the complaint.

If Telstra Corporation decides that the complainant's claims have merit after reviewing the complaint, how does Telstra Corporation propose resolving the complaint?

If Telstra Corporation is of the view that there is no merit to some or all aspects of this complaint, please provide reasons for its view, identifying any facts in dispute. In addition, please supply all documentation relevant to the complaint. In particular, please provide:

- All Customer Care Notes for the account
- All Fault Reports for the account
- Telstra Corporation's assessment of whether Mr Lewis is entitled to compensation under the Customer Service Guarantee in relation to any of the faults reported above. Please include its reasons for the assessment for each fault reported.

The TIO has forwarded a copy of this letter to the complainant and asked them to pay any undisputed charges. While this complaint is under consideration, the TIO expects that Telstra Corporation will suspend credit management on any disputed charges.

The TIO may also forward Telstra Corporation's response to the complainant. For this reason, please ensure that it is written in plain English.

Please forward your reply to this letter within the next 28 days. The TIO may escalate the complaint to Level 4 status if Telstra Corporation does not respond to the TIO within this time frame or provide information requested.

Please contact me if you would like to discuss any aspect of this complaint.

Yours sincerely

Gillian Mc Kenzie
**Investigations Officer**