ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL ADMINISTRATIVE DIVISION
MELBOURNE REGISTRY **No 2008/1836**

Between **ALAN SMITH**
Applicant

And: **AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY**
Respondent

The Applicants Report Statement of Facts and Contentions (i.e. written summary of facts and arguments the applicant releies upon to support the view that the decision under review is not correct.)

Alan Smith
Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Victoria

26th July 2008

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

26th July 2008

Conference Registrar
Administrative Appeals Tribunal
PO Box 9955, Melbourne
Victoria 3001

Re: CONFERENCE REGISTER LETTER
Dated: 2nd July 2008 Complaint No: 2008/1836

Dear Sir or Madam,

The following attached documents support the applicant's evidence, and the documents upon which the applicant relies:

1. Document titled *"Statement of Facts and Contentions"*, referred to throughout as *'The Chronology of Events'* or *'The Chronology'*. This is the written summary of the facts and arguments that the applicant relies on to support his view that the decision under review is not correct, as per your point (ii). Please note that the applicant refers to himself in the third person throughout this 'Chronology', i.e. as Alan Smith or Alan;
2. 339 exhibits, collated into three spiral-bound books, in support of the 157-page Chronology of Events (see point 1, above), together with a CD of the same. The exhibits are labelled as **(AS 1)** to **(AS 339)**, with the 'AS' representing Alan Smith.
3. A document labelled as *"Attachment Two"*. This sixty-nine page draft report, dated 3rd March 1994, is titled *"Re Alan Smith"*, was prepared by Bruce Matthews of AUSTEL (now ACMA) and is referred to on page 3 of this letter. It is enclosed here for your information.
4. A Statutory Declaration sworn by the applicant.

The applicant's FOI issues are not the only matters that are currently of concern. The information recently provided, both to the AAT and ACMA, proves that the applicant has been a victim of a crime perpetrated by a Government-owned corporation during a Government-facilitated and endorsed arbitration procedure that was expected to provide justice but, instead, provided the exact reverse. Because some of the applicant's FOI issues are linked to these crimes; because those crimes were committed by a Government-owned corporation; and since both the AAT and ACMA are also Federal Government agencies, the applicant believes that perhaps his present AAT and ACMA FOI issues should be put on hold until the information in the applicant's Statement of Facts and Contentions and Argument (the Chronology) has been properly and fully investigated by an appropriate State law enforcement agency.

In the applicant's Statement of Facts and Contentions, he has proved the existence of the Telstra-related FOI documents that are not included in the list of FOI documents that ACMA say they have retrieved in relation to the matters under review. It is important to note that, in response to previous FOI requests, ACMA have noted that: *"Some (but not all) of these documents may contain information about business affairs of a third party ACMA is required to consult the third party about these documents before releasing them under the FOI Act."* The applicant understands that this is a normal position for any Government agency to take when assessing the

validity of any FOI request, and he is aware that ACMA would therefore have had to seek permission from Telstra before they could release some of the FOI documents the applicant has requested. Some of the material included in the request of 21st May, and the FOI issue currently before the AAT however, will prove to be quite damaging for Telstra, and this raises questions of justice if ACMA has to approach Telstra for permission to pass on to the applicant, copies of documents proving that Telstra perverted the course of justice during the applicant's arbitration. What sort of justice is that? It is tantamount to asking the criminals to investigate themselves! It would therefore be inappropriate for ACMA to ask Telstra for permission to provide documents that prove that Telstra committed crimes.

In mid-1998, John Wynack, Director of Investigations, Commonwealth Ombudsman's Office, provided to an In-camera Senate Estimates Committee Hearing into COT claimants' FOI issues, a scathing report in relation to Telstra. This report is not available for public comment but could possibly be accessed by the AAT. A number of other statements from this In-Camera Hearing (made on 6th and 9th July 1998) are however included in the applicant's Statement of Facts and Contentions – which also describes how a Coalition Minister has twice threatened the applicant with the possibility of a jail sentence, if the applicant publicly releases these In-camera Hansard documents, even though they only relate to the COT claimants' FOI issues. These two In-camera Hansard reports would be most useful for the AAT and, if the AAT were to ask the applicant, under confidentiality rules, to provide them, they would help to show, more clearly, how the FOI matters presently under review are linked to Telstra's previous decisions to withhold documents from AUSTEL (now ACMA).

In the applicants Statement of Facts and Contentions, he has provided information confirming that a number of Senators, during this same Senate Estimates Committee Hearings (refer above), dammed Telstra for withholding COT related FOI documents from the Commonwealth Ombudsman Officer assisting the Senate Estimates Committee investigations. The applicants Statement of Facts and Contentions also provides evidence showing that Telstra was withholding ***technical*** information from him at least up to October 1998, under Legal Professional Privilege (LPP). Some of this same LPP technical information Telstra had already provided AUSTEL in February/March 1994, see (*"Attachment Two"*), the same technical information that ACMA now state they cannot locate.

A list provided by AUSTEL to some of the second group of COT claimants to go through arbitration includes three documents proving that the TIO's Special Counsel (Peter Bartlett), AUSTEL and Telstra's Steve Black exchanged correspondence during June 1994 in relation to providing material, free of charge, to the second group of COT claimants. The ACMA list provided to the applicant in response to his FOI application covering February to June 1994 however, does not include any letters from Peter Bartlett or Steve Black, even though the applicant's arbitration was under review between February and April 1994. Surely, since arbitrations for the first group of four (which included the applicant) and the second group of twelve COT claimants were all facilitated by AUSTEL, and Steve Black (Telstra) and Peter Bartlett (the TIO's Special Counsel) were both involved in all the arbitrations, then AUSTEL would have received similar correspondence from Steve Black and Peter Bartlett in relation to the applicant's arbitration – so why is none of this correspondence included in the ACMA list provided to the applicant?

A copy of a letter dated 26th August 1993, from Robin Davey, then-Chairman of AUSTEL, to the then-Communications Minister, the Hon David Beddall MP, is included in the applicant's Statement of Facts and Contentions, as **Exhibit** (AS 48g). In this letter, Mr Davey discusses the continuing phone complaints still being registered by the COT claimants. Mr Davey correctly names all the claimants except the applicant. Instead of using the applicant's name, Mr Davey refers only to 'Cape Bridgewater', where the applicant operated his business at the time, and notes, on page 4, that, in reference to Cape Bridgewater: *"Telecom has admitted existence of unidentified faults to AUSTEL."* Between the reference on page 3 to Graham Schorer, the last claimant listed before the applicant, and this reference to Cape Bridgewater on page 4, a number of paragraphs have been concealed. It would therefore seem that the applicant's name (which is the only one not included in the letter) is probably included somewhere in these concealed paragraphs, suggesting that, when this document was provided to the applicant under FOI in 2001, The Australian Communication Authority (now ACMA), concealed at least some important information pertaining to the applicant's claims.

The applicant maintains that, on 6th and 7th April 1994, during a briefing regarding the drafting of the AUSTEL COT Report, the applicant and other claimants were not permitted to leave the building without agreeing to strict confidentiality regulations and to being searched before they left. The applicant recalls that, during this briefing period, he saw, in a folder, a copy of the letter dated 26th August 1993 (see paragraph above); other documents related to his telephone problems; and Telstra documents admitting the existence of telecommunications problems affecting the Portland AXE exchange and the Cape Bridgewater RCM. The applicant remembers clearly that some of these documents were dated February 1994, a period that is covered by the applicant's Statement of Facts and Contentions in relation to the FOI claim issue that is currently under review. The letter of 26th August 1993, while not specifically included in the timeframe covered by the FOI claim under review, is however directly linked to that claim, demonstrating how important it is for the AAT to read the applicant's entire *Chronology of Events* document.

It is clear that NONE of the ongoing telecommunication problems and faults that (A) Telstra agreed (in 1993) were then affecting the applicant's business, and that (B) AUSTEL included in the draft report prepared by Bruce Matthews on 3rd March 1994 (see *Attachment Two* at point 3 on page 1) were ever investigated or fixed during the applicant's arbitration. The applicant believes that, if Robin Davey (past-Chairman of AUSTEL) was to learn of this present FOI situation, he would insist that the applicant immediately be given all the documents he needs free of charge to bring this appalling saga to an end.

In support of this evidence, the applicant can also provide to both the ATT and ACMA, numerous examples of:

- COT/Telstra-related Supreme Court documents that a lawyer faxed to a COT client at a different address to his normal business address, as well as other, similar documents faxed in the same way but to the client's normal address. Those faxed to the different address arrived with the lawyer's correct fax identification displayed across the top of the document, as would be expected, but the same documents arriving at the client's normal address arrived without the lawyers identification in place.
- Documents faxed by the applicant that arrived with the applicant's correct fax identification in place when faxed to one location but when the ***same*** document was faxed to AUSTEL (now ACMA) five minutes later, the applicant's fax identification was missing.

This is why the applicant has requested, from ACMA, copies of documents he has faxed to ACMA in the past.

Both the AAT and ACMA should find the applicant's information of particular interest because:

a. It suggests that, at least between April 1994 and 2002, Telstra-COT-related documents, intended for and faxed to AUSTEL and the ACA, were intercepted and then re-directed on to the intended recipients and

b. Raises questions regarding whether or not ALL the intercepted material was actual forwarded on – which is why the applicant has raised this matter now.

The applicant's Statement of Facts and Contentions provides other examples of arbitration claim material that he faxed to the arbitrator but which did not always arrive at the arbitrator's office and shows that Telstra acknowledge this problem in arbitration records.

This AUSTEL and ACMA fax interception issue is directly related to the present ACMA FOI matters under review because ACMA has now stated that some Telstra/COT related technical documents that should be included in their list of located documents cannot be found. The AAT and ACMA must therefore view the applicants Statement of Facts and Contentions in its entirety.

Some of the documents provided to ACMA by the applicant are attached to the applicant's Statement of Facts and Contentions as proof that (1) Telstra perverted the course of justice during the applicant's arbitration and (2) AUSTEL (now ACMA) misled the applicant's lawyers in 1995 when the lawyers asked AUSTEL about Telstra's use of flawed material in their defence of the applicant's arbitration claims. These documents show why the applicant's Statement of Facts and Contentions should be provided to an appropriate law enforcement agency before the process can proceed any further.

In the applicant's Statement of Facts and Contentions, the applicant has explained why, in support of his contention that the decision under review is not correct, it has been necessary to provide a list of events and facts dating back to 1988. His 'Chronology' shows that the FOI matters presently under review are directly linked to previous FOI requests and other document issues.

On pages 92 & 93 in the applicants Statement of Facts and Contentions, the applicant shows quite clearly that on 16th October 1995, five months after his arbitration was deemed complete, AUSTEL (now ACMA) allowed Telstra, to address arbitration claim documents outside the legal arena of the arbitration procedure. This disallowed him his legal right to challenge Telstra under the agreed rules of arbitration. Attached as **Exhibit** (AS 213) to the applicants Statement of Facts and Contentions, is evidence Telstra used confidential arbitration material that should never have been released outside of the arbitration procedure. The sworn witness statement provided to ACMA, by Telstra on 16th October 1995, which Telstra originally used in their arbitration defence, has since been condemned by the Victoria Police Major Fraud Group as more than just a bias document. This 16th October 1995, issue shows that ACMA has an unhealthy relationship with Telstra when it comes to COT related document issues.

It is blatantly clear from the applicants Statement of Facts and Contentions that he provides a strong argument in support of his contention that some of the material that Telstra did **not** supply

to AUSTEL (now ACMA) in 1994, during the AUSTEL investigations into the applicant's previous phone faults, are directly related to some of the documents that ACMA now maintain they cannot locate, even though the applicant has proved they do exist.

The applicant has named Graham Schorer, Director of Golden Messenger Service, as a witness in support of the FOI matters under review.

SUMMARY

The applicant has provided (above) his argument regarding why he believes the AAT should call upon the appropriate State law enforcement agency or agencies before this matters can proceed any further. The applicant understands however that the AAT will have to read all the applicants Statement of Facts and Contentions before such a decision can be made. The applicant therefore leaves this matter in the hands of the Administrative Appeals Tribunal.

Sincerely,

Alan Smith
cc Ms Allison Jermey, Senior Lawyer, ACMA P.O. Box 13112 Law Courts Melbourne 8010

STATUTORY DECLARATION
VICTORIA

I, Alan Smith of Cape Bridgewater in the State of Victoria,

do hereby solemnly and sincerely declare that: On 21st March 1995, at a Senate Committee Hearing into the Telecommunications (Interception) Amendment Bill 1994, in Parliament House, Canberra, I introduced a number of documents, including two pages from a transcript of an interview conducted by the Australian Federal Police on 26th September 1994. These two pages are attached to my Administrative Appeals Tribunal Statement of Facts and Contentions as **Exhibit (AS 332)**.

Shortly before this Senate Committee Hearing I had discussions with AUSTEL's Cliff Mathieson regarding flaws I had discovered in the Bell Canada International (BCI) 'Cape Bridgewater (Addendum)' Report. During this discussion, Mr Mathieson informed me that AUSTEL had written to Telstra during the preparation of the AUSTEL COT Report into the tests carried out by BCI at both Cape Bridgewater and at the Glen Waters Fish Farm (Victoria). Mr Mathieson also told me that none of the tests described in the 'Cape Bridgewater (Addendum) Report' could possibly have been conducted at either the times or on the dates included in the report. My response to Mr Mathieson was to confirm that nothing had changed and my business was still plagued by phone problems. Mr Mathieson then commented that he understood my frustration with the arbitration process but AUSTEL could not become involved, as these were matters for the arbitrator and the arbitration consultants. Mr Mathieson appeared to be reluctant to broadcast his knowledge that the BCI Cape Bridgewater tests were flawed, even though he advised me that AUSTEL was fully aware that Telstra were using the known flawed BCI tests in the COT arbitrations. This, together with other information in my Statement of Facts and Contentions, is further proof that AUSTEL deliberately hid their knowledge of the way Telstra had submitted, to the arbitration process, sworn witness statements that Telstra knew were flawed.

It is particularly important to note Cliff Mathieson's comments that AUSTEL had written to Telstra during the preparation of the AUSTEL COT Report, with particular regard to the BCI 'Cape Bridgewater (Addendum) Report' but ACMA's FOI schedule of documents currently under review by the AAT does not include any mention of this contact in any file notes or letters exchanged between AUSTEL and Telstra. This is therefore yet another example of material that could be sensitive for Telstra, but which ACMA say they cannot find.

On 26th August 2001, I wrote Mr Tony Shaw of the ACA (now ACMA). The full letter, which was prepared on the advice of a Senator, is attached to my Statement of Facts and Contentions as **Exhibit (AS278-b)**. I have not yet received permission to identify the Senator in relation to these matters but I have, however, provided the Senator's name to my legal advisor and will pass the name on to the AAT at the appropriate time, in confidence. That a Senator would actually suggest that I forward this quote to the Chairman of the Australian Communication Authority (ACA) indicates just how concerned this particular Senator was, in relation to the way that a Government Agency, like the ACA (now ACMA) did not address Telstra's unlawful behaviour during a Government-endorsed arbitration process that the Regulator had facilitated. The following quote is taken from my letter to Mr Shaw: ***"...We suggest that any Regulator and or agent of the Federal/Crown, who possessed knowledge of the nature of these unlawful acts and events by Telstra during the AUSTEL facilitated COT***

arbitration procedure, and specifically have concealed these acts by not broadcasting to the appropriate law enforcement agencies, would be acting outside of the law, and would be engaging in prima facie abuse of office, and obstruction of justice.

In all these respects, the law is clear, it prohibits such conduct."

This was not the only Senator to indicate concerns regarding Telstra's abuse of the Australian Legal system during my arbitration when he wrote: *"The appalling manner in which you have been treated by Telstra is in itself reason to pursue the issues. Your manuscript demonstrates quite clearly how Telstra has been prepared to infringe upon the civil liberties of Australian citizens in a manner that is most disturbing and unacceptable."*

During 2001, Tony Shaw was provided some of the information now included in my Statement of Facts and Contentions, information confirming that, during my arbitration, Telstra perverted the course of justice in a number of ways, including relying on deficient Service Verification Tests (SVT) that AUSTEL themselves declared deficient, as well relying upon the BCI's impracticable Cape Bridgewater Report that Cliff Mathieson declared fundamentally flawed in March 1995.

I can say though that, before these Senators offered their opinions, they had each only seen less than half the material now provided as attachments to my Administrative Appeals Tribunal Statement of Facts and Contentions.

An independent technical consultant Brian Hodges, (an ex-Telstra veteran – 29 years), noted in his report of 27th July 2007, similar findings to that reached by Cliff Mathiesons, regarding BCI's flawed tests alegedly conducted at BCI Cape Bridgewater, and AUSTEL's findings regarding the deficient Cape Bridgewater SVT tests. Although ACMA was recently provided with Mr Hodges' report in May 2008, they have not yet notified any relevant law enforcement agency regarding Telstra's use of known flawed reports as defence documents.

I have prepared this Statutory Declaration because it shows that, since ACMA has been prepared to hide Telstra's unlawful acts for so many years, there is a strong possibility they are still withholding relevant FOI documents that might prove to be detrimental to either ACMA or Telstra.

AND 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, the Statutory Declaration Act, 1959, (Commonwealth) and subject to the penalties provided by that Act for the making of false statements in Statutory Declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

DECLARED at PORTLAND POLICE STATION

this 26TH day of JULY 2008

Before me

S. HAFNER

(Signature of person before whom the declaration is made)

S. HAFNER

SLC 33490.

(Signature of Declarant)

GENERAL INFORMATION ALAN SMITH

Over time, Alan came to believe that the skills he had gained during his time at sea, as well as working as a chef and steward, together with the experience accumulated during the many and varied catering jobs listed in his Relevant Infromation File, provided him with a good base on which to build his own business.

Before Alan moved to Cape Bridgewater, and for the first three months after he moved, he visited many Victorian metropolitan and country schools, including the Wimmera and South West regions, Geelong and Warrnambool, and distributed some two thousand brochures about the camp. The camp coordinators at all these schools were most interested in the package Alan presented.

After opening for business, and having put in all the promotional time and effort noted above, Alan was most surprised to find that they were not receiving anywhere near the number of enquiries he expected, particularly since many of the prospective customers he had spoken to had indicated that they would soon phone to check available dates etc. This lack of incoming phone enquiries led him to wonder if there was a problem with the phone lines and this concern was confirmed as a number of personal friends began to tell Alan and his wife Faye that they were receiving constant engaged signals or, alternatively, a phone message saying that my phone had been disconnected.

Chapter One

19th April 1998: Alan particularly recalled one example of these problems, which Alan experienced himself. Alan had driven some twenty kilometres from the Camp into Portland to shop and then realised he had left his list behind so he found a public phone and rang his wife, intending to ask her to read the list to him. Alan was stunned when, instead of reaching his wife, he twice reached a recorded message telling him that his own phone had been disconnected. Alan rang Telecom's fault centre and was told Telecom would investigate so he continued on his way, attempting to shop from memory. Finally, he decided to ring the camp again to check his purchases against the list. This time the phone was engaged and he assumed his wife was talking to a friend or, hopefully, a prospective customer at last. The Telstra fault chart for this date see Exhibit (AS 1), records this fault. When Alan arrived back at the camp Alan's wife advised him that she had not answered, or made, any phone calls in the entire time Alan had been gone.

26th April 1988: Exhibit (AS 1) confirms Telstra records another one of Alan's complaints for this date. It is also interesting to note that, when Alan accessed Telecom's fault records during his rbitration, he could not find any record of the many faults he had reported to Telecom in the early days after he took over the business. In those first, early days, it didn't occur to him that he needed to record the faults they reported to Telecom and so Alan can't designate any particular date for the complaint he lodged during the aforementioned shopping trip to Portland, but

concludes that one of the faults shown in exhibit (AS 1) could be the registered shopping trip complaint.

2nd & 24th May 1988: Telstra records two more on Alan's complaints (AS 1) another fault frequently experienced with the phone at the camp was a call drop-out (e.g. Alan would be talking on the phone and the line would just go dead). If Alan or his wife Faye had rung the person themselves, this was not such a great problem at first since they could just redial, although it did cost them another STD call. The problem became much worse if they couldn't reconnect (and often the line remained dead for some time), or if the caller had phoned us (they had to bear the cost of redialling). If the call had come in to the camp, particularly if it was one of the few business enquiries that managed to get through at all, it was very frustrating for them to wait and wait for the caller to ring back, without the phone ringing at all. At first, it didn't occur to Faye and Alan that the caller was not able to get through because, of course, they were sitting by the phone waiting!

2nd & 6th September 1988: Telstra continues to record their complaints the phone problems became much worse (often the line remained dead for some time after the preceding call had been terminated), in other words the line locked-up. This problem often was not noticed until they lifted the receiver to dial out of the business. (AS 1)

2nd & 6th September 1988. Telstra continues to record Alan's complaints. The phone problems became much worse (often the line remained dead for some time after the preceding call had been terminated), in other words the line locked-up. This problem often was not noticed until we lifted the receiver to dial out of the business. (AS 1)

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

Exhibit (AS 27) is a Telstra Internal Minute dated 2nd July 1992, from Mark Ross Customer Service Manager to Network Operations.

Exhibit (AS 28) is an Internal Memo dated 29th November 1993, from National Network Investigations to Harvey Parker, Group Managing Director, Commercial & Consumer. The statement made in the internal minute: *"...Please find enclosed documentation in regard to a grade of service Complaint from Mr Alan Smith of Cape Bridgewater. Our local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a Recorded Voice Announcement saying that the number is disconnected. They believe it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE,"* and the statement made in the Telstra Internal Memo:

"...As the performance quality of the network is directly translated to customer satisfaction and cost and quality of Fault Management, caution is also expressed about the decision on which switch should be used for FMO. I have long held the view the AXE switch provides an inadequate and crude Fault Analysis Diagnostic tools. Attempts to have improvements incorporated have been acknowledged, but nothing has changed," confirms there were problems associated with the Ericsson AXE system.

It is also interesting to note, that in the AUSTEL *COT Cases Report* dated April 1994, at point **7.40** – AUSTEL states: *"...AUSTEL recently became aware that Telecom had prepared an internal document on the subject of this AXE fault and on 21 March 1994 sought a copy from Telecom."* Neither, Mr Schorer or Alan Smith was ever provided a copy of this AXE report under FOI.

It is important to note that the AXE Ericsson exchange problems (see also below for the dates of 16th July 1997, 24th July 1997, 20th August 1997 and 16th September 1997), was the subject of COT Cases belief that the TIO-appointed (arbitration technical consultants) Lane Telecommunications may well had a conflict of interest before they were removed from the arbitration process.

6th & 10th January 1889: Telstra continues to record our complaints (AS 1) As the weeks went by and their business, which should have been flourishing by now, simply began to vanish before their eyes, they began to wonder if they should have moved to Cape Bridgewater at all. Family argument ensued as Alan pushed to sell their family home in Melbourne (with it's in ground swimming pool and spacious back yard) and asked his wife, Faye, to give up her thriving dressmaking business. Alan believes it would be unfair to lay the entire blame for our 20-year marriage breaking up on Telstra's doorstep, but the constant stress created by prospective customers not being able to reach them on the phone in Cape Bridgewater certainly was a major factor. When Alan now looks at Telstra FOI documents confirming that they knew, all along, that their phone problems were caused by the poor network into Cape Bridgewater (even though, at the time, they continually denied the problem) Alan finds it really difficult to take. If Telstra had addressed the rural phone problems in Cape Bridgewater when he first raised them, he might well still have a marriage and on-going contact with both his children.

Faye and Alan slit up

20th October 1989: Finally, with Faye gone and the first awful weeks over (with the support of a number of friends) I began to assess my new, single, situation and it became painfully obvious that running the business alone was going to take an awful lot of energy and time but local Telstra technicians had, by then, assured me that there were no real problems with the Cape Bridgewater exchange and that, once the new RCM exchange was installed, any lingering minor congestion problems would be eliminated. (2)

IMPORTANT – REGULATORS REPORT APRIL 1994

At point **6.78 – 6.79** on pages 134 – 135 in the *AUSTEL COT Cases Report* it states: *"...Arising from the continuing complaints lodges by Mr Schorer, one of the* ***original*** *COT Cases, Telecom undertook a comprehensive study of the North Melbourne exchange in 1988. The main findings of the study were –*

- *congestion exited on the Integrated Digital Network (IDN) exit route from Footscray to North Melbourne*
- *under-dimensioned CL blocks (used for call supervision and clearing) and PD (a software function for meter pulse distribution during a call) individuals at Footscray Node were also causing congestion.*

The combined effect of those two factors was a congestion level of between 5% and 14%. Faults were also found with various exchanges in the network which affected the grade of service received by Mr Schorer. Both shortcomings in the North Melbourne exchange and the Footscray Node would have impacted significantly upon the standard of service delivered to Mr Schorer as is revealed in the following Telecom documentation."

Please note: Graham's Schorer's (Federal Court Action) was that Telstra had been aware of the limitations of the Flexitel when they sold the Flexitel system to Golden Messenger

Trade Practices Act 1974

Part VA – Liability of manufacturers and Importers For Defective Goods

Commonwealth mandatory standard "...in relation to goods, means a mandatory standard in respect of the good imposed by law of the Commonwealth.

(a) for the goods or anything relating to the goods; and

(b) that, under law of the Commonwealth, a State or a territory, must be complied with when the goods are supplied by their manufacturer, being a law creating an offence or liability where there is non-compliance."

Please consider the following points shown immediately below, regarding Alan Smith's EXICOM TF200 touchphone problems. e.g.:

1. It is confirmed in Alan Smith's Administrative Appeals Tribunal Chronology and supporting material that numerous internal Telstra file notes and correspondence confirmed that, Alan's business suffered as a result of congestion at his local exchange that serviced the unmanned RCM system at Cape Bridgewater and, it was widely known throughout Telstra that there were major lock-up problems with their EXICOM TF200 phones, but Telstra's laboratory technicians denied that this known problem had been part of Alan's problems, even going as far as conjuring up a report that indicated that all of the problems with Alan's EXICOM TF200 were caused by 'wet and sticky' beer that had been spilt inside the phone.

2. In Alan Smith's case, after Telstra replaced his faulty EXICOM TF200 with another EXICOM, Alan's business continued, to suffer from problems with the phone system. In Alan's case, the arbitrator and the arbitration technical consultants appointed by the telecommunication Industry Ombudsman failed to address the lock-up problems, apparently because they believed Telstra's laboratory TF200 'wet and sticky; beer report had proved Alan's drinking habits had caused part of his problems (see Telstra's arbitration defence 12th December 1994)

3. **Exhibit** (AS 2-b) FOI folio R37011 last paragraph states: *"This TF200 is an EXICOM and the other T200 (which was connected to Alan Smith's 267267 line) is an ALCATEL, we thought that this may be a design "fault"??? with the EXICOM so Ross Anderson tried a new EXICOM form his car and it worked perfectly, that is, released the line immediately on hanging up. We decided to leave the new EXICOM and the old phone was marked and tagged."*

   For the sake of this document I remind the reader that the problem Alan Smith was experiencing with the EXICOM TF200 tagged and taken away was it used to lock-up intermittently after a terminated call. One of the side faults was while the EXICOM was in a lock-up state people could hear Alan in his office sometime minutes after he had placed the receiver back in the cradle (terminated the call).

4. **Exhibit** (AS 2-c) Telstra FOI folio D01026/27 confirms like the Flexitel system the Telstra knew there were lock-up problems affecting the EXICOM T200 in moisture prone areas those that were manufactured after week 7 1993. This document confirm one of the known lock-up side affects to this problem was while the line was in this lock-up mode the calling or called party could hear room noise of the other party after the call had terminated. Document D01026 confirms that instead of destroying these

faulty EXICOM phones Telstra allowed their technical staff to re-deploy some 45,000 phones back into service or those that had not seen service into areas where their local technicians believed moisture wasn't a problem.

It would be unreasonable for Telstra senior executives to assume that local Telstra staff would have metrological experience, or be aware that Coastal regions early morning to early afternoon moisture is a problem in place like Cape Bridgewater, where Alan Smith had his business. While it is evident from documentation Alan had problems with the EXICOM TF200 collected 27th April 1994, the new EXICOM left behind was still in service on his 55 267230 line until at least 1999, when it was removed to the Camp kiosk.

SUMMARY - EXICOM

In other words by at least the end of 1993, Telstra were aware of the known faults affecting the EXICOM TF200 but chose to continue to install this equipment at customer premises at least up and until April 1994. What the EXICOM examples show is that Telstra had learnt nothing and were still prepared to operate outside of the Trade Practices Act 1974.

3rd July 1992: Peter: Telstra's Warrnambool Manger sends Alan a letter noting: "*...As you requested the following is a copy of your fault history on service 267267. Unfortunately I can only provide details for the past 12 months due to change in your data base.*" Why wasn't the above document 16, supplied to Alan by Peter Taylor, when Alan asked him for all fault records since 1989? Other documents discussed above documents 3 and 4 confirm there were records going back to 1989. **(AS 17)**

Clearly Alan was seriously misled by Telstra during this settlement process, and at the time he accepted Telstra's offered payment.

From soon after settlement on 11th December 1992 and through to early 1993 Alan continued to experience intermittent problems with incoming STD calls cutting out: 80% of his incoming calls were STD. On 3rd February 1993 Alan complained to Telstra that the phone was frequently giving only one ring and, when he picked it up, the line was dead.

12th July 1993, Telatra FOI documents M34204 – M34205 **(AS 18)**
Confirms that I had been complaining of cut-offs in March 1993. The amazing thing about this document is that Telstra states that there were 45,993 degraded minutes yet, in the Arbitration Technical Report, DMR and Lanes (30th April 1995) refers to only 405 degraded minutes. The Technical Report also claims there were only 43,500 errored seconds (ES) when the Telstra document shows 65,535. It seems that, for some unknown reason, DMR and Lanes played down the actual number of faults.

The three attached documents from the (AUSTEL COT Report dated 13 April 1994) see pages163 to 165, confirm that, from when the new RCM was installed at Cape Bridgewater in August 1991 until at least July 1993, numerous problems affected the RCM at Cape Bridgewater **(AS19)**

At this point it is important to raise the issue of a Witness Statement which was sworn by Gordon Stokes of Telstra, and used in the FTAP (12th December 1994). In part (2) of this Statement, Mr Stokes states: *"I transferred to Network Operations Portland in 1989 and between 1990 and 1994 I was responsible for maintaining switching equipment at the*

Portland exchange." At point (8), Mr Stokes further states: *"After the Portland to Cape Bridgewater RCM systems were installed, I became aware that the performance of the systems could be measured using the facility known as CRC. I checked the CRC error counters regularly between the date the RCM systems were installed and February 1994, when I left Telecom. Checking the CRC counters in this way was normal maintenance practice. I can recall checking the CRC counters prior to March 1993. When I checked the CRC counters pre-March 1993, I did not observe any errors that could have impacted upon the telephone service provided to cape Bridgewater customers. A typical reading for each RCM system was 5 to 10 errored seconds, no degraded minutes and severely errored seconds"* **(AS 20)**

If Mr Stokes did check the RCM regularly, as he states, why didn't he notice that the fault alarm system had not been installed after the RCM replaced the RAX exchange in August 1991, twenty months before? Furthermore, Mr Stokes's statement does not correlate with a report made after a visit to the Portland exchange by the Melbourne Pair Gain Support Group which states: *"At this stage we had no idea over what period of time these errors had accumulated."*

If Mr Stokes's Witness Statement is correct in that he *"... checked the CRC counters pre-March 1993 and* (I) *did not observe any errors"*, then 65535 errored seconds and 45993 degraded minutes would have accumulated in the three days between 28th February and 2nd March.

Throughout 1993, Alan Smith continued to receive numerous letters from clients and business associates, documenting their frustrating experiences when they attempted to contact him by phone see also document 15. The stress became increasingly difficult to bear but, although he often tried to convince himself that the problems were diminishing, in reality nothing was improving at all.

26th September 1992 – Part -1

Casualties of Telecom/Telstra – C.O.T.

The newly formed *Casualties of Telstra* (COT) Group, comprising Graham Schorer, Alan Smith, Ann Garms, Bruce Dowding (representing Shelia Hawkins) and Amanda Davis (the AUSTEL's General Manager for Consumer Affairs), met with three representatives of Telstra at the IBIS Hotel in North Melbourne to discuss the ongoing phone problems being experienced by the members of COT. One of the Telstra's representatives at that meeting, Ted Benjamin, was later appointed as Telstra's arbitration liaison officer for Graham and Alan's respective arbitrations. The Alan Smith Administrative Appeals Tribunal Chronology and supporting documentation has shown that the TIO should never have allowed Mr Benjamin to the position of arbitration liaison officer while he was still a member of the TIO Council, because the TIO's office was the administrators of the COT arbitrations, see belwo, the Senate Estimates Committee hearing on the two hats worn by Ted Benjamin.

On 13th April 1994 (see below), AUSTEL provided the then-Minister for Communications, the Hon Michael Lee, with a report entitled *AUSTEL COT Cases Report*, which discusses at great length the telecommunication problems experienced by Graham, Alan and other COT members. Most of the information in the report was supposed to provide an unbiased

view of the issues which AUSTEL had investigated by accessing from Telstra, each of the COT Case telecommunication fault registered with the carrier.

The information shown in the Alan Smith – Administrative Appeals Tribunal Chronology and supporting documentation confirms that Telstra (throughout the COT arbitrations) continued to withhold FOI documents from the claimants, and by AUSTEL not releasing the Alan Smith – draft Bruce Matthews report see "*Attachment Two*' during Alan's arbitration, they did the same. It is also apparent that AUSTEL was unable to access all the information they requested from Telstra to enable them to properly prepare a more detailed report i.e.

AUSTEL COT Cases Report

Point 5.46 on page 95 states: *"...Where, as part of its direction, AUSTEL sought to obtain detailed information on each of the exchanges involved in terms of performance standards, actual performance, maintenance requirements and achievements, Telecom initially responded with advice in terms of a few generalisations. Very specific requests were necessary to obtain data which a co-operative approach may well have been expected to deliver. Indeed, throughout this inquiry it has been apparent that Telecom has chosen to interpret AUSTEL's request for information in the narrowest possible terms. The net effect of this was to minimise the amount of relevant data it put before AUSTEL and lengthen the process necessary to extract it.*

Point 2.29 on page 34 of the AUSTEL *"COT Cases Report* states:
"...Since the five original COT Cases came to AUSTEL's attention, fourteen complainants have approached AUSTEL alleging that –

- *they have experienced service difficulties and faults similar to those experienced by the original COT Cases*
- *they have received similar treatment in Telecom's handling of their complaints."*

Point 3.45 on page 59 states:

"...Accordingly, at the same time as AUSTEL's was pursuing its investigation it also used its best endeavours to facilitate a ***Fast Track Settlement Proposal*** *for four of the COT Cases with the object of using the outcome of the Fast Track Settlement Proposal procedure as a model for resolving other individual disputes. Outcomes in that regard are detailed elsewhere in this report."*

Point 5.7 on page 84 states:
"...Argument on that general theme continued. By letter dated 23 September 1992, Telecom's Group Managing Director, Commercial and Consumer, informed Mr Schorer as spokesperson for the original Cot Cases -

- *"The key problem is that discussions on possible settlement cannot proceed until the reported faults are positively identified and the performance of your members' services is agreed to be normal. As I explained at our meeting, we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services."*

Point 5.25 on page 89 states:
*"...Mr Smith was the first of the original COT Cases to reach an initial' **settlement'** with Telecom. It is understood that he –*

- *identified the type of faults which his business had experienced*
- *indicated the incidence of the faults by way of –*
  - *statements by individuals who had sought unsuccessfully to contact him*
  - *demonstrating a reduced effectiveness of advertising he had undertaken.*

Telecom has a acknowledge of at least some of the faults impacting on Mr Smith's business as well as having access to relevant fault records and monitoring data. It was also aware of the extent of the problems and difficulties at its local exchange servicing his business."

It is clear from the information recorded above that AUSTEL found merit in what Alan said regarding his continuing phone problems and this why AUSTEL chose to support the suggestion that Alan had his matters assessed commercially rather than legalistically. The following information shows however that Telstra (assisted by the newly-appointed TIO) high-jacked the commercial settlement process in favour of Telstra's preferred rules of arbitration.

BROKEN PROMISE

AUSTEL COT Cases Report - Continuing Faults

Point 5.30 on page 91 states: *"...Understandably the original Cot Cases, having reached an initial 'settlement' involving –*

- compensation for past losses
- restoration of an adequate telephone service

expected that they might be able to resume their business activities afresh."

Point 5.32 on page 91 states: *"...Unfortunately that did not prove to be the case. Soon after his intial 'settlement' Mr Smith reported continuing problems to AUSTEL. Even prior to her settlement, Mrs Garms reported continuing faults to AUSTEL. The decision by Mrs Garms and Mrs Gillan not to report faults to Telecom in order to hasten a financial settlement is noted above. Mr Schorer continued to report faults to AUSTEL throughout the period.*

Point 5.32 on page 91 states: *"...The fact that faults continued to impact upon the businesses in the period following the settlement shows a weakness in the procedures employed. That is, a standard of service should have been established and signed **off** by each party. It is a necessary procedure of which all parties are now fully conscious and is dealt with elsewhere in this report. Its omission as far as the initial 'settlement' of the **original COT Cases** were concerned meant that there was continued dissatisfaction with the service provided without any steps being taken to rectify it. This inevitably led to dissatisfaction with the initial **'settelment'** and to further demands for compensation. To avoid this sort of problem in the future, AUSTEL is, in consultation with Telecom, developing –*

- *a standard os service against which Telecom's performance may be effectively measured*
- *a relevant service quality verification test."*

The original (commercial) negotiation process leading up to the AUSTEL facilitated *Fast Track Arbitration Procedure* (FTAP), see point 5.32 details quite clearly that no future assessment process should be signed ***off*** until Telstra had demonstrated that their verification testing had located and/or fixed the phone problems that had affected the COT Cases businesses. By Telstra agreeing to carry out the Service Verification Tests (SVT) as specified by AUSTEL, and by doing proving to AUSTEL's satisfaction that the services provided to Alan Smith were now up to network standard, was one of the main reason's why Alan signed the FTAP. Leading up to the signing of the Arbitration Agreement 21st April 1994, and before the final COT report was provided to the Communications Minister on 13th April 1994, Alan attended a two-day, lock-up, confidential viewing of the incomplete draft of the report at AUSTEL's headquarters in Queens Road, Melbourne. At this meeting Robin Davey, AUSTEL's Chairman, reminded Graham Schorer (COT spokesperson) and Alan of commitments made in a letter dated 23rd September 1992, from Telecom's Commercial Consumer Group Managing Director to Graham, (see at point 5.7 *AUSTEL COT Case Report*, which stated: *"As I explained at our meeting, we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services."*

At the time of the AUSTEL lockup meeting, Graham and Alan were refusing to move from the commercial agreement to arbitration. It was at this point of time, that Mr Davey noted that the original agreement to properly identify the phone and fax faults still stood because an assessor (or arbitrator) would not be able to hand down findings if the problems and faults that had sent the claimants into the process in the first place had not been rigorously tested. At this lock-up meeting Graham and Alan were alerted by Mr Davey, to various sections of the AUSTEL report where AUSTEL clarified that Service Verification Testing would be conducted on Difficult Network Fault (DNF) customers, which is how the COT claimants had been classified.

