

# TELSTRA AND COT/COT RELATED CASES

## Working Party Terms of Reference

Amended by the Senate Environment, Recreation, Communications and the Arts  
Legislation Secretariat following Legislation Committee Meeting 8:40am-9:27am  
23 October 1997 FURTHER AMENDED BY SENATOR SCHACHT 1:00 pm 23  
OCTOBER 1997

(Draft prepared for Senators Schacht and Tierney - 22 October 1997 8.50 pm)

Part 1: The Working Party is to be chaired by a representative of the  
Commonwealth Ombudsman's Office

Part 2: List of Documents

- \* 1. The Working Party must develop a list ("List") of all documents which:
  - \* • were reviewed by Telstra in the course of preparation of its defence;
  - \* • were brought into existence after Telstra prepared its defence, but which would in the opinion of Telstra's solicitors have been reviewed by Telstra if it were preparing its defence today; or
  - \* • were lost or destroyed before Telstra prepared its defence, but which would in the opinion of Telstra's solicitors have been reviewed by Telstra if they had been in existence at the time Telstra was preparing its defence,

\* including documents in relation to

(a) the:

- arbitration cases
- responses to requests under FOI; and
- appeals in respect of cases already decided

described in Schedule A to these terms of reference.

Such arbitration cases, FOI requests, appeals, cases and issues are known in these terms of reference as "Proceedings"

- (b) if the Working Party becomes aware of relevant cases additional to those listed in the Schedule, or relevant documents, the Working Party will advise the Senate Environment, Recreation, Communication and the Arts Legislation Committee in writing of these cases or documents and the reasons why the Working Party considers they are relevant. The Working Party will not proceed with any investigation of such additional cases or

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documents unless and until the Senate Environment, Recreation, Communications and the Arts Legislation Committee so agrees in writing

(c) the Senate Environment, Recreation, Communications and the Arts Legislation Committee reserves the right to amend the Schedules to this document.

*[DELETE (c)—NOT NECESSARY AS ERCA COMMITTEE ALREADY HAS THE POWER TO AMEND AT ANY TIME AS IT SEES FIT]*

The documents itemised in the List must include the documents itemised in the Excel files prepared by Telstra in relation to the Proceedings and any other relevant documents not previously provided to parties to the Proceedings ("Parties").

2. The List must be sorted into separate sections, so that all documents in relation to a particular party to the Proceedings ("Party") are contained in one section of the List.
3. Telstra must provide written advice, in respect of each Party, identifying the network or networks which were used by Telstra to service the business telephone service of that Party.
4. The List must clearly distinguish between
  - documents which refer to service difficulties, problems and faults of Telstra's network, or of a Party's business telephone services; and
  - documents which do not so refer.
5. The List must clearly distinguish between
  - documents which were provided by Telstra to a Party before 26 September 1997
  - documents which were provided by Telstra to a Party on or after 26 September 1997; and
  - documents which have not been provided by Telstra to a Party.
6. The List must clearly distinguish between
  - documents which Telstra claims are privileged;
  - documents which Telstra claims are confidential; and
  - documents which Telstra does not claim are privileged or confidential.

*INSERT NEW PARA: Telstra must provide a statutory declaration made by a senior solicitor employed by Telstra, whose responsibilities include management of the CoT cases, declaring that Telstra has made all necessary inquiries of its employees and agents to establish that all documents falling within these Terms of Reference have now been identified in the List in the manner required by these Terms of Reference.*
7. Where Telstra claims that a document is privileged or confidential, the description of that document in the List must include a statement of the basis on which Telstra claims that status for the document.
8. Telstra must provide a statutory declaration, made by a senior solicitor employed by Telstra, whose responsibilities include management of the CoT cases, declaring

that in respect of all documents described in the List which Telstra claims are privileged or confidential, Telstra believes in good faith after making reasonable inquiries *of its employees and agents* that these documents ought properly to be regarded as privileged or confidential, and the reasons for that status are accurately set out in the List.

9. Where a document was lost or destroyed before Telstra prepared its defence, the description of that document in the List must describe the manner in which the document was lost or destroyed.
10. Where the List is required to distinguish between documents in particular categories, the distinctions may be indicated in any manner which the Working Party considers appropriate.

### **Part 3: Other Sources of Information**

1. The Working Party must investigate whether there are avenues not yet explored by Telstra to locate documents which are relevant to the claim of a Party under a Proceeding.

### **Part 4: Report to the Senate Committee**

1. The Working Party must report to the Senate Committee regarding the matters with which it is charged under Parts 1 and 2 of these terms of reference. The Working Party is to report to the Senate Committee no later than Thursday, 27 November 1997.
2. The Working Party must include in its report to the Senate Committee an assessment of the processes used by Telstra in providing information to the Parties and, if the Working Party considers it appropriate, make recommendations as to additional or improved processes which should be adopted by Telstra.
3. The Working Party must include in its report to the Senate Committee recommendations as to whether:
  - any documents described in the List should be provided to the Parties
  - documents which Telstra claims are privileged or confidential should be provided to the Parties;
  - if the Working Party considers that documents described in the List should be provided to the Parties, the terms on which those documents should be so provided.
4. Any disagreement which cannot be resolved is to be advised to the Senate Committee in writing by the Chair of the Working Party.

**SCHEDULE A**

- Arbitration of dispute between Telstra and Mr Bova.
- Arbitration of dispute between Telstra and Mr Plowman.
- Arbitration of dispute between Telstra and Mr Schorer.
- **Arbitration of dispute between Telstra and Mr Dawson.**
- Appeal proceedings regarding the award in the arbitration of the dispute between Telstra and Mrs Garms.
- **The proceedings undertaken by Mr Robert Bray.**
- **The proceedings undertaken by Mr A Honner.**

**FREEDOM OF INFORMATION**

- Such proceedings as may have been commenced, or actions as may have been taken, under the Freedom of Information Act, to gain access to documents in the possession of Telstra, by Mr Bova.
- Such proceedings as may have been commenced, or actions as may have been taken, under the Freedom of Information Act, to gain access to documents in the possession of Telstra, by Mr Plowman.
- Such proceedings as may have been commenced, or actions as may have been taken, under the Freedom of Information Act, to gain access to documents in the possession of Telstra, by Mr Schorer.
- Such proceedings as may have been commenced, or actions as may have been taken, under the Freedom of Information Act, to gain access to documents in the possession of Telstra, by Ms Garms.
- Any matters of dispute concerning requests for documents under the Freedom of Information Act by any person listed below in Schedule B, and by Mr Dawson, Mr Honner and Mr Bray at Schedule A.

**UNRESOLVED MATTERS, INCLUDING THE AMOUNT OF SETTLEMENT OFFERED OR PAID IN RESPECT OF PERSONS LISTED IN SCHEDULE B.**

**SCHEDULE B**

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| <ul style="list-style-type: none"> <li>Davis</li> <li>Dixon</li> <li>Dullard</li> <li>Gillan Mrs</li> <li>Holmes, J F Mr &amp; Mrs</li> <li>Hynninen Mr</li> <li>Love</li> <li><u>Oldfield, Barbara Mrs</u></li> </ul> | <ul style="list-style-type: none"> <li><u>Smith, Alan Mr</u></li> <li>Smith, Lorraine Ms</li> <li>Trzcionka Mr</li> <li>Tuczynski, John Mr</li> <li>Turner</li> <li><u>Vogt, Mervyn Mr</u></li> <li>Wiegmann</li> <li><u>Wolfe, Sandra Mrs</u></li> </ul> |
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[Further details to be circulated when available]

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