It never occurred to Alan, that Telstra would stoop so low as to conjure up a false result of the Service Verification Tests they carried out at his business (as part of their arbitration defence) but, as this Alan Smith – AAT Chonology shows, this is exactly what happened, even after AUSTEL had written to Telstra, on 16th November 1994 see **(AS 124)**, clearly advising Telstra that the tests carried out at Alan's business premises were deficient.

26th August 1992: The first formal meeting of the Casualties of Telstra was held in October 1992, at the Ibis Hotel in Melbourne. Graham Schorer had already been elected as official spokesperson. During this meeting the COT Cases advised Telstra that they now knew, contrary to what each of had been individually advised by Telstra in the past, that they were NOT the only businesses in their areas complaining about faults with their telephones: Telstra fault documents confirm that during October and November 1992 alone, fourteen Cape Bridgewater residents had complained to Telstra about problems with their phones. **(AS 8)**

1st September 1992: Ms Pittard, Telstra's General Manager sends Alan a letter "…Dear Mr Smith, We believe our recent tests indicate that your service is now performing to normal network standards. I am initiating a further detailed study of all the elements of your service and the tests which have been conducted." (AS 9)

18th September 1992: Mr Beard, Telstra's Service Manager sends Alan a letter "... *We believe that the quality of your telephone service can be guaranteed and although it would be impossible to suggest that there would never be a service problem we could see no reason why this should be a factor in your business endeavours.*" (AS 10)

Telstra FOI document R01444 confirms that Telstra had documented people experiencing RVA recorded message that Alan's service was not connected from at least March 1992. This document also confirms that a Heywood resident Mrs Saville, also complained of the same RVA fault when trying to ring Alan on 2/9/92. Document R01444, confirms the fault was not fixed until 7/10/92 (AS 11)

13th October 1992: Telstra connected a monitoring ELMI machine at my business Documents 7 shows that, around 13 October 1992, one of Telstra's Portland technicians, Gordon Stokes, connected an ELMI monitoring machine at the RCM exchange at Cape Bridgewater and linked it to a 'sister' machine so they could 'talk' to each other and carry out tests to see which calls actually terminated successfully at Alan's Camp. This equipment was connected to the camp kiosk phone, which could be answered either in the kiosk via the kitchen, or in the main office. Over this period Alan continued to complain that calls were being registered as reaching his business when they hadn't. On some occasions calls showed on the ELMI tapes as having been answered when they weren't and, on other occasions, calls which had actually managed to get through and were successfully answered appeared on the ELMI tapes as ringing out and not being answered. (AS 7)

Alan has included two examples of calls on 13th October 1992, which registered on the ELMI tapes as successful; one at 1.40 pm and the other at 3.04 pm. In fact, both these calls had dropped out when answered, so they were certainly not connected successfully. According to Gordon Stokes, there was no ELMI equipment connected at Alan business at that time – but they must have been, or Alan wouldn't have the tapes.

As these kinds of faults continued and were denied by local staff, things got worse instead of better. At the time, Karen had to bear the brunt of a lot of anger from those people who did manage to get through because she answered the phones every second or third day while Alan attended COT meetings in Melbourne and so it did not really come as a surprise to learn that Karen had decided to move into a rented house in Portland.

23rd November 1992: Don Lucas, of Telecom Commercial Vic/Tas Region, wrote to Alan advising that the RVA MELU fault had only lasted for three weeks and had been fixed by 19th March 1992. (AS 12) Another Telstra FOI document K02643, which Alan received during his arbitration, under FOI confirms that Telstra considered this particular RVA MELU fault to be apparent from the cut-over from the old exchange to the new RCM at Cape Bridgewater that is from August 1991 to at least 19th March 1992 (AS 13)

In his letter, Mr Lucas further states that another software 'register' problem relating to RVA local faults had only lasted from 2nd to 7th October 1992 while other documents received under FOI R01444 (see document AS 11 confirm that Telstra knew that this fault was apparent from at least 9th September 1992. Further documents received from the ACA (2001) and dated 2 March 1994 from AUSTEL to Telstra also show that the local 'register' RVA fault at Heywood and the RVA MELU fault had both lasted many weeks longer than Telstra had told Alan during his settlement period.

11th December 1992, Alan provided Telstra four letters from clients who had documented their own phone problems when trying to contact his business (see document **AS14**)

During Alan's settlement with Telstra, he produced at least four letters which he had written to the local rural fault centre at Hamilton, somewhere between June 1988 and September 1989 (refer Cape Bridgewater Holiday Camp documents), including four letters from the operators of the Empress of Tasmania, Heywood Primary School, Collingwood Half-way House and the Haddon Community Health Centre. All these organizations had experienced difficulties in contacting Alan because of the RVA phone message. John Wynack, Commonwealth Ombudsman Office, wrote to Telstra 11 November 1994, asking why Telstra has never returned *"a number of files relating to his contacts with Telecom prior to 1991"* (the four letters referred to here **(AS 14)**

DOCUMENTS C04006, C04007 and C04008

Brief summary: when these three documents are compared to some of the already attached Telstra FOI documents and those discussed below, it can clearly be seen that, on settlement day (11th December 1992), Telstra's Victorian General Manager (Commercial), Ms Rosanne Pittard, knew that Telstra had provided Alan with a very poor phone service for at least three or four years. This confirms that Telstra were aware of the problems with Alan's phone line from April 1988, when he lodged his first complaints. **(AS 15)**

Document 15

Was used during Alan's Arbitration Claim to answer Telstra's Interrogatories pages 11, 12, and 22 include references to:

- Copies of letters, dated from as early as 1991, from people who had personal experience of the phone problems Alan had to deal with. These people included business clientele, friends and associates;
- Contemporaneous notes Alan had made regarding his phone problems;
- Surveys of phone users in the general area; and
- Copies of correspondence relating to other peoples' problems with their own telephone services in the Portland/Cape Bridgewater area

When Alan arrived at the meeting with Ms Pittard on 11th December 1992, he reminded her of correspondence he had received from her office, in September and November 1992, stating that the phone faults had been rectified yet documents **C04006, C04007 and C04008** show that there were a number of facts which were not provided to him during these settlement negotiations, including references to:

1. Callers often hearing an RVA message when lines into Cape Bridgewater were congested (document C04006);
2. 'Issues' with the wiring and cabling in Cape Bridgewater
3. A history of poor performance of Telecom in the area
4. Alan's service problems being network related and covering a period of three to four years (document C04007)
5. Alan's phone service, overall, having suffered from a poor grade of network performance over a period of several years, with some difficulty in detecting exchange problems in the eight months before this document was written.

In particular, point 5 shows that Ms Pittard was aware that there were ongoing faults before the settlement meeting and that she was also aware of the continuing phone faults when she wrote to Alan on 1st September 1992, stating: *"Whilst our recent tests indicate that your service is now performing to normal network standards ... ".*

Bob Beard, Telstra's Service Manager, wrote to Alan on 18th September 1992, stating: *"We believe that the quality of your telephone service can be guaranteed and although it* would *be impossible to suggest that there would never be a service problem, we could see no* reason why this should be a factor in your business endeavours." It is now clear that he knew at the time that the information he supplied to Alan in this letter was false.

Another document which Alan received from Telstra, under FOI, **(AS 16)** dated July 1991confirms that Telstra knew, before they installed the new RCM at Cape Bridgewater in August 1991, that numerous problems had affected the old RAX exchange prior to this cut-over. This document clearly states that there were 11,000 errors per hour in direction A and 216 errors per hour in direction B, when the specified level allowed for was 72 errors per hour in both direction A and direction B.

Chapter Two

Freehill Hollingdale & Page, AUSTEL and Telstra

It is most important to highlight in this segment the letter of 10th September 1993, from Denise McBurnie of Freehill Hollingdale & Page to Ian Row, Telstra's Corporate Solicitor, which relates to strategies that were used in dealing with the COT claimants. Telstra FOI document N00749 is the first page of this strategy document N00749 states: "Both Freehill's and Duesbury's would be happy to assist you should matters raised in the issues paper or with regard to any other matters concerning management of "COT" cases and customer complaints."

In June 2000, renowned Legal Professional Privilege expert, Associate Professor Suzanne McNicoll, provided the COT claimants with the following legal opinion regarding the Freehill's 'COT Case Strategy' document: "There is also some potential prima facie evidence of (4) i.e. knowingly making false or spurious claims to privilege. For example, there is potential structure set up for the possible abuse of the doctrine of legal professional privilege in the faxed document entitled "COT" Case Strategy, marked "Confidential" dated 10 September 1993 from Ms Denise McBurnie of Freehill Hollingdale & Page, Melbourne Office to Mr Ian Row, Corporate Solicitor, Telecom Australia."

During late 1992 through to early 1993, in his roll as spokesperson for the Casualties of Telstra (COT) Graham Schorer began to believe their businesses were under surveillance. During this same period 1992 to 1993, Cathy Ezard (now Alan's partner) was a professional associate of Alan's having previously visited his business with a social club from Ballarat. Cathy later signed a statutory declaration dated 20th May 1994, explaining a number of sinister happenings when she attempted to collect mail on Alan's behalf from the Ballarat Courier Newspaper office **(AS 29)**. This declaration leaves questions unanswered as to who collected Alan's mail and how did they know there was mail to be collected at the Ballarat Courier mail office. On both occasions when this mail was collected by a third person, Alan had previously telephoned Cathy, informing her that the Ballarat Courier had notified Alan there was mail addressed to Alan waiting to be picked up.

On pages 12 and 13 transcript from the AFP inquiry into Alan's allegations that Telstra had unlawfully intercepted his telephone conversations, the AFP state Q59:*"...And that, I mean that relates directly to the monitoring of your service, where it would indicate that monitoring was taking place without your consent?* **(AS 30)**

21st April 1993: Telstra internal email FOI folio C04094 from Greg New bold to numerous Telstra executives Subject COT cases latest states: *"...Don, thank you for your swift and eloquent reply, I disagree with raising the issue of the courts. That carries an implied threat not only to COT Cases but to all customers that they'll end up as lawyer fodder. Certainly that can be a message to give face to face with customers and to hold in reserve if the complaints remain vexatious.* **(GS 75)**

Billing Problems

21st May 1993: s a copy of Alan's 008 billing account for that date. This document demonstrates how Alan proved conclusively that Telstra continued to charge him for calls, which couldn't have connected to Alan's service during the 21st May, 1993 period in which the MCT equipment was installed on this service line see document **(AS 25)** the 90 second delay-lockup period between each previous successful terminated call. Why then did Telstra 008 accounts for 21st May 1993, show 5 second to 20 second calls terminating at Alan's business (one after another) when the MCT equipment disallowed this to happen? The person who tried to ring Alan on this particular day, Mrs Haddock, of Ringwood Victoria, later wrote of her concerns. She was also one of the people who referred to a woman's voice on what she thought was Alan's answering machine, when she arranged her bookings. In late 1992 Alan recorded a complete mail voice over his answering machine (Alan's own voice was now on the machine). Who did Ms Haddock leave her particulars with? **(AS 31)**

BRIEFCASE SAGA

On 3rd June 1993, two Telstra technicians, David Stockdale and Hew Mackintosh, visited Alan's business to investigate his continuing complaints regarding his phone service inadvertently leaving behind a briefcase. The most important issue raised by the contents of this briefcase is that it confirmed that Telstra had known, before Alan's settlement on 11th December 1992, that major faults existed in their network, but they did not disclose this to Alan during his settlement see documents **AS 5, AS 9** and **AS 10**. A letter dated 9th June 1993, from AUSTEL to Telstra is part of the briefcase saga, as it confirms that AUSTEL was concerned that Alan may well have been misled by Telstra during his settlement, due to what Alan explained he found in the briefcase. On page one, paragraphs four and five, when referring to Alan's allegations that Telstra had withheld this information from him on 11th December 1992, this letter states:

> *"Further, he claims that Telecom documents* (found in the briefcase) *contain network investigation findings which are distinctly different from the advice which Telecom has given to the customer concerned.*
>
> *In summary, these allegations, if true, would suggest that, in the context of the settlement, Mr Smith was provided with a misleading description of the situation as the basis for making his decision. They would also suggest that the other complainants identified in the folders have knowingly been provided with inaccurate information.*

I ask for your urgent comments on these allegations. You are asked to immediately provide AUSTEL with a copy of all the documentation which was apparently inadvertently left at Mr Smith's premises for his inspection.

In light of Mr Smith's claims of continuing service difficulties, I will be seeking to determine with you a mechanism which will allow an objective measurement of any such difficulties to be made." **(AS 41)**

16th and 22nd June 1993 – The Telecommunication Industry Ombudsman (TIO) Board and Council was formed. The TIO office was to deal with the ongoing phone problems and faults as a separate identity to AUSTEL

At exhibit **(AS 48-B)** below Alan provided a page not numbered from the first Telecommunication Industry Ombudsman (TIO) Annual Report for 1993/94. This page marked Appendix B confirms that Telstra's Ted Benjamin (who had been involved in the COT matters since1992), was appointed to the TIO Council 22nd June 1993. Telstra's Corporate Secretary, Jim Holmes and Telstra's Corporate Affairs Officer Chris Vonwiller, was appointed to the TIO Board on 16th June 1993.

It is important to highlight the names of Jim Holmes and Ted Benjamin here as they both played very important rolls in the COT arbitrations as can be seen below.

17th June 1993: Ms Rosanne Pittard's memo has to be read to be believed: *"...I refer to our telephone conversation regarding the material contained in Mr Macintosh's briefcase. Please find attached a letter from AUSTEL requesting information regarding that incident. Whilst I can respond to the details regarding the information provided to him at the time of settlement I cannot comment on the variation between what Mr Smith was told and the contents of the Network Investigation files."* **(AS 42)**

7th July 1993: This internal Telstra email, FOI folio C04054, discusses whether Telstra should speak to Clinton Porteous, a journalist with the Herald-Sun, and attempt to stop him listening to Graham Schorer regarding Telstra's network problems. The email states: *"I propose that we consider immediately targetting key reporters in the major papers and turn them on to some sexy 'look at superbly built and maintained network stories."* This suggests that Telstra had a number of ways of deflecting the reporters' focus from Graham Schorer's evidence. **(AS 42-b)**

12th July 1993, Telstra FOI documents M34204 - M34205 (18)
Confirms that I had been complaining of cut-offs in March 1993. The amazing thing about this document is that Telstra states that there were 45,993 degraded minutes yet, in the Arbitration Technical Report, DMR and Lanes (30th April 1995) refers to only 405 degraded minutes. The Technical Report also claims there were only 43,500 errored seconds (ES) when the Telstra document shows 65,535. It seems that, for some unknown reason, DMR and Lanes played down the actual number of faults.

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At this point it is important to raise the issue of a Witness Statement which was sworn by Gordon Stokes of Telstra, and used in the FTAP (12th December 1994). In part (2) of this Statement, Mr Stokes states: *"I transferred to Network Operations Portland in 1989 and between 1990 and 1994 I was responsible for maintaining switching equipment at the Portland exchange."* At point (8), Mr Stokes further states: *"After the Portland to Cape Bridgewater RCM systems were installed, I became aware that the performance of the systems could be measured using the facility known as CRC. I checked the CRC error counters regularly between the date the RCM systems were installed and February 1994, when I left Telecom. Checking the CRC counters in this way was normal maintenance practice. I can recall checking the CRC counters prior to March 1993. When I checked the CRC counters pre-March 1993, I did not observe any errors that could have impacted upon the telephone service provided to cape Bridgewater customers. A typical reading for each RCM system was 5 to 10 errored seconds, no degraded minutes and severely errored seconds"* (20)

If Mr Stokes did check the RCM regularly, as he states, why didn't he notice that the fault alarm system had not been installed after the RCM replaced the RAX exchange in August 1991, twenty months before? Furthermore, Mr Stokes's statement does not correlate with a report made after a visit to the Portland exchange by the Melbourne Pair Gain Support Group which states: *"At this stage we had no idea over what period of time these errors had accumulated."*

If Mr Stokes's Witness Statement is correct in that he *"... checked the CRC counters pre-March 1993 and* (I) *did not observe any errors"*, then 65535 errored seconds and 45993 degraded minutes would have accumulated in the three days between 28th February and 2nd March.

Throughout 1993, Alan continued to receive numerous letters from clients and business associates, documenting their frustrating experiences when they attempted to contact him by phone see also document 15. The stress became increasingly difficult to bear but, although he often tried to convince himself that the problems were diminishing, in reality nothing was improving at all.

23rd July 1993: AUSTEL's John MacMahons' letter to Telstra: *In my letter of 9 June I asked for a copy of all documentation left inadvertently at Mr A Smith's premises. It has now been suggested that there was other documentation in the file. Would you please clarify this issue and if so, arrange for a copy of the documentation to be made available to* me immediately." **(AS 43)**

12th August 1993: Ms Espinosa, a hopeful singles club enquiry has Alan worried. This letter confirms Ms Espinosa, her recollection of the same constant engaged problems she experienced when trying to book a week-end during April and May 1993. **(AS 32)** Alarming is the attached Telstra FOI document K03870 dated 17th June (assume 1993) referring to the same Elisie Espinosa and her friend Rita Stenoya **(AS 33)**.

This document does not only record the two personnel phone numbers of these two ladies, it also confirms Telstra was fully aware of the times Alan's office girl left the business when Alan went to Melbourne. This document does not state Adelaide or where ever only Melbourne. Alan used to visit Melbourne on a regular basis during 1992 to 1993 (visiting singles clubs owners who

might be interested in using the Cape Bridgewater for their next club get-a-way) Are we to assume Telstra even knew where Alan stayed and who with, and which club he visited?

17th August 1993: more phone problems. Mrs Cullen from Daylesford Victoria attempted to phone Alan's business but only reached a dead line. Once more Alan was charged for these attempts as four short duration calls on his 008/1800 service. **(AS 34)** All this evidence was submitted into arbitration in a variety of ways, but never addressed. When Mrs Cullen finally made her booking arriving in February 1994, Ms Cullen's partner wrote of the problems he and Mrs Cullen, experienced when trying to use the Holiday Camp coin operated 'Gold Phone' service **(AS 35)**

19th August 1993: Telstra FOI folio R10606, confirms that Telstra's Ms Pittard was contemplating seeking legal advice regarding how to withhold COT FOI information under Legal Professional Privilege. **(GS 86)**

This internal email Subject: AUSTEL Directions Regarding COT Cases states: (1)*"...The request for files and other documents are onerous. How much do they want? A warehouse is not out of the question. Who will copy these? I don't have the resources or money for agency people to spend time photocopying. Will Austel pay? (The last question was a joke – I know the answer.)* (2) *I believe we should quarantine any papers associated with legal action, refuse to supply papers associated with settlements and refuse to supply any papers marked Legal Professional Privilege – but we should see legal advice on same.* (3) ***The results of the tests are of a concern to me.*** *What confidentiality will be guaranteed? Austel has had close contact with these customers –* ***what will ensure they don't pass test results on****? What are the legal implications if they do?* (6) ***What promises have been made to the COTS as a result of the testing****? None I hope.* (7) *The testing at customer premises causes great difficulties for us.*

The sentences marked in bold above, refer to a number of tests carried out by Telstra at various COT Cases businesses. This email also suggests that Ms Pittard was in charge of most of the COT Cases issues and the aforementioned tests. Why then, is Ms Pittard so concerned if the test results are made available to the COT Cases?

TELECOM SECRET – COT CASES AND AUSTEL

19th August 1993: This internal Telstra Memo from Harvey Parker, Group General Manager Commercial and Consumer states: *"...Austel's direction has enormous workload implications (notwithstanding technical constraints and misunderstandings) and also has significant legal complications. Some of the material sought is under Legal Professional privilege."*

Please note: AUSTEL's request for documents from Telstra, were ONLY associated with the COT Cases telephone exchange material, technical information surrounding Telstra's testing of the exchanges and the customer premises and all relevant known fault information concerning the COT businesses. AUSTEL did not request Telstra to supply any documentation pertaining to legal issues.

Mr Harvey's statement: *"...Some of the material sought is under Legal Professional privilege"*, confirms COT service fault information was being held under LPP, see also Rosanne Pittards FOI document folio R160606 dated 19th August 1993, which also states at point 2. *"...Some of the documents on the files are Telecom Secret, some are legal professional privilege."* **(AS 35-c)**

When assessing these two (19th August 1993, documents) with the Freehill Hollingdale & Page strategy dated 10th September 1993, by Denise McBurnie, it would be considered reasonable to

sssume that because Telstra withheld relevant fault information from both AUSTEL and then the COT Cases (during their respective arbitrations) this stopped the arbitrator from correctly assessing ALL the relevant fault information past and present.

23rd July 1993: AUSTEL's John MacMahons' letter to Telstra: *"...In my letter of 9 June I asked for a copy of all documentation left inadvertently at Mr A Smith's premises. It has now been suggested that there was other documentation in the file. Would you please clarify this issue and if so, arrange for a copy of the documentation to be made available to* me immediately." **(AS 43)**

23rd August 1993: Telstra internal email subject The Briefcase FOI R09830. *"The files on Smith and Dawson have been provided to Austel via Craig Downing of Regulatory at the request of Austel following a meeting with Austel on the issue. The other papers were not requested and not provided. Subsequently it was realised that the other papers could be significant and these were faxed to Craig Downing but appear not to have been supplied to Austel at this point. The loose papers on retrofit could be sensitive and copies of all papers have been sent to Ross Marshall. Telecom is in receipt of minutes from Austel that suggest that not all documents have been provided as requested.* **(AS 44)**

Please note: In the Arbitrators Award dated 11th May 1995, the arbitrator, Dr Hughes, stated:

"...The claimant has not asserted that the settlement reached was inadequate, unreasonable or unfair and there is no basis in fact or law for setting aside or avoiding the settlement reached by Telecom and the claimant in respect of all claims prior to 11th December 1992.

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 11th December 1992. Particulars of this payment are set out in part 3.3(a) of these reasons. I have taken this payment into account."

Alan's response to Telstra's arbitration defence of 12th December 1994 makes it quite clear that the settlement process engineered by Ms Pittard on 11th December 1992 was administered deceptively. As further support of Alan's allegations that Telstra misled him during the settlement of 11th December 1992, Alan also provided Dr Hughes with a list of FOI documents, including the AUSTEL letter see **(AS 41)** (where AUSTEL stated that if Telstra had withheld fault documentation from Alan during his settlement they had misled him) and the previously withheld fault documents themselves – C04006, C04007 and C04008 see **(AS 5)**.

In Alan's reply to Telstra's arbitration defence on this deceptive conduct see {p2} Alan states: *"...I would submit that for Ms Pittard as General Manager of Telecom Commercial Victoria/Tasmania to take these actions and execute these actions is one of negligence and a breach of statutory duty" and on* {p4} *"...Mr Arbitrator you would find that telecom has been negligent in their dealings with my phone service and the actions of Ms Pittard in refusing me historical fault information prior to the settlement was not only negligent, misleading and deceptive, it was also unconscionable conduct"* **(AS 45)**

Whatever could have caused Dr Hughes to say that Alan had not complained about the settlement process when he had so clearly documented how unreasonable and unfair the whole settlement process had been?

Freehill Hollingdale & Page

10th September 1993: This document FOI folio N00749 to N00760, from Denise McBurnie to Telstra's Corporate Solicitor Ian Row confirms Ms McBurnie is attempting to convince Mr Row that it would be appropriate to hide relevant COT information under Legal Professional Privilege FOI folio N00750 confirms Mr McBurnie appears to have singled out four of the COT Cases businesses **Golden Messenger**, Tivoli Theatre Restaurant, Japanese Spare Parts and the **Cape Bridgewater Holiday Camp**, for Legal Professional Privilege. **(AS 35-d)**

Associate Professor Sue McNicol, Australia's leading specialist in Legal Professional Privilege, has assessed this document titled *"COT Case Strategy"*, Prof McNicol has advised that by using this 'COT Strategy' of withholding non-legal FOI documents under Legal Professional Privilege, Telstra was knowingly making false or spurious claims to privilege (see page 17 **AS 35-c)**

13th September 1993: Denise McBurnie's *"Cot Case Strategy"* document that is referred to immediately above was attached to this Telstra internal fax, apparently because Telstra's Corporate Secretary, Jim Holmes, had not circulated it previously.

11th October 1993, Telstra internal email H36291 confirms Telstra's knowledge of the 1800 network billing problems Peter Zeagers to Nigel Beaman: *"...I am receiving a disturbing number of reports of instances where the 1800 prefix 'does not work' in the Network."* **(AS 35)**

29th October 1993: Alan was still having problems sending faxes. This Telstra internal FOI document K01489, confirms that while Telstra were testing Alan's Mitsubishi fax machine (using the office of Golden Messenger as the testing base) *"some alarming patterns of behaviour was noted"*. This document further goes on to state: *"...Even on calls that were tampered with the fax machine displayed signs of locking up and behaving in a manner not in accordance with the relevant CCITT Group fax rules. Even if the page was sent upside down the time and date and company name should have still appeared on the top of the page, it wasn't."*

Telstra FOI documents K03750 K03751 and K03752 attached to **(AS 46)** confirm this testing was being generated from a (Xerox Telecopier), installed in Graham's office. These three documents include technical information showing the inter office lock-up problem between their two offices.

What is so concerning about the 1992 to 1995 fax interception issues are, that on 31st July 2001, Alan received a number of startling FOI documents from the ACMA **(AS 47)**. One of these 8 page documents was originally faxed to the arbitrators office fax line 03 6148730 at 05:56 on 15 February 1995. The information contained in this combined document shows that during the period in which Telstra and AUSTEL was investigating the briefcase saga see **(AS 41) (AS 42) (AS 43)** and **(AS 44)**, Telstra's local Portland technician Gordon Stokes, had been monitoring Alan's fax line to see who I had been faxing information after the day the briefcase was inadvertently left at Alan's premises. The statement on FOI document K03273: *"...Micky, This is a note from Gordon Stokes, if you want me to type up some info please advise ASAP. The information regarding the telephone numbers called by this customer following this incident are available from Network Investigation and my information was verbal from Gordon Stokes,"* when collated with Mr Stokes other diary notes on this briefcase matter leaves very little doubt that the faxing side of my business was not private.

FAST-TRACK SETTLEMENT PROPOSAL (FTSP)

The COT four, Ann Garms, Maureen Gillan, Graham Schorer and Alan, provided AUSTEL with clear proof that Telstra was continuing to deny that any of their businesses were still suffering from any phone faults, or that they were at least denying the extent of these faults (including their allegations of incorrect charging). Alan also provided AUSTEL with proof regarding the unethical way Telstra had conducted his previous settlement 11th December 1992. Finally, AUSTEL began to look for an appropriate process to finalise all these outstanding matters and so, Ann, Maureen Graham and Alan began negotiations for the drawing up of the FTSP see exhibit **(AS 49-A)**

Because of the proof provided to AUSTEL, confirming problems had continued after their settlements and court actions, AUSTEL looked towards the reporting of Coopers & Lybrand, who were now auditing the way in which Telstra had previously dealt with COT legitimate complaints. It was during this period that Robin Davey made a statement to the four COT Cases words to the affect that, "before any appointed assessor can bring down a finding on your matters an end to end testing of your service at your premises will have to be implemented, as we don't want you back here again a third time. The group later learnt the process was to be called Service Verification Tests (SVT)

1st November 1993: Telstra internal email H36293 Peter Zeagers to Nigel Beaman: *"...All admin groups are being inundated with complaints from customers who have advertised their numbers as 1800 but their customers are simply unable to get through to them. I have spoken to our fault staff at Waverley who are also inundated with same complaints."* **(AS 36)**

5th November 1993: Telstra Internal Memo H36178 Telstra's Greg Newbold Group Communications Manager, alerts Harvey Parker, Group Managing Director – Commercial and Consumer about the short duration – post dialling delays affecting Telstra's 1800 customers stating: *"...Bruce is concerned that the matter requires fixing at a national level not just on a fault by fault basis. He also raises the question whether we should be actively promoting 1800 in the currant circumstances."* **(AS 37)**

Please note: Alan was never informed that Telstra was aware that Alan's 1800 complaints were valid or advised by Telstra to withdraw his 1800 advertising until they fixed the problem.

CONFLICT OF INTEREST – PART 1

Please compare this TIO segment with the conflict of interest segment below.

10 November 1993: Warwick Smith, TIO discloses confidential information Telstra FOI document A05993 not seen prior to me signing the FTSP is marked CONFIDENTIAL Subject – Warwick Smith – COT Cases. In this Telstra email addressed to Telstra's Corporate Secretary Jim Holmes, copied to Frank Blount Telstra's CEO, author Chris Vonwilla, Telstra's Corporate Affairs Officer states: **(AS 48-A)**

> *"... Warwick Smith contacted me in confidence to brief me on discussions he had in the last two days with a senior member of the parliamentary National Party in relation to Senator Boswell's call for a Senate Inquiry into COT Cases.*
>
> *Advice from Warwick is:*
> - *Boswell has not yet taken the trouble to raise the COT Cases issue in the Pary Room.*

- *Any proposal to call for a Senate inquiry would require, firstly, endorsement in the Party Room and, secondly approval by Shadow Cabinet.*
- *The intermediary will raise the matter with Boswell, and suggest that Boswell discuss the issue with Warwick Smith. Warwick sees no merit in a Senate Inquiry.*
- *He has undertaken to keep me informed, and confirmed his view that Senator Alston will not be pressing a Senate Inquiry, at least until after the AUSTEL report is tabled*
- *Could you please protect this information as confidential?"*

Exhibit **(AS 48-B)** confirms Chris Vonwiller and Jim Holmes were both members of the TIO Board, when this email went into circulation. Exhibit **(AS 48-C)** confirms Ted Benjamin, was reporting back to Senior Telstra Executives, confidential information he had been privy to as a TIO Council member.

17th November 1993: This internal Telstra email to Jim Holmes and Ted Benjamin, folio A05254, shows that yet another so called 'independent' report was about to be sanitised, when the writer of this email states: *"Am raising with Sekuless the merits/demerits of holding back the BCI* (Bell Canada International) *info for a 'cleansing' program immediately after the mess of Coopers."* **(AS 47-b)**

CHAPTER THREE

Fast Track Settlement Proposal

18th November 1993: By signing the Fast-Track Settlement Proposal, Mr Holmes agreed that Alan's matters were to be settled through a non-legal commercial assessment process. This document concludes by stating: *"...This proposal constitutes an offer to all or any of the COT Cases referred to in Clause (1) (a), which will lapse at 5pm on Tuesday 23 November 1993. This offer may be accepted by signature below and sending advice of such signature to AUSTEL or the Telstra Corporate Secretary before that time."*

23rd November 1993: Graham Schorer and Alan Smith, signed the AUSTEL facilitated Fast Track Settlement Proposal (FTSP).

AUSTEL *COT CASES REPORT:*

At point 5.30, 5.31 and 5.32 in this report Robin Davey, Chairman of AUSTEL states:
*"...Understandably the **original COT Cases**, having reached an initial 'settlement' involving –*

- *compensation for past losses.*
- *restoration of an adequate telephone service*

expected that they might be able to resume their businesses activities afresh.

5.31 *"...Unfortunately that did not prove to be the case. Soon after his initial 'settlement' Mr Smith reported continuing problems to AUSTEL. Even prior to her settlement, Mrs Garms reported continuing faults to AUSTEL. The decision by Mrs Garms and Mrs Gillan not to*

report faults to Telecom in order to hasten a financial settlement is noted above. Mr Schorer continued to report faults to AUSTEL throughout the period."

5.32 *"...The fact that faults continued to impact upon the businesses in the period following the settlement shows a weakness in the procedures employed. That is, a standard of service should have been established and signed off by each party. It is a necessary procedure of which all parties are now fully conscious and is dealt with elsewhere in this report. Its omission as far as the initial 'settlement' of the* ***original COT Cases*** *were concerned meant that there was continued dissatisfaction with the service provided without any steps being taken to rectify it. This inevitably led to a dissatisfaction with the initial 'settlement' and to further demands for compensation. To avoid this sort of problem in the future, AUSTEL is, in consultation with Telecom, developing –*

- a standard of service against which Telecom's performance may be effectively measured
- a relevant service quality verification tests. (see *AUSTEL COT Case Report*)

Telstra writes to Warwick Smith TIO Re FTSP

21st December 1993: Telstra and Warwick Smith discuss the Fast-Track Settlement Proposal (FTSP). Please note: there is no mention in this letter of an arbitrator being appointed only the appointment of an assessor because the process: *Is a "flexible, quasi-judicial process."* **(AS 48-E)**

21st December 1993: Alan submits his first (FTSP) FOI request **(AS 48-E)**
"...Dear Mr Holmes
As you are aware of the Fast Track Settlement, you will understand this request. I am applying directly to yourself for All-documentation, files and records relating to my business, the Cape Bridgewater Holiday Camp. This request is made under FOI.

These documents are required within 14 days, to enable the Cape Bridgewater Holiday Camp to present our settlement submission."

Please note: this letter was copied to Mr Robin Davey, Chairman of AUSTEL (who facilitated the FTSP), Senator Richard Alston and Senator Ron Boswell, who both advised Alan Smith through Graham Schorer, to enter into the FTSP settlement arrangement.

25th November 1993: Telstra Memo Short Duration Calls, Mr A Smith Page two of this document states: *"...The following is an assessment of the individual disputes highlighted by Mr Smith. From the information given, little more can be offered for explanation than "This is not the way it should work, we need to investigate to find cause".* **(AS 38)**

2. **Calls to Traralgon, being charged on busy.** *"This situation should not have occurred."*
3 **Calls to RVA,** *"...being charged for RVA is not correct operation."*

As shown above for the date 26th September 1992, Mr Benjamin has been involved in dealing with the COT cases since 1992, not 1994.

The above information shows that the COT arbitrations should have been administered by a TRULY independent person and, if that had been the case, it is most likely that the COT arbitrations would have been carried out in an appropriately democratic manner.

In the immediate segment below, it is clear that Telstra favoured the Telstra funded TIO in preference to the Government funded regulator AUSTEL, when dealing with the COT Case issues. When we combine these two dated 30th November and 3rd December 1993 documents, it is understandable why Telstra favoured the TIO in preference to AUSTEL.

3rd December 1993: This internal Telstra email, FOI folio A01924, states: *"Now that the TIO has been officially "launched" it would be appropriate for Austel to change its approach to customer complaints and start referring them to the TIO rather than dealing with them in Austel. Rather than writing to Davey on this it might be better handled either by a phone call or alternatively a phone call or letter from the TIO to Dave,"* see Relevant Information File.

On the surface this seems to be quite a harmless proposal but there is an underside to the suggestion that the TIO should investigate customer complaints rather than AUSTEL, and this needs to be considered in relation to the Telstra email of 10th November 1993 (above) from Telstra's Chris Vonwilla to Telstra's hierarchy, confirming that Warwick Smith (then the TIO) had discussed, with Mr Vonwilla, in-confidence Government issues regarding the COT claimants. It is important to highlight the fact that the TIO Board, which included Chris Vonwilla and Telstra's Corporate Secretary, Jim Holmes, dominated Warwick Smith, and Warwick Smith had been nominated as the administrator of the COT arbitrations even though Telstra were the defendants in the COT arbitrations. In the Relevant Infromation File, Alan discusses Telstra file notes that show how Telstra hoped the TIO would become involved in the continuing phone problems at Cape Bridgewater which, they also hoped, would take Senator Alston (then the Communications Minister) and David Hawker MP out of the equation. In other words, the TIO appears to have favoured Telstra throughout all the COT arbitrations, with little or no regard for the principles of justice.

AUSTEL (now the ACMA) is a fully Federal Government funded organisation and, until Robin Davey retired as chairman, it was almost 100% independent. The TIO is, on the other hand, funded by the carriers and, during the COT arbitrations, Telstra, Optus and Vodaphone were the only carries on the Board and Council. How can an administrator be truly independent when he is paid by the organisation on trial (Telstra) in the case he is administrating? Because Telstra was certainly on trial in the COT arbitrations and the COT claimants the plaintiffs as was Telstra the defendants.

PLEASE NOTE: on a number of times during Alan smith's arbitration he alerted AUSTEL, the TIO Warwick Smith, and the arbitrator, his belief that the Cape Bridgewater Bell Canada International (BCI) tests were flawed – as shown below AUSTEL (now ACMA) allowed Telstra to use these known flawed BCI tests as arbitration defence material. The Administrative Appeals Tribunal should be concerned that ACMA, who like AAT is a fully Federal Goverement funded Agency, has for thirteen years concealed from the public that Telstra used known flawed reports as arbitration documents in defence of Alan Smith's claim.

It is interesting to note in the AUSTEL *COT Cases Report* (dated April 1994) see page 243 point **11.8** AUSTEL states: *"...Prior to receiving Telecom's response to the Bell Canada International report as outlined in paragraph 11.6 above, AUSTEL had written to Telecom informing it that the claim in the Bell Canada International report to the affect that Telecom's customers received a grade of service that meets global standards goes too far because the study was an inter-exchange study and did not extend to the customer access network – AUSTEL had agreed to the study being so limited on the basis that other monitoring it had requested Telecom to undertake on AUSTEL's*

behalf should provide AUSTEL with the data on the efficacy of the customer access network (CAN)

It is also interesting to note on page 246 point **11.18** in the AUSTEL *COT Cases Report* AUSTEL states: *"...Telecom responded to AUSTEL's letter 16 December 1993 referred to in paragraph 11.10 above in the following terms – As you may be aware, Telecom has extensively tested the CAN. These results indicated a satisfactory level of performance.*

COMMENTARY

As the information provided in this Chronology to AAT and copied to ACMA, confirms that Telstra perverted the course of justice during Alan Smith's arbitration, (thereby committing a crime against Alan), the AAT and ACMA as agents of the Federal/Crown, are obliged to report these crimes to the appropriate State law enforcement agency.

As shown above, Mr Benjamin was a TIO Council member as well as a very senior Telstra executive, and therefore, he should have been neutral when providing the survey statistics to Mr Parker. Numerous Telstra FOI documents show that the word perceived is consistently used by Telstra employees in their blind faith that it was the customer's equipment at fault, and not Telstra's network. Mr Benjamin was also one of Telstra's arbitration liaison officers during Alan's arbitration, who after Alan Smith's arbitration wrote to John Pinnock TIO, 7th September 1995m confirming that the Bell Canada International information documents N00005m N00006 and N00037, (which confirmed the BCI Cape Bridgewater tests were flawed) was withheld from Alan Smith during his arbitration. See immediately below, the Senate Estimates Committee comments regarding Mr Benjamin's many hats Hansard 26th September 1997:

> Senator SCHACHT – *"Mr Benjamin, you may think that you have drawn the short straw in Telstra, because you have been designated to handle the CoT cases and so on. Are you also a member of the TIO Board?*
>
> Mr Benjamin – *"I am a member of the TIO council.*
>
> Senator SCHACHT – *"Were any CoT complaints or issues discussed at the council while you were present?*
>
> Mr Benjamin – *"There are regular reports from the TIO on the progress of the CoT claims.*
>
> Senator SCHACHT – *"Did the council make any decision about CoT case or express any opinion?*
>
> Mr Benjamin – *"I might be assisted by Mr Pinnock.*
>
> Mr Pinnock – "Yes?
>
> Senator SCHACHT – *"Did it? Mr Benjamin, did you declare your potential conflict of interest at the council meeting, given that as a Telstra employee you were dealing with CoT cases?*
>
> Mr Benjamin – *"My involvement in CoT cases, I believe, was known to the TIO council.*

Senator SCHACHT – *"No, did you declare your interest?*

Mr Benjamin – *"There was no formal declaration, but my involvement was known to the other members of the council.*

Senator SCHACHT – "You did not put it on the record at the council meeting that you were dealing specifically with CoT cases and trying to beat them down in their complaints, or reduce their position; is that correct?

Mr Benjamin – *"I did not make a formal declaration to the TIO.*

16th December 1993: Denise McBurnie writes to Alan Smith, noting: *"I refer to your letter of 6 December 1993 and our subsequent telephone conversation. With respect to your comment concerning a customer from Mount Gambier, South Australia, who has reported to you that he had difficulty contacting you on your 008 service. If you are able to provide our client with more details (such as the caller's telephone number) our client may be able to investigate and comment on the problem which this customer reported to you."* **(AS 47-c)**

Neither Telstra nor Freehills ever did explain why this Mt Gambier customer, and numerous other customers, were all experiencing the same problem when trying to contact Alan. This letter however confirms that Alan Smith was still having, to deal directly with Freehills in relation to each of his telephone problems and faults, (as they occurred), before there was any possibility of a resolution being reached.

Exhibit **AS 47-d)** is a letter dated 4th January 1994 from Alan Smith to Denise McBurnie (Freehills) and Exhibit **AS 47-e)** dated 28th January 1994, is Ms McBurnie's response. These two documents show that Freehills had a significant input into settling the technical issues associated with Alan Smiths continuing phone problems. Not only was Freehill's, Telstra's arbitration defence lawyers in Alan's arbitrations, they also advised Telstra on how to address technical COT related technical issues. Could this be why Telstra withheld so many technical documents under LPP? Could it be that when Alan were instructed to register their complaints through Freehills in 1993, it was because Telstra and Freehills believed any technical related correspondence in relation to Alan's faults would therefore be able to be classified as Legal Professional Privilege?

Surely, this has to be a world first by forcing citizens of a country to register their phone complaints, in writing, to the very legal firm that will be defending the organisation to whom their complaints were against!

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

Alan Smith will supply the AAT on requests, numerous examples showing that Telstra did withhold technical information from the COT claimants, including Alan, during their respective arbitration procedures under the cloak of Legal Professional Priviege. Some of the technical information that AUSTEL's Bruce Matthews has commented on in his draft – Alan Smith report, he believed was in existence, appears to have also been withheld from AUSTEL under LPP.

Alan Smith has already proved, the existence of a number of Telstra-related AUSTEL FOI documents (see below) that are not included in the list of FOI documents that ACMA say they have retrieved and, in response to one of Alan's previous requests, ACMA have noted that:

"Some (but not all) of these documents may contain information about business affairs of a third party ACMA is required to consult the third party about these documents before releasing them under the FOI Act." It can be assumed that ACMA will therefore have to seek permission from Telstra before they can release some of these FOI documents Alan has requested recently, including those listed in his outstanding FOI request of 21st May 2008 (which are not included in the current review by the AAT). Some of the material included in the request of 21st May however will prove to be quite damaging for Telstra and this raises questions of justice if ACMA has to approach Telstra for permission to pass on to Alan, copies of documents proving that Telstra perverted the course of justice during his arbitration. What sort of justice is that? It is tantamount to asking the criminals to investigate themselves! It would therefore be inappropriate for ACMA to ask Telstra for permission to provide documents that prove that Telstra committed crimes.

This is why Alan believes that Telstra's illegal acts perpetrated upon him during his arbitration which has been uncovered during this ACMA and AAT review including the irrefutable evidence submitted to AAT, in this chronology of vents, the Telstra perversion of the course of justice issues, should therefore be fully investigated by the appropriate law enforcement agency before this review can be finalised.

21st December 1993: Telstra's Ian Campbell's letter to Warwick Smith, TIO and administrator to the FTSP, confirms the proposal was assessment and to the appointment of an assessor.

It is most important to point out that the Ian Campbell (see above) was the same person referred to in the AUSTEL *COT Cases Report* see point **5.7** who wrote to Mr Schorer 23rd September 1992, stating: *"...The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your members' services is agreed to be normal. As I explained at our meeting, we cannot move to settlement discussions or arbitrations while we are unable to identify faults which are affecting these services."* **(GS 131)**

21st December 1993: Telstra writes to Warwick Smith re the FTSP Telstra and Warwick Smith discuss the Fast-Track Settlement Proposal (FTSP). Please note: there is no mention in this letter of an arbitrator being appointed only the appointment of an assessor because the process: *Is a "flexible, quasi-judicial process."* **(AS 48-E)**

21st December 1993: Alan provide Jim Holmes, Telstra's Corporate Secretary his first (FTSP) FOI request *"... As you are aware of the Fast Track Settlement, you will understand this request. I am applying directly to yourself for All-documentation, files and records relating to my business, the Cape Bridgewater Holiday Camp. This request is made under FOI.*

> *These documents are required within 14 days, to enable the Cape Bridgewater Holiday Camp to present our settlement submission."* **(AS 48-E)**
>
> Please note: this letter was copied to Mr Robin Davey, Chairman of AUSTEL (who facilitated the FTSP), Senator Richard Alston and Senator Ron Boswell, who both advised Graham and Alan to enter into the FTSP settlement arrangement.

7th January 1994, Internal Federal Government memo from Tom Dale, of Minister Lee's Office – Subject: cot cases **(48-F)**

"...I spoke with Warwick Smith in light of today's reports that he is investigating the telephone monitoring allegations.

He also mentioned that the fast-track claim settlement process was not getting anywhere due to the cot cases knocking back the TIO's proposal for people to determine their claims. We should not give the Minister the impression that the fast-track would fix things: it is far from certain."

The issue being discussed regarding whether the *"fast-track"* would fix these matters should have in Alan's case, been addressed before he went into the FTSP. Robin Davey AUSTEL Chairman, had already written to the previous Minister the Hon David Beddall MP, 26th August 1993 advising him that Telstra was aware of faults still affecting Cape Bridgewater see exhibit **(AS 48-H)** {p 4}stating:

Cape Bridgewater – *"...Telecom has admitted existence of unidentified faults to AUSTEL."*

Alan's question has always been to the Telecommunication Industry Ombudsman, John Pinnock, is:

(a) Why was this admission by Telstra to the Government Regulator AUSTEL and the advice given by AUSTEL to the Minister regarding these unidentified faults in existence in Cape Bridgewater hidden from Alan and his technical advisors during his arbitration?
(b) Why did AUSTEL and the Government allow Telstra to submit under oath, in their arbitration defence of Alan's claims, that during Telecom's fault investigation at Cape Bridgewater during 1993 and 1994, they found no faults that would have affected Alan's business endeavours?

11th January 1994: Warwick Smith, (who was supposed to be independent of Telstra during the FTSP COT process) had received a letter from Telstra's Steve Black which states: **(AS 62-A)**
"It was agreed at a meeting between Mr Graeme Ward and Steve black of Telecom, and Dr Bob Horton and Neil Tuckwell of AUSTEL, on 7th January 1994, that:

- *Information obtained from Telecom, in the course of AUSTEL's regulatory functions, and relevant to any parties involved in a formal arbitration process with Telecom under the control of the Telecommunication Industry Ombudsman (TIO) will only be released after consultation with the TIO and Telecom."*

Clearly the TIO, although officially acting as the administrator of the COT arbitrations, was working with Telstra and the Australian Regulator to ensure that ONLY material that had first been scrutinised by Telecom and the TIO would be passed on to the members of COT.

A further alarming document relevant to the vetting of COT information from Steve Black to Warwick Smith, dated 11th July 1994, **(AS 62-B)** states: *"... Telecom will also make available to the arbitrator a summarised list of information which is available, some of which may be relevant to the arbitration. This information will be available for the resource unit to peruse. If the resource unit forms the view that this information should be proved to the arbitrator, then Telecom would accede to this request."*

This is an alarming set of circumstances on its own, but it becomes even more alarming because, in the Alan Smith case, it was the TIO-appointed Arbitration Resource, Ferrier Hodgson Corporate Advisory (FHCA), that withheld regulatory information and arbitration material that should have been provided to the arbitrator and Alan Smith. FHCA has since admitted (2nd August 1996) to withholding AUSTEL regulatory letters that were exchanged between

AUSTEL, Telstra and the arbitrator, during October and December 1994, that were all relevant to Telstra's defence and Mr Smith's claim.

12th January 1994: A further similar letter from Steve Black to AUSTEL's John MacMahon states: *"...In accordance with our agreement reached in the meeting with yourself and your Chairman, these documents will be released through the TIO at the appropriate stage of the arbitration process. It is my view that the appropriate time for release as after the assessor is appointed and the procedural rules for the arbitration process have been agreed by all parties. However, as indicated in our agreement, this decision will be taken in consultation with the TIO."* **(AS 62-b)**

We ask the Administrative Appeals Tribunal to take particular account of a second letter written by AUSTEL's John MacMahon to Telstra's Steve Black, dated 12th January 1994, regarding the Bell Canada International tests in which ne notes: *"...Whatever the content of the report, failure to release it will doubtlessely be viewed as an attempt to restrict access to information unfavourable to Telecom's interests. In our above meeting, AUSTEL undertook not to release such documents or information to the COT Cases without prior consultation with Telecom and this is my understanding of our agreement."*

We further ask the Administrative Appeals Tribunal, to view *'Attachment Two'* which is accompanying Alan's response to the AAT Conference Registrar, a draft report prepared by AUSTEL's Bruce Matthews on 3rd March 1994. This report notes on page 68, point 209: *"...Cape Bridgewater Holiday Camp has a history of service difficulties dating back to 1988. Although most of the documentation dates from 1991 it is apparent that the camp has had ongoing service difficulties for the past six years which has impacted on its business operations causing losses and erosion of customer base."* However as this report was *"unfavourable to Telecom's interests"* it was withheld from Alan Smith until November until 2007.

Alan & Graham Schorer attend the first COT FTSP/FTAP meeting

12th January 1994: The one meeting that Alan and Graham attended, was in the Melbourne office of the TIO, Warwick Smith, was also attended by Peter Bartlett, and Ann Garms and it was at this meeting that Peter Bartlett confirmed that the arbitrator could only make a final determination based on documents provided to him according to the arbitration agreement. This verified Alan's understanding that the arbitration process was the only way to go, in order to obtain all the documents he needed before he submitted his claim. **(AS 63)**

In March 1994, during this negotiation period, a number of documents faxed from Peter Bartlett at Minter Ellison (the TIO's Legal Counsel) did not arrive at Alan's office. Page 33 of Alan's claim document (Cape Bridgewater Holiday Camp – CBHC - Part 1) shows that he advised the arbitrator of at least three businesses who complained of not receiving faxes from Alan during the FTSP negotiation period. CBHC Part 1 was an eighty-page bound document which Alan submitted to the FTSP but Ferrier Hodgson Corporate Advisory did not pass it on to DMR and Lanes for their assessment **(AS 64)**

Numerous documents in the confirm the continuing problems with Alan fax line and show how it affected the submission of his claim at the time of the FTSP and FTAP including raising the question about how his business losses could be commercially assessed if the

phone and fax problems were still apparent. It was a futile exercise until Telstra fixed the problems and faults.

Because of the complexity of the matters that the arbitrator was going to address, it was agreed to base the arbitration rules on the original commercial FTSP; in other words, the rules of the Arbitration Agreement (FTAP) would incorporate the rules of the original FTSP.

When Robin Davey, who was then AUSTEL's chairman, assisted with the drafting of the original FTSP rules, he was fully aware of Telstra's **unethical behaviour** during Alan's settlement **11th December 1992,** and their conduct towards Graham. He was also aware of their allegations regarding Telstra's phone bugging and misleading conduct and he knew that these issues were independent parts of Alan's overall complaints. Mr Davey therefore wanted the FTSP rules to be drafted in such a way that they would allow for all these individual issues, including Alan's commercial settlement process, to all be properly and separately assessed under the FTSP. This was achieved by including a clause 10.2.2, covering the way the claimants could present their claims. This clause initially referred to

"... each of the Claimants Claims", was twofold in its meaning because it allowed the claimants to present separate different causal links between the alleged service difficulties problems and faults (such as, billing errors, phone bugging etc) these would then be assessed separately, based on the evidence each COT Case presented. In this way, the assessor in the FTSP could look also at any evidence regarding the way in which Telstra had previously misled the COT four in regard to their individual settlements.

Alan was later to follow these guidelines when preparing hi claim but was then surprised to find that Dr Hughes did not cover the individual sections in his award; nor did he prepare any written findings on these separate issues. Alan later discovered that clause 10.2.2 had been removed from the arbitration rules, without the permission or knowledge of the claimants. There is no correspondence in existence, either from the TIO or the arbitrator, to indicate that we ever agreed to the removal of this important clause.

12th January 1994: John Rundell of Ferrier Hodgson, Corporate Advisory (FHCA), the newly appointed Fast Track Settlement Proposal (FTSP) Resource Unit provided Graham Schorer copies of two Curriculum Vitae for:

3. Paul Howell, DMR Group Inc – Corporate, Montreal
4. Jan Blaha, DMR Group Australia Pty Ltd

Please consider the following:

- At no time prior during the FTSP or the FTAP, was Mr Howells name or DMR (Canada) ever mentioned verbally or in written document format, until March 1995. **(AS 65)**

In the draft of Alan Smith's arbitrator's award (see Relevant Information File), at point (i), Dr Hughes states: *"... pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit."*

In the final version of the arbitrator's award (see Relevant Information File), Dr Hughes has added to point 1, so it read: *"... pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and*

DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit. By consent of the parties, the role of DMR Group Australia Pty Ltd was subsequently performed jointly by DMR Group Inc. and Lane Telecommunications Pty Ltd."

On 24th May 1994, Peter Bartlett provided Graham Schorer with a copy of the Confidentiality Undertaking signed by Jan Blaha, DMR Group Australia Pty Ltd, but it was not until late February 1995 that Warwick Smith, TIO, finally told the COT claimants that DMR Group Australia Pty Ltd had pulled out of the arbitration procedure because of a conflict of interest. The TIO has never explained exactly when this conflict of interest was discovered. The claimants were then literally forced to accept Paul Howell, DMR Group Inc (Canada) as the substitute TIO-appointed principal technical consultants, with Lane Telecommunications Pty Ltd as their assistants.

Questions:

1. Why do exhibits (AS 64-a and 64-b) show two conflicting tables of alleged sourced documents as being assessed to make a finding on Alan Smith's claim, both dated 30th April 1995, when both reports are exactly the same findings?
2. Did DMR Group Australia Pty Ltd wanted to change their corporate identity to DMR Inc on 12th April 1994 because, right from the outset, they believed that as DMR Inc (Canada) was offshore and not affiliated financially with the Australian arm of DMR, there would therefore be no liability problems if Telstra issued a court injunction in relation to DMR's technical findings?
3. If they did change their corporate identity so they could work with DMR Inc (Canada) and thereby avoid the risk of a messy Australian legal challenge by Telstra, then Jan Blaha should never have signed the confidentiality agreement.
4. Why Was Graham Schorer given a copy of the CV of Paul Howell of DMR Group Inc, on 12th January 1994, before Graham and Alan had even signed the FTAP but after we had accepted DMR Group Australia Pty Ltd?
5. Why did DMR Group Australia Pty Ltd ask, through Ferrier Hodgson, for their business name to be changed to DMR Group Inc, before signing the Arbitration Confidentiality Agreement?

These points suggest that all the parties to the arbitration, except the claimants, were aware of a link between DMR (Australia) and DMR (Canada), before we signed the FTAP.

13th January 1994: Ms Velthuyzen provides a statutory declaration to AUSTEL: Mrs Velthuyzen records she rang Alan's 008/1800 number seven times and received an engaged signal further stating: (AS 39) "*...However, when I called the eighth time I got a recording telling me the number was not connected.* Ms Velthuyzen at Alan's request tried to contact AUSTEL's General Manager of Consumer Affairs, John MacMahon but was put through to Bruce Mathews. Mr Mathews plays a continuing roll in this billing saga as can be seen from below. On the 8th April 1994, Telstra's Steve Black responded to Ms Velthuyzen 1800 complaints in his letter to Mr MacMahon (AS 40). However, Mr Black failed to mention that Ms Velthuzen complaints might well be valid because it was known within Telstra that there was a major national 1800 short duration Post Dialling delay billing problem.

14th January 1994, Telstra admits to trapping Alan's telephone conversations Telstra FOI document K00604, subject Voice monitoring of Priority Investigation Services, confirm that the local Portland Technical Officer had been trapping Alan's telephone conversations from at least June to August 1993. The local Portland Technical Officer during this period was none other than Gordon Stokes. (AS 48-H)

The phone bugging and privacy issues, was an issue Alan raised with Warwick Smith, during the FTSP, see exhibit **(AS 49-C)**

18th January 1994: Telstra's Internal Memo FOI folio R11698, marked Telecom Confidential from David Stockdale to Simon Chalmers, who was seconded from Freehill's states: *"...I feel obliged to voice concerns I have regarding the information being provided regarding the Investigations of Cape Bridgewater and Golden Messengers courier service."* **(GS 142)**

20th January 1994: While this letter from Ms Philippa Smith, Commonwealth Ombudsman, has been addressed in chapter 2, it is important to remember Ms Smith's statement that, if the FTSP was to be effective, then Telstra had to supply FOI documents to the COT claimants 'in a speedy manner. Ms Smith also raised these issues again with Telstra's Frank Blount, 25th March 1994, stating: *"Comment on my views that:*

- *It was unreasonable for Telecom to impose a condition for release of certain documents that the participants make further assurances that they will participate in the FTSP; and*
- *It was unreasonable for Telecom to require the participants to make the assurances while Telecom was considering the agreement related to the FTSP (the agreement) and thereby denying the participants the opportunity to consider the rules that Telecom wished to have included in the Agreement."*

Please inform me whether Telecom intends releasing information to Mr Smith, Mrs Garms, Mr Schorer and Ms Gillan in accordance with the undertaking in Mr Black's letter to Mr Schorer dated 27 January 1994(copy attached) and subsequently confirmed in communications to my officers by Mr Black and Mr Rumble." **(AS 51)**

ATTENTION – ADMINISTRATIVE APPEAL TRIBUNAL:

In Alan Smith's letter dated 2nd March 2008, to Ms Alison Jermey, Senior Lawyer ACMA Legal Service Division, which ACMA also attached to their **The Resondents Section 37 Documents**: at exhibit 15, is aforementioned letter (see above) from Ms Philippi Smith, in which she also notes: *"...In the circumstances, the giving of access to information required by the applicants to present their cases to the assessor appointed under the FTSP* (Fast Track Settlement Proposal) *is in the general public interst, in the context of s29(5) and s30A(1) (b) (iii) of the Act."*

We ask the Administrative Appeal Tribunal, to take note of the Commonwealth Ombudsman's coment in her letter and that AUSTEL (now ACMA) conveyed to Alan Smith, that if he signed the FTSP (arbitration agreement) then AUSTEL would assist him in gaining free FOI documents from Telstra and AUSTEL, in the public interest.

20th January 1994, AUSTEL writes to Telstra re Service Verification Tests This letter signed by both AUSTEL's Cliff Mathieson and Michael Elsegood, confirmed what Robin Davey had promised the COT four before we signed the FTSP. This letter entitled Verification Tests For Difficult Network Fault Cases states on page 2, *"Where test results do not meet the essential outcome, remedial action should be taken and the relevant tests repeated to confirm correct network operation."* **(AS 40-A)**

Would AUSTEL and the Federal Government ever be in a position to force Telstra to test a service again if the SVT tests proved negative? In my case as shown below the answer was to be NO.

In his letter of 12th May 1995 (see below) to Warwick Smith, Dr Hughes wrote that they *"... did not allow sufficient time in the Arbitration Agreement..."* he was referring to Frank Shelton's revised version of the AUSTEL facilitated Fast Track Settlement Proposal FTSP, that became the "Fast-Track Arbitration Procedure FTAP – Arbitration Agreement. Clearly Dr Hughes believed that mistakes in the arbitration agreement document meant that the arbitration itself lacked credibility and he blamed those who prepared the document for this situation.

Dr Hughes' letter of 12th May 1995 was concealed from Graham Schorer during his arbitration and, before that, from Alan Smith during his arbitration appeal period and neither was it provided, by Mr Pinnock, on 26th September 1997 (see below), when he advised the Senate that Dr Hughes had no control over the arbitration procedures.

24th January 1994, Warwick Smith writes to Ms Fay Holthyuzen, Assistant Secretary Regulatory Branch Parliament House, attached a public media release that Dr Gordon Hughes had been appointed as the Assessor to the COT Fast-Track Settlement Proposal (FTSP). Please note: There is NO mention in this media release of an arbitration process. **(AS 49-B)**

24th January 1994, Warwick Smith writes to Ms Fay Holthyuzen, Assistant Secretary Regulatory Branch Parliament House, attached a public media release that Dr Gordon Hughes had been appointed as the Assessor to the COT Fast-Track Settlement Proposal (FTSP). Please note: There is NO mention in this media release of an arbitration process. **(AS 49-B)**

Customer Access Network (CAN) problems

In the AUSTEL *COT Cases Report* (dated April 1994) see page 243 point **11.8** AUSTEL states: *"...Prior to receiving Telecom's response to the Bell Canada International report as outlined in paragraph 11.6 above, AUSTEL had written to Telecom informing it that the claim in the Bell Canada International report to the affect that Telecom's customers received a grade of service that meets global standards goes too far because the study was an inter-exchange study and did not extend to the customer access network – AUSTEL had agreed to the study being so limited on the basis that other monitoring it had requested Telecom to undertake on AUSTEL's behalf should provide AUSTEL with the data on the efficacy of the customer access network* (CAN)

As shown above, it has been confirmed that there were serious deficiencies in Telstra's Service Verification Testing process at Alan Smith's business and yet Telstra still used the corrupt test results to support their arbitration defence claims that the lines into Alan's business were operating correctly. In his CAV LGE information for 29th September 1994, in relation to these Service Verification Tests, Alan Smith has confirmed, using Telstra's own Call Charge Analysis System (CCAS) data, that the tests carried out on all three of his business lines were, beyond any doubt, fundamentally flawed.

Please note: on 27th July 2007, Brian Hodge, B Tech; MBA (B.C. Telecommunications), assessed the November 1993, Bell Canada International (BCI) Addendum Cape Bridgewater tests and the 29th September 1994, SVT Cape Bridgewater tests, including the CCAS data report and concluded that both the BCI and Verification Testing process conducted at Cape Bridgewater were fundamentally flawed. Mr Hodge held a number of senior positions during his 28 years as a Telstra employee, spending some of that time assessing Call Charge Analysis System (CCAS) data.

ATTENTION – ADMINSTRATIVE APPEALS TRIBUNAL

On 11th June 2008, Alan Smith provided both the AAT and ACMA, a copy of the Brian Hodge, B Tech; MBE report, discussed above. It is quite defined in Mr Hodges' report that Telstra did pervert the course of justice during Alan's arbitration.

At common law, when a citizen, or any other person, discovers as crime, they are obliged to report same to the police. This specifically applies to Government departments and instrmentalities. The Australian Federal Police, continue to get referrals from departments all the time, Fraud especially. The Commonwealth Audit Act reqires it.

LIVE VOICE MONITORING OF PHONE CALLS

Complaints from over-forties singles patrons

1992 to 1994

At about the same time, from mid 1992 until January 1994, Peter Turner from the Australian Social Centre (ASC) in Hartwell, Victoria, acted as Alan's Melbourne phone agent for the over-forties singles weekends away because of the number of complaints registered by hopeful holiday weekenders regarding the difficulties of reaching me by phone see (document (AS 21). During two separate periods from May to July 1993, two different ladies told me they had left a message on Alan's answering machine regarding their intended travel to Cape Bridgewater. Both these women noted a female voice on his answering machine, although the voice on Alan's machine was actually his. One of these women particularly asked if Alan ever gave out client details or passed details of female clients to men clients. Alan reassured that this certainly would never happen, unless he had asked her for her permission first, and discovered that she was asking because, since speaking to Peter Turner and Alan, she had received strange and vaguely suggestive phone calls where the caller clearly knew that she was single. Alan suspects from discussions with other clients who also mentioned leaving a message with a lady, that some of his phone calls were being live monitored by Telstra.

Documentary Proof of Voice Monitoring

Telstra documentation provided by Alan Smith, to the Australian Federal Police (AFP) confirms they admitted to live voce monitoring Alan's phone conversations. However, this documentation states that Telstra only listened to Alan's telephone conversations from June to August 1993 (AS 22). Questions raised on page 6 of the AFP transcript taken during Alan;s interview 26th September 1994, shows the AFP were amazed that

- Telstra was able to document the actual name of (O'Meara bus line) the company Alan was discussing work with a tender during 1992, before June and August 1993 (AS 23).
- Telstra FOI document A10148 & A10233 also confirm that COT telephone conversations were taped (AS 24).
- Arbitration documents DMR & Lane report, further confirms that a Malicious Call Trace (MCT) was placed on both Alan's 055 267 267 and 055 267 230 services, late in May 1993. The MCT equipment is a totally different monitoring device than the phone interception device (the EOS) that Telstra admitted to using to listen to Alan's telephone conversations. The MCT equipment was disconnected on 19th August 1993 and September 1993 (AS 25).

The MCT equipment locks the line up for ninety seconds after each successful call and therefore no other call can come through until this lock-up is released. Documents submitted to arbitration

1 – 200 – 400 – 600 – 2,001 – 2158 (AS 26) show at least eighty-one calls connected to Alan's 267 267 line during this MCT period but, with the equipment in place, this is impossible. Alan has to ask if some of these calls were actually being diverted (and connecting) to some other location and if so, were these the calls that reached a female voice? Karen Gladman was no longer living at Cape Bridgewater by this time and her voice had been taken off of Alan's answering machine over Christmas of 1992. Whose voice were these callers hearing? Could someone have taken a copy of Karen's voice when it was on Alan's answering machine and used it elsewhere?

Gordon Stokes, Telstra's local Portland technician admitted in a witness statement 12th December 1994, that he used EOS listening equipment to intercept Alan's telephone conversations. Gordon Stokes has since admitted to Alan in person, that he was not the only Portland technician to intercept Alan's telephone conversations.

27th January 1994: With no official guidance from Warwick Smith, (who was the administrator to the FTSP), on how the COT Cases should submit their claims to the assessor, Alan jumped in first and submitted an interim type testament of the problems and faults his business had experienced stating: *"...I present these summaries for your viewing. This should give an insight into some of the difficulties experienced during my years when trying to run a telephone dependant business."* You will note from exhibit (AS 322-A) below, this letter and attachments was addressed to Warwick Smith (administrator), Dr Hughes (Assessor), Peter Bartlett (Special Counsel to Warwick Smith), and John Rundell (FHCA). Although this letter is addressed in more detail below it is important to point out the following:

It is obvious that nether the administrator, assessor, nor the resource unit passed on to the Fast-Track Arbitration Procedure any of the claim material Alan provided to them during the Fast-Track Settlement Process on 27th January 1994. Furthermore, in Alan's letter of claim dated 15th June 1994, see (AS 322-A) Alan's advisor, Garry Ellicott reminded Dr Hughes of Alan's interim claim supplied to him in his letter of 27th January 1994.
It was Warwick Smith, Peter Bartlett and Dr Hughes who advised the COT four Cases to abandon the already-signed Fast-Track Settlement Proposal and agree to the new Fast-Track Arbitration Procedure and it was therefore their responsibility to carry over my interim claim material from the previous Settlement Process to the Arbitration Procedure, they did not do so: see (AS 322-A)

28th January 1994: From mid 1993 until January 1994, Telstra senior management instructed Alan to document all his complaints directly through to Denise McBurnie, Freehill Hollingdale & Page, Telstra's solicitors. In one of the letters from Ms McBurnie dated 28th January 1994, sent in response to Alan's complaints regarding the on-going telephone problems, she states, in closing: *"As noted above in Telecom's response to the questions raised in your paragraph 2, Telecom has not found any evidence of network faults applicable to and which could affect your service during the period to which you refer."* Ms McBurnie, then goes on to state: *"As the information provided originally in your letter dated 12 November 1993 was of a limited nature, no specific response was possible to your allegations concerning over-charging and short duration calls."* (AS 59)

It is clear from the attached Telstra documents see documents AS 35, AS 36, AS 37, and AS 38, that either Telstra misled Freehill's regarding the 1800 national network billing software problem or Freehill's misled Alan. What is evident is that the information Freehills supplied Alan via their client Telstra, does not match Telstra's archival billing evidence.

Robin Davey prepared the AUSTEL draft FTSP document dated 5th October 1993, for Ian Campbell of Telstra. At point 40 in this document, Mr Davey makes quite clear his concerns if Freehills was to have any involvement with the Fast Track Settlement Procedure, when he states: *"If the attached letter dated 7th July 1993, from Freehill Hollingdale & Page to one of the COT cases solicitor's is indicative of the way Freehill Hollingdale & Page have approached the COT cases in the past, I would be more than a little concerned if they were to have a continuing role."*

During the process of drafting the FTSP rules, and right up to the time Warwick Smith (then the TIO) became involved in the FTSP, AUSTEL became very concerned at the requirement for Alan to report his telephone phone complaints to McBurnie, before Telstra actively did anything about fixing the ongoing problems. It seems that an important point has been lost here: **AUSTEL was a government funded regulator and they had made it quite clear that Freehills should not be used in COT matters** and this made absolutely no difference – Warwick Smith allowed Telstra to continue to use Freehills anyway.

It should also be noted that during the early negotiation FTSP period, Ms McBurnie wrote to Ian Row, Telstra's Corporate Solicitor on 10th September 1993, (FOI document N00749) re COT Cases Ann Garms, Maureen Gillan, Graham Schorer and Alan Smith, instructing him on how to hide documents under Legal Professional Privilege. This certainly supports Robin Davey's concerns about Freehills. A legal opinion obtained from Suzanne McNicol, a renowned Legal Professional Privilege researcher dated 30 June 2000, states on page 17 that Freehills ***(4) knowingly made false or spurious claims to privilege*** - **(AS 61)**

As mentioned above, one of the conditions included in the agreement was that Telstra would provide the COTs with any discovery documents they needed to support their claims. Because there were no court guidelines regarding discovery documents within the FTSP, they were to be supplied under the Freedom of Information Act. Both AUSTEL and the Commonwealth Ombudsman's Office agreed that this was the only way the COT four could successfully present our claims. Senate Hansard records of February 1994 show, however, that Telstra at first refused to comply with this arrangement, unless the COT Cases paid fees amounting to thousands of dollars. The Opposition and AUSTEL both applied pressure to Telstra on behalf of the COTs and, finally, they agreed to provide us with the documents we needed, free of charge.

30th January 1994: Telstra FOI document K01398 confirms that Telstra's Tony Watson knew that the lock-up problem Alan had complained about was caused by a fault at the RCM but Telstra's Bruce Pendelbury told him not to investigate this fault, further proof of the recurring problems. **(AS 58)**

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

Please Note: The document referred to above, Telstra FOI document K01398 dated 30th January 1994, refers to Telstra's Tony Watson. This same Tony Watson is referred to in a letter dated 28th January 2003, from the TIO's Ms McKenzie to Telstra, regarding the telephone complaints lodged by the new owners of the Cape Bridgewater Holiday Camp, Darren and Jenny Lewis, when Ms McKenzie wrote: *"...Mr and 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 "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.*

On 23rd April 2008, Alan Smith forwarded a copy of Ms McKenzies' letter to the AAT and ACMA, noting that it seemed to indicate that, eight years after Alan's arbitration, Tony Watson was still carrying an unhealthy grudge against the Lewises whose only crime was to buy, from Alan, a business that Mr Watson knew had suffered from communications problems for years (as reported in the AUSTEL report prepared by Bruce Matthews). The Tony Watson issue does not stop there however. Exhibit (AS 82) (following) explains that Telstra's official arbitration report, B004, dated 12th December 1994, included an official statement from Mr Watson, claiming that none of the faxes that Alan Smith alleges he faxed to the arbitrator on 23rd May 1994 could have been sent because the arbitrator's secretary stated that all the lines into the arbitrator's office were engaged at the time. Exhibit (AS 82) however uses Alan's Telstra account for the 23rd May 1994, to prove that the faxes Alan sent did arrive – somewhere. Alan provided the arbitrator with another eighty-one examples of both phone and fax transmissions that Alan was charged for, even though they did not reach their intended destination. The document listing these eighty-one examples however was conveniently withheld from the arbitration process by Ferrier Hodgson, the TIO-appointed Resource Unit, so that this information would not be discovered under arbitration see Exhibit (AS 26), the arbitrators copy of the real claim documents that DMR & Lane were provided by Ferier Hodgson to assess.

Tony Watson's 'grudge' and his apparent disregard of valid complaints by difficult network customers is why Alan is before the AAT today.

31st January 1994: A copy of Alan's phone/fax account 055 267230 when compared with these two Telstra CCAS document FOI number K01410 and K01411 confirm someone within in Telstra has hand-written the names of the people Alan had spoken to and/or faxed to on this particular name. Transcripts from Alan's interview with the AFP 26th September 1994 (AS 50-A and (AS 50-B), confirm that the AFP were alarmed that Telstra had gathered private information about Alan including documenting on this CCAS data the names of the people who Alan rang on a daily basis. This CCAS data information was supplied to Warwick Smith, and the Commonwealth Ombudsman's office.

8th February 1994, The Hon Michael Lee Minister for Communications writes to the Minister for Justice, the Hon Duncann Kerr, MP *"...I am writing to inform you that members of the group known as the Casualties of Telecom (COT) have contacted my Office regarding the Australian Federal Police inquires into voice monitoring by Telstra of their telephones.*

> *Both Mr Graham Schorer and Mr Alan Smith of CoT have informed my Office that they have information on Telstra's activities in relation to these matters."* (AS 52-A)

Australian Federal Police are provided with the interception tapes

10th February 1994:*"...Yesterday we were called upon by officers of the Australian Federal Police in relation to the taping of the telephone services of COT Cases.*

(AS 52-A) *Given the investigation now being conducted by that agency and the responsibility impose on AUSTEL by section 47 of the Telecommunications Act 1991, the nine tapes previously*

supplied by Telecom to AUSTEL were made available for the attention of the Commissioner of Police."

10th February 1994: AUSTEL's John MacMahon writes to Telstra's Steve Black stating: *"...Yesterday we were called upon by the officers of the Australian Federal Police in relation to the taping of the of the telephone services of the **COT Cases**. Given the investigation now being conducted by that agency and the responsibilities imposed on AUSTEL by section 47 of the Telecommunications Act 1991, the nine tapes previously supplied by Telecom to AUSTEL were made available for the attention of the Commissioner of Police."* **(AS 52-b)**

17th February 1994: Graham Schorer, Telstra, Peter Bartlett, and Dr Hughes met to discuss the settlement *v* arbitration process. Telstra's transcript of this meeting confirms that the COT claimants still wanted a commercial settlement process and not an arbitration procedure. On page three of the transcript, Dr Hughes stated that this course of action would be more effective and that, as arbitrator, he *"... would not make a determination on incomplete information.* **(AS 53)**

Comment:

In the case of Alan Smith, as it turned out, Dr Hughes DID make his determination on incomplete information when he handed down his award even though his own technical consultants, DMR & Lanes, had asked for 'extra weeks' to complete their findings – a request that Dr Hughes denied. Dr Hughes also did not access documents for Alan Smith, under the discovery process, even though he was aware Telstra had not provided this information under FOI. This is a complete about-face to the commitment he made to the COT claimants at this meeting.

In the case of Graham Schorer, Dr Hughes continued to arbitrate on his matters after 12th May 1995, when wrote to Warwick Smith noting: *"...In summary, it is my view that if the process is to remain credible, it is necessary to contemplate a time fame for completion which is longer that presently contained in the Arbitration Agreement."*

Please note Robert McGregor of Freehill's signed off these minutes on behalf of Telstra.

During late 1993 and early 1994 the momentum was with the COT's to push to have many different issues investigated by the Senate. If the claimants had continued down this road, instead of accepting the FTSP, the missing infrastructure would have had to have been addressed in the public domain, (along with the solving the continuing phone problems being experienced by the COT cases) instead of being addressed in camera, all these outstanding issues would have created serious embarrassment for Telstra. By the 17th February 1994, with the momentum for a Senate enquiry lost, and with the TIO, Warwick Smith, feeding secret, in-confidence Coalition party-room information to Telstra see exhibit **(AS 48-a)**, including advice that the proposed Senate Investigation into COT-related matters appeared to be unlikely, Telstra was once again able to manipulate the Australian justice system to their own benefit and to the detriment of the COT claimants.

Exhibit **(AS 48-c** FOI document folio D01248 confirms that Telstra's Ted Benjamin, a TIO Council member, was also supplying Telstra's hierarchy with in-confidence TIO COT-related information he had acquired during a TIO Council meeting. Mr Benjamin was Telstra's arbitration liaison officer for most of the COT arbitration process. It is now obvious that the only chance the COT claimants ever had of getting a fair assessment of their losses or, having their phone problems fixed, would have been via a Senate enquiry.

Here again it has been forgotten that the COT claimants were only ever looking for a fair chance at an independent review of their past problems and an end to the continuing phone and fax problems

they battled with every day but, since they took the wrong road – the Fast Track Arbitration and not a Senate enquiry – they have all been left in the positions they are in today.

At point **1.6** on page 2 in the AUSTEL *COT Cases Report* AUSTEL states: *"...Until recently, Telecom's approach to the **COT Cases** might reasonably have been perceived by the **COT Cases** as one of indifference. But, more recently, the **COT's** persistence, AUSTEL intervention, Ministerial involvement the threat of a Senate inquiry and adverse publicity has resulted in Telecom adopting a more positive, conciliatory approach.*

At point **1.18** on page 6 in the AUSTEL *COT Cases Report* AUSTEL states: *"...When the initial **settlements** were reached with the original **COT Cases**, the standard of service then applicable was not objectively established and there is a reason to believe that difficult network faults may have continued to affect their services."*

17th February 1994: Dr Hughes, assessor makes a promise he does not keep. Transcripts from the assessment arbitration discussion process confirms on page 3, that Dr Hughes stated *"that as arbitrator, he would not make a determination on incomplete information."* Alan has addressed some of the FTSP assessment and FTAP arbitration issues in documents **(AS 51** and **AS 55)** as an introduction into the reasons why Graham Schorer and Alan accepted the FTAP agreement **(AS 53)**?

23rd February 1994: This letter from Mr Black to Dr Hughes, referring to the above fax sent from Mr Black to Dr Hughes on 21st February 1994. The letter also documents changes to the FTAP but makes no comment on the removal of the words *'... each of the Claimants claims"* from clause 10.2.2. Graham and Alan were not advised that clause 10.2. 2 had been altered.

24th February 1994: This Telstra internal email FOI folio A13980 from Kevin Dwyer to Peter Gamble, states: *"...Regarding the problems in AXE – You are quite correct in you though that the anecdotal reference applies more to AXE than ARE-11 'lock-up's are generally well-known as a problem in AXE exchanges, not only in Australia but in overseas countries as well. Ericssons are said to have suggested that call loss could be up to 15%.* (This document can be supplied to the AAT on request)

As shown below, Ericsson (Australia) during the COT arbitrations purchased Lane Telecommunications, the TIO-appointed technical arbitration resource unit. So the reference in this document regarding the known lock-up problems with the AXE exchange is most important, because both Graham and Alan's businesses were routed through an Ericsson AXE.

25th February 1994: Ministers office writes to Telstra's Jim Holmes *"...Attached are copies of correspondence received by the Hon Michael Lee MP from Mr Alan Smith of Cape Bridgewater Holiday Camp, Victoria, outlining further difficulties he is having with his telephone and facsimile service.*

I ask that you investigate Mr Smith's allegations and take all appropriate steps to resolve his problems." **(AS 54-A)**

Why didn't Telstra's Corporate Secretary Jim Holmes, who was also a TIO Board member, alert Minister Lee, that Telstra had already advised AUSTEL 26th August 1993, (six months previous) of the existence of unidentified faults affecting Mr Smith's service? (Exhibit **(AS 48-G)** above)

25th February 1994: Government internal Minute to Minister MP Subject: Casualties of Telecom (COT) Complaints by Alan Smith, Cape Bridgewater Holiday Camp **(AS 54-B)**

"The Australian Federal Police has been a asked to Investigate possible breaches of the Telecommunications (Interception,) Act 1979 and it would be inappropriate for you to make any further comments of details of the allegations while the matter is before the Federal Police. A draft letter to Mr Smith has been cleared by Legal and General Branch of the Department. We have provided both Telecom and AUSTEL with copies of Mr Smith's letters requesting that they investigate his allegations."

3rd March 1994: Steve Black writes to Telstra's CEO Frank Blount stating: *"...As discussed it appears that Gordon Hughes and Peter Bartlett are ignoring out joint and consistent message to them to rule that our preferred rules of arbitration are fair and stop trying to devise a set of rules which meet all the COTs requirements. My course therefore is to force Gordon Hughes to rule on our preferred rules of arbitration."* **(AS 55)**

Comment:
Clearly, at this stage, Dr Hughes and Peter Bartlett were not happy with the FTAP rules; so what made them later change their minds and agree that the Telstra designed FTAP was a fair process? What pressure was applied to Dr Hughes to force him to rule on Telstra's preferred rules of arbitration? What made Dr Hughes agree to Frank Shelton's revised FTAP?

3rd March 1994: Confirmation from AUSTEL to Steve Black, that the regulator was adamant that, "if the Fast Track Settlement Proposal was to be effective then the COT members must be given access to the documentation in Telecom's possession necessary for them to prepare their cases." **(AS 56)**

AUSTEL's COT INVESTIGATION

3rd March 1994: On 21st November 2007, Alan Smith received from the ACMA, under FOI, a copy of AUSTEL's original draft findings see Bruce Matthews' – Alan Smith report regarding the telephone problems experienced by the Cape Bridgewater Holiday Camp during 1988 to 1994 *"Attachment Two"*. Copied below are some of the page numbers and points in the report. The reason this exhibit is attached here is because, if AUSTEL (the Government Regulator) could not extract documents from or gain access to documents from a fully owned Government Corporation such as Telstra was, during this official, government-funded investigation, then what hope did the COT claimants ever have? Did AUSTEL have a regulatory obligation as the facilitators of the Fast Track Arbitration Procedure (FTAP) to abandon the signing of the agreement until Alan had received the documentation he was promised he would receive if he signed the FTAP. The following list identifies some areas where AUSTEL had problems with access to Telstra records on the service provided to Alan:

- **Point 43 on page 20** notes: *"As no fault report records remain in existence from Cape Bridgewater residents prior to this period, or these records have not been provided to AUSTEL, it is difficult to gauge the level of problems in the area."*
- **Point 48 on page 22** notes: *"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."*
- **Point 71 on pages 28 and 29** notes: *"AUSTEL has not been provided with the documents on which the conclusion in this briefing summary were reached, such as fault reports from other Cape Bridgewater subscribers over this period or the*

details of the final selector fault. It would have been expected that these documents would have been retained on file as background to the summary. It can only be assumed that they are contained within the documentation not provided to AUSTEL."

- **Point 140 on page 49** notes: *"It should be noted that AUSTEL's investigation of matters relating to the RCM problem has been hampered by Telecom's failure to make available to AUSTEL a file specifically relating to the Pairs Gains Support investigation of the RCM. The file was requested by AUSTEL on 9 February 1994."*
- **Point 160 on page 55** notes: *"It should be noted that it is hoped that a number of issues in regard to the Cape Bridgewater RCM will be clarified when Telecom provides the documentation requested by AUSTEL."*
- **Point 5.46 on page 95** in the final *AUSTEL COT Cases Report* notes: *"...Where, as part of its direction, AUSTEL sought to obtain detailed information on each of the exchanges involved in terms of performance standards, actual performance, maintenance requirements and achievements, Telecom initially responded with advice in terms of a few generalisations. Very specific requests were necessary to obtain data which a co-operative approach may well have been expected to deliver. Indeed, throughout this inquiry it has been apparent that Telecom has chosen to interpret AUSTEL's request for information in the narrowest possible terms. The net effect of this was to minimise the amount of relevant data it put before AUSTEL and lengthen the process necessary to extract it.*

BCI tests

Prior to the COT four signing the FTSP, Telstra called in Bell Canada International Inc (BCI) to carry out a study on a number of the service lines and exchanges which were allegedly causing the problems being experienced by the COT's businesses. After the completion of the BCI tests, AUSTEL and the COT Cases argued that the actual faults and problems they had complained of had not been highlighted correctly in the testing process. The problem was that, if BCI found a fault while they were testing they halted the test at once and fixed the problem before they re-tested. In other words, even though they found faults along the way, their final report specified that the Telstra network had a clean bill of health and there was NO RECORD OF THE FAULTS THEY HAD FIXED DURING THE TESTING PROCESS.

The COT members asked how, in the name of justice, could they use this report in support of their claims when it showed the Telstra network operating 'up to Network Standard' when, for up to eight years BEFORE the BCI tests, they had been forced to operate their business with phone systems suffering from major faults? Even though Telstra knew of the COT protests in relation to the BCI report, it was still used to support Telstra's defence of a number of the COT cases, including Alan's.

13th April 1994, see page 243, AUSTEL's Chairman Robin Davey, provides the Hon Michael Lee, Minister for Communications, following advice: *"...AUSTEL had agreed to the study being so limited on the basis that other monitoring it had requested Telecom to undertake on AUSTEL's behalf should provide AUSTEL with the data on the efficacy of the customer access network"* see (AS 57). This statement does not match the statement made by Cliff Mathieson on behalf of AUSTEL's new Chairman Neil Tuckwell to Alan Smith's

lawyers 'Taits' of Warrnambool (Victoria) on 12th July 1995, when he noted: *"...The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the test should be referred to those who carried them out or claim to have carried them out,"*

Taits Solicitors had original wrote to AUSTEL, on 29th June 1995, asking for information associated with the flawed BCI and NEAT testing process conducted at the Cape Bridgewater RCM in November 1993 see (AS 185).

PLEASE NOTE: This was the same Cliff Mathieson who had written to Telstra on 9th December 1993 see exhibit (88-b) above before Telstra used the BCI report as defence material, advising Telstra that they had to provide the 'assessor(s)' to the COT processes with a copy of his letter regarding the BCI tests in which he decalred was did not go far enough in the study tests. Furthermore, this letter was NOT provided to Dr Hughes.

How much more evidence does the Administrative Appeals Tribunal need to convince them that AUSTEL (now ACMA), have not been transparent when dealing with Alan's arbitration issues?

Please note: prior to Graham Schorer and Alan Smith signing the FTSP, AUSTEL was alerted by them that they were still experiencing phone and fax problems. Alan was adamant that the RVA message faults which wrongly advised customers calling his 008/1800 number that the line had been disconnected was crippling the singles club side of his business. Alan's arbitration reply to Telstra's interrogatories see (AS 15) confirms he received numerous letters (80 plus) from clients and tradespersons all documenting their own experience with when trying to make a booking. The RVA billing problem was threefold, first Alan lost the incoming call – secondly, he was charged for the non-connected call – thirdly, Telstra allowed Alan to continue to promote his business using the 008/1800 service (wasted advertisement costs) aware of that the RVA post dialling problems would not bring Mr Smith any business.

SECRET ARITRATION MEETING – ONLY THE DEFENDENTS ATTEND

22nd March 1994: Confirmation of a meeting attended by Steve Black (Telstra), David Krasnostein (Telstra's General Counsel), Simon Chalmers (Freehills), Peter Bartlett, Dr Hughes (arbitrator), Warwick Smith (TIO) and the TIO's secretary, Jenny Henright. The meeting discussed the Fast Track Arbitration Procedure (FTAP) without any COT claimants or their representatives.

The transcript of this meeting is quite clear that the TIO noted that, if clause 10.2.2 of the FTSP was changed in any way whereby the agreement did not meet the original clause 2(f) of FTSP, then he would not endorse the FTAP as being fair.

Graham and Alan received the FTAP rules on 21st February 1994 (see above) and before we signed them, the words *"... each of the Claimant's claims"* were removed from clause 10.2.2 without our knowledge or consent. (AS 67) As shown below, the arbitrator's trickery and deception did not stop at the removal of clause 10.2.2.

It was not until 1998, three years after the arbitrator had deliberated on Alan's case, that he received FOI documents from Telstra which recorded this clandestine gathering. The fact that Telstra, their lawyers, Dr Hughes and the TIO's office all attended this meeting, and it was NOT attended by ANY representative of the COTs the meeting therefore was unlawful.

The COT four claimants had no opportunity to contribute to whatever discussions took place at this meeting and will now never know how accurate (or otherwise) the minutes were. They will never even know if a second set of minutes exists somewhere. It is now accepted that the FTAP rules were changed to exclude the words *"... each of the Claimants Claims"* and the removal of clauses 25 and 26, including alterations to clause 24. The secret changes to this (legal document) the arbitration agreement probably occurred at this clandestine meeting. Dr Hughes attended this meeting, while the COT claimants were in preliminary negotiations regarding the forthcoming arbitrations: this is no different to a judge meeting in his chambers with the defence team, but without the presence of the plaintiff in the matter, and planning how the judge will conduct the trial.

This meeting, when coupled with Telstra's letters of 11th January and 11th July1994 to Warwick Smith, i.e. (the vetting of procedural documents by the TIO resource unit) indicates that the COT claimants had absolutely no chance of success, from the moment they were forced to abandon the FTSP. It is of great concern that the TIO apparently agreed to COT requested documents being first vetted by AUSTEL and the TIO- Resource Unit before they were passed onto the COT claimants (AS 62 and AS 63). Fancy the defendants (Telstra) discussing what documents were relevant with the administrator of the process (the TIO)!

What is interesting to note from the author of these minutes (Freehill Hollingdale & Page) see last paragraph {p1} is the statement: *"...Mr Smith stated that he would not endorse the rules as fair unless clause 10.2.2 repeated clause 2(f) of the Fast Track Settlement Proposal."* Am I to assume that because someone removed the wording from the arbitration agreement at clause 10.2.2 ***"each of the Claimants claims"*** which were derived from clause 2(f) of the 'Fast Track Settlement Proposal' that had Warwick Smith been alerted to this removal, he would not have endorsed our arbitration process? Are we to now assume that once the AAT and ACMA, alert the TIO to the further alterations to the arbitration agreement i.e. clause 24, 25 and 26, that the TIO will no longer go on endorsing Alan's arbitration process?

As shown below in Dr Hughes' letter of 12th April 1994, to Peter Bartlett, Minter Ellison, (Special Arbitration Counsel) the only people who benefited from the secret alterations to the arbitration agreement, was Dr Hughes' Resource Unit and Peter Bartlett.

23rd March 1994: The Hon Minister Lee MP writes to Alan *"...Thank you for your letters of 3rd February 1994, concerning problems with your telephone and facsimile service. I have also arranged for your letters to be sent to senior management in Telecom with a request that they fully investigate your allegations. It would be inappropriate for me to comment on any allegations of improper monitoring while the matter is under investigation by the Federal Police.* **(AS 63-A)**

25th March 1994: Ms Smith advises Mr Blount, her concerns that Telstra had already stated to John Wynack, Director of Investigations Commonwealth Ombudsman *"...that they were concerned at the publicity and significant diversion of Telecom resources caused by the recent release of certain information by Mr Smith and that the delay in release of documents was due to the need for Telecom to check all documents prior to release so that Telecom is alert to the possible use/misuse of sensitive information.* Ms Smith then went on to say that: *"... It is unreasonable for Telecom to require the participants to make further assurances while Telecom was considering the Agreement and thereby denying the*

participants the opportunity to consider the rules that Telecom wished to have included in the Agreement." **(AS 64)**

The Commonwealth Ombudsman's Office will confirm that the first (limited) bundle of FOI documents Alan received in February 1994, were heavily censored, many with large sections blacked out and others supplied without a covering schedule, making it incredibly difficult for lay people to understand the significance of the information. Again, it appears as though this information was censored in this manner under the 11th and 12th January 1994, letters of agreement between AUSTEL, the TIO and Telstra in an attempt to minimise Telstra's liability?

It is evident from the following chapters, that the vetting and withholding of documents from, the COT claimants, wasn't the only devious method used by Telstra and the TIO;s office to stop the COT four claimants from have their valid claims assessed independently.

January/March 1994 – still no relevant FOI documents to support Cot claims

According to Graham Schorer and Alan's memory of the FOI situation at this time between January and March 1994, the TIO advised them that the only way for them to proceed was to sign for arbitration. Why didn't the TIO show the same concerns as Ms Philippa Smith, see exhibit **(AS 64)** where she dams Telstra for threatening four small business that if they didn't sign the new preferred rules of arbitration Telstra would not supply the documents they needed to support their settlement claims.

Could the TIO have been siding with Telstra from the outset? Could the TIO have been mischievously involved with Telstra by allowing them to withholding COT requested FOI documents until the COT Cases signed for the FTAP? How many documents were actually destroyed (or simply not provided to the COT 's) under this clandestine operation? Of all the breaches of law so far uncovered during the COT arbitrations, this is probably the one of worst along side the altering of the clause in the agreement:

We ask the AAT to consider how alarming this is i.e: that the defendants the administrator the administrators resource unit and AUSTEL (now ACMA) all appearing to be party to this secret agreement of vetting what documents the claimants should receive and what should be withheld from them AND the arbitrator!

Even after Dr Hughes' guarantee see **(AS 54)** *"that as arbitrator, he would not make a determination on incomplete information"* left the claimants still feeling trapped, there was no one prepared to listen to the COT spokesperson, Graham Schorer and Alan Smith's argument that they had already signed a commercial assessment agreement 22nd November 1993 **(AS 51)**. At first Graham and Alan all flatly refused to be a party to Telstra's preferred rules of arbitration as it was evident to them that Telstra was attempting to force the COT four down the legal track so that their cases would not be commercially assessed. Graham and Alan both believe Dr Hughes, at the time he made his commitments to COT, (that he as arbitrator) would also not receive many of the relevant documents he should, due to this secret vetting arrangement.

Other details of these meeting minutes show that Dr Hughes *"... stated that he was aware of a dispute between the parties but did not have any idea as to the nature, and indicated*

that, from this point in time, there were two ways to proceed in relation to the problem of outstanding documents.

- *the procedure is put on hold until all the documents are exchanged in accordance with the FOI procedure; or*
- *the arbitration procedure commences and then the arbitrator gives appropriate productions of documents.*

Point (2) was Alan's main reason for finally agreeing to sign for arbitration, because Telstra had still only provided him with a very limited quantity of documents but, as can be seen from the arbitration process itself, Dr Hughes went back on his commitment to access documents from Telstra on his behalf.

25th March 1994: The Commonwealth Ombudsman Ms Philippa Smith, wrote to Telstra's CEO Frank Blount, concerning the complaints raised by Graham Schorer and Alan Smith, regarding: "*...Telecom's handling of their applications under the Freedom of Information (FOI ACT) of 24 November 1993 and 21 December 1993 respectively. It was unreasonable for Telecom to require the participants to make further assurances while Telecom was considering the Agreement and thereby denying the participants the opportunity to consider the rules that Telecom which to have included in the Agreement* and *the delay in release of documents was due to the need for Telecom to check all documents prior to release so that Telecom is alert to the possible use/misuse of sensitive information."*

This letter from Ms Philippa Smith was provided to ACMA on 2nd March 2008, by Alan in support of his claim for free access to FOI documents held by ACMA.

7th April 1994: Telstra Internal Memo R11908 needs reading to be believed. In this memo Telstra's Steve Black states: *"...Peter Bartlett tells me that Graham Schorer is putting pressure on Gordon Hughes to read the AUSTEL Report and see if it contains anything which would necessitate a change in the Arbitration Rules. I told Mr Bartlett to tell Dr Hughes that Telecom would seriously object to such a course of action."* **(AS 68)**

Please note: The AUSTEL COT Report referred to in this memo by Mr Black, was soon to become a public document. Alan and Graham can only assume that the reason Telstra was *"seriously"* objecting to Dr Hughes seeing this report is that it refers only that the COT four were to be assessed under the AUSTEL facilitated 'Fast Track Settlement Proposal', with the other COT type complainants to be implemented into the yet to be devised 'Special TIO Arbitration Agreement'.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

The following 9th April 1994, information is very relevant to the ACMA FOI issues currently under review, becasue it confirms AUSTEL (now ACMA) is prepared to alter their true findings when those findings are unfavourable to Telstra's interests.

9th April 1994: On page 3 of this letter Mr Black states: *"In relation to point 4, you have agreed to withdraw the reference in the Report to the potential existence of 120,000 COT-type customers and replace it with a reference to the potential existence of "some hundreds" of COT-type customers."* As noted immediately above, the official report refers to 'fifty or more' Cot-type faults, confirming that Mr Davey was further pressured to change his real findings. **(AS 68-b)**

Exhibit (AS 68-c) A hand-written note dated 10/03/94, from Julie Martinson (see above), states that 10% of those surveyed had experienced the same sort of problems as the COT claimants and that 4% said they had been affected seriously or very seriously. It is not clear whether this 4% is of the total surveyed, or just 4% of those with problems. I have been told that there were more than 100 people at the public meeting in Brisbane where this survey was undertaken. If this figure is correct, simple mathematics shows that AUSTEL's original findings were very close to correct.

Exhibit (AS 68d) Telstra FOI folio 101115 to 101117 this document states: "*...A **total** of 8% of all businesses stated they had experienced problems **themselves**; **5% had**, by inference from comments made by **callers** assumed they had problems; and **8%** claimed they had both experienced problems **themselves** and **also** received comments from **callers** regarding difficulties in getting through to the business. 73% of customers who felt the problems associated with incoming calls has seriously affected their business had **reported** the problems to Telecom with varying degrees of success regarding resolution.*

It is also interesting to note that, on 6th December 1993 (see above), Telstra's Ted Benjamin warned Telstra's Group Managing Director, Harvey Parker, that 4% of the 2644 Commercial Business Customers surveyed by TELCATS (on behalf of Telstra) reported experiencing significant phone problems that had affected their businesses.

Four percent of 2644 is one hundred and six businesses that experienced COT-type problems – a significant number. Four percent of all Telstra's Commercial Business customers, nation-wide, would be well over 120,000 – the number that AUSTEL's Chairman, Robin Davey, wanted to have included in the AUSTEL COT Report, rather than the 'fifty or more' customers Telstra insisted on. Clearly Robin Davey's original calculations were correct.

IMPORTANT

Alan's technical advisor, Mr George Close, was forced to use the AUSTEL COT Report findings during Alan's arbitrations because Telstra was not supplying the documents that had requested under FOI, which meant that Mr Close's technical findings were therefore based on flawed information and were therefore incorrect. Letters dated 16th and 25th August 1994 (see below) confirm that, on behalf of Alan, Mr Close asked the arbitrator, under the arbitration agreement discovery process, to seek from Telstra all the relevant BCI information Telstra had used to arrive at their findings. Even though Dr Hughes accepted the BCI report into evidence (see 2nd May 1994, below), he did not ask Telstra for any BCI discovery documents (under the Arbitration Agreement) on behalf of Alan.

12th April 1994: Dr Gordon Hughes (arbitrator) writes to Peter Bartlett, Special Counsel to the arbitration procedure noting: "*...further in relation to clause 25 and 26, both Ferrier Hodgson Corporate Advisory and DMR Inc are concerned about their potential liability. As the clauses presently read, they would be liable to a maximum of $250,000.00 per claim. This is likely to significantly exceed their professional fees in relation to each claim.*

I appreciate that one claimant has already executed the agreement in its current form. The others will no doubt be pressed to do likewise over the next few days. I further appreciate you will be reluctant to introduce additional changes to the draft procedure at this delicate stage of negotiations but it is of course also fundermental that account be taken of the concerns raised by members of the Resource Unit. Perhaps the agreement should be executed in the current form and then agreement sought from the parties to vary the terms to take into account any proposal by Ferrier Hodgson or DMR which you agree are reasonable."

What this letter shows is that the TIO-appointed arbitrator from even before Alan Smith signed the arbitration agreement the arbitrator was conniving to deceive Alan, into signing an agreement he was going to alter as soon as Alan had signed. In other words, there was no good will whatsoever from the arbitrator in regards to the rights of Alan as the claimant.

14th April 1994: Ann Garms writes two letters to Warwick Smith, one hand-written the other typed. It is clear from both letters that Ms Garms, Alan Smith and Mr Schorer, did not want to abandon the AUSTEL facilitated Fast Track Ssettlemt Proposal (FTSP) and enter into an arbitration process. **(AS 69-a)**

PLEASE NOTE Robin Davey AUSTEL's Chairman assured Alan Smith and Graham Schorer that regardless of what process they entered into Telstra still had to perform the required AUSTEL Service Verification Tests (SVT) before the assessor and/or arbitrator could bring down a finding.

***17th April 1994**: Telstra's Steve Black wrote to AUSTEL's Chairman Robin Davey regarding the Service Verification Tests noting: "...I would appreciate your confirmation that the tests have met all the requirements of AUSTEL for Verification Testing. Once agreement has been reached on these Vwerification Tests, Telecom will be in a position to commence the tsting of the services associated with COT customers, and ensure they meet the agreed requirements for a satisfactory service."* **(AS 69-b)**

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

The above letter from Telstra's Steve Black dated 17th April 1994, is directly related to AUSTEL's correspondence dated 16th November 1994, to Steve Black, which declared the Cape Bridgewater Holiday Camp Service Verification Tests (SVT) as deficient.

19th April 1994: This is a three page brief to Mr A H Goldberg, Q.C., from William Hunt, on behalf of Graham Schorer. According to a hand-written note in the top right-hand corner, Mr Goldberg's office was contacted by Hunt Solicitors at 2.43 pm. **(AS-69-c)**

19th April 1994: It is clear from the fax imprint on these two documents from Dr Hughes' secretary, Caroline Friend, to Mr Goldberg and William Hunt, that they were faxed between 1:20 and 2:00 pm on 19th April 1994. Each fax included an unsigned copy of the arbitration agreement which can be supplied to Administrative Appeals Tribunal on requests, for the purpose of this chronology we have only attached the covering facsimiles sheets as testimonials see **(AS 69-d)** and **(AS 69-e)**). Ms Friend sent the faxes from her office after Graham Schorer had asked his solicitor, William Hunt, for advice in relation to signing the arbitration agreement that had been drawn up by Frank Shelton of Minter Ellison and Mr Hunt then contacted Dr Hughes' office and asked Ms Friend to send one copy to Mr Goldberg and one to Mr Hunt, for assessment. On 21st April however, before Graham had received any information from Mr Goldberg or Mr Hunt, Graham and Alan Smith met Peter Bartlett (the TIO's Legal Counsel) in the Minter Ellison offices and were told by Mr Bartlett that the TIO would withdraw from administering the already-signed Fast Track Settlement Proposal if Graham and Alan did not sign the arbitration agreement by close of business that day. If Peter Bartlett had provided Graham Schorer and Alan Smith with a copy of the altered agreement early in the day, before they were presented with it for signing, and allowed them to take it away for relaxed discussion between themselves, a comparison between the altered version and the version faxed to Mr Goldberg and Mr Hunt would have uncovered the secret alterations to the agreement Graham and Alan were being pressured to sign was not the agreement that Caroline Friend had faxed to Mr Goldberg and Mr Hunt thirty-six hours earlier.

CHAPTER FOUR
Fast Track Arbitration Procedure

21st April 1994: Mr Schorer, Ms Garms and Alan Smith all signed the Arbitration Agreement under duress. All three had been threatened by Peter Bartlett, that under instruction from Warwick Smith, that if they did not sign the FTAP (Agreement), the TIO would refuse to continue in his roll as administrator to the FTSP.

The phone and fax problems continue

22nd April 1994: The day after Alan signed for arbitration, Alan returned to Cape Bridgewater to find two notes on his desk, reporting that staff had registered two more phone faults. Alan also faxed AUSTEL three 008/1800 incorrectly charged billing accounts. AUSTEL's fax journal registered three faxes from Alan as lasting from 01.40 to 02.22 seconds, but only blank paper appeared. (AS 70) Where did the information on these faxes end up? How can a fax transmit through to the receiving end, without the sender's identification (date and time the fax was sent) being displayed on the document received?

From late in October 1993, until 26th April 1994, numerous people reported that, after Alan had hung up at my end of the phone line they could still hear him talking in his office. These people included Graham Schorer, clients and friends, including Cliff Mathiesons of AUSTEL, and Peter Gamble of Telstra. It was bad enough that they could hear what Alan was saying but it is worse to realise that Alan was being charged at STD rates, as though the call was still connected. This TF200 phone shared a line with my fax machine.

Cliff Mathieson and John MacMahon, General Manager for AUSTEL's Consumer Affairs Department, were both part of the AUSTEL management team involved in the preparation of the AUSTEL COT Report. They had asked Alan to pass on to them, during Alan's assessment/arbitration processes, anything of interest that he uncovered which would support the evidence he had already provided to them regarding the lock-up and short duration problems on Alan's 800/1800 line.

On the 26th April 1994: Alan Smith telephoned AUSTEL's Chief Engineer, Mr Mathieson (using the EXICOM TF200 on his 055 267 230 line).During their conversation, Alan mentioned the lock-up problems he had been experiencing and described how numerous people had commented on this strange phenomenon. Mr Mathieson thought they should run a series of tests themselves and suggested that Alan put the receiver back in the cradle and count aloud to ten before picking it up again to see if it was still connected (and it was). They then tried going to fifteen seconds and still the line remained open. Mr Mathieson then suggested that Alan take the phone off the 055 267 230 line and switch it with the phone which was connected to his 055 267 267. More tests confirmed that the lock-up fault was still occurring on this different designed TF200 ALCATEL phone. Mr Mathieson confirmed Alan's belief that the fault therefore must have been originating in the exchange. According to Mr Mathieson, since Alan was in arbitration at the time, he suggested Alan should bring this fault to the attention of Peter Gamble, Telstra's Chief Engineer.

Alan then switched the phones back to their original lines and phoned Mr Gamble, but did not tell him that Mr Mathieson and Alan had already tested two phones on the 055 267 230 line. Mr Gamble and Alan then carried out similar tests on the 055 267 230 line, with Alan

first counting aloud to ten and then to fifteen. Mr Gamble's response was that he would arrange for someone to collect the phone for testing purposes on the following day. Two separate Telstra emails, the first one FOI K00941 dated 26th March 1994, show (name blanked out) that they believed this lock-up fault was being caused by a heat problem in the RCM exchange at Cape Bridgewater (AS 71). Document K00940 dated the day Alan actually carried out this testing with Mr Mathieson and Mr Gamble, also suggests Mr Gamble believed the problems was caused by heat in the exchange (AS 72)

This is the same Peter Gamble, whose SVT equipment couldn't perform the AUSTEL required Service Verification Tests correctly (at Alan's business during his arbitration) who later swore under oath in Telstra's arbitration defence that the tests were ALL successful.

27th April 1994, Telstra collects Alan's faulty TF200 EXICOM Telephone. During the FTAP, Alan received Telstra document R37911 under FOI. This document shows that, on the following day after the testing of the TF200, Ross Anderson, a Telstra technician from Portland, tested the TF200 EIXICOM fax phone at least eighteen times without it once displaying this lock-up fault. Had he first visited the RCM at Cape Bridgewater (ten minutes away) to release hot air from the RCM un-manned exchange? In his Witness Statement to the FTAP, he acknowledges connecting a fan to the RCM to alleviate the heat problem. Further documents in the Relevant Infromation File suggest the problem could have been related to moisture or a combination of both. (AS 73)

The (Call Charge Analysis) CCAS data for the 27th April 1994 shows that after Alan's faulty EXICOM had been collected and a new EXICOM installed in his office, there was still a lock-up problem affecting his service. The CCAS data confirms that at 22:23 hours the incoming caller waited for 3599 seconds before they answered call. This CCAS data also confirms that after this phantom caller had waited 3999 seconds to answer Alan then talked for a further 14718 seconds (AS 74)

In his official report, George Close, Alan's technical advisor, used the limited amount of Telstra's own data which was received under FOI during the FTAP to show that the lock-up fault was apparent from at least December 1993 through to February 1994. He then calculated that 863 hours were lost of 77 days due to this one fault (AS 75). It is interesting to note that Mr Close also found a similar pattern of faults in other FOI documents relating to Alan's Gold Phone coin-operated service which recorded a fault rate of 59% over the same period.

Also during the FTAP, Alan received Telstra FOI documents K01031, 32, 33, K00957 and K01398 which further substantiate the relationship between the fault and the exchange. First, in document K01398, Tony Watson of Telstra states: *"Probably caused by RCM, no need to investigate. Spoke to Bruce, who said not to investigate also"*. Then, in document K01032, Bruce Pendelbury, Telstra's Fault Manager tells Jim Holmes, Telstra's Corporate Secretary that three test calls to Cape Bridgewater appeared to be answered, but no conversation took place. Did Telstra even care about Alan's problems? How could three test calls be designated 'successful' if they were not answered at the receiving end? How did the technician know what the receiving person was (or was not) hearing?

According to Telstra archival documents this lock-up fault was apparent on Alan's phone/fax line as early as August 1993. The new owner of Alan's business Darren Lewis has provided a statutory declaration and other testaments to the Hon David Hawker MP,

stating that the lock up problems on the fax line was severe at least up and until to November 2002.

6th May 1994: Ms Philippa Smith, Commonwealth Ombudsman writes to Telstra's CEO Frank Blount stating: *"...I should be grateful if you would now respond to the outstanding matters raised in my letter of 25 March 1994 ie*
Comment on my views that:

- *it was unreasonable for Telecom to impose a condition for release of certain documents that the participants make further assurances that they will participate in the FTSP; and*
- *it was unreasonable for Telecom to require the participants to make the assurances while Telecom was considering the agreement related to the FTSP (the Agreement) and thereby denying the participants the opportunity to consider the rules that Telecom wished to have included in the Agreement."*

ATTENTION ADMINISTRATIVE APPEALS TRIBUNAL

PLEASE NOTE: the above letter from Ms Philippa Smith dated 6th May 1994, is attached as ***Exhibit 15*** of ACMA's **The Respondents Section 37 Document [No 1836 of 2008]**

Believe it or not!

14th May 1994: Before Alan and Graham Schorer signed for arbitration, Warwick Smith, Peter Bartlett and Dr Hughes had all assured them that the documents they required from Telstra would begin to flow through to them once their signatures were on the agreement. This was the Arbitration Agreement that was secretly altered just 36 hours, before it was signed. By May 1994, one month before Alan had to submit his claim, it was clear that the flow of documents had all but dried up and so he arranged to go to Melbourne on 14th May 1994 to look at some FOI documents which Telstra had stated they would show him, in their offices.

Alan arrived at Telstra House in Exhibition Street a little after nine and then discovered that a room had been set aside for him from 8 am to 6 pm. Alan was introduced to Telstra FOI staff, including George Sutton and Rod Pollock and was then provided with some of the documents which he should have received under his December 1993 and February 1994 FOI requests. Some thirty or so heavily blanked out documents were provided by Mr Pollock, including about fifty-six fax cover sheets, with attached documents. One of the documents referred to the MELU exchange, which had caused Alan massive problems between August 1991 and March 1992 so he asked Mr Pollock if he could supply the document, without the blanking-out. Mr Pollock went away for some time and Alan continued to check the documents that had been provided.

Alan had taken with him that day some of the documents that Telstra had previously supplied him with and, while Mr Pollock was away from the room, he noticed that some of the fifty-six fax cover sheets he had seen before now had different material attached. Nothing seemed to match. For example, documents relating to a fault in 1991 were attached to a fault record dated 1993 which stated that no fault had been found. Alan was so alarmed at this discovery that he phoned Detective Superintendent Jeff Penrose of the Australian Police and described the situation to him. At his suggestion, Alan prepared a Statutory Declaration and provided it to both the TIO and the arbitrator **(AS 76)**

16th May 1994: Alan provided irrefutable information to the TIO office to no avail
A TIO file note, which he received late in December 2001 (under the TIO Policy Privacy Act), confirms that, on the 16th May, Alan also visited the TIO's office (two blocks from Telstra House) and asked that they provide a witness to accompany him back to the Telstra viewing room to see the altered documents for themselves. (AS 77) Even though the TIO was acting as administrator to Alan's arbitration, they refused to send anyone back with him. When we remember that, as already noted, on 11th January and 11th July1994, Telstra's Steve Black wrote to Warwick Smith regarding the TIO-appointed Resource Unit and AUSTEL censoring Telstra documents before the COT claimants were allowed to use them to support their claims we have to ask if this is why no-one from the TIO's office would help to investigate this discovery matter. In the last paragraph of this document the deputy TIO Ombudsman, Sue Harlow wrote to Warwick Smith, and referred to the proof Alan left with her confirming Telstra had altered information on the supplied documents noting *"He left an example of this with us (also attached)*

In Alan's statutory declaration (AS 76), Alan named Rod Pollock as one of the culprits who had not supplied him with the correct FOI documents. Compare this statement with the following statement made by Graham Schorer under oath;

1. On the 13th October 1994, a Telstra Whistleblower (possibly Lindsay White) wrote to Minister Lee stating that Steve Black and Rod Pollock were altering and changing information on FOI documents being requested by the COT Cases, in their attempt to minimise Telstra's liability. At the side column of this letter {p1} someone has hand-written the statement: "*Warwick Smith has been critical of Pollock on same issue.*" Please note: the FOI identification numbering on this letter is from AUSTEL, who were the regulator during our arbitration, perhaps someone from AUSTEL hand wrote this statement?

2. On 6th May 1994, prior to the revealing of the Steve Black and Rod Pollock FOI issues, Ms Philippa Smith wrote to Telstra's Frank Blount stating: *"...Mr Black replied on your behalf on 31 March 1994, but his letter addressed only some of the matters I raised. I should be grateful if you would now respond to the outstanding matters raised in my letter of 25 March 1995 ie*

Comment on my views that:

- *it was unreasonable for Telecom to impose a condition for release of certain documents that the participants make further assurances that they will participate in the FTSP; and*
- *it was unreasonable for Telecom to require the participants to make the assurances while Telecom was considering the agreement related to the FTSP (the Agreement) and thereby denying the participants the opportunity to consider the rules that Telecom wished to have included in the Agreement.*

2. Provide information about the steps Telecom has taken to locate files containing information relating to Mr Smith's contacts prior to June 1991 and the personal files which allegedly were destroyed (AS 80).

18th May 1994: Telstra is still not suppling Alan the required documents he needs to support their claim. Alan wrote to Dr Hughes, asking him to extend his claim preparation time to 15th June 1994, because of Telstra's delaying FOI tactics. Dr Hughes replied to Alan's request on 23rd May 1994, advising him that Telstra has agreed to an extension until 15th June 1994,

further stating that Telstra's: *"...Mr Rumble has indicated that Telecom would be opposed to a further extension of time beyond 15 June 1994."*

LOST CLAIM DOCUMENTS

Alan faxed Dr Hughes further claim material

23rd May 1994: This attached fax billing account confirms there were five attempts from Alan's office to fax this information to Dr Hughes failed. Telstra's B004 defence document stated also attached **(AS 82)** state that the fax couldn't get through because Dr Hughes's fax machine was busy. If this is so, why was Alan charged for the five 'calls'? **(AS 81)**

MISSING FAXES

Finally, after numerous faxes sent from Alan's office to Dr Hughes had not reached his office, Alan became more and more agitated. On a couple of occasions Alan actually abused Dr Hughes's secretary because he couldn't understand why she was unable to find the faxes he had sent. On one particular occasion Alan sent her a $50 bunch of flowers by way of apology. But still Alan had no idea where these faxes might have disappeared to, or why they were disappearing.

Documentation obtained from Ferrier Hodgson Corporate Advisory (FHCA), the TIO-appointed Arbitration Resource Units report, confirm numerous documents forwarded to Dr Hughes' office does not appear on their list of documents as being received. The list referred to above, will be supplied to the ATT, on requests.

COMMENTARY:

It is most important to point out here that from the day Alan signed the Fast-Track Settlement Proposal 23rd November 1993, and until he realized that Dr Hughes' office was not getting all of his transmitted faxes, he had participated in the following official inquiries and investigations:

- The Bell Canada International Test (study)
- The Coopers & Lybrand investigation
- The AFP investigation which was still in progress
- The AUSTEL investigation into my matters.
- The Commonwealth Ombudsman investigation into Alan's FOI matters

which were not completed until May 1997, two years after Alan's arbitration was deemed finalized.

Question

How could anybody state in all fairness their belief that it was reasonable to expect Alan to successfully prepare his claim while they were involved in the above investigations?

25th May 1994: Graham Schorer writes to Dr Hughes noting: *"...Due to circumstances and events beyond the direct and/or indirect control of Graham Schorer plus other related claimants, companies etc, I am formally applying for an extension of time on behalf of Graham Schorer, plus other related claimants, companies etc, pursuant to clause 7.1 in the Fast Track Arbitration Procedure etc etc*

The reason for this request are as follows:-

"...A substantial burglary in Golden's premises on the 4 March, 1994 and the theft of vital equipment and records.

One of two word processors with its laser printer and back up disks containing Golden's sales quotas, customer agreements, facsimiles and all the correspondence facsimiles and most of the documentation relating to telephone service difficulties, problems and faults in relating to our present claim." Graham Schorer's letter of 25th May 1994, referred to above, will be supplied to the AAT, on request.

PLEASE NOTE: On the 4th March 1994, approximately one and a half hours after Golden Messenger's burglary, another COT claimants business, Dawson Pest Control, was also burgled. Mr Dawson later remarked that he found strange that the burglars only stole business records and Telstra related information. On the 11th October 1994, during Alan Smith's (taped) arbitration oral hearing he informed the arbitrator that the Cape Bridgewater Holiday Camp booking information and banking statements disappeared from his office. Telstra FOI documents provided to the Australian Federal Police in 1994, by Alan, confirmed that Telstra was able to document the dates when Alan would be in Melbourne, (away from his business), in one instance Telstra documented an intended Melbourne trip weeks before the intended trip.

Calls being charged yet not answered by Alan or staff in his office

3rd June 1994: Alan was working in my lounge room (adjacent to my office) with Wendy Trigg, a bus service operator, when the 055 267 267 phone in his office rang with two short bursts and stopped before he could reach it. The line was dead when he picked up the receiver. Since this was one of the problems he had experienced for some months, he immediately rang Telstra's 1100 fault line in Bendigo. Mrs Trigg observed (and later documented) the following process.

Alan used his fax phone to phone Telstra. This equipment is on a separate line to his 008/1800 free call service which was the line he was complaining about. He asked the Telstra 1100 fault operator (Heidi) if she would phone his free call number and see if she had problems getting through. Moments later, while Alan was still holding on the fax line, there was a faint, one ring burst on his free call line. Both Mrs Trigg and Alan heard this short ring but when he picked up the receiver, the line was dead and so he didn't bother to speak but simply hung up the phone.

A few moments after Alan had hung up the free call phone the Telstra operator came back to his fax phone and quite innocently announced that she had heard some-one answer the free call line, and it sounded like 'Cape Bridgewater Holiday Camp'. He certainly didn't say anything about a holiday camp, so who answered the call? The operator's version of events certainly doesn't match Alan's version, nor does it match the description provided by Mrs Trigg to the arbitrator, so where was her call answered?

Later, Alan rang 1100 again and asked Heidi why she thought he wouldn't have said more when he answered her test call. Why didn't he say something like 'It looks like the phone's OK after all'? Alan then spoke to Heidi's supervisor and records show that, all up, he was on the phone to 1100 for twelve minutes and seven seconds.

The following day Alan booked Power House Productions of Portland to produce a professional video, including a six minute interview explaining this incident. A Graham

Sawyer interviewed him for this, asking a set of prepared questions. See Alan's letter to Dr Hughes dated 21st June 1994, concerning this issue (83).

10th June 1994: AUSTEL's John MacMahon writes to Steve Black stating: *"...AUSTEL is continuing to receive complaints as to the quality of service from a number of the COT Cases*

- *Mr Smith at Cape Bridgewater continues to express concern about the ability to receive and send facsimiles.*
- *Mr Schorer at North Melbourne continues to claim that customers are reporting an inability to make a successful phone call*

In the 'Implementation of the Recommendations of the COT Cases Report' (see Relevant Infromation File), the report states, on page 15: *"The role of the Service Verification Tests (SVT) in the determination of the adequacy of a DNF service is that the SVT clearly have to be conducted well before 30 May 1995 to meet the requirement of recommendation 25. For example, if the SVT indicate an unacceptable level of service then a considerable amount of time may be required to rectify the service in question, particularly if major replacement of exchange equipment is required to bring the service to the accepted standard."*

In regards to the adequacy of the telephone service provided to the Cape Bridgewater Holiday Camp by Telstra, it is apparent from the enclosed information that the service was less than adequate. **(AS 84)**

Telstra's Paul Rumble threatened Alan on the telephone.

31st June 1994: Mr Rumble was angry that Alan had supplied a number FOI documents to the AFP, which he had previously received from Telstra under FOI. The documents which Alan supplied to the AFP were provided to assist them in their interception investigations. Mr Rumble stated (words to the affect) that if Alan promised not to supply any more FOI documents to the AFP, Telstra would assist him by supplying the rest of the relevant claim material he needed. Due to the stressful situation Alan found himself in including having no support from either the arbitrator or the TIO, he gave his word to Mr Rumble, in blind hope that he could reach an early end to this dreadful saga.

4th July 1994: Alan responded to Mr Rumbles threats in my letter stating: *"...I gave my word on Friday night, that I would not go running off to the Federal Police etc, I shall honour this statement, and wait for your response to the following questions I ask of Telecom below."* At the time of writing this letter Alan had no intension of providing the AFP with more FOI documents. However, when the AFP came back to Cape Bridgewater 26th September 1994, they started asking a number of questions concerning this Paul Rumble letter **(AS 85)**

On page 12 of the AFP transcript of Alan's second interview at Q57, they state: *"...The thing that I'm intrigued by is the statement here that you've given Mr Rumble your word that you would not go running off to the Federal Police etc etc.* It is clear from the statements made by the AFP in this transcript that they believed Telstra had been intercepting Alan's telephone calls without his knowledge or consent **(AS 86)**

It should be made known here that on 29th November 1994, Senator Ron Boswell asked Telstra's Legal Directorate David Krasnostein, a number of matters concerning the AFP investigations into Telstra's interception of the COT telephone conversations including asking the question: Senator BOSWELL – *"...Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith*

provided Telecom FOI documents to the Australian Federal Police during their investigations.? **(AS 87)**

Food For Thought

In the AUSTEL's draft Alan Smith – Bruce Matthews report dated 3rd March 1994, see *"Attachment Two"* it is confirmed that on a least five occasions while preparing this report, Telstra failed to provide AUSTEL the correct requested information they needed to complete ***all*** the findings they had hoped to include in the report. And here Alan Smith is, fourteen years later being refused similar information by ACMA.

11th July 1994: Steve Black writes to Warwick Smith stating: *"...Telecom will also make available to the arbitrator a summarised list of information which is available, some of which may be relevant to the arbitration. This information will be available for the resource unit to peruse. If the resource unit forms the view that this information should be provided to the arbitrator, then Telecom would accede to this request."*

The statement in Mr Black's letter: *"... if the resource unit forms the view that this information should be provided to the arbitrator,"* confirms that both Warwick Smith and Mr Black, are fully aware that the TIO-appointed Resource Unit Ferrier Hodgson Corporate Advisory (FHCA) had also been ***secretly*** assigned to vet most if not all the arbitration procedural documents on route to Dr Hughes. In other words, if FHCA decided that a particular document was not relevant to the arbitration process, it would not be passed on to Dr Hughes, or the other parties. **(AS 62-c)**

On page 5 of the Commercial Arbitration Act 1984, under Part 11 – Appointment of Arbitrators and Umpires it clearly states: ***(6) Presumption of single arbitrator***
"...An arbitration agreement shall be taken to provide for the appointment of a single arbitrator unless –
(a) the agreement otherwise provides; or

(b) the parties otherwise agree in writing.

The Fast Track Arbitration Procedure FTAP (Agreement) signed by Graham and Alan, 21st April 1994, mentions only one arbitrator. There is likewise no written agreement in existence seen by Alan or Graham that allows a second arbitrator to determine what information the first arbitrator will see.

18th July 1994: Dr Hughes accepts the BCI report as arbitration evidence, this letter from Dr Hughes to Paul Rumble, states: *"...On 13 July 1994, the Resource Unit requested copies of the Bell Canada Report, the Coopers & Lybrand Report and the Telecom response to these Reports. The purpose of the request was to enable the Resource Unit to commence perusing relevant background documentation."* **(AS 88)**

Exhibit (AS 88-b) a letter dated 9th December 1993, from AUSTEL's Cliff Mathieson to Telstra's Ian Campbell under the heading: Bell Canada International Report, condems the BCI report as narrow and disappointing noting: *"...I understand that BCI is currently undertaking further testing to redress this shortcoming in its report"...* and then goes on to say {P-3}: *"...In Summary – Having regard to the above, I am of the opion 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."*

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

Please Note:

1. When Alan Smith received his copy of the BCI Report from the arbitrator, during Alan's arbitration, it did not have Cliff Mathieson's letter of 9th December 1993 attached (AS 88-b).
2. BCI did not undertake further testing to redress the shortcomings in the BCI Cape Bridgewater report.
3. On 25th March 1995, two hours before Alan was to attend a Senate Estimates Committee Hearing in Parliament House, Canberra, Cliff Mathieson told Alan, in front of Frances Woods (AUSTEL), that Bell Canada (BCI) could not have carried out the tests they described in their Cape Bridgewater Addendum Report.

This AAT submission clearly shows that both past and present employees of the Government Regulator, AUSTEL (now ACMA) – supposedly an independent body, have concealed, from the public, their knowledge of the way Telstra, in defending Alan Smith's arbitration claims, relied on arbitration defence documents they knew were both flawed and deficient. The impracticable BCI Cape Bridgewater tests referred to above (and below) was only one of these flawed defence reports.

It is also obvious to anyone reading this submission that both past and present employees of AUSTEL (now ACMA) have also known that the arbitration process AUSTEL facilitated was not as transparent as the TIO and the Regulator told the claimants it would be.

Alan Smith has deliberately not included here evidence suggesting that, during Alan's arbitration, very senior AUSTEL executives allowed Telstra to downgrade their End-to-End Performance Parameter testing process (this is a different process to the BCI tests) so Telstra would meet their required licensing conditions. It seems that AUSTEL did not intend this to be part of any deliberate strategy to destroy Alan's case against Telstra, but it did create serious problems in relation to Alan's case because this senior AUSTEL executive didn't understand that downgrading the Telstra tests meant that Telstra had fewer reasons for upgrading the rural Customer Access Network (CAN) – the same Customer Access Network that AUSTEL's COT report had clearly stated had caused some of the problems being experienced by some of the COT claimants. Alan has never deliberately gone out of his way to destroy Telstra and/or Telstra's regulatory protector, so this kind of evidence has not been discussed in detail however, if the AAT was to call for this material, they would see how involved AUSTEL (now ACMA) has been in protecting Telstra and the Telstra rural network at the expense of people like Alan, Alan's partner, and Darren and Jenny Lewis – who purchased the business from Alan in 2001.

12th August 1994: Alan wrote to Dr Hughes, copying same to Paul Rumble (AS 89) Because the BCI report was to be used as arbitration library material, see (AS 88). Alan reminded Dr Hughes that Telstra had still not supplied Alan the relevant raw data to which BCI would have had to use to support their reporting.

15th August 1994: Alan again wrote to Dr Hughes, copying same to Paul Rumble. In this letter I ask Dr Hughes to convene a meeting so that the Resource Unit and the claimants can view technical documents which Telstra is withholding under legal profession privilege, stating: *"...I forwarded you a very interesting document last week*

which was tabled under this Professional Privilege Act. That document was of a network fault. That document has since been viewed by John Wryneck, Commonwealth Ombudsman, FOI as being illegal under the Act to be umbrellared in legal privilege documents". **(AS 90)**

16th August 1994: Dr Hughes writes to Paul Rumble *"...I enclose copy facsimile from George Close & Associates Pty Ltd, undated but received 12 August 1994. You will note Mr Close is seeking information to which he has apparently not yet had access. Presumably this may lead to a formal application by one or more of the Claimants pursuant to clause 7.5 of the "Fast-Track Arbitration Procedure."* **(AS 91)**

Dr Hughes again favours Telstra

16th August 1994: Another letter to Paul Rumble from Dr Hughes
"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." **(AS 92)**

The 17th February 1994 arbitration minutes, confirm that Mr Bartlett stated that because some of the COT Cases had still not received their FTSP documents was the reason for starting the arbitration as the arbitrator could order the production of documents. Dr Hughes stated: *"there were two ways to proceed in relation to the problem of outstanding documents:*

- ***the procedure is put on hold until all the documents are exchanged in accordance with the FOI procedure; or***
- ***the arbitration procedure commences and then the arbitrator gives appropriate directions for the production of documents.***

Dr Hughes indicated that one party can ask for documents once the arbitration has commenced:

- ***and that as arbitrator, he would not make a determination on incomplete information"*** **(54)**

Why did Dr Hughes break his commitment to the COT Cases?

Please note: attached are two examples of the type of technical material that was withheld from Alan under LPP. Settlement issues papers – Poor performance of Telecom – historical March data problem, local Portland problem fixed in October (593) Slow resolution by Telecom of past problems of Smith – both technical and claims (594). (Smith Grade of Service Complaint - Cape Bridgewater) see Minute from B Watson to M Ross, (LPP). (Smith Service Grade Complaint - Cape Bridgewater) see Minute from R Denmead to B Watson (LPP) **(AS 93)**

ATTENTION – ADNINISTRATIVE APPEALS TRIBUNAL

It might be of some benefit to AAT, if they were to investigate some of the technical information listed as Legal Professional Privilege see **(AS 93)**, as that previous withheld documentation is linked to the same type of technical information which Telstra would not supply AUSTEL during the preparation of the Alan Smith – draft Bruce Matthews 3rd March 1994, see *"Attachment Two."*

16th August 1994: Dr Hughes again writes to Mr Rumble stating: *"...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"*

At the time of writing this letter, Dr Hughes had already provided the BCI Report to the Resource Unit 24th May 1994 (see above), for their perusal. It is important to show Dr Hughes clarified in this letter by stating: *"...if Mr Smith does seek to rely upon the raw data or the results of any analysis of the data"* (that Alan's claim was NEVER complete), yet, he still brought down his findings on Alan's incomplete submission **(AS 95-b)**

25th August 1994: Telstra's Paul Rumble writes to Dr Hughes in regards to Hughes's letters of 16th August letter (see above) stating: *"...Mr Smith has requested "all raw data associated with the Bell Canada Testing. I have obtained files containing some test results and working documents belonging to Bell Canada International which they created while preparing their Reports, and subsequently left with Telecom. I have been informed by Bell Canada International that they have not retained any other files containing such documents. These files consist of approximately 700 pages plus six disks of data."* **(AS 95-c)**

28th August 1994: Alan again writes to Dr Hughes re FOI BCI matters. This letter acknowledges that Alan contacted Telstra's Mr Stockdale, *"as I wanted to identify which person in National Network Investigations was advising in writing the Telecom staff responsible for making decisions to exempt or delete information from me under the FOI procedures on the bases that the information contained in the documentation that he was supplying would be considered harmful to Telecom."* **(AS 94)**
"...I refer to my letter of 25th August 1994, concerning Mr Smith's request for "all raw data associated with the Bell Canada testing", and your reply later that day. Telecom has not received any direction from you to supply any of Bell Canada International documents to Mr Smith."

16th September 1994: Alan responds to Telstra's Interrogatories. This 42 page reply addressed to Dr Hughes on pages 15 and 16 questions Telstra as to how can Alan respond to the BCI information requested as per the interrogatories and I quote from Alan's answer to Telstra's question 14: *"...28th October 1992 produce this raw data to the resource team and I shall prove calls came in as answered but they were not answered. Go on, prove I am wrong. If I am right, then you produce all raw data that I have asked for, including Bell Canada, if I am wrong then let the Assessor decide and make a judgement for 1992.*
Another Telstra question at point 2, could have been better answered on the BCI matter had Alan received the BCI Raw Data under FOI and or through Dr Hughes. **(AS 97)**

18th September 1994: Alan's letter to Mr Wynack Commonwealth Ombudsman's Office re BCI FOI documents. Again Alan has dammed Telstra for the way in which they have not abided by the FOI Act, or the spirit of the arbitration agreement. This letter was copied to Dr Hughes, Paul Rumble his and Warwick Smith. **(AS 98)**

Please note: In the entire arbitration process from 21st April 1994, to 11th May 1995, Alan never received one letter from either Dr Hughes or Warwick Smith, advising him they were concerned Telstra would not provide him the relevant FOI documents he needed to support his claim.

21st September 1994: Dr Hughes to Paul Rumble **(AS 99)**

"...I confirm I have not directed the production by Telecom of any Bell Canada International documents. At this stage I would be encouraging Mr Smith to defer any request for discovery until Telecom's defence documents have been submitted."
Didn't Dr Hughes think that Alan was entitled (as the claimant) to be provided the correct information so that he could correctly support his reply to Telstra's interrogatories and to further support his claim?

VERIFICATION TESTING PROBLEMS

29th September 1994

Peter Gamble, Telstra's arbitration engineer experiences problems getting Verification Testing equipment to work correctly at Cape Bridgewater and then blames Alan's telephones, saying that the problems were being caused because the phone in the camp kiosk had been left connected to the phone line. This phone was connected on to the office so that staff could answer it if they were in the kitchen, or the office, which was about 100 metres away. Cathy Ezard (Alan's partner) and Alan disagreed: they were sure they had disconnected the phone themselves immediately after the Telstra technicians arrived on site. They both later prepared and signed Statutory Declarations confirming their belief that Mr Gamble was wrong and that it had seemed that there were problems with the Verification equipment. These documents were both forwarded to Dr Hughes.

Documents received (2001) under FOI from the ACA

Two documents are particularly relevant to the Verification Testing problems.

11th October 1994

AUSTEL wrote to Peter Gamble regarding the 'deficient' verification testing and asked what Telstra intended to do about this deficiency see below **(AS 123)**.

16th November 1994

AUSTEL wrote to Steve Black of Telstra under the heading *"Service Verification Test Issues"*, outlining their concerns regarding the deficiencies in this testing process as it was conducted at Cape Bridgewater, with particularly emphasis on the simulated 008/1800 calls see below **(AS 124)**.

Even though AUSTEL expressed serious concerns about obvious deficiencies in this Verification testing process, Telstra still used the test result to support their arbitration defence. Telstra's CCAS data for the actual day the testing took place at Alan's premises 29th September 1994, confirms that none of the separate tests on his three business lines had met the regulators requirements.

In Alan Smith's most recent letter dated 11th June 2008, to Mr Tony Lyons, Case Service Manager, AAT which he copied to Mr Chris Chapman, ACMA Chairman Alan raised these same deficient Cape Bridgewater SVT (tests) notong: *"...My attached letter to Ms Jermey highlights conflicting statements in two of AUSTEL's COT quarterly reports, one dated 9th November 1994 and the other dated 2nd February 1995. Both these reports were provided to the then-Minister for Communications, Minister Lee MP, and also released into the public domain. Evidence I have already provided to Mr Chris Chapman, ACMA Chairman and Ms Jermey,* (ACMA Senior Lawyer) *and the previous Telecommunication Industry Ombudsman, John Pinnock, proves that AUSTEL would have known that the information in their February 1995 quarterly report was false and misleading.*

The arbitrator accepted Telstra's sworn statements that the SVT process at my business was successful, even though I had complained about the testing process but who would question AUSTEL's official report to a Federal Government Minister? Which would the arbitrator, the administrator and the arbitration technical consultants be more likely to believe, Telstra's (sworn SVT defence statements) the Government regulator or the claimant?"

In this same letter, dated 11th June 2008, Alan also noted: *"...The attached technical report entitled Cape Bridgewater Holiday Camp, dated 27th July 2007, author Brian Hodge B Tech; MBE (B.C. Telecommunications), confirm that both the Bell Canada International Inc, Cape Bridgewater (Addendum) report and Telstra's Cape Bridgewater Holiday Camp, Service Verification (tests) were flawed. The reviewed documentation as shown therein, will be supplied on request."*

PLEASE NOTE: at the time of preparing this chronology, 16th July 2008, Alan had atill not received a request from AAT or ACMA, to be provided the reviewed technical information used by Mr Brian Hodge, when compiling his report, which Alan kindly offered to send.

SERVICE VERIFICATION TESTS - BILLING

Telstra's own billing records, including documentation given to Telstra by John Wynack of the Commonwealth Ombudsman's Office, show that Telstra continued to incorrectly charge Alan on 008/1800 line well past his arbitration. Finally, as a direct result of this faulty charging, Alan asked Telstra to disconnect this service. One would have thought that with all continuing complaints about the bill faults that were still apparent in Alan's arbitration, this would have prompted John Rundell of Ferrier Hodgson Corporate Advisory to re-assess the merit of the Verification Testing process because of these complaints. Instead FHCA blamed the limited time frame allowed in the arbitration agreement for the technical resource unit to investigate technical issues like the billing faults to investigate these issues.

Mr Rundell wrote to the TIO John Pinnock, 15th November 1995, alleging Alan only raised the billing faults in April 1995 **(AS 104)**. The attached 4 transcript pages, 91 to 94 from the oral arbitration hearing on 11th October 1994, which John Rundell, attended confirm Alan discussed the billing problems then which had been attached to his letter of claim dated15th June 1994. What ever made Mr Rundell lie about the dates to when Alan raised the billing problems? **(AS 105)**

If Telstra had been pro-active and honest in their dealings with the arbitration, and had advised Dr Hughes that AUSTEL had alerted their arbitration liaison officers to deficiencies with the Verification Testing at Cape Bridgewater (and advised that the testing should be repeated) then, once the tests had been repeated, it would have been obvious, either to Telstra or the technical resource unit that major faults were still occurring on the 008/1800 service, the Gold Phone service and the facsimile line also. This would have meant that the arbitration would have had to be halted immediately because the arbitrator could hardly have handed down his award when the phone faults, which sent Alan into arbitration in the first place, had still not been fixed.

2nd October 1994, Alan complained to Ted Benjamin about the deficient SV tests conducted at his premises. On 6th October 1994, Telstra wrote to Dr Hughes 1994, asking him to order Alan to comply with their interrogatories and *"... direct the claimant to provide Telecom, on or before 20th October 1994, with the particulars set out in Schedule 1*

of this letter, and the documents set out in Schedule 2 of this letter", but some of the documents they were seeking could only be supplied by Telstra themselves, under one of the many FOI requests which they had not yet complied with. **(AS 106)**

Letters exchanged between Dr Hughes and Telstra on 15th and 21st July, and 16th August 1994, together with two letters on 25th August 1994 (making five letters in all) clearly show that Dr Hughes was well aware that Telstra had admitted that some of the information Alan was seeking was stored in their archives. Why didn't Dr Hughes order Telstra to produce these documents so Alan could complete his claim? Why was Dr Hughes not concerned about the copied 2nd October, 1994 letter damming the SVT process? Nothing was adding up regarding who was protecting Alan's rights?

How could Alan properly reply to Telstra's interrogatories and complete the final presentation of his claim, when the arbitrator had not accessed the information which Alan required to complete these jobs (as he had promised to on 17th February 1994)?

By this time, (the end of August 1994), Alan was beginning to rethink his commitment to Paul Rumble that he would not pass information on to the AFP was associated with the non-supply of documents from Telstra raising many questions:

- What was really behind Telstra's reluctance to supply the documents Alan needed and was this anything to do with his previous contact with the AFP?
- When Telstra had advised the arbitrator that at least some of the documents Alan wanted were held in their archives, why didn't the arbitrator order Telstra to pass them on to Alan?
- How did Telstra know, on 7th April 1994, that Alan would be away from his business on the following 5th of August to the 8th August 1994?
- Why was Telstra live monitoring Alan's business during the arbitration process?
- Was Telstra involved in the disappearance of Alan's booking and banking records?

The transcript of a second interview with the AFP, on 26th September 1994, confirmed that Telstra records (then held by the AFP) proved that Telstra had indeed been bugging Alan's phones. Was Telstra now trying to 'get back at Alan' because Alan dobbed in Paul Rumble?

3rd October 1994,

As Alan has noted earlier, during the AUSTEL COT Report period in April 1994, Cliff Mathieson, a technical advisor to AUSTEL, asked him to keep AUSTEL informed of any evidence that Alan found during his arbitration, which might assist AUSTEL in their investigations into 008/1800 billing and short-duration call problems. In fact, AUSTEL actually wrote to Telstra's Steve Black on 10th June 1994 see above, on Alan's behalf, expressing concern at the problems he was then experiencing with sending and receiving faxes. Because of AUSTEL's request that Alan keep them up to date, he wrote to them on 3rd October 1994, providing evidence, using Telstra's own data, which showed that they had charged Alan for two non-connected recorded voice faults (RVA) on 27th May 1994. Alan's evidence was supported by the fact that the person who complained about these two faults was his arbitration claim advisor, Gary Ellicot, ex National Crime Detective, and he was not a man to stretch the truth in any way.

This letter to AUSTEL on 3rd October 1994 later became pivotal to Alan's increasing anger, particularly when he then received the following information from Dr Hughes in a letter dated 15th November 1994 **(AS 118)**:

"As I have indicated previously, I believe it would be inappropriate for me to order the production of documents in connection with the preparation of your claim, until Telecom has submitted it defence. I will then understand the parameters of the claim."

Alan's frustration is clear from his response dated 27th November 1994, part of which is reproduced here **(AS 119)**:

"I refer to your letter dated 15 November, 1994.

In paragraph three you have noted that, if newly released F.O.I. material is made available by Telecom, and if that makes it necessary for me to amend my claim, I should advise you accordingly.

I have continually corresponded with both yourself and Telecom about my concerns with regard to the conduct of Telecom Management; Simon Chalmers; Freehill, Hollingdale & Page and their delaying tactics. Their drip feeding procedure, where the release of these F.O.I. documents is some twelve months late, has disadvantaged me in the preparation of my submission under the Fast Track Arbitration Procedure.

Newly released documents on their own may only show limited evidence, painting a small picture. However, had this newly released F.O.I. material been released some twelve months ago, as it should have been under the F.O.I. Act, this material, when combined with documents already released, would have helped in many instances to further the point made on certain issues.

Telecom Management, by using this destructive system, has disadvantaged C.O.T. and its members throughout this Arbitration Procedure. By not allowing all the evidence to be viewed by C.O.T., Telecom has stopped us from substantiating all our claims with all the available material. "A Jigsaw Puzzle Can Only Be Finished When All The Pieces Are Tabled": and didn't Telecom Management play this to a break!"

And, later in the same letter:

"So, in response to your letter of 15th November, 1994: How can I amend my claim? Telecom have already had five months to view my first submission as presented in June, 1994, and three months to view my second submission presented in August, 1994. I am already living on borrowed time, in more ways than one, and each delayed week is having an effect, particularly where advertising for next year is concerned - this has already been disadvantaged."

Finally, at the end of the third page, I noted:

"I do not have the resources to have a professional team view these additional F.O.I. documents which have just been released by Telecom. I have spent time writing reference to these examples and enough is enough. All future F.O.I. that has not been provided will

have to stay put. I am today mentally exhausted and unable to continue taking part in Telecom's façade, their Merry Go Round.

I thank you for your time, and that of the Resource Team."

This letter was sent the following day, 28th November and that evening, totally overcome with anger and frustration, Alan smashed a single barrel shotgun that had been given to him by his father-in-law, Noel Wagner, some sixteen or seventeen years earlier.

LODGEMENT OF ARBITRATION CLAIM

October 1994, and Alan was still submitting claim material to be assessed

The first part of Alan's claim was lodged with Dr Hughes on 15th June 1994. Paul Rumble, of Telstra's Customer Response Unit and Graham Schorer, COT spokesperson, were also at that meeting. At the time, Alan made it very clear to Dr Hughes & Mr Rumble that:

1. The FOI documents Telstra had supplied had not been numbered so we had numbered them ourselves, from 1 to 2158.
2. It had been extremely difficult to submit a complete claim when Telstra had provided so much documentation without schedules and heavily censored.
3. Because of these problems I would therefore be submitting further documents to support my submitted claim, and
4. George Close, my technical advisor, had not yet received the relevant technical data we had requested under FOI and so his report would be somewhat delayed.

The claim documents Alan submitted were:

Numbers 1 to 200:

201 to 400:

401 to 600:

601 to 800:

801 to 1,000:

1,001 to 1,289 and

2,001 to 2,158.

The Arbitration Agreement states quite clearly that the arbitrator should pass the claim on to Telstra WHEN THE CLAIM IS COMPLETE, and allow Telstra one month to complete their defence. George Close was not able to submit his report until late in August 1994, but a letter from Dr Hughes to Mr Rumble on 22nd June shows that Dr Hughes had sent Alan's interim claim on to Telstra on 15th June. Since Alan's claim was not complete until George's report was submitted, this meant that Dr Hughes was arranging for Telstra to have at least two months, from first receiving Alan's interim claim, to present their defence. As it happened, Telstra did not submit their defence until 12th December 1994, almost six months after receiving Alan's interim claim. How much more one-sided can a process be?

This 13 page document dated 30th March 1995, to Warwick Smith from FHCA is submitted in full in the CAV Peter Bartlett Target. The two relevant pages attached here confirm FHCA noted that Alan'as claim was not complete until November 1994 **(AS 103)**

What this FHCA letter doesn't say is that due to Telstra withholding FOI documents from Alan, Alan was still (drip feeding claim material) to Dr Hughes, but was never assessed or even saw the light day.

It is most important for the reader, to understand that the 1994 and 1995 FOI issues are linked to the very FOI matters presently under review by ATT.

10th October 1994, Alan again complains to Telstra regarding the SVT tests
Like his letter of the 2nd October 1994, **(AS 106)** this SVT complaint was also copied to Dr Hughes and Warwick Smith. And it likewise received no response **(AS 107)**

Alan's one sided Oral Hearing

11th October 1994, Back to the Oral Hearing with Telstra see also document (AS 101)
When Alan was unable to comply with Telstra's interrogatories, Telstra asked the arbitrator to convene an oral hearing, which he did. Dr Hughes advised Alan that he should attend this hearing alone since Telstra's lawyers wouldn't be involved but, as the transcript of this gruelling, five-hour, non-stop examination (FTAP rules prohibited cross-examination) shows, Telstra were actually represented by two officers who had some sought of legal expertise: Steve Black and Ted Benjamin.

The transcript of this hearing also shows that Dr Hughes accepted Alan's claim material as factual and entered it into evidence. Claim document SM18 was highlighted at this hearing and discussed at great length. Other evidence inadvertently provided by Dr Hughes's secretary (in August 1995) confirms that documents (SM 18 & SM 19) do not appear on the list of documents that appear in the DMR and Lanes report as being assessed by the arbitration process see DMR & Lanes report.

When we compare Alan's summary at exhibit **(AS 322-A to F)** with exhibit **(AS 108)** attached here it shows first hand 'pages upon pages' of a comprehensive log of Alan's complaints that he provided to the arbitrator during his arbitration. On page 2 in the DMR & Lanes report see exhibit **(AS 322-C)** DMR & Lane state: *"...A comprehensive log of Mr Smith's complaints does not appear to exist."* Of course it exists – if exhibit **(AS 322-C)** isn't a comprehensive log of complaints, then what is a comprehensive log of complaints? Each of the listed numbers in the far right column of this log was the number of not only the claim document but gave a brief description of the actual document itself. How much more comprehensive could the first ten pages of this twelve page document be?

Also included in the transcript pages 37 to 41 **(AS 106)** was Dr Hughes's clear direction that, if Alan wanted him to address the phone bugging issues in his claim Alan had to be aware that Telstra had the right to order him to provide relevant information to support the claim. Twice in this transcript Alan confirmed that he wanted the phone bugging and privacy issues to remain in his claim, regardless. Steve Black's letter to Warwick Smith, dated 17th October 1994, regarding the voice bugging issues states: *"...Mr Smith has also raised Telecom's fault investigation procedures (including voice monitoring) as an issue in his claim which is under arbitration. Telecom is currently in the process of responding to that claim under the agreed arbitration procedure"* **(AS 109)**

Please note: Neither, Telstra (in their defence) or Dr Hughes (in his Award) addressed the phone bugging claim issues even though the Arbitration Agreement clause 11. states: *"...The Arbitrator's reasons will be set out in full in writing and referred to in the Arbitrator's award"* **(AS 110)**

On 27th October and again on 3rd of November 1994, **(AS 111 and AS 112)** Alan wrote to Telstra seeking relevant CCS7 and CCAS Bell Canada International data. Some of this data had been included in the documents that were supposedly held in Telstra's archives and which Telstra had previously advised the arbitrator was ready for release **(AS 96 and AS 99)**

The transcript clearly discussed Alan's claim document ('Smith 18'). It is clear that the arbitrator and Alan spoke at great length about this billing document **(AS 101)** A Telstra FOI document, which was included in 'Smith 18', and numbered as C17, shows that the call Heidi made to Alan's 008/1800 line lasted for only six seconds. **(AS 83)** If Alan had answered in his usual way he would have said 'Hello, Cape Bridgewater Holiday Camp, how may I help you?' Surely Heidi would then have said something like 'It looks like there's nothing wrong with your line after all.' This would have taken considerably more time than six seconds. Heidi's version of events just doesn't add up.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

The following Commonwealth Ombudsman FOI issues discussed below is most relevant to the AAT review, as it appears that some of the material that was not supplied by Telstra during Alan's arbitration is linked to the same type of technical information in which Telstra withheld from AUSTEL, during their invesrigations into Alan's continuing service complaints see *'Attachment Two'*.

The Commonwealth Ombudsman's enquiry into Telstra's defective supply of FOI documents during Alan's arbitration found in his favour. One particular issue that was never addressed successfully in the arbitration is referred in the Commonwealth Ombudsman's findings as follows:

3.3.1 *Telstra states a video of the Heidi incident was produced by Mr Smith and a letter from Mr Smith to Dr Hughes dated 21st June 1994.*

3.3.2 *There exists a file note by Heidi in early July 1994 which records her recollection of her phone conversation with Mr Smith. The file note was prepared by Heidi at the request of Telstra's solicitors, as part of the preparation of Telstra's defence. It is titled "Report on phone call from Alan Smith" and appears to be the report referred to in document New 000199; as such, it does not fall within the scope of any of Mr Smith's FOI requests.*

3.3.3 *Accordingly, Telstra denies that it has acted unreasonably in failing to provide this file note to Mr Smith.*

This Commonwealth Ombudsman's report was produced around February or March 1997.

So, not only did Dr Hughes accept Alan's video and supporting information as evidence in support of this claim (refer his letter to Mr Rumble on 20th July 1994) **(AS 102)** but Telstra also states that their solicitors included the Heidi report to be used in their arbitration defence see point 3.3.2 above. Why was this Heidi report not provided to Alan under FOI? Why did DMR & Lanes not investigate this issue? Did the Heidi incident, in 1994, relate in any way to the single ladies who reported leaving messages on Alan's answering machine with a female voice in June 1993?

Telstra Minimise their liability

13th October 1994: This AUSTEL FOI document folio 94/0269-05 (22) is a letter originally sent by a Telstra whistleblower (name deleted) to Parliament House Canberra, ACT 2600, and was received by the Office of the Hon Michael Lee, MP Minister for Communications. This letter makes allegations against Steve Black and Rod Pollock, as the two Telstra executives who were involved in altering and removing information on documents requested by the COT claimants under FOI.

Please note: someone has added a hand-written comment on page one, pointing to Rod Pollock's name and noting: *"Warwick Smith has been critical of Pollock on same issue."* It should be noted that Alan has already provided documentation confirming that on the 16th May 1994, he left irrefutable evidence with Sue Harlow (Deputy TIO) for her to pass on to Warwick Smith, together with his statutory declaration showing that he had also named Rod Pollock, as one of the Telstra employee's who had removed information on requested documents and/or had not provided the correct documentation that should have accompanied existing received FOI documents. Alan is of the opinion that his evidence prompted the hand-written note.

Comment:

Warwick Smith must have told someone – either in the Government, or in a regulatory position – that Rod Pollock had been named by two different sources.

In this 13th letter under the heading *"Concerns and issues"*, this document states: *"1. Mr Steven Black, Group General Manager of Customer Affairs, who has the charter to work to address and compensate Telecom's "COT" customers as well as the management of other customer issues related to Telecom, is involved in and initiates conduct and work practices that are totally unethical. 2. There are three main areas which Steve Black has sought to cover up the true facts of disclosure of customer information. Particularly he has sought to cover up 'broadcasting' of the customer's private information."*

- *Remove or change clear information on the position of liability*
- *Diminish the level of compensation payable to COT customers*
- *Dismissive of breaches in relation to matters regarding customer privacy."*

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

PLEASE NOTE: the letter of 13th October 1994, referred to above is already attached to ACMA's ***Exhibit 15*** – **The Respondents Section 37 Document [No 1836 of 2008]** As a Government funded agency AAT should be concerned that a fellow Government funded agency allowed Telstra to alter and/or remove information on legal requested FOI documents. Alan Smith would like to think that AAT will take this particular alteration and removal of infroamtion on FOI documents into consideration when assessing their review. Alan has already commented that it appears as though ACMA has already selectively has been able to locate various requested documents sought under previous FOI requests.

In Alan Smith's arbitration claim (including during the period when this 13th October letter was wriiten), Alan raised the issue of his phone being illegally tapped on 15th June 1994, in his letter of claim; in his response to Telstra's interrogatories on 16th September 1994; and during his oral arbitration hearing on 11th October 1994. Since Alan's phone tapping issues were never addressed in his arbitration including the removal of information on requested FOI documents, without

alerting the claimants, we must then ask if Dr Hughes ever intended to address any of these unlawful acts as arbitrator. While it has already been established above on 12th April 1994, that Dr Hughes instigated the secret alterations and the removal of clauses 25 and 26, of Alan's already agreed and accepted arbitration agreement. Could Dr Hughes'involvement in his own alteration scheme, have persuaded him to keep quite on Telstra's removal of information scheme in their camp.

11th November 1994, confirmation Alan had not received all his relevant requested FOI material. John Wynack, Director of Investigations at the Commonwealth Ombudsman's Office, wrote to Frank Blount, Telstra's CEO. This letter was copied on to Dr Hughes and Warwick Smith – it indicates how desperate Alan was becoming. Alan believes that Mr Wynack made it quite clear to Mr Blount that he would be more than a little concerned if

Alan's allegations were proved to be correct in regard to Telstra knowingly blanking out information on documents previously supplied under FOI; and/or knowingly withholding relevant documents from Alan. Mr Wynack's concerns have been shown to be justified: **(AS 114)**

In Dr Hughes' draft award on page 4 at 2.23 he states: *"...Although the time taken for completion of the arbitration may have been longer than initially anticipated, I hold neither party and no person responsible. Indeed, I consider the matter has proceeded expeditiously in all the circumstances. Both parties have co-operated fully"* **(AS 115)**.

What is amazing about this draft award inadvertently provided by the TIO office 2001, is that at the side column of this clause someone has hand-written the notation *"...**Do we really want to say this?"*** One would have to assume from this hand-written statement that they believed the arbitration process had not been as transparent as it should have. In the final Award there is no clause 2.23 or any reference to both wordings. What can be confirmed by comparing both the draft and final Awards is that the technical findings prepared in both are one of the same. However, it is evident from a date discussed in the draft it confirms the technical findings was prepared before the TIO appointed DMR Canada as the technical consultant.

Telstra has now admitted to Mr Pinnock, 7th September, 1995 that they withheld at least 40% of the documents Alan had requested during his arbitration, until after Dr Hughes had deliberated on his claim **(AS 116)**

What is significant about the FOI issues so far raised in this chronology including attachments **(AS 114 to AS 116)**, is that Dr Hughes did know Telstra was not abiding by the FOI Act, including not abiding to the agreed process of discovery. It is important to mention here that on page 4, of John Pinnock's report to the Senate dated 26th September 1997, he states: *"...In the process leading up to the development of the Arbitration procedures the Claimants were told that documents would be made available under the Freedom of Information Act"* **(AS 117)**.

Dr Hughes plays Arbitrator

21st November 1994: After sending his letter of 15th November but before Alan's reply had been drafted, Dr Hughes wrote to Alan again, with the following statement: **(AS 120)**

"If I form the view, or if the Resource Unit forms the view, that there are relevant documents in the possession of either party which have been deliberately or inadvertently withheld, I shall make an appropriate order for production."

Four letters that FHCA have admitted to withholding from Alan during his arbitration

1. **4th October 1994:** AUSTEL's Bruce Matthews wrote to Steve Black asking questions of Mr Black, regarding the discrepancies in Alan's 008 service line and (the on average) 11% incorrect charging on his facsimile 267230 line. **(AS 126).**

2. **11th November 1994**, Ted Benjamin responds to Bruce Matthews' letter noting: *"...Each of the questions put by you in your letter 4 October 1994 will be answered as part of Telecom's defence to Mr Smith's claims lodged under the Fast Track Arbitration Procedure."* **(AS 127)**

3. **1st December 1994**, Bruce Matthews to Ted Benjamin re A Smith 008 faults: "I note that your letter states that "Each of the questions put by you in your letter of 4 October 1994, will be addressed as part of Telecom's to Mr Smith's claim lodged under the Fast Track Arbitration Procedure". **(AS 128)**

4. **16th December 1994**: Ted Benjamin to Dr Hughes re FTAP – Smith: Accompanying this letter Mr Benjamin attaches the aforementioned letters shown above **(AS 126, AS 127,** and **AS 128)**. In this letter Mr Benjamin states: *"The question has also been raised of whether discussions between yourself and Austel on the content of the claim and defence in Mr Smith's arbitration might itself breach the confidentiality rules of the Fast Track Arbitration Procedure. The simplest way forward may be for Mr Smith and Telecom and yourself to all confirm in writing that this information can be provided to AUSTEL if this meets with your approval."* **(AS 129)**

None of these aforementioned letters were provided to Alan during his arbitration.

Clause 6 of the Arbitration Agreement states: *"...A copy of all documents and correspondence forwarded by a party to the Arbitrator shall be forwarded by the Arbitrator to the Special Counsel and the other party"* (AS 130).

Please note: Sue Hodgkinson FHCA, wrote to Dr Hughes, (FIFTEEN MONTHS) after Alan's arbitration 2nd August 1996, admitting to withholding the above aforementioned letters. This segment is addressed in more detail below.

TELSTRA'S FLAWED DEFENCE DOCUMENT B004

B004 and faults continuing

Page 26 (index)

"On 23rd June 1994, Smith reported he received a call from Canberra. A minute after hanging up his phone her received one burst of ring. Few mins later Schorer rang from 287 7099. Said he had just called & received busy tone. Smith believes his phone takes up to 90 secs to release.

"On 23rd 1994, Smith reported that his 008 number service had long post dialling delays and the phone would give 1-2 bursts of ring after he finished a call. **(AS 122 - H)**

Page 50

"On 19th August 1994, Smith reported that the Australian Federal Police had been trying to call him from Canberra via his 008 number and got busy for 1 hour at approximately 11.10 am" **(AS 122 - B)**

These three examples show very clearly that Telstra are defending faults which Alan registered AFTER he had submitted his letter of claim. How much clearer can it be that the faults had not been fixed and that the arbitration set up by AUSTEL to fix the phone problems and compensate the claimants had certainly failed, in Alan's case at least? After all, how could the arbitrator arrive at an accurate compensation figure when it was painfully obvious that the faults were going to continue occurring, after he had finished his Award?

IMPORTANT

Please note: the statement made by Telstra on 23rd June 1994 see exhibit **(AS 122 - H)** regarding a post dialling complaint which Alan had just registered regarding continuing problems he had been experiencing with his 008/1800 service since 1993. The following exhibits attached here as **(AS 122 - C)** **(AS 122 – D)** and **AS 122 - E)** are three Telstra FOI documents that confirm Telstra was aware in October and November 1993, that this post dialling delay 008/1800 fault was a national RVA problem, see also exhibits **(AS 35, AS 36,** and **AS 37).** Also attached here as exhibit **(AS 122 – F)** is a letter from AUSTEL to Telstra's Steve Black dated 27th January 1994, alerting him to the same type of 008 short duration calls Alan's customers are complaining about, citing a statutory declaration provided to AUSTEL by Ms Tina Velthuyzen, declaring having heard repeatedly a recorded message when ringing my 008 number *that the number you are calling is not connected,* see Ms Velthuyzen's sworn testament attached to exhibit **(AS 39).** Enclosed here in exhibit **(AS 122 - G)** is a Telstra internal letter dated 25 November 1993, (Subject – Short Duration Calls- Mr A Smith). This letter states: *"... The following is an assessment of the individual disputes highlighted by Mr Smith. From the information given, little more can be offered for explanation than "This is not the way it should work, we need to investigate to find the cause."*

Its interesting to note When Frank Blount, Telstra's CEO left Telstra in 1996 he co-published a manuscript entitled, Managing in Australia. On pages 132 and 133 from this manuscript the problems that Telstra was hiding from their 1800 customers, is exposed when the author cites:

{p132}: a young woman arrived in his office whom Blount learned was a bright MBA graduate with responsibility for the 1-800 product. Again, Blount recalls the conversation:

"...Blount: I want to talk about the 1-800 service.' Staff: Yes sir' Blount: There are some issues that have arisen on the product management side, specifically maintenance of the product, fixing some problems with it how it is billed.' Staff: 'I know the typeof things you are talking about sir, because we studied product *management in school, but strictly speaking, my job was to launch the product. I have no way of knowing how it performs once it has been launched.'*

Blount was shocked, but his anxiety level continued to rise when he discovered this wasn't an isolated problem. {p133}: The picture that emerged made it crystal clear that performance was sub-standard **(AS 122–i)**

And here Alan was in 1994/95, in a legal nightmare with the arbitration procedure having already costs him in excess of a $180,000 dollars (just to prepare his claim), and here was Telstra, Australia's largest Corporation hiding their knowledge from the arbitrator their awareness of this 1-800 problem.

Telstra's B004 flawed defence documents

Peter Gamble's Witness Statement at point 38 see (AS 122 – H), "...The service passed all of the Customer Specific Line Tests and the two Public Network Call Delivery Tests that were carried out.

The two above letters shown in exhibit (AS 106 and AS 107) confirm this arbitration statement covered by a statutory declaration is so far from the truth it is almost laughable (if it weren't so serious). Both Cathy and Alan will again swear on oath that they gave one of the three technicians so many documents confirming the problems that had not been fixed that the young lad was aghast and Peter Gamble, the chief engineer in charge, pulled the lad away in embarrassment. Alan has already referred above to the problems Peter Gamble had with tying to get the Verification testing equipment to function and Alan's concern is that, if Telstra had re-tested his phone lines correctly, they would have discovered that the faults had not been fixed at all. As already reported, Telstra later knowingly used the results of this Verification Testing as defence documents, even though AUSTEL had advised them that the tests were deficient see immediately below (AS 123 and AS 124).

B004 and flawed defence documents continued

Telstra's 12th December 1994, defence included numerous inaccuracies and misleading witness statements. The flawed defence documents have been discussed throughout this chronology but it first important to refer to a letter from Telstra to Dr Hughes on 23rd December 1994, which includes the statement: *"The purpose of this letter is to update you on the status of a voluntary review that Telecom had conducted of exemptions applied to documents referrable to requests made by the above persons for access under the Freedom of Information Act."* (The names referred to were Smith, Garms and Gillen). This shows that, eleven days after Telstra submitted their defence they had still not provided Alan with the documents he needed. This meant that Telstra therefore only had to defend part of the clam Alan should have been able to submit if they had abided by the FOI Act.

20th December 1994: Telstra's letter to Alan entitled FOI – Internal Review notes: *"...I refer to Telecom's letter to you dated 16 December 1994 which was delivered with a box of documents being specific to your telephone service."* Why did Telstra wait until after they had submitted their defence before they provided this FOI information?
Please note: during the period between 4th October to 16th December 1994, Telstra and AUSTEL were generating enough letters between them (copied to Dr Hughes) that would convince the devil himself, that there were 'forces at work' intent on stopping Telstra and Dr Hughes, from addressing Alan's billing claim documents. (AS 125)

23rd December 1994: Questions raised regarding Ian Joblins Witness Statement:
Ian Joblin was a Clinical Psychologist appointed by Telstra to ascertain the state of mind of the COT claimants. Before he interviewed Alan, Telstra supplied him with at least one copy of the Cape Bridgewater Addendum BCI report which they knew was flawed, but which supported their case. As noted under the 'Bell Canada report' heading (above), Telstra wrote to Bell Canada about problems with this report. If Alan had seen a copy of Telstra's letter to Bell Canada he would not only have had grounds to challenge the report

itself, because of the numerous faults it included, but he could also have challenged the arbitration, and the Ian Joblin Witness Statement.

In a letter dated 23rd December 1994, Telstra notified Dr Hughes that they had supplied Mr Joblin with only one document, "1AJ-I", before he assessed the state of Alan's mental health but, according to Mr Joblin's Witness Statement, he received another document "IAJ-2" as well (In this same letter Telstra write: *"I note that the copy in Telecom's set of defence documents is signed and complete and cannot understand how an unsigned copy went to you"* **(AS 144)**

Question:
Why didn't the arbitrator and/or Administrator correctly investigate the illegal act of a witness statement be sent out during an arbitration process which was only signed by Telstra's solicitor and not Ian Joblin, the witness?

FOI Documents withheld until after Telstra submitted their defence

24th December 1994: Alan received three Telstra FOI document C04006, C04007 and C04008, after Telstra submitted their arbitration defence, confirming Telstra was aware of these previous problems **(AS 5)**. Even though Alan attached these documents to his reply to Telstra's, it appears they were not provided to the TIO-appointed technical consultants DMR & Lane.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

Alan Smith is prepared to meet with ACMA's Bruce Matthews as part of this AAT review process because it was Mr Matthews (see *Attachment Two*) who knew, before Alan signed the altered FTAP agreement, that Telstra's reluctance to provide documents to either AUSTEL or Alan led to Mr Matthews' draft 'Alan Smith' report being incomplete when it was given to the Chairman, Robin Davey. If Mr Matthews and Mr Davey had then insisted that the regulator had not been able to force Telstra to comply with the FOI requests lodged by AUSTEL and Alan, and explained how this non-supply of documents would affect further COT arbitrations by interfering with the preparation of other COT claims, then the matters now before the AAT would not have surfaced. One can only imagine what Mr Matthews may have included in his draft report if Telstra had actually provided him with documents C04006, C04007 and C04008.

It is important to recap (below) one of the most devastating problems created for Alan and his then-partner, Karen Gladman, when Telstra withheld this type of information from Alan and Karen during their initial settlement process.

Not long after Karen moved in, however, it became patently obvious that the phone problems had not been fixed by the installation of the new exchange: they were still being told by people who couldn't get through to them on the phone that either the line rang out (as if they weren't there, and there was no answering machine connected), or they constantly got an engaged signal. Even worse, many clients and friends reported reaching a recorded message stating that the phone line was not connected. Telstra FOI document C04006, which Alan received on 24th December 1994, acknowledged that Recorded Voice Announcements (RVA) was often heard if the lines into Cape Bridgewater were congested. Why then was Karen and Alan told this was NOT a problem?

Not long after Alan became aware, again, that the phone problems had not been fixed, Karen and Alan began to argue but, in an attempt to keep the relationship together and battle on, they came up with the bright idea of contacting various over-forties singles clubs, by mail and personal visits,

and attempt to entice them to visit Cape Bridgewater over weekends for social gatherings with other, similar clubs.

Alan personally visited clubs such as the *Australian Singles Centre* in Burwood Road, Hartwell; *Phoenix Singles* in Burwood Road, Camberwell; *Frenze in Deed* in Albert Road, Box Hill and *Capers* in the City of Knox, *Warrnambool Partners in Dining* etc. After each visit Alan heard from at least one, and sometimes three or four people, with stories about the numerous problems they had encountered in trying to secure a booking or make an enquiry of their business by telephone.

The RVA stating: *"The number you are calling is not connected"* was, in Alan's opinion, the most insidious and damaging of all the faults. In fact, Telstra's senior management even agreed with Alan on this one! Telstra FOI documents A03544 and C00757 confirm their concerns regarding the RVA fault. Document C00757 actually states that that the words of this RVA message have to be changed BECAUSE IT GIVES THE IMPRESSION THAT THE BUSINESS BEING CALLED HAS CEASED TRADING **(AS 6)**

The correspondence addressed above for the dates of 4th October and 11th November 1994, confirm the RVA faults were still being heard by callers to the Holiday Camp, as late at May 1994, one month into Alan's arbitration, and five years after Telstra acknowledged this was a major network fault.

28th December 1994: Alan faxed two letters to Dr Hughes asking for access to all CCS7 and CCAS data, including all the Bell Canada working notes covering tests at Cape Bridgewater on 5th, 8th and 9th November 1993, because he was concerned that Telstra had misled the arbitration process with this report. Alan concluded this letter by saying:

"This information sought by the Cape Bridgewater Holiday Camp is vital to assess Telecom's defence of their network during the Bell Canada testing period." **(AS 131)**

28th December 1994: Dr Hughes faxes Alan's letters to Ted Benjamin noting: *"...As you are aware, I have the power under clause 7.6 of the Fast-Track Arbitration Procedure to order the production of documentation."* At no time during Alan's arbitration did Dr Hughes execute this power. **(AS 132)**

Late delivery of FOI documents

On 6th January 1995: Alan again wrote to Dr Hughes asking him to access from Telstra numerous documentation so Alan could respond to their defence also stating *"...to substantiate incorrect details as presented in Telecom's Defence Documents."* Alan did not receive a reply because, as he discovered later, on 12th January, Dr Hughes was away on holiday for a further week and there was no-one in his office who could help Alan regarding an extension of time to submit his reply to Telstra's defence.. Alan also stated in the 'post script'
"...I am now disadvantaged even further. It is the 6th January 1995, and still my own Resource Team have not been provided with Telecom's defence on disk." **(AS 133)**

Alan had only one month after Telstra's submission of their defence, on 12th December, to prepare and lodge his reply and, of course, this was the busiest time of the year for Alan's business. To make the situation even worse (if that was possible), Telstra released 24,000 FOI documents which arrived on 24th December. Was this time-line pre-planned to cause

him the most possible trouble in preparing his reply? Did Telstra plan to dump all these documents on Alan at my busiest time AND while the arbitrator was away on holidays? Did Telstra use the two week Christmas (legal fraternity shut down by lawyers) as the period to submit their defence?

And so, under enormous stress, Alan, without access to the arbitrator, began to sort through all these documents in the hope that he would find something to help him with the preparation of his reply which he finally managed to lodge on 20th January 1995, incomplete.

13th January 1995, Ted Benjamin writes to Dr Hughes: *"I refer to your letter dated 27 (sic) December 1994 enclosing a copy of a letter dated 28 December 1994 from Mr Smith. Mr Smith has now requested CCAS and CCS7 call statistics for the dates 5 November, 8 November and 9 November 1993. Telecom has not denied Mr Smith access to these documents but is unable to provide documents which do not, as far as I am aware, exist for the specific dates requested by Mr Smith."* **(AS 134)**

The BCI Report states they used the CCS7 monitoring device at the Cape Bridgewater RCM to trap the tests calls generated on 4, 5, 6, 8 and 9 November 1993. It has now be confirmed by Brian Hodge, B Tech; MBA in his report dated 27th July 2007, that the RCM system could never have facilitated the CCS7 monitoring device which the BCI Report states captured the 13,000 successful tests generated to Cape Bridgewater. As stated above, Alan has already provided ATT and ACMA, with a copy of Brian Hodges' detailed report

So Ted Benjamin was right when he stated the CCS7 data for those dates did not exist. What exchange did these alleged 13,000 BCI tests generate to? Could this be the same exchange that had a recording of Karren's voice answering the intended calls for Alan?

On the 26th May 1995, two weeks after Dr Hughes brought down his award, Telstra supplied Alan under FOI documents numbered N00005, N00006 and N00037. These documents confirm Telstra knew as early as 23rd August 1994, (three months before they submitted the BCI tests as defence material) that at least one day's testing was impracticable **(AS 135 and AS 136)**. Brian Hodges report confirms ALL 5 tests could not have generated through the CCS7 equipment.

TF 200 report

This report was one of the main documents submitted by Telstra in their defence. It refers to the same EXICOM TF200 problem which was originally raised with Cliff Mathieson of AUSTEL on 26th April 1994, and which Alan has referred to previously **(AS 71 to AS 74)**. Mr Mathieson believed that the fault had to be in the RCM exchange at Cape Bridgewater

Telstra's Peter Gamble tested Alan's TF200 via his Melbourne office on 26th April and, after testing the phone, reported that he believed that a heat build up in the unmanned Cape Bridgewater RCM was causing the problem **(AS 71 and AS 72)** also supports this theory about it in August 1993.

Telstra fault records (FOI R37911) **(AS 73)** shows that Ross Anderson, a Portland Telstra technician, collected the EXICOM phone on 27th April and then used it to make eighteen test calls, without encountering any lock-up faults at all. Mr Anderson then forwarded the phone to Telstra's laboratories for further testing. The report included a number of photos

of the dissected phone, and stated that it was received at Telstra's laboratory in a very dirty condition and was found to contain a sticky substance.

Amazingly, after Mr Anderson completed his testing on 27th April, the phone then took nine days to reach the laboratory, where it arrived on 6th May, and where it then waited another four days before laboratory testing commenced. Ray Bell, the author of the TF 200 report, was adamant that his staff found a wet and sticky substance in the phone which was later identified as beer residue. The laboratory staff decided that the 'beer in the phone' had caused the lock up faults (which, remember, Ross Anderson had been unable to find on the day after he took the phone from Alan's premises). The full 29 page separate TF200 report and further late received documents showing the report was fabricated, can be supplied to AAT and ACMA, on request.

Attached here are pages 68 and 69 from Telstra's main B004 arbitration report indexed as (AS 137 and AS 138). This B004 report also uses part of the TF200 report as defence material stating: *"...A brown sticky liquid substance which contained chemicals typically found in beer was found in the T200. This was causing the switch hook mechanism in the T200 to lock up. It is the customer's responsibility to ensure that foreign substances are not introduced into their CPE (reference document to 4.02 which includes a detailed report of analysis of T200 which is also known as a TF200.*

After Alan received this report he asked Dr Hughes to access from Telstra, on his behalf, all the laboratory working notes so Alan could discover how the laboratory technical staff actually arrived at their conclusion. On 3rd March 1994 Alan wrote again with the same question. On 12th April 1995, Telstra gave Dr Hughes a copy of the original completed report that they had already submitted in their defence. On 17th April 1995, Alan wrote to Dr Hughes yet again, expressing his disgust at the thirty-five days it had taken Telstra to supply the wrong document, and saying:

"I believed, when I asked the Arbitration Process to access, from Telecom, all written, original notes regarding the TF 200 (267 230), that this would include all original report notes and the contents of the TF 200 report, however, all I received from your office, by courier, was a copy of the report, in printed form, which had already been viewed in Telecom's Defence documents." (AS 139).

TF200 Saga Continues

On 28th November 1995, six months after Dr Hughes had deliberated on Alan's claim, Telstra finally sent some of the laboratory working notes and graphs, under FOI. One file note, FOI A64535, dated 26th May 1995, confirms that, they tested an unidentified TF 200 twice (was it Alan's?), by pouring beer into it and leaving it overnight. The note recorded that the beer had dried out within twenty-four hours. The second set of tests state the beer dried out within 48 hours. Since Alan's TF 200 had been removed from his premises sixteen days before it was tested, then the 'beer' residue is clearly suspect.
The TF 200 information that Alan has agreed to send to AAT and ACMA, on request see above, confirms many discrepancies in Telstra's TF200 defence report. These documents had they been supplied during Alan's arbitration this information alone would have provided enough evidence to instigate an investigation by the arbitration technical resource unit, if only it had been provided to him at an appropriate time. Even the graphs show that a wet substance 'of a high level', tested on the 25th, was almost dry by the 26th. Yet the actual defence report states these testing began on the 10th May 1994!

A brief summary before we get back to January/February 1995

1. The BCI report used in Alan's arbitration as defence and library material has now been declared by Brian Hodge, technical consultant as fundamentally flawed.
2. AUSTEL and Brian Hodge have singularly declared the SVT process conducted at Alan's premises 29th September 1994, were deficient.
3. Telstra's late received laboratory working notes for the TF200 investigation do not coincide with Telstra's TF200 arbitration report.

26th January 1995: Alan writes to Dr Hughes providing accompanying material confirming his 008/1800 account showed Telstra had a billing software problem in their network at least up and until13th January 1995, four months after Telstra submitted the deficient SVT tests. **(AS 139)**

30th January 1994: Alan wrote to Dr Hughes, explaining many alarming facts noting: *"...A ruling regarding information associated with the Defence Documents being presented in this manner must be addressed. I had no intention of drip feeding information to the Arbitration Dr Hughes, once my final Submission had been completed.*

It is now thirteen months since the first of four FOI applications was presented to Telstra and yet, even after all this time, Telecom have not supplied the material sought, NNI documentation, technical diary notes, ELMI raw data, CCAS7, CCAS and EOS data and voice monitoring fault records. Very little of this information has been supplied under the Arbitration Procedure." **(AS 146)**

30th January 1995: Alan wrote to John Wynack, Director of Investigations, COO noting: *"...Even at this late date, Telecom are still withholding documents requested under my FOI applications."* **(AS 148)**

In this same letter Alan details other inaccuracies being reported by Telstra, e.g., in regard to Commonwealth Ombudsman officer, Ms Jill Cardiff: *"Telecom states that on 2/10/92 a faulty register was found and fixed five days later. This is again incorrect. The faulty register was detected on the 2/9/92 and fixed some 35 days later.*

We have faults down-played on the 2/9/92 by 30 days, we have deceptive and misleading statements to Ms Jill Cardiff, and no also to Ms Fay Hothuzen. It appears that Telecom will stop at nothing, just to starve COT and its members from gaining the truth."

1st February 1995: Dr Hughes writes to Ted Benjamin re 30th January letter: *"I enclose copy letter received from the claimant dated 30 January 1995. I have the right to request that information and, if necessary, issue a subpoena. I emphasise I have not formed any view of the matters raised in the claimant's letter of 30 January 1995."* **(AS 146)**

15th February 1995. Alan's letter to Dr Hughes again raises the SVT problems noting: *"...My previous letters to you in January 22nd and 26th also confirmed we were still experiencing problems with our service lines. As you are aware the verification testing was prepared in consultation with Austel and was to form the basis for determining whether the Cot cases individual telephone service was operating satisfactory at the time of our*

arbitration. Out previous statutory declarations confirmed the testing was not conducted as they should have under the agreed testing process. (AS 140

Brief summary for the end of 1994 and the start of 1995

It is important to remind the reader of the following issues are already substantiated in this chronology. The five following points should also be taken into consideration when assessing the Graham Schorer and Alan Smith, BCI issues discussed (see below) for the periods between March and August 1995.

Please note: The William Hunt file notes referred to during May to July 1995, (Graham Schorer's solicitor) were only received in October 2007. The file notes referred to above, will be supplied to AAT and ACMA on request.

1. Alan Smith received FOI documents 24th May 1995, two weeks after Dr Hughes brought down his award 11th May 1995, confirmed the BCI Tests were flawed.
2. On 21st June 1995, Dr Hughes corresponded with John Pinnock TIO copying the same to Telstra, also attaching three letters from Alan Smith's written during his arbitration that had requested Dr Hughes seek on Alan's behalf (under the discovery process) all the BCI information to support their alleged successful tests at Cape Bridgewater. Mr Smith has never received a copy of the correspondence dated 21st June 1995, from Dr Hughes to Mr Pinnock and Telstra even though the defendants (Telstra) received his letter.
3. From August 1995 to October 1995, Mr Pinnock wrote a number of letters to Telstra's Ted Benjamin asking why Mr Smith had not received the BCI information during his arbitration it appears that even though Mr Pinnock was concerned that Alan Smith received relevant information after his arbitration stopped his enquires into the BCI matters.

21st February 1995: Sue Hodgkinson Ferrier Hodgson Corporate Advisory (FHCA) the arbitrator's resource unit visited Cape Bridgewater. Alan and his partner Cathy, provided Ms Hodgkinson with a number of documents which proved that his business was much more than 'just a school holiday camp'. The information provided to FHCA, showed that on the week-ends Alan's agent Peter Turner, from Melbourne who acted as Alan's Metro telephone base (because people could still not ring directly to the camp) confrimed over – over-40s single Club Groups and Social Club Groups, werepaying triple to that of school groups. Alan and Cathy have never seen this information again, not even after FHCA returned (supposedly) all of Alan's submitted material during his arbitration.

In other words, it served FHCA, not to show all of Alan's financial losses due to his continuing phone problems.

3rd March 1995: Alan writes to Dr Hughes attacking the TF200 report: "... I believe, as I have already stated in my reply to Telecom's Defence Documents, that Telecom must show not only the phone and original photos taken of the phone when it was given to the Laboratories, but also all evidence used by the laboratories to derive this information." (AS 141)

At point 5.8 (a) in the arbitrator's draft award entitled: Faults Caused by Claimant the author states: "Examples are said to be leaving the phone off the hook or damaging the equipment by spilling a liquid into it" (AS 142).

At point 5.8 (a) in the arbitrators final award entitled: Faults Caused by Claimant

the author states: *"A simple example is said to involve the claimant leaving the phone off the hook"* **(AS 143).**

Why was the issue of a spilt liquid removed from the final award? Did the author and/or Dr Hughes secretly investigate the TF200 report issue and discover the report had been manufactured?

24th March 1995: Warwick Smith's public statement is discussed at point (h) below, however it is important to point out the following issues, including the information already contained in the Alan Smith CAV LGE Telephone Interception target documents which explain in detail how Alan Smith's phone interception issues were never addressed during his arbitration and, although Graham Schorer's phone interception issues (in 1994) were briefly discussed in the CAV LGE Telephone Interception LGE target documents, the following issues have not been covered in any detail:

(a) From February to September 1994 the Australian Federal Police interviewed Graham and Alan a number of times, regarding the alleged illegal interception of their telephone conversations.

(b) Warwick Smith and Peter Bartlett agreed that, under the arbitration agreement, the claimants could submit their interception issues to the arbitrator, as part of their claims.

(c) Evidence included in Alan Smith's Relevant Information File target documents confirm that Telstra wrote to Warwick Smith on 17th October 1994, agreeing to address the voice monitoring issues raised by Alan Smith in his arbitration claim (see attached), as part of Telstra's defence of Alan's claim.

(d) On the 10th November 1994 Dr Hughes wrote to Graham Schorer to notify him that Telstra had agreed to address his allegations of phone interception as part of Telstra's defence of Graham's arbitration claim (see attached).

(e) Telstra did not address the phone interception issues, either in Alan Smith's arbitration.

(f) The Commonwealth Ombudsman's office has confirmed that Telstra were defective in their supply of FOI documents during Graham Schorer and Alan Smith's arbitrations and Telstra FOI schedules confirm that Telstra withheld interception information from Alan under Legal Professional Privilege (LPP).The Commonwealth Ombudsman's Office and the Senate Working Party have agreed that Telstra was defective in their supply of FOI documents during Graham Schorer's arbitration and Telstra FOI schedules confirm that Telstra withheld numerous non-legal and privacy related documents from Graham, also under LPP.

(g) On 24th March 1995 Warwick Smith stated, publicly: *"I have been asked to enquire as to whether or not there has been a breach of internal privacy arrangements by Telecom"* and that he had *"... conducted interviews with Telecom employees"* but that he had *"... yet to conclude that enquiry."*

It would be reasonable to assume that while the Australian Federal Police were investigating the COT interception issues they might have discussed some of these matters with Warwick Smith although clearly they would have limited this to matters relevant to Warwick Smith as the administrator of the COT arbitrations. It is most unlikely that the AFP investigators would have allowed or instructed Warwick Smith to interview Telecom

employees regarding these same interception issues, as that would have cut across the AFP investigations, see attachment to point (h), above.

In his public statement of 24th March, Warwick Smith also stated: *"There are still matters of concern. The recent decision by the director of Public prosecutions not to proceed with a prosecution, following an Australian Federal Police investigation into voice monitoring issues raises questions which have already been canvassed elsewhere and are not appropriate for me to discuss."*

Warwick Smith's public statement (point (h), above), that he had been asked to *"...enquire as to whether or not there has been a breach of internal privacy arrangements by Telecom"* indicates that he was investigating the interception issues as the administrator of Alan's arbitrations, but without consulting Alan arbitration technical advisors and without providing Alan with an opportunity to challenge (as was their right) any statements made by Telstra's employees. This indicates that Warwick Smith took it upon himself to interview Telstra employees regarding interception matters and means that this part of the arbitration process was therefore conducted in camera by the administrator (and, it also now seems, by the arbitrator too) without allowing the claimants their legal right to challenge the information that Telstra people provided to the administrator (Warwick Smith), even though the transparency process included in the arbitration agreement clearly provided the claimants with a right to challenge evidence submitted by the defendant.

Warwick Smith's public statement: *"... I am yet to conclude that enquiry"* confirms that the TIO's office would have on record a report regarding the interception issues that the four original COT claimants raised with him and the arbitrator as part of their arbitration claims. Such a report should have been provided to the COT claimants and the arbitrator during their respective arbitrations. Alan was entitled to a copy of this report since he raised these interception issues during the TIO-administered arbitration process.

It is also important to point out that, while the AFP were officially investigating the COT interception issues, both Graham and Alan were expected to provide information to the AFP and the arbitration, at the same time, which leads to the question of how any lay person could be expected to carry out such complex tasks when Telstra was working with the AFP on the same matters that the arbitration administrator, Warwick Smith, was secretly investigating.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

We again remind AAT, that the late supply of FOI documents discussed by Sue Hodgkin son with Warwick Smith, (see below) might appear to only be arbitration FOI issues, they are the same type of Telstra related documents that Telstra withheld from AUSTEL (now ACMA) when Bruce Mathews was attempting to complete the Alan Smith – draft report dated 3rd March 1994, see AAT *"Attachment Two"*. The link between the two sinarios is that ACMA should be attempting to right the wrongs of the past FOI issues, by supplying Alan all the FOI documents presently under this review, free of charge in the public interest.

30th March 1995, Sue Hodgkinson report to Warwick Smith (AS 103)
In this report by Sue Hodgkinson of FHCA, to Warwick Smith, TIO, it confirms Warwick Smith and his Resource Unit were fully aware Alan didn't receive the bulk of his requested

FOI documents until two weeks after Telstra had submitted their defence. In this letter, Ms Hodgkinson states:

- *"Alan Smith ... has included volumes of documents and the direct relevance of all this information is difficult to ascertain. Nonetheless, Smith has gone to a lot of trouble to assemble his FOI information which, as you may be aware, was not provided in full by Telecom until 23rd December 1994.*
- *Smith's claim was formally certified as complete in November 1994.*
- *On 13 December 1994, Telecom delivered its defence to the Arbitrator.*
- *Smith has stated to me verbally that, on 23 December 1994, he received 90 kilograms of FOI material. As his claim was "finalised", he did not have the ability to examine these documents and add to his claim.*

With regard to Ms Hodgkinson's difficult understanding the relevance of the material Alan submitted, these were highly technical documents he was dealing with, and they had been presented to him, by Telstra, in apparently unrelated batches, some of them not even arriving until long after he had submitted his claim. It is actually amazing that he managed to make any sense out of them at all!

Ms Hodgkinson's contention (in her second point) that Alan's claim was certified as complete in November 1994 is correct, according to the resource unit. This means that the attachments Alan later forwarded to Dr Hughes were never addressed.

The last point made here by Ms Hodgkinson, regarding the weight of the documents delivered to Alan on 23rd December 1994, is also correct: Alan was aware of the weight because they were delivered to him by air-freight however her comment regarding his 'ability' to assess the documents is not completely accurate. Alan recalls, he actually asked her how the arbitrator could expect any claimant to look through all this information in the eleven days he had left to reply to Telstra's defence of his claim. Part of Alan's assessment process would have had to include revision of documents that had been provided, as previously noted, in separate batches, and which had been delivered in February, May, July, August, September and November 1994. It was like an enormous jigsaw puzzle: worse, it was like an enormous jigsaw puzzle without any defined 'edge' pieces!

Furthermore, these documents often turned out to contradict each other, as the following example illustrates:

Telstra stated, in their B004 defence report, on page 25, that a lightning strike on 21/11/92 damaged RCM equipment, and that the fault lasted four days **(AS 149)**.

DMR and Lanes' Technical Evaluation Report agrees with this, on page 23 when, under the heading: *"RCM 1 Failure due to lightning strike 21st November 1992. Affected Service for Four Days* they state, at point 2.8 **(AS 150)**:

A lighting strike on 21st November damaged the Cape Bridgewater RCM equipment: Telecom received 22 customer complaints from CB customers for No dial tone, No ring received, noisy. No complaint was identified from CBHC, however RCM 1 was affected and this was the unit CBHC services were on. The condition affected for 4 days, before restorative action was taken, which may have been less than successful."

After Alan had lodged his interim letter of claim, he received Telstra FOI document K01173, which paints an entirely different picture, and confirms that, contrary to the two reports above, he DID report this fault. K01173 is dated 9th February 1993, and states:

"I contacted Don Bloomfield (Portland Customer ops) to discuss Alan Smith's problems. It is his opinion, and this is supported by data retrieved from ops, that there were problems in the RCM caused by a Lightning strike to a bearer in late November. These problems (damaged PCB's) appeared to be resolved by late January" **(AS 151)**.

On page 33 in the arbitrator's award Dr Hughes goes one step further in stating: *"...damage was caused to Cape Bridgewater RCM equipment by a lightening 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"* **(AS 152)**.

This proves that, at least in this instance, Telstra provided incorrect information which not only affected the arbitrator's decision, but also swayed the technical resource unit into believing that a long-standing problem only existed for four days, instead of sixty or more days.

ATTENTION –ADMINISTRATIVE APPEALS TRIBUNAL

In the Bruce Mattews draft findings see *'Attachment Two'* it is evident there are still relevant Telstra/AUSTEL FOI documents in existencence, yet ACMA has been unable to locate these documents. As part of Alan's 6th December 2007, FOI request presently under review by AAT, he has confirmed by using *'Attachment Two'* that AUSTEL believed that the MELU exchange problem experienced by the Cape Bridgewater Holiday Camp, was more serious that Telstra advised Alan, during a previous settlement.

In the official TIO-appointed DMR & Lane arbitration report, at point 3, another startling downplaying of the actual faults that affected Alan's business due to the incorrect information supplied by Telstra in their defence when he states: *"... "Calls Directed to RVA, March 1992", Mr Read only uses Telstra's defence figures. If he had read the AUSTEL information,* (that AUSTEL withheld from the arbitration process) *Mr Read would have seen that this fault lasted for eight months and not the sixteen days he reported.*

Please note: some of the information supporting this MELU fault is attached at Exhibit **(AS 12** and **AS 13)**. However, it is important to also attach page 21 of the DMR & Lanes findings as shown in their report which states that this MELU fault lasted: *"for at least 16 days and possibly longer"* **(AS 153)**. On page 32 of the arbitrators Award he also acknowledges this fault lasted for 16 days and possibly longer **(AS 154)**.

In Exhibit **(AS 13)** is an AUSTEL FOI document 95/0603-01 number 75 a Telstra internal Minute that states: **It is my understanding of the sequence of events:-**

Aug '91 - Cutover from RAX to RCM *When ? – approx 7/8 mths 50% maximum*

And a hand written document which states *"SERVICE DIFFICULTIES"*

Cutover to RCM when : Likely length of MELU problem.

In Telstra's arbitration defence and in the DMR & Lanes report they acknowledge this MELU RVA **(a recorded message saying the number you have called is not connected)** was fixed on the 16th March 1992. The cutover from the old RAX to the RCM was in August 1991. Therefore the fault had lasted between 7 and 8 months NOT 16 days.

It was this kind of problem, and the disadvantages that came with it, that Alan tried to explain to Ms Hodgkinson.

It has also been acknowledge by Telstra that in 1991 and 1992, that between 33% to 50% of all Metro calls to Cape Bridgewater during this period would have gone via the MELU route. Alan is sure that any reasonable minded person would have to conclude that a recorded message telling prospective clients for 7 to 8 months (that the number they were calling was not connected) would have far more reaching repercussions than if the message had lasted for only 16 days.

The contriversal David Read – visit to Cape Bridgewater.

6th April 1995: Because of his previous involvement with Telstra management (Alan and Graham are led to believe at the time he had been a Telstra employee for some twenty years) the COT Cases argued that Lanes should not being assessing their matters. Warwick Smith compromised on their involvement agreeing that Lanes would only assist DMR Group (Canada) who would be the principal technical consultants. This is further confirmed from the statement in Warwick Smith's letter 9th March, 1995 **(AS 161)**. However, suffice to say that while he was in Cape Bridgewater, Mr Read did not make one visit to assess the phone configuration Alan complained of to him regarding the incoming lines to the Camp Kiosk, and the extension line to his office.

It is well documented that Alan had continued to complain about phone and fax problems through out his arbitration, and after, including complaints to local technicians where Alan enquired about the phone alarm system, and associated wiring, which had been installed by Telstra during ELMI monitoring of his service lines in 1991/2. Although Alan asked Mr Read to look at this wiring and some of the evidence he had which proved incorrect billing on all his phone lines but he made it quite clear that Dr Hughes had ordered him not to look at any new evidence during his site visits. Dr Hughes later confirmed these orders in a letter to Laurie James, President of the Institute of Arbitrators **(AS 157)**. Mr Read did relent and peruse one of the examples Alan had, which showed two calls to Alan's 00/1800 service on 13th January 1995 which had been wrongly charged to his account by Telstra.

Mr Read's insistence that he only had limited time before he flew out of Portland that evening infuriated Alan no end. Here Alan was, still in an arbitration process that had been dragging on for eighteen months, from 23rd November 1993, and the technical resource unit, appointed by the TIO, couldn't spend three or four extra hours investigating the wiring at Alan's premises. It was beyond Alan. Mr Read wouldn't even make half a dozen test phone calls to his 008/1800 line, or the gold phone customer service line, to see if he Alan's continuing complaints about the poor service was valid. Should we believe that his reluctance to investigate the equipment installed and supplied by Telstra was due to the deficient Verification Tests that Telstra unlawfully used in their defence? At the conclusion of his visit, Alan was astounded to see Mr Read drive off with Peter Gamble, Telstra's arbitration technical engineer, who had also attended the meeting with Mr Read.

A newspaper article in the Portland Newspaper on 8th November 2002 reports that the new owner of the Holiday Camp, Darren Lewis, said this week *"...he had experienced several problems with the phone and fax service since taking over the Cape Bridgewater Holiday Camp"* **(AS 167)**. The significance of raising a 2002 issue here is that the following exhibit **(AS 168)** relates to a TIO letter dated 28th January 2003, describing to Telstra's Level 3 Complaint unit that since Telstra rewired Mr Lewis' business *"the phone problems have decreased dramatically."* Had David Read inspected the same wiring when he was asked to on 6th April 1995, he would no doubt have condemned the wiring and had it replace under the umbrella of the arbitration process.

12th April 1995: Ted Benjamin provides Dr Hughes same TF200 information *"...I refer to your facsimile of 7 March 1995 and the attached facsimile of the letter of 3 March 1995 from Mr Smith. I advise that Telecom is prepared to make available the further data being sought by the Claimant. A copy of the Technical Report is enclosed."*

Please note: it took over a month for Telstra to respond to a simple request for further and better particulars, and when they did finally respond they provide a replica of the information they had already provided in their defence 12th December 1994. **(AS 158)**

Ted Benjamin writes to Dr Hughes

13th April 1995: This letter is in response to the letter from David Read of Lane Telecommunications dated 31 March 1995. Please note in this letter Ted Benjamin states: *"Attached is a copy of a facsimile from Peter Gamble of Telecom to David Read of the Resource Unit dated 31 March 1995. It is being made available to you for your information and in case you consider Mr Smith should be provided with a copy."*

The letter referred to dated 31 March **(AS 156)** confirms David Read contacted Peter Gamble and discussed relevant technical issues concerning the increase CL at the Warrnambool AXE Exchange during March 1993. Alan has no way of knowing what discussions followed between Mr Gamble and Mr Read after this telephone conversation and what information was provide regarding the Warrnambool AXE Exchange - Call Line Identification (CL) issue. What information did Mr Gamble provide Mr Read? Was it information similar to the MELU or TF200 issues? How many other private telephone conversations were generated in this fashion discussing technical issues which Alan's technical advisor George Close and he were not privy to?

On the 16th February 1996, Dr Hughes wrote to the President of the Institute of Arbitrators Laurie James stating: *"...Mr Smith's assertion on page 4 that a technical expert, Mr Read refused to discuss technical information at his premises on 6 April 1995 is correct – in this regard, Mr Read was acting in accordance with his interpretation of my direction which prohibited him from speaking to one party in the absence of the other party at any site visit"* **(AS 157)**.

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In relation to the manufactured and flawed TF200 technical findings included in the report, it is important to note that, on 26th April 1994, Alan Smith and AUSTEL's Cliff Mathieson were involved together in the original testing of Alan's TF200 phones. After carrying out the first set of tests, Mr Mathieson assured Alan that it certainly seemed that the problems were linked to the CAN exchange and it was much less likely to be a problem with the telephone itself. Mr Mathieson then suggested that he would contact Telstra, and Alan

should also ring Telstra, and they would both ask how two different TF200 phones could both be causing lock-up problems on the same line. Mr Matheison was actually adamant that he would be seeking clarification of this matter with Telstra however, in the FOI schedules ACMA has now provided to the AAT and Alan, there is no reference to Mr Mathieson's findings, or his file notes, or anything that Telstra had reported to AUSTEL in relation to this particular fault.

Like so many other issues highlighted throughout this submission, the TF200 issue is linked to the matters currently under review by the ATT and it was therefore important that it be included in this document.

17th April 1995: Alan provided evidence to Dr Hughes, copied to Ted Benjamin *"...I refer to Mr Benjamin's letter of 12th April 1995, addressed to Dr Hughes, point 1 and 2. I believed when I asked the Arbitration Procedure to access, from Telecom, all written, original notes regarding the TF200 (267230) that this would include all original report notes and the contents of the TF200 report, however, all I received from your office, by courier, was a copy of the report, in printed form, which had already been viewed in Telecom's Defence documents."* **(AS 159)**

The attachments accompanying Alan's letter to Dr Hughes probably swayed the author of the (draft arbitrators Award) **(AS 142)** to remove the segment *"damaging the equipment by spilling a liquid into it."* Of course know one in Alan's office spilt any sought of liquid into the TF200. Beer does not form a sticky liquid as Alan's testing has proved. Alan's tests carried out also confirms beer in a vessel (Alan used a TF200) dries within a very short period of 2 to days. Telstra had Alan's TF200 from 27th April 1994 and it was not provided to the laboratory until 10th May 1994. What made Telstra wait 15 days before they decided to send the TF200 to their laboratory?

18th April 1995: John Rundell (FHCA) writes to Warwick Smith – (Part One) **(AS 160)** In 2001 under the TIO Privacy Policy Act, Alan received a document dated 18th April, from John Rundell of FHCA to Warwick Smith. Part of this document advised Warwick Smith that: *"Paul Howell, Director of DMR Inc Canada arrived in Australia 13th April 1995 and worked over Easter Holiday period, particularly on the Smith claim. Any technical report prepared by draft by Lanes will be signed off and appear on the letterhead of DMR Inc."*

The relevance of this letter is split up in the following two points:

- DMR (Australia) signed an agreement with the TIO Warwick Smith in April 1994, (as displayed in the Arbitration Agreement) that they would act as the independently arbitration technical resource unit.

- March 9, 1995, Warwick Smith advised Alan that DMR Australia was unavailable to provide locally based technical assistance. This letter confirms that Paul Howell of DMR (Canada) would be appointed as the principal technical advisor to the Resource Unit and Lanes (based in Adelaide) would assist Mr Howell, stating: *"Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith"* **(AS 161)**.

- Please note: the above statement by Mr Rundell in his letter confirms he was prepared to transfer Lanes technical findings onto the letterhead of DMR (Canada) as a guise that Paul Howell prepared the final report **(AS 160)**

- Document **(AS 162)** confirms Paul Howell on 21st March 1995, only received three of Alan' 22 submitted claim documents along with Telstra's defence.

- Document **(AS 163)** confirms FHCA advised Mr Howell 5th April 1995, that David Read would have his draft technical report prepared by 7th April 1995.

- Dr Hughes' draft Award page 3 at (i) and (j) states: *"...pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit," comprising Ferrier Hodgson, Charted Accountants, and DMR Group Australia Pty Ltd, to conduct such inquires or research as I saw fit; On 21 February 1995, by the time I was satisfied that the submissions of all relevant material by both parties was complete, I instructed Ferrier Hodgson and, through them DMR) to conduct certain inquiries on my behalf"* **(AS 164)**.

- Dr Hughes' final Award states on pages 3 and 4 at (i) and (j) *"...pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit" comprising Ferrier Hodgson, Charted Accountants, and DMR Group Australia Pty Ltd, to conduct such inquires or research as I saw fit. By consent of the parties, the role of DMR Group Australia Pty Ltd was subsequently performed jointly by DMR Group Inc and Lane Telecommunications Pty Ltd; On 21 February 1995, by which time I was satisfied that the submissions of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquires on my behalf"* **(AS 165)**.

Summary of document **(AS 160** to **(AS 165)** follows in point form:

1. Paul Howell didn't receive any of the technical claim and defence material until 21st March 1995 see **(AS 162)**
2. Paul Howell and David Read wasn't officially appointed by the TIO until 9th March 1995 and/or officially accepted by letter of consent **(AS 161)**

All the technical findings in both the draft and final Awards (except for the removal of the alleged liquid spillage segment) are one of the same mirrored word for word. However, in the draft Award the author states by 21st February 1995, he called on DMR Group Australia Pty Ltd to conduct inquires, (who had been sacked prior to this date for conflict of interests) The fact that DMR (Canada) was not appointed as a replacement for DMR (Australia) until 9th March 1995, and didn't receive the technical claim and defence material until 21st March 1995 see **(AS 162)**, how could the technical findings in the final Award have been prepared by DMR (Canada) when the technical findings in both Awards are one of the same?

18th April 1995: This letter from the TIO-appointed arbitration project manager, John Rundell of Ferrier Hodgson Corporate Advisory, to Warwick Smith (copied to Peter Bartlett and Dr Hughes) states: *'It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work."* Neither Graham Schorer nor Alan Smith were ever told about these 'forces at work', nor were they ever warned that, under the noses of the arbitration administrator and his legal advisor (Peter Bartlett), unnamed forces had been allowed to infiltrate and manipulate the arbitration process. **(AS 160)**

Why wasn't Alan or Graham Schorer notified of these *"forces at work?"*

27th April 1995, Ted Benjamin writes to Dr Hughes, included attachments the information referred to, was never provide to Alan or his technical advisor George Close. This letter includes 7 separate points that had apparently been sourced by DMR & lanes directly from Telstra, without any formal request directed through the transparency process of the arbitration. This letter is discussed in more detail in the Relevant Information File. What is important to point out here is that had George Close and Alan received a copy of this letter (during the arbitration procedure) they would have been entitled to request from Telstra through Dr Hughes, copies of all the technical data to which Mr Benjamin, has based this letter on, they were not afforded this opportunity. **(AS 166)**

28th April 1995, Warwick Smith and Peter Bartlett conjure draft letter dated 28th April 1995, confirming that Warwick Smith and his Legal Counsel, Peter Bartlett, were prepared to pressure Dr Hughes to conclude Alan's award quickly. This letter suggests: *"However, I understand you are to present a paper in Greece in mid May. I would expect that the Award would be delivered prior to your departure.*

It would be unacceptable to contemplate the delivery of the Award being delayed until after your return." **(AS 169)**

This letter further suggests Alan's continuing assertions that the arbitration was not a transparent process and that the arbitrator was not independent. It is also clear that Warwick Smith and Peter Bartlett had no regard for justice, or for Alan's right to present the facts as they really were.

DMR and Lanes present their Technical Evaluation Report

30th April 1995: There were many problems with this report, not the least being that DMR and Lanes skipped a six-month period of Alan's claim, from August 1994, to April 1995, including only assessing 23 fault claim examples from 200 fault complaints (see point 3 in the concludion of this report. They also failed to investigate or address numerous bound volumes of evidence which demonstrated Telstra's continuing incorrect charging on all of Alan's phone lines.

One of the exhibits at **(AS 26)** is a list from the DMR & Lanes Report dated 30th April 1995, which Alan has hand marked Arbitrators copy. The other attachment at **(AS 26)** is marked Final copy also a list from the DMR & Lanes Report dated 30th April 1995. Both lists include the words *"The information provided in this report has been derived and interoperated from the following documents."* Any person with average intelligence would conclude that both reports dated 30th April cover the same twenty-three assessments and include the same technical information. The arbitrators list of sourced documents, are minus 13 bound claim documents (comprising over 3,000 documents) to that which appear of the final report list. So who added the 13 sets of claim documents to the final list?

In the DMR & Lanes Report provided to Dr Hughes 30th April 1995, where this condensed list came from, there is one difference, although not a technical matter. Included on page 2 of this report are the words: *"...There is, however, an addendum which we may find it necessary to add during the next few weeks on billing, i.e. possible discrepancies in Smith's Telecom bills'* and on page 3: *"...one issue in the Cape Bridgewater case remains open,*

and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems. Otherwise, the technical Report on Cape Bridgewater is Complete.

The report that Dr Hughes provided for Alan's official written response (as directed by the arbitration agreement) was different to the one that needed weeks to finish and was therefore incomplete. Not only had an extra thirteen volumes of sourced documents been added but then reference to billing discrepancies had been removed, along with the reference to the report being incomplete.

Questions

1. How could the report Alan received be complete when the arbitrator's version with the same date needed extra weeks more to complete?
2. How can two reports have identical technical findings when their conclusions were apparently reached after one of the reports had assessed 3,000 more claim documents than the other?
3. How can a report that sourced 3000 more claim documents (mostly consisting of billing claim material) not disclose one single billing issue as being addressed?
4. Who disallowed DMR & Lanes the extra weeks they needed to complete their report?

On 3rd May 1995, Dr Hughes wrote to Alan, advising that he had five days in which to respond to the DMR and Lanes report. Alan was forced to prepare this response himself since he could no longer afford to pay his technical advisor. Even though he had no technical expertise or experience in the telecommunications field, he was still able to refute many of the assertions in this so-called 'independent' report, but had to agree with some assessments due to his inexpereice in technical issues. Alan could not understand why the billing part of his claim had not been addressed in the report. Alan didn't completely solve this problem until early in January 2001, when he discovered that John Rundell of FHCA had written to the TIO on 15th November 1995, advising the TIO that FHCA had ordered DMR and Lanes NOT to investigate the billing evidence Alan had included in this part of his claim see **(AS 104)**. So it was Mr Rundell and FHCA who caused all Alan's heartache and worry as he attempted to put together a response to a highly technical report.

At point 2.23 in this report DMR & Lanes state: *"...Continued reports of 008 faults up to the present, As the level of disruption to overall Cape Bridgewater Holiday Camp (CBHC) service is not clear, and fault causes have not been diagnosed, a reasonable expectation is that these faults would remain* 'open' **(AS 170)**

Why didn't DMR & Lanes diagnose the fault causes for these billing problems?

5th May 1995: Dr Hughes wrote to Alan noting: *"...I refer to your telephone message of 4th May and your facsimiles of 4 and 5 May 1995 and advise I do not consider grounds exist for the introduction of new evidence or the convening of a hearing at this stage"* and reiterated his previous instructions that *"... any comments regarding the factual content of the Resource Unit reports must be received ... by 5:00pm on Tuesday 9 May 1995."* **(AS 171)**

Alan's facsimile of 4th May 1995, advised Dr Hughes that FHCA had not taken into account a similar type business (that had a reliable phone and fax service) Camp Rumbug which he had previous helped set up in Foster Gippsland (Victoria).

In this fax Alan also asked Dr Hughes to look at the late evidence he had provided to Sue Hodgkinson. This evidence confirmed that the operators of six other Camps had written to Cathy and him in support of their view that booking two different groups into a camp at the same time was a good way to create more revenue and would also encourage group bookings in the future. Dr Hughes' response (AS 171) shows that he would not accept this labelling it as 'new' evidence (AS 173). Alan raised the same issues again in a second letter faxed to Dr Hughes on 5th May 1995, but to no avail (AS 173). Pages 100 to 102 from the oral arbitration hearing held on 11th October 1994, confirm that Alan had attempted to submit similar evidence, eight months earlier, but this was also to no avail. The transcripts of the oral hearing (attached) confirm the sensitivity of the information Alan was attempting to submit (AS 174).

The attached phone/fax account for 4th October 1994 (AS 175) shows that Alan phoned Dr Hughes' office at 5:06 pm and spoke for 5 minutes and 11 seconds. If Alan's memory serves him correctly, he made this phone call to discuss Telstra's reluctance to provide FOI documents and to request a meeting to discuss the matter further (AS 100). Alan also believe that he had detailed his reasons for not submitting the list of names and addresses of the proposed singles club patrons with his letter of claim, because of the sensitivity of the private information. Alan believes Dr Hughes would remember this conversation as it was his suggestion that Alan bring the singles club material to the oral hearing for discussion. Whatever changed Dr Hughes' mind between this phone conversation and the oral hearing.

These documents, including the contact information for the prospective singles club patrons, were relevant to Alan's claim because they showed the kind of business clientele Alan was loosing and proved that it was not only the school market that Alan was missing out on because of the continuing phone problems.

Why did FHCA only look at the school booking rate per head when valuing the lost camp bookings? A multiple group student price per two night stay during 1993/94 with all meals provided cost approximately $50 per person. A single club patron for a (two night stay) during the same period cost approximately $140 to $160.00 per person.

Important:
Because the TIO allowed FHCA to vet information and assess the validity of that information before they decided whether it should or should not be provided to the arbitrator, appears to have been the route cause of the failure of the most relevant information being seen by Dr Hughes.

9th May 1995: DMR Corporate lodged their response to FHCA financial report. Alan's accountant, Derek Ryan of DMR Corporate, received the FHCA report on the 5th May 1995, and by the 9th May duly presented the report to Dr Hughes's office Mr Ryan made it very clear that, in his professional opinion, the FHCA financial report was factually incomplete and this made it impossible for him to address the way FHCA had arrived at their findings.

Derek Ryan was so incensed with the FHCA report that, without Alan's knowledge, he then wrote to the then Shadow Minister for Communications, Senator Richard Alston, on the 6th December 1995, to alert him to what Mr Ryan believed was a miscarriage of justice. In this letter, Mr Ryan noted that:

"The FHCA report was inaccurate and incomplete. I have since been advised by a staff member of FHCA that a large amount of information was excluded from their final report at the request of the arbitrator. This has left the report in an incomplete state and it is impossible for anyone to recalculate how FHCA loss figures were determined" **(AS 176).**

Dr Hughes Brings down his award on incomplete information

11th May 1995: .Because of the voluminous nature of both the draft and final Award, they are not included in the exhibits here, but will be supplied to AAT and ACMA on request.

Please note: It will be evident to the reader when viewing these two Awards, that Dr Hughes was provided false and misleading information by persons who did not want the true facts of Alan's case disclosed.

12th May 1995: Dr Hughes writes to Warwick Smith: Alan received a copy of this letter from the TIO's office in 2001/2, and he has so far only touched briefly on its significance here. A more in-depth study of this letter raises the following questions: **(AS 180)**

Dr Hughes states: *"... as far as I could observe, both Telecom and Smith co-operated in the Smith arbitration."*

- How could he make such a statement when he had received written notification that the Government Solicitors had to be brought in to force Telstra to comply with FOI requests by three COT members? and
- How could he make such a statement after seeing a copy of John Rundell's letter of 18th April 1995, to the TIO, which stated: *"It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work."*

Was the man totally blind, or was he just afraid to expose the truth?

Also in this same letter, Dr Hughes makes the following comments, which all need to be explained by the TIO's office:

- *The time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;*
- *In particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;*
- *In summary, it is my view that, if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement.*

It is patently obvious that, immediately on receipt of this letter, as the administrator of the Arbitration Agreement, Warwick Smith should have abandoned the process and intervened on Alan's behalf to allow a review and allow Alan more time to obtain further particulars, produce documents and prepare his technical report. John Rundell's letter to Mr Pinnock on 15th November 1995 (refer Relevant Infromation File) regarding the inadequate time frame and how it affected the completion of the DMR & Lane technical report, adds further weight to the allegation that the process was severely flawed.

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FOI documents that Alan received on 24th May 1995, two weeks after his arbitration was deemed to be complete, directly relate to the FOI documents that ACMA now cannot locate within the time frame covered by the FOI issues now under review by the AAT.

The schedule of documents that ACMA has located in relation to Alan Smith does not include any of the technical information documents exchanged between AUSTEL and Telstra between February and June 1994, in relation to the Bell Canada International tests, even though these documents are stressed in the *AUSTEL COT Case Report* of April 1994.

Alan and Graham Schorer met with AUSTEL on 6th and 7th April 1994, to discuss the BCI tests that had been carried out at their respective business, and also to find out what information would be included in the *AUSTEL COT Cases Report* in relation to the BCI tests. This suggests that the BCI information that Alan received after his arbitration had been deemed to be complete are linked to the BCI documents now missing from AUSTEL's schedule of FOI documents they have located.

24th May 1995: Mr Benjamin's letter to Alan re late released FOI documents again confirms Alan had no chance of ever receving justice. On 26th May 1995, two weeks after Dr Hughes had deliberated on Alan's claim, Telstra released 745 new FOI documents under the heading: *"Your FOI Request of May 1994"*, and including the following: **(AS 182)**

"Further documents have recently come to light that fall within your FOI request of 1994. Copies of these documents are enclosed. At this time a table has not been prepared giving decisions in relation to these documents as it was considered by Telecom more important you receive copies of the documents now."

Twelve months after Alan had originally asked for these documents Telstra finally considers in important that he gets them – too late! The arbitrator had gone to Greece for his holidays.

Among the papers in this 'box of tricks' Alan found two particularly relevant documents, numbered N00005/6 and N00037 see **(AS 135 and AS 136)**. Document N00005/6 is a letter dated 6th September 1994, from Telstra to Gerald Kealey of Bell Canada International in Ottawa, which confirms that **the BCI tests conducted at Cape Bridgewater on 5th November 1993 were impracticable.**

N00037 is an internal Telstra memo dated 23rd August 1994, which acknowledges that I was correct: **the BCI tests conducted at Cape Bridgewater on 5th November 1993 were impracticable.**

These two documents support Alan's previous contention that the BCI report should never have been used by Telstra as defence material or as library material by the arbitration process because it was flawed. Telstra clearly knew that the report was impracticable as far back as August 1994, yet they still used it to support their contention that the telephone network into Cape Bridgewater was operating well. This was more than just unethical.

Exhibit (AS 182-b) relates to the Gerald Kealey BCI flawed defence documents and Alan Smith's attached to his letter to Dr Hughes, dated 20th June 1995. This TIO Faxcsmile

Cover Sheet from Pia Di Mattina to Peter Bartlett, of Minter Ellison, discusses Dr Hughes' letter dated 21st June 1995, to the TIO John Pinnock noting:

"...Could you please have a look at Hughes' letter to Pinnock dated 21 June 1995 rer Alan Smith. John wants to discuss it on Monday, and what the approach should be re parties seeking to revist isses post Arb'n (Arbitration) *His position is not to open The can of worms."*

On the 11th June 2008, Alan Smith wrote to both Mr Chris Chapman, ACMA Chairman and Tony Lyon's Case Service Manager, Administrative Appeals Tribunal noting: *"...The attached technical report entitled Cape Bridgewater Holiday Camp, dated 27th July 2007, author Brian Hodge, B Tech; MBA (B C Telecommunications), confirms that both the Bell Canada International Inc, Cape Bridgewater (Addendum) report and Telstra's Cape Bridgewater Holiday Camp Service Verification (tests) were fundarmentally flawed. The reviewed documentation provided to Mr Hodge, which enabled him to make his findings as shown therein, will be supplied on request.*

Neither ACMA nor the Administrative Appeals Tribunal, have asked to be provided with the information used by Mr Hodge, to enable him to derive at his findings.

Letters received in 2001/2

Among the material I received in 2001/2, under the TIO Privacy Policy Act, were a number of documents which confirmed that Mr Pinnock, the TIO, allowed numerous episodes of Telstra's unethical conduct during Alan Smith's arbitration, to go unaddressed. One of these was a copy of a letter dated 7th September 1995, from Telstra to Mr Pinnock **(AS 116)**. In this letter, Telstra acknowledged that one of the BCI test results (which they used to support their defence) was impracticable. Why did Telstra withhold this knowledge until after Dr Hughes had brought down his findings?

Another alarming document included in those received from the TIO in 2001/2 was a fax cover sheet to Peter Bartlett of Minter Ellison from the TIO, (see above) regarding some of Alan's letters to Dr Hughes and his consequent letter to Mr Pinnock on 21st June 1995. This fax cover sheet notes, in reference to Alan's arbitration, *"...what the approach should be re parties seeking to revisit post Arbitration. This position is not to open the can of worms"* **(AS 184)**. This document certainly suggests that Alan's arbitration process was certainly not administered as transparently or as lawfully as it should have been, and is addressed along with attachments below.

26th May 1995: Alan Smith received Telstra FOI documents folio N00005, N00006 (see above) which confirmed that at least one set of the Bell Canada International tests (allegedly) conducted at Cape Bridgewater, was impracticable **(GS 219**

27th June 1995: John Pinnock writes to William Hunt stating: *"...As you may be aware, this arbitration has in effect been in abeyance for some months. This has apparently been due to the Claimant's outstanding request for documentation, and Mr Schorer's ill health. We have not heard from Mr Schorer for some time, and would be grateful if you could advise us as to how he intends to proceed."* **(AS 182)**

Please note: There is no reference in this letter stating: *It is **Dr Hughes'** view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement.*

29th June 1995: On behalf of Alan Smith, Taits Solicitors in Warrnambool wrote to AUSTEL, asking for information associated with the BCI and NEAT testing process conducted at the Cape Bridgewater RCM in November 1993. **(AS 185)** On 12th July 1995, Cliff Mathieson of AUSTEL replied **(AS 186)**:

"The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the test should be referred to those who carried them out or claim to have carried them out", but this was the same Cliff Mathieson who had written to Telstra on 9th December 1993 see exhibit **(88-b)** above before Telstra used the BCI report as defence material, advising Telstra that they had to provide the 'assessor(s)' to the COT processes with a copy of his letter regarding the BCI tests in which he decalred was did not go far enough in the study tests. Furthermore, this letter was NOT provided to Dr Hughes as AUSTEL had directed, which in my opinion makes Telstra's use of the BCI report even more unconscionable conduct.

7th August 1995: Mr Pinnock responds to Alan's allegations that, in support of their defence, Telstra used BCI test results that were known to be impracticable to support their defence of his claims. Mr Pinnock stated: **(AS 187)**

"As administrator of the FTAP, I have a duty to ensure the integrity of the procedure. Your complaints go to this issue, and accordingly, I would be pleased if you would provide me with:

- *All documents supplied to you by Telstra on or after 26th May 1995 together with covering letters, specific instances which support your contentions in (a) and (e) above.*
- *Any other evidence which supports the above contentions.*

Alan forwarded the required documents to Mr Pinnock but he is still waiting for him to carry out his 'duty' as the administrator of Alan's arbitration and correctly respond to Alan's reply.

8th August 1995, Alan wrote to Ted Benjamin concerning the flawed BCI tests that Telstra knowingly using in their defence document as well as withholding FOI documents until after Dr Hughes had deliberated on my claim. **(AS 196)**

9th August 1995: Alan submits yet another FOI request to Ted Benjamin re T200 report explaining to Mr Benjamin that, because neither Telstra nor Dr Hughes had accessed, on his behalf, the working notes regarding Telstra's 'beer in the phone' TF 200 report, he was therefore now making a fresh FOI request, with the appropriate $30 application fee, for these documents. This letter was also copied to Mr Pinnock, who plays a continuing roll in this TF200 saga. **(AS 188)**

21st August 1995: Mr Pinnock was provided with a copy of a letter allegedly sent by Gerald Kealey of BCI Canada to Steve Black of Telstra **(AS 189)** see 11th August 1995 **(190-A)**. A number of Telstra executives would have known that this letter contains false and misleading information and yet it ***was*** still provided to the Senate in an attempt to stop the

Senate investigating into Alan's claims that Telstra knowingly used impracticable test results to support their arbitration defence see attached pages 107 to 109 Senate Hansard dated 26th September 1997 **(AS 191)**. Was the Gerald Kealey letter a manufactured document? This letter does not have any BCI identification on the letter at all.

Attached as exhibit **(AS 190-B)** is a copy of a letter from Bell Canada International (BCI) to Telstra's Alan Humrich, dated 14 December 1993, on a BCI letterhead. What ever made Gerald Kealey type his letter on a blank piece of paper?

In Mr Black's letter to Mr Pinnock he states: *"...I refer Dr Hughes' letter to you dated 21 June 1995, which enclosed a copy of a facsimile from Mr Smith to Dr Hughes dated 20 June 1995. Dr Hughes copied his letter to Telstra."*

Attached to Alan's 20th June, 1995 letter to Dr Hughes **(AS 192)** were three other BCI related documents showing in Alan's opinion he had reason to raise the flawed BCI tests during his arbitration **(AS 193, AS 194 AS 195)**.

Are we to assume Dr Hughes copied this BCI information to Telstra, because he believed Alan's claims were valid? After all, he was now supplying correspondence which he didn't address during Alan's arbitration onto Telstra (six weeks after Alan's arbitration).

24th August 1994: Ted Benjamin responds to Alan's letter 8th August 1995 noting: *"...I refer in particular to the last paragraph of your letter in which you state that Telstra had* ***"...internal knowledge that the Bell Canada International Addendum report was not a true and correct document"***. *"Telstra rejects outright your claim"*. **(AS 197)**

20th September 1995: Senate Hansard – Page 1083 Matters of Public Interest – Telstra

Senator BOSWELL (Queensland –Leader of the National Party of Australia – notes: *"...At the moment there are customers of Telstra who, for many years, have also been casualties of Telstra. For years they have experienced problems with dead lines, lines dropping out, busy signals when it was not busy and many more.*

One Commonwealth Ombudsman's report on delays in FOI information condemns Telecom's denial of documents in the following words."

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

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PLEASE NOTE: the Commonwealth Ombudsman's letters referred to directly above, is attached as *exhibit 15* to ACMA's **The Respondents Section 37 Document [No 1836 of 2008].**

3rd October 1995, AUSTEL writes to Telstra's Steve Black, re 008/1800 faults *"...I write concerning charging discrepancies raised in 1994 by Mr Alan Smith of Cape Bridgewater Holiday Camp regarding his 008 service, and the wider issues these discrepancies raise for Telstra's 008/1800 service. To date, AUSTEL has not received a response from Telstra which allays AUSTEL's concerns about this issue."* **(AS 201)**

Please note: this letter was copied to John Pinnock

On 28th November 1995, Mr Pinnock informed Alan: *"You have sent approximately 25 letters to the TIO in the last month. ... If you continue to write to me seeking that I take action which you know I cannot and will not, you will only be frustrated and disappointed by my lack of response. The Resource Unit have provided clarification of the reasons for the deletion of references to a potential addendum on possible discrepancies in your Telecom bills from the final Technical Report as follows:*

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During the period in which AUSTEL's Bruce Matthews was preparing his draft Alan Smith report see *"Attachment Two"* and during the AUSTEL COT investigation period of 6th and 8th April 1994, he confided in the company of AUSTEL's General Manager of Consumer Affairs, John MacMahon, and COT Spokesperson Graham Schorer, that AUSTEL was concerned at the evidence Alan had been providing AUSTEL since June 1993, which appeared to suggest that Telstra had a systemic billing software problem within their network.

It was during this discussion that Alan was asked, as he had previously been asked by the Australian Federal Police, (who were investigating Telstra's interception of Alan's telephone conversations), would he provide any relevant information he received under FOI during his arbitration that might assits the parties investigating his complaints.

ACMA will be able to provide the following information to the AAT:

- **4th October 1994**: AUSTEL's Bruce Matthews, wrote to Telstra's Steve Black under the heading **"Charging Discrepancies Reported By Alan Smith And Issues Related To Short Duration Calls On 008 Services"** noting: *"...Was Mr Smith informed of the results of any investigations conducted in regard to the RVA report(s) identified in (1)? If not, why not? Telecom is requested to respond to Mr Smith's claim that on his 267 230 service he is being charged "on average" 11% over charged seconds."*
- **11th November 1994**: Telstra responds to Bruce Matthews' letter of 4th October 1994 (see above) noting: *"...Each of the questions put by you in your letter of 4 October, 1994 will be answered as part of Telecom's defence to Mr Smith's claim lodged under the Fast Track Arbitration Procedure"*
- **1st December 1994**: Bruce Matthews responds to Telstra's letter of 11th November 1994 (see above) noting: *I note that your letter states that "Each of the questions put by you in your letter of 4 October 1994 will be answered as part of Telstra's defence of Mr Smith's claims under the Fast Track Arbitration Procedure. In summary, the issues raised in my 4 October 1994 letter are of concern to AUSTEL, and will remain of concern until Telecom provides a response to AUSTEL which AUSTEL considers allays this concern."*
- **16th December 1994**: Telstra responds to Bruce Mathews' letter of 1st December 1994 (see above) noting: *"...In the light of this it would seem appropriate for Austel and telecom to seek the advice of the Arbitrator on this matter so that the issue might be finalised quickly and appropriately."*
- **16th December 1994**: Telstra writes to Dr Hughes arbitrator, providing all the above three letters noting: *"...The simplest way forward may be for Mr Smith and telecom and yourself to all confirm in writing that this information can be provided to Austel if this meets with your approval."* On 2nd August 1996,

(fifteen months after Alan's arbitration was deemed completed), Ferrier Hodgson confessed to Dr Hughes and the TIO office, in a memorandum stating they withheld all of the aforementioned above letters from Alan Smith, and as it appears, the arbitrator as well!

- **4th Octover 1995**: AUSTEL's Darren Kearney writes to Alan Smith noting: *"...I write to advise you that AUSTEL has again written to Telstra regarding the issues originally raised in Bruce Matthews' letter to Telstra of 4 October 1994. You will be advised of the outcome"*
- **14th October 1995**: AUSTEL's Darren Kearney writes to Alan Smith notong: *"...As noted in my letter to you of 4 October 1995, AUSTEL has written to Telstra regarding the issues originally raised by you in 1994. The letter refers specifically to charging discrepancies raised in 1994 by Alan Smith of Cape Bridgewater Holiday Camp."*
- **16th October 1995**: Telstra's Steve Black, to whom Bruce Matthews first wrote to on 4th October 1994, forwarded confidential arbitration material that should never have been released outside of the arbitration procedure with AUSTEL (now ACMA). The TIO and ACMA have refused to answer questions why they allowed Telstra to address arbitration issues outside the legal arena of Alan Smith's arbitration, thus disallowing him his legal right to challenge Telstra under the agreed rules of arbitration.
- **6th December 1995**: AUSTEL's Darren Kearney wrote to Alan Smith noting: *"...I refer to my recent correspondence advising you that AUSTEL had again written to Telstra regarding the issues relating to charging discrepancies concerning its 008/1800 service. AUSTEL received information from you on 3 October 1994 regarding this matter, including test sheets and itemised billing shhets for your 008/1800 service. As previously advised, AUSTEL has forwarded this information to Telstra for a response. AUSTEL now request from you any outher information which you consider supports youe claim of massive incorrect chaging referred to above. Your assistance in this matter would be appreciated."*
- **26th February 1996**: AUSTEL's Darren Kearney provided Bruce Matthews a copy of a three page report which notes: *"...The following is a guide to documentation provided by Alan Smith on 19 December 1995, in support of his claim of massive incorrect charging on his 008/1800 account. It should be noted that AUSTEL has advised Mr Smith that it is investigating the charging discrepancies he has raised to ascertain their potential systemic nature.* The 27 examples in this document confirm that Telstra's CCAS data showed numerous discrepancies in the duration of calls into Alan's 008/1800 service compared to the billing accounts Alan received from Telstra.

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PLEASE NOTE: At no time since 1994, has AUSTEL (now ACMA) ever provided Alan a response to the information he provided free of charge and in the public interest. Most fair minded lawyers would think it deplorable for ACMA to be demanding Alan pay for infroamtion, which should have been originally supplied to him during his AUSTEL facilitated arbitration. It is quite apparent that ACMA has not taken into consideration the hours spent by Alan, including a personal cost in dollars to him, when preparing and copying and binding the material for AUSTEL to have ready access to, when they visited his business 19th December 1995. Alan has never asked AUSTEL (now ACMA) for reimbursement for these costs.

23rd October 1995: Portland Solicitors Bassett & Sharkey, wrote to John Pinnock, stating that Alan was of the view that Telstra had used BCI test results that were known to be impracticable to support their arbitration defence of his claims, and therefore, required answers. **(AS 198)**

26th October 1995: Minter Ellison, for the TIO, drafted a letter to be used in reply to Bassett & Sharkey. This letter included the statement: *"Although the Arbitrator had a copy of the Bell Canada Report, it does not appear to have ever formally been put into evidence."* This was false and misleading because both Minter Ellison and the TIO's office also had a copy of Telstra's arbitration defence and a copy of the arbitrators Award where he states the BCI was placed into evidence. **(AS 199)**

9th November 1995: Mr Pinnock writes to Alan Smith's Lawyers, Bassett & Sharkey noting: *"...If Mr Smith feels the process was flawed or the Award tainted, he has legal avenues available to him."* **(AS 202)**

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Most truly independent lawyers would consider it unthinkable that an arbitrator would continue with an arbitration process when he was aware that:

a) **The claimants were not being provided with discovery and therefore could not correctly prepare their technical reports for assessment;**

b) **The claimants could not accurately respond to the defendants' Interrogatories because the defence withheld much of the required material until after the arbitrator had handed down his findings.** *(As occurred in the case of Alan Smith v Telstra when Telstra withheld from Mr Smith information regarding the Bell Canada International – Cape Bridgewater tests, even though Mr Smith had requested that information twelve months before the arbitrator handed down his findings in Mr Smith's matter);*

c) **The arbitrator's own Resource Unit had written to the arbitrator advising *"It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work."*** *(In Mr Smith's case, the Resource Unit was Ferrier Hodgson and they wrote to the arbitrator, the TIO (Warwick Smith) and the TIO's Special Counsel (Peter Bartlett) on 18th April 1995).*

d) We suggest that if those same truly independent lawyers were to read the Reports that Alan Smith has prepared for the Administrative Appeals Tribunal in July 2008, they would come to the clear conclusion that not only should the **arbitrator** have called a halt to the arbitration because of the three points listed above, but the **administrator** should not have continued with Mr Smith's arbitration either, not only because of the defective FOI discovery process that AUSTEL (now ACMA) designed for the arbitration process in 1994 but also because, on 12th May 1995, the arbitrator advised the administrator that: *"In summary, it is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than that presently contained in the Arbitration Agreement."*

LETTER FROM DR HUGHES TO WARWICK SMITH, 12TH MAY 1995

As previously mentioned **(AS 180)** the following is an excerpt from that letter:

- *The time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;*
- *In particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;*
- *In summary, it is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement."*
- *There are some other procedure difficulties which revealed thesemselves during the Smith arbitration and which I would like to discuss with you when I return."*

This confirms the advice also given to Mr Pinnock, by John Rundell 15th November 1995 **(AS 104)**, that there had not been enough time allowed in the Arbitration Agreement for the technical unit to investigate the evidence of billing problems which Alan submitted in his claim. It also confirms the lack of enough time for the *"...preparation of technical reports."*

What on earth was this arbitration about if the technical resource unit wasn't meant to assess correctly ALL the claim documents submitted to it by the COT claimants, and come to a proper and independent conclusion?

In his letter, Mr Rundell also states:
- *"A second matter involved 008 calls. Again, this matter was current at a late stage (April 1995) of the Arbitration process."*
- *As no further progress was likely to be made on these matters, the formal version of the Technical Evaluation Report did not leave the billing issues open."*

Although the billing issues were certainly still 'current' in April 1995, this letter infers that they had not been referred to before: this is not accurate as the billing issues were included in Alan' letter of claim which he lodged on 15th June 1994. Furthermore, the transcript of the arbitration oral hearing on 11th October 1994 (see above), also shows that both FHCA and the arbitrator were given massive (and we repeat – massive) amounts of evidence in relation to wrongly calculated accounts charged to Alan's phone services over many years.

As for the *"... Technical Evaluation Report"* not leaving *"... the billing issues open"*, this is so far from the truth that, if it wasn't so serious, it would be laughable. Both the draft Technical Evaluation Report and the formal version clearly left this issue wide open, as can be seen from the following point, which appears in both versions of the report:

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

<u>24th November 1995</u>: This letter from William Hunt, Graham Schorer's solicitor, to Dr Hughes, states: *"We refer to your letter of 6th November last to our client and subsequent correspondence. The arbitration proceedings were entered into on a clearly acceptable basis that Telstra would supply required documentation under FOI provisions. Our client cannot proceed without the relevant information being made available. Our client is aware of the disastrous state of affairs as to the supply of FOI documents in the recent Smith arbitration wherein documentation was*

supplied shortly before and after you made your decision; it does not want to be similarly disadvantaged in its own proceedings." **(AS177b)**

On 21st June 1995, before William Hunt wrote this letter, Dr Hughes had already corresponded with Telstra and the TIO (without copying the letters to Alan Smith) regarding the issue of late-received FOI documents which provided conclusive proof that Telstra had knowingly used impracticable Bell Canada test results to support their defence of Alan Smith's arbitration).

Exhibit **(AS182-b)** and **(AS 177-b)** Includes:

1. A fax dated 22nd June 1995, from the TIO's office to Peter Bartlett, the TIO's Legal Counsel, regarding Alan Smith's arbitration matters. It refers to the possibility of a *'can of worms'* that could be opened if the TIO re-visited Alan Smith's post arbitration matters. Together, these documents establish the reality of William Hunt's concerns that Graham Schorer might end also up receiving vital claim material after Dr Hughes had deliberated on HIS arbitration.

20th December 1995: John Pinnock TIO, wrote to Derek Ryan noting: *"...In that letter you state, among other things, that* ***"I have since been advised by a staff member of FHCA that a large amount of information was excluded in their final report at the request of the arbitrator."*** *"...I have been informed by Ferrier Hodgson Corporate Advisory that it is not in fact the case that a large amount of information, or indeed any information, was excluded from the Resource Unit's report at the request of the Arbitrator."* **(AS 177)**

22nd December 1995: Derek Ryan responds to Mr Pinnock's letter noting: *"...On May 8th 1995 I telephoned FHCA and spoke to John Rundell and requested a meeting to discuss how the FHCA loss figures were determined. He was reluctant to talk to me at the time however we set a tentative date of 17th May 1995 for us to discuss this matter again.*

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

On 17th May, I telephoned John Rundell and he stated that he was unable to discuss anything with me until the appeal period had expired. During the telephone conversation, I told him I was unable to recalculate the FHCA figures and that the report was deficient in this regard. He then stated that he understood my problems and that FHCA had excluded a large amount of information from their final report at the request of the arbitrator **(AS 178-B)**

Please note: Although Alan has the full 39 page letter referred to above, from Derek Ryan dated 9th May 1995, to Dr Hughes, we have only attached page 1 and page 39 because of the voluminous nature of the document. This document will be supplied to AAT and ACMA, on request.

Is there a sinister motive behind Ferrier Hodgson, withholding from Alan the AUSTEL/Telstra 1800 billing letters discussed below?

On 15th November 1995, John Rundell wrote to Mr Pinnock about Alan's 008 billing issues stating that: *"... A second mater involved 008 calls. Again this was currant at a late stage (April 1995) of the Arbitration process"* **(AS 104)**. Why would Mr Rundell, make such a statement when he was present at the 11th October 1994, oral hearing see transcripts that confirm Alan's 008 billing and facsimile issues were discussed at great length? **(AS 105)**.

Considering this misleading statement and his admission to Mr Pinnock see immediately below (*"I did advise Mr Ryan that the final report did not cover all material and working*

notes) suggests that Derek Ryan's two letters (**AS 177 and AS 178**) are closer to the truth that anything Mr Rundell would have us believe, see also Derek's letter to Ms Caitland English, Consumer Law Centre Victoria (**AS 176**).

Who suggested John Rundell write this letter?

Among documents received in 2001/2, from the TIO's office, was a copy of a letter dated 13th February 1996, from John Rundell of FHCA to Mr Pinnock, which admits that Mr Rundell's financial report was incomplete. This letter states: ***"I did advise Mr Ryan that the final report did not cover all material and working notes."*** Even more amazing, in this same letter, Mr Rundell all but accuses Alan of causing criminal damage to his personal property and notes that the Brighton CIB were intending to interview Alan. When Alan found this comment, he contacted the Brighton CIB and was told that they had never intended to interview him regarding this matter and, in fact, they had no record of Alan on their files at all. Surely this further supports Alan's assertions that John Rundell is not a credible witness and should therefore never have been in charge of the distribution and assessment of Alan and Graham's arbitration claim documents? If this is not enough to label him as a character of questionable character, then other evidence, presented below, surely will. (**AS 179**)

IMPORTANT POINTS TO CONSIDER:

- Derek Ryan's report was dated 9th May 1995.
- Dr Hughes and FHCA would have needed all of the following day 10th May 1995, to digest and discuss Derek's reply to the final FHCA report. This is the same final FHCA report that John Rundell advised Mr Pinnock 13th February 1996, that he: *"...**did advise Mr Ryan that the final report did not cover all material and working notes."***
- Dr Hughes on the other hand with his wizardry some how was able to submit his Award on 11th May 1995.

Please note: Derek Ryan never received a response from Dr Hughes, confirming he received Derek Ryan's official response. Are we to assume FHCA first received Derek's Ryan's letter before Dr Hughes for their vetting process, and decided the letter was irrelevant?

22nd November 1995: Ted Benjamin again refutes Alan's BCI claims: In this letter Mr Benjamin states: *"I note that you raised issues in relation to the Bell Canada International testing in the arbitration process. As you are aware, the arbitration process dealt with the complaints by you in relation to your telephone service. Telstra does not propose to comment further or enter into debate with you on these matters."* (**AS 200**)

28th November 1995: Alan made a telephone call to Dr Hughes' residence to inform him his latest FOI application dated 9th August 1995, which he had asked Ted Benjamin to process (**AS 188**) had brought home the bacon. Alan's FOI application had been seeking for all working notes as to how Telstra laboratory staff had concluded 'sticky' beer had been the cause of his EXICOM TF200 phone lock-up problems. The TF200 information Alan had just received was a completely different set of testing results than the ones Telstra had previously used in their arbitration defence see Dr Hughes wasn't home – Mrs Hughes informed Alan that Gordon was away on business. Alan was immediately concerned that perhaps Dr Hughes had told his wife about his continued frustration regarding his arbitration and so, when she asked who was calling so that she could let Dr Hughes know

who had rung, Alan was worried that she would become upset if he gave his real name and quickly decided to use the first name he could think of that was unlikely to upset her, but who he was sure Dr Hughes knew – John Rundell. The result of this telephone call is discussed in more detail below.

10th January 1996: Mr Pinnock writes concerning Alan's requests for documents that might enable him to appeal the arbitrator's award. *"The arbitration of your claim was completed when an award was made in your favour more than eighteen months ago and my roll as Administrator is over. I do not propose to provide you with copies of any documents held by this office."* **(AS 203)**

18th January 1996: Alan wrote to Mr James, President, Institute of Arbitrators condemning the way Dr Hughes conducted his arbitration. **(AS 204)**

23rd January 1996: Dr Hughes writes to John Pinnock re Laurie James noting: *"...I enclose copy letters dated 18 and January 1996, from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters, including;*

- *the cost of responding to the allegations;*
- *the implications to the arbitration procedure if I make a full and frank disclosure of the facts to Mr James.* **(AS 205)**

Why wasn't Dr Hughes fully frank with Laurie James? Why didn't Dr Hughes inform Laurie James, that he had already advised Mr Pinnock's predecessor Warwick Smith, that the Arbitration Agreement was flawed and needed revising?

15th February 1996: Dr Hughes writes to Mr Pinnock regarding a draft of a letter he is proposing to send to the Institute of Arbitrators in response to one of Alan's complaints. Dr Hughes's letter states: **(AS 206)**

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

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

Why would Dr Hughes need a letter of support if he was sure he had nothing to hide?

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

The 24,000 FOI document issues discussed by Dr Hughes in his letter to Laurie James, is most relevant to the present Telstra FOI letters ACMA state they cannot locate as part of Alan Smith's 6th December 2007, FOI request. In Alan's AAT *'Attachment One'* and *'Attachment Two'* he provides the reader five examples where even AUSTEL (now ACMA) was unable to force Telstra to supply documents to enable them to complete the Alan Smith – Bruce Matthews draft report. It is quite disturbing that fourteen years later and ACMA still cannot find the relevant documents in which as the Regulator has still been unable to find. In ACMA's **The Respondents Section 37 Document [No 1836 of 2008]** at Exhibit 15, see Alan Smith's letter dated 2nd March 2008, to Ms Alison Jermey, Senior Lawyer where he notes: *"...If AUSTEL (the Government Regulator) could not extract documents from or gain access to documents in a fully owned Government Corpoation such as telstra was during this investigation, then what hope did I have as one of the COT*

Claimants ...and *"...My matters are of public interest and AUSTEL/ACMA and ACMA's past and present involvement in this cover-up does not provide ACMA with grounds to deny my appeal. The information I am seeking is of public interest and therefore should be provided free of charge."*

Dr Hughes spins a tall story to Laurie James

16th February 1996: This letter has been discussed above but it is also relevant to document (AS 103). There are many inaccuracies in this letter but the most important is at point 1 on page two, where Dr Hughes states: *"...contrary to Mr Smith's assertion on page 3, his 24,000 (sic) documents were all viewed by me, Ferrier Hodgson Corporate Advisory, DMR Group Inc (Canada) and Lane Telecommunications."* This statement however is quite wrong and highlights just how far Dr Hughes was prepared to go to cover up the unconscionable way Alan's arbitration was conducted. (AS 157)

For the record:
The 24,000 FOI documents referred to by Dr Hughes in his letter to Mr James, relates to my original letter to Senator Evans, see document (AS 208) was also copied to Laurie James. On page 4 of this letter Alan alerts Senator Evans to the 24,000 documents stating: *"...As a result of viewing the previously referred to 24,000 late FOI documents and sorting them into bound volumes it became apparent that there were still many areas I could not include in my written submission since I did not have enough technical knowledge.*

On page 3 in my letter to Senator Evans Alan also stated: *"Telstra presented their defence on 12th December 1994. At this time I was still waiting for FOI documents to be supplied. Eleven days after Telstra presented their defence I was finally supplied with 24,000 plus documents. The first notification I had of these documents arriving was a phone call from Kendall Airways on 23rd December 1994, announcing that 72-74 Kilograms of documents, addressed to me, had arrived at the Portland Airport."*

It is blatantly obvious from Dr Hughes' letter to Laurie James that he was concerned about the content in Alan's letter to the Senator, and the ramifications if the truth was ever revealed.

In Alan Smith Relevant Information File, Alan provides documents proving that, even though the TIO-appointed technical resource unit (DMR & Lanes) clearly stated that their draft report of 30th April 1995 was incomplete, this reference was removed from the draft and the doctored report was then provided to Alan and his technical advisors as the final and complete version of the report. Either Dr Hughes conformed to Peter Bartlett's request of 28th April 1995, or he made his own decision to bring down an award prematurely on an incomplete report before he went to Greece: either way, Alan's claim suffered.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

It is important for the AAT, to consider if there is any link between the Special Counsel, to Alan's arbitration, (who had to have authorised the secret changes to the arbitration agreement), and the fact that Alan has been hampered for thirteen years in trying to gain relevant documents from AUSTEL (now ACMA) to uncover this massive cover-up. It is of public interest, that the Australian legal system of arbitration has been abused to protect the defendents and those who benefited from the alterations in clauses 24, 25 and 26, of Alan's arbitration agreement.

Exhibits **AS 208-b, AS 208-c, AS 208-d and AS 208-e** see below, should also concern the legal fraternity within AAT, because these exhibits show due to AUSTEL (now ACMA) not exposing the flawed BCI tests, prior to Alan Smith's arbitration, this allowed other claimants to be disadvantaged when tying to access relevant BCI information. In other words, had the regulator advised the TIO and Dr Gordon Hughes, that the BCI report should be taken out of the legal arbitration arena, this action would have benefited all the claimants as was their right. Tainted and/or manufactured evidence defence spreads to and infects the whole body of any judgement made.

CHAPTER FIVE

Who benefited from exonerating FHCA – DMR & Special Counsel?

Although the 19th April, 1994 arbitration agreement issue has been addressed above, it is important to link that segment to the faxed a copy of the FTAP agreement by Dr Hughes' secretary Caroline Friend to legal Counsel, Mr Goldberg, and William Hunt, in response to Mr Hunt's request, when Mr Hunt was seeking a legal opinion on the agreement before Graham Schorer and Alan Smith were to sign it on 21st April 1994. The following three clauses are included on page 12 of this version of the agreement received via Caroline friend:

Clause 24: *Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.*

Clause 25: *The liability of Ferrier Hodgson and the partners and employees of Ferrier Hodgson for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.*

Clause 26: *The liability of DMR Group Australia Pty Ltd and the directors and employees of DMR Group Australia Pty Ltd for any act or omission in connection with any arbitration conducted under these rules, other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.*

In the agreement that was presented to the COT claimants for signature two days later, on 21st April 1994, Clauses 25 and 26 had been removed and some – and only some –of the wording had been added to Clause 24. The final version of Clause 24 reads (in part): *"Neither the Administrator, the Arbitrator, the Special Counsel, a partner or employee of the legal firm of which the Special Counsel is a partner, a member of the Resources Unit, Ferrier Hodgson or a partner or employee of Ferrier Hodgson, DMR Group Australia Pty. Ltd. shall be liable to any party..."* This resulted in Clause 24 having quite a different meaning to that presented by the original three separate clauses (24, 25 and 26) and, more importantly, it freed Peter Bartlett and Minter Ellison from any risk of being sued for misconduct associated with their roll as legal advisors to the process, thereby providing no incentive for them to ensure that the COT claimants were involved in a fair and just process.

It is also blatantly obvious from the altered clause 24, that it does not show the original $250,000.00 liability cap against FHCA and DMR, as was in the case of the (Arbitration Agreement) faxed to Mr Goldberg and William Hunt, 19th April 1994 (see below)

It is most important to consider that:

(a) Graham Schorer sought a legal opinion from Mr Goldberg (through Mr Hunt, and at the 'eleventh hour' on 19th April 1994) regarding what the COT claimants had been led to believe was the final version of the Arbitration agreement but changes were later made to that agreement – i.e. the removal of clauses 25 and 26 and alterations to the original clause 24. This meant that the COT claimants' legal opinion was provided on a document that was later secretly altered, apparently by the legal counsel who would most benefit from the alteration.

(b) On the day Graham Schorer and Alan Smith signed the FTAP in the Special Counsel's office (21st April 1994), no reference was made to the alterations, by Mr Bartlett or anyone else, but the claimants were told that they had to sign the agreement before close of business that day because Mr Bartlett's instructions were that the TIO would not administer even the already-signed Fast Track Settlement Proposal – the earlier commercial agreement if the FTAP was not signed by then.

(c) On 19th April 1994, when Mr Goldberg and Mr Hunt were assessing the not-yet-altered version of the agreement, not only could they not have known that alterations would be made AFTER they had completed their assessment, neither did they know that another clause 10.2.2 had already been changed by the removal of the words *"... each of the Claimants claims"* because neither Graham Schorer nor Alan Smith knew of this change either

Comment
When Graham and Alan signed the arbitration agreement on 21st April 1994, Graham was still waiting on a legal opinion from William Hunt and Mr Goldberg as to whether or not he should sign the FTAP agreement.

Question:

- Would Mr Hunt, have advised Graham and Alan to sign the altered agreement, had he received that document instead of the one faxed by Caroline Friend?
- Would Dr Hughes, have advised Graham and Alan to sign the altered agreement, had he been aware it was not the agreement he and Caroline Friend, believed he was to arbitrate under?

21st March 1996: Dr Hughes writes to Sue Hodgkinson FHCA stating:
(a) "...I am prepared to be present at the proposed informal meeting;
(b) I do not consider the meeting should be transcribed. **(AS 208-b)**

- Why was Dr Hughes concerned about a simple directions hearing being transcribed?
- Was Dr Hughes worried because of the arbitration issues raised by Alan Smith, with Laurie James, the President of the Institute of Arbitrators Australia?

On 18th and 19th January 1996, Alan Smith raised a number of complaints with Laurie James, President of the Institute of Arbitrator's Australia, concerning the unethical way in which his arbitration had been conducted.

On the 23rd January 1996, see **(AS 208-c)** Dr Hughes wrote to John Pinnock, concerning a letter he had received from Laurie James, concerning the two letters (see above), written by Alan Smith to Mr James on 18th and 19th January 1996 stating:

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

(a) the cost of responding to the allegations;

(b) the implications to the arbitration procedure if I make a full and frank disclosure of the facts to Mr James."

On 15th February 1996, Dr Hughes again writes to Mr Pinnock stating: *"...I enclose a draft letter I propose forwarding to the Institute of Arbitrator's in response to the complaints by Mr Smith.*

I would appreciate your confirmation that there is nothing in the proposed letter which would embarrass your office or jeopardise the current arbitrations." **(AS 208-d)**

It is clear from Dr Hughes' letter of 16th February, 1996 see above, that he knowingly misled Laurie James concerning Alan's arbitration. The fact that Dr Hughes was seeking advice from Mr Pinnock, on what he should or should not disclose to Laurie James, (about the conduct of the COT arbitrations) during the time he was arbitrating on Graham arbitration raises just more questions about Hughes' independence.

19th March 1996: William Hunt's file notes states: *"...At or about the same time Bell Canada had Telstra doing reports on its service in relation to Golden's receipt of same. At or about the same time similar tests were being done on the Telstra equipment to Smith and the results of those cover the demonstration that they could not have been done. As to the second Bell Canada test Schorer has on disk the Telstra abandoned certain tests as part from certain exchanges. One can only assume that the reports were unsatisfactory to Telstra or supportive of Schorer."* **(AS 208-e)**

27th March 1996: Mr Pinnock assists Dr Hughes in his letter to Laurie James, President of the Institute of Arbitrator (Australia). Mr Pinnock also attacks Alan's credibility by knowingly misinforming Mr James that Alan had rung Dr Hughes's wife at 2 o'clock one morning noting:

"...Mr Smith has admitted to me in writing that last year he rang Dr Hughes' home phone number (apparently in the middle of the night, at approximately 2.00am) and spoke to Dr Hughes' wife, impersonating a member of the Resource Unit." **(AS 209)**

Who advised Mr Pinnock that Alan telephoned at approximately 2.00am? The attached telephone account for the evening in question confirms Alan called at 8:02pm see **(AS 210)**

Question:

- Why didn't Mr Pinnock, just send Laurie Jamers a copy of the alledged letter from Alan to him admitting in writing, that Alan had telephone the arbitrator's wife at 2.00am in the morning?

28th March 1996: Mr Pinnock wrote to David Hawker MP, re billing issues **(AS 210)** This letter was in response to Alan's allegations to Mr Hawker that the incorrect billing he had raised in his claim had not been investigated, addressed or fixed during his arbitration. Mr Pinnock stated:

"It is incorrect for Mr Smith to assert that the TIO has avoided dealing with over-charging practices. My office refers questions of general charging practices to AUSTEL and deals

with particular problems itself. Mr Smith's allegations of over-charging for his service formed part of the claim submitted to the Arbitrator. Consequently, this matter was dealt with in his arbitration."

But, of course, the matter had not been dealt with in Alan's arbitration and AUSTEL had advised Mr Pinnock so by passing on to the TIO a copy of AUSTEL's letter to Telstra on 3rd October 1995, which stated exactly that – the billing faults Alan had raised in his claim had NOT been addressed **(AS 201)**. Mr Rundell FHCA also admitted, in writing, to John Pinnock that he had actually DMR and Lanes, the technical resource unit, had NOT to investigate or address the billing documents Alan Smith submitted in his claim **(AS 104)**. This indicates that Mr Pinnock has not behaved independently or impartially in Alan's matters. Knowingly lying to David Hawker MP, Alan's local Federal Member of Parliament, is beyond contempt.

Numerous other letters document the fact that Telstra disconnected Alan's Gold Phone in December 1995, even though they knew that he was refusing to pay only the refuted faulty part of this account which originated in the exchange at Cape Bridgewater. Alan also personally arranged for Telstra to disconnect his 008/1800 number in December 1997, because of the endless billing and short duration calls generated on that line which apparently could not be fixed.

Brief Billing Summary
Alan has jumped eighteen months in this particular billing summary in an attempt to show the reader that it took from Mr Pinnock's letter to Mr Hawker 28th March 1996, to October 1997, to convince him to investigate the continuing billing problems that were twofold.

- The lines often locked-up for periods not noticed. It was quite common for Cathy and Alan (during this period) after they had terminated a call to lift the receiver only to find their line still open.
- This billing fault also disallowed intended calls to receive a busy signal.

27th May 1996: Mr Pinnock writes to Alan noting "*...If you have complaints about the conduct of your arbitration procedure, I suggest you seek legal advice on the availability of review or an appeal. In your letter of 3 May 1996, you request that I ask Telstra why they chose not to defend allegations raised in your claim regarding your 008 service. As this matter was raised in your claim, it would have been considered by the Arbitrator, regardless of Telstra's failure to respond.*

I advise that any further request by you for a review or investigation of (or comment on) the substantive issues in your completed arbitration will not be answered." **(AS 215)**

As shown above **(AS 213)**, Telstra waited until five months after Dr Hughes had deliberated on Alan's claim before attempting to address the 008 billing arbitration issues.

25th June 1996: Alan writes to Mr Pinnock noting: "*...your statement to Mr Laurie James, President of the Institute of Arbitrators, regarding a telephone call to Dr Hughes. To date I have had no response from you, personally, as to why you chose to tell Mr James that I phoned Dr Hughes' residence at 2.00am on 29th November 1995 and that, in making this alleged call I behaved unethically.*" **(AS 216)**

When Alan later received a copy of this letter back from the TIO's office, a hand-written note had been added, stating: *"John, we are still waiting on a response from Gordon on this."* Although, Mr Pinnock has apologised (in a round about way for writing to Lauire James in the manner he did), Alan has never received any reason to why Mr Pinnock was intent in blackening Alan's name as he did.

It would be reasonable to conclude that the Institute of Arbitrators, would believe an Ombudsman, (the TIO) in preference to someone like Alan, who was making a number of allegations against the conduct of his arbitration.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

The AAT and ACMA should also consider the possibility that much of the information Alan Smith provided to AUSTEL has been deliberately and incorrectly labelled, by those with a vested interest in hiding the truth, as coming from someone who has 'lost the plot' and whose allegations cannot be supported by facts. The exhibits attached to Alan Smith's chronology however prove that, for the last fourteen years, Alan has only been reporting the truth.

The AAT and ACMA therefore must consider that, in Alan Smith's chronology, some of the statements regarding documents that have been withheld; have had information deleted from them; or have been wrongly labelled as Legal Professional Privilege (LPP), are actually documents that Telstra should have provided to AUSTEL during AUSTEL's Regulatory Investigations but which Telstra either did not provide, deleted information from, or incorrectly labelled as LPP and this is why ACMA can now not locate the information that Alan requested in his FOI request of 6th December 2007.

26th June 1996: Alan pens another letter of disgust to Mr Pinnock: *"...I find it very sad to be in possession of so many FOI documents which support my allegations that many, many copies of internal correspondence I forwarded to Dr Hughes during the FTAP was never seen by the Resource Unit or Telstra." It is equally sad that copies of Telstra letters, which were also part of the FTAP, were not forwarded to me."*

When this letter was later returned from the TIO, it also had a hand-written note stating: *"These are quite serious allegations, we need to respond to specific letters Smith says weren't forwarded or received and provide answers on each."* **(AS 217)**
Exhibit **(AS 64)** is a letter dated 25th March 1994, from Phillipa Smith to Mr Blount. This is even more important because, in the third paragraph on page three, Ms Smith confirms that Mr Bartlett and Warwick Smith both knew that Telstra was still holding up the settlement/arbitration process at that stage. Even after Graham and Alan had signed the settlement (FTS) agreement, when Alan approached Warwick Smith regarding FOI documents that Telstra was not providing, he advised Alan that, as long as he submitted the documents into arbitration, this would help facilitate the process and assist the arbitrator

It is, of course, now obvious that many of the documents that Dr Hughes and Graham and Alan should have seen may well have been vetted and discarded by FHCA.

11th July 1996: Sue Harlow, of AUSTEL writes to Senator Alston noting: *"...Also included in AUSTEL's report is a report by the Telecommunication Industry Ombudsman (TIO) on the Status and Progress of the Fast Track, Special and Standard Arbitration Procedures. The TIO is critical of Telstra's behaviour and attitude in relation to these arbitrations."* **(AS 218)**

This is the same Sue Harlow, who was the Deputy TIO (during my arbitration) who on the 16th May 1994 left a note for Warwick Smith saying: *"...Attached is a fax received from Alan Smith regarding access to FOI documents at Telecom. Smith is alleging that documents are not in chronological order and blanking done for earlier FOI inspections has made the collection of appropriate documentation uncertain and diminished the opportunity for him to satisfactorily present his case. Mr Smith has demanded a TIO member be present at today's examination of papers by him at Telecom. He left an example of this with us (also attached)* see (77).No one came from the TIO's office the next day to assist me in inspecting the documents.

The involvement of Sue Hodgkinson and FHCA in Graham and Alan's arbitration is further addressed below (see 14th and 18th August 1997).

30th July 1996: Mr Pinnock draft letter intended for Alan (one page only **(AS 219)**
Alan did not see a copy of this letter until 2001/2. The hand-written notes in the top right corner of this letter included dates that coincided with a number of arbitration letters that were withheld from both Dr Hughes and Alan during his arbitration see **(AS 27 to AS 129)**.

COMMENTARY:

1. The letters referred to are attached at Exhibit **AS 127** to Exhibit **AS 129**.
2. The handwriting exhibit **(AS 219)** looks to be the same as Ms Di Mattina's handwritten note referring to 'opening a can of worms', on the TIO document **AS 184)**
3. Alan only received these letters under the TIO Privacy Policy Act, late in 2001/2 and early in 2002.

Please note: the hand-written notes in the top right corner of document **(AS 219)** which is discussing a number of dated letters are some of the letters that Sue Hodgkinson FHCA has admitted to withholding from Alan during his arbitration, and as it appears from this memorandum also from Dr Hughes see directly below **(AS 220)**

Ms Sue Hodgkinson Memorandum to Dr Hughes

2nd August 1996: In this memo Ms Hodgkinson states: *"...At the time of the AUSTEL letter from AUSTEL, Mr Smith's telephone problems were being addressed in the arbitration. Due to a number of factors including confidentiality, it was felt not appropriate to answer AUSTEL's comments in detail, in particular the issue was under consideration in the Arbitration. As agreed the Resource Unit did not response to the AUSTEL letter."* **(AS 220)**

One of the documents dated 16 December 1994, which is shown in the square at the top left corner page of this Memorandum (page one) was actually addressed to Dr Hughes attaching three AUSTEL and Telstra related billing documents see (AS 129).

The Arbitration Agreement clause 6 is clear in its understanding in regards to the supply of documents to the defence and claimants see **(AS 130)** *"...A copy of all documents and correspondence forwarded by a party to the Arbitrator shall be forwarded by the Arbitrator to the Special Counsel and the other party."*

Important

1. Sue Hodgkinson knowingly misinforms Dr Hughes when she states: *"I refer to your letter dated 31 July 1996 (received 1 August 1996) concerning Mr*

Smith's letter dated 25 June 1996. I have not received a copy of Mr Smith's letter however I have reviewed Matt Deeble's summary and provide the following information concerning Mr Smith's allegations: At the time of the letter from AUSTEL, Mr Smith's telephone problems were being addressed in the Arbitration. Due to a number of factors including confidentiality, it was felt not appropriate to answer Austel's comments in detail, in particular the issue was under consideration in the Arbitration. As agreed, the Resource Unit did not respond to the Austel letter."

2. Please note that the Mr Deeble referred to by Ms Hodgkinson is a lawyer who was seconded from Minter Ellison to the TIO's office.

Why didn't Mr Deeble provide Ms Hodgkinson with a copy of Alan Smith's letter to Mr Pinnock on 25th June 1996? And when Mr Deeble received a copy of Ms Hodgkinson's letter of 2nd August 1996, why didn't he immediately advise the TIO and Dr Hughes that Ms Hodgkinson was incorrect when she wrote that only one AUSTEL letter had been withheld from Dr Hughes? Alan Smith has provided examples of numerous letters sent by Telstra, addressed to Dr Hughes, but withheld during Alan's arbitration. Alan's letter of 25th June 1996 listed the documents he finally received, thirteen months after his arbitration, which confirmed the many documents that were withheld from him during his arbitration. Even with all this evidence, including hand-written notes made by John Pinnock regarding how serious the withheld documents were, this same important information was withheld from Graham and his solicitor, William Hunt, during Graham's arbitration, and not released until 2001 when Mr Pinnock provided documented proof to Alan under the TIO Privacy Policy Act, confirming how serious the TIO saw these issues.

16th August 1996, Mr Pinnock writes to Alan re my concerns that Mr Paul Howell, author of the DMR & Lanes technical report, didn't sign off the report, Mr Pinnock wrote: *"I note that the Arbitrator was not obliged to forward a copy of this covering letter to you, as it did not, strictly speaking, form part of the Technical Evaluation Report."* I do not believe for one moment that Paul Howell signed this letter on 30th April 1995, please read why: **(AS 221)**

ATTENTION – AMINISTRATIVE APPEALS TRIBUNAL

Please Note: The Statutory Declaration referred to below Exhibit **(AS 222)** was also provided to Mr Marcus Bezzi, ACMA FOI Co-ordinator, on 9th April 2008, as a testament to the way that the AUSTEL (now ACMA) facilitated arbitration process was not conducted in the transparent manner that AUSTEL had told the Australian Federal Government it would be, when the Government endorsed the procedure.

Exhibit **(AS 222)**, is a copy of a statutory declaration Alan provided Senator Helen Coonan's office 23rd February, 2006. On page 2 second paragraph of this document Alan stated: *"...I collapsed with a suspected heart attack and was rushed to hospital by ambulance. On my return, five days later, Mr Paul Howell of DMR Canada telephoned me at home. I had not spoken to Mr Howell before, but he told me he had heard that I had been in hospital and was phoning to wish me well. Mr Howell then went on to tell me that my arbitration was the worse process he had ever been associated with and that, had it been conducted in North America, it would never have been allowed to continue under such an atrocious administration. I told him I appreciated his concern, but was disappointed with his technical report and asked him why he had not signed it off. He relied in words to the affect that he hadn't signed the report."*

Question:
If Paul Howell was telling Alan the truth he did not signing off his report, then who wrote the 30th April, 1995 letter? The 30th April 1995 letter was attached to the 16th August 1996 letter provided to Alan by Mr Pinnock **(AS 223).**

4th February 1997: Mr Pinnock writes to Alan *"I reject completely your assertion that Dr Hughes and David Read 'conspired to breach the rules of the Arbitration. Please note that Mr Benjamin has never held any position as an 'executive officer' of the TIO."* **(AS 224)**

24th February 1997: Mr Pinnock writes to Alan noting: "...Since the arbitrator delivered his award, you have written many letters to me asserting, variously, that the arbitrator, and/or the Resource Unit, erred in their duties under the Arbitration agreement." **(AS 225)**

27th May 1997: Mr Pinnock writes to Alan stating: *"...I refer to your latest correspondence and advise that it has been twelve (12) months since the arbitration of your claim for compensation as a Casualty of Telecom (Cot). My role as Administrator has ceased."* **AS 229)**

18th June 1997: Telstra's Corporate Secretary, Mr Montalto writes to Alan *"In those letters you made allegations as to Telstra's conduct in relation to a report prepared by Bell Canada International. I am advised that you raised these same allegations in your arbitration claim made against Telstra. I am advised further that you again raised these allegations with the Arbitrator after an award had been delivered and referred those matters to the Telecommunication Industry Ombudsman. Telstra responded to the Ombudsman's queries in relation to this matter."* **(AS 230)**

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

In the Alan Smith – draft Bruce Matthews report dated 3rd March 1994, see *'Attachment Two'* On page 68 point 209 under the heading **Conclusions** AUSTEL noted: *"...Cape Bridgewater Holiday Camp has a history of service difficulties dating back to 1988. Altough most of the documentation dates from 1991 it is apparent that the camp has had ongoing services difficulties for the past six years which has impacted on its business operations causing loses and erosion of customer base."* This statement on page 68 at point 208, in *'Attachment Two'* is relevant to the DMR & Lane reporting issues below, because AUSTEL noted that the camp has had ongoing service difficulties for the past six years, where DMR & Lane reported only on historic issues.

In other words, by AUSTEL not broadcasing their knowledge to the arbitrator, that both the Cape Bridgewater, BCI tests and the Cape Bridgewater Service Verification Tests, were fundamentally flawed, they allowed DMR & Lane to assume both tests had exonerated Telstra's once historical problem area at Alan's business.

Lanes prepared the draft of their Cape Bridgewater report on 6th April 1995, before Paul Howell of DMR Canada had even arrived in Australia. In the final DMR & Lanes Cape Bridgewater Report (dated 30th April 1995), twenty-two of the twenty-three faults discussed relate to problems Alan had experienced before 1994 even though, when David Read of DMR had visited Cape Bridgewater on 5th April 1995, Alan had shown him Telstra's own list of seventy-two separate complaints registered by various Cape Bridgewater residents between February and August 1994. None of Alan's up to-date 1994/95 evidence of the ongoing billing problems associated with the Cape Bridgewater RCM system that routed through the Portland Ericsson AXE exchange equipment was ever addressed. What was the point of the TIO commissioning a technical unit to

view the on-going problems being experienced by claimants like Alan, if the technical consultants only addressed old historical problems and not the problems that were still affecting his business?

Sister Maureen Burke, IBVM, Principal of Lorretto College Ballarat, writes to Alan

18th August 1997: *"...Dear Alan, Thank you for the opportunity to read the working draft of your book and to view your promotional video. 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.* **(AS 231-A)**

May your venture at Bridgewater now go from strength to strength."

Alan first met Sister Burke in March 1992, when she was attempting to organise a trip to the Holiday Camp for a group of under-privileged children from the Ballarat region. When she had been unable to contact Alan by phone over a couple of weeks she decided to drive the three hours to visit instead., and arrived just after Alan's partner at the time Karen Gladman, had handled a phone call from an irate singles club patron who had also been trying to ring us for weeks. Karen had just taken the full brunt of this man's fury and, when Sister Burke arrived, Karen was in the office, in tears. After speaking to Karen, Sister Burke suggested that she (Karen) needed to see a counsellor and that it would be in the best interest of both of them if Karen left Cape Bridgewater. Sister Burke believed she could arrange counselling for Karen in Warrnambool. Over the next two or three years from then on, Sister Burke was instrumental in keeping Alan calm and helping him control his anger towards Telstra. Her charity camp went ahead in April 1992 and, if Alan's memory serves me correct, the children all had a lot of fun.

Twelve months after Sister Burke's charity camp another of the Sisters from Lorretto College (Sister Karen Donnellon) attempted unsuccessfully, to phone Alan to arrange another camp and finally wrote **(AS 231-B)**: *"During a one week period in March of this year I attempted to contact Mr Alan Smith at Bridgewater Camp. In that time I tried many times to phone through.*

Each time I dialled I was met with a line that was blank. Even after several re-dials there was no response. I then began to vary the times of calling but it made no difference."

PLEASE NOTE: some similar 80 plus letters Alan received over the years, from people with similar complaints to Sister Donnellon appear to have been withheld from DMR & Lane the TIO-appointed consultants from being assessed during Alan's arbitration see **(AS 322-C)**, even though he submitted them to the arbitrator as supporting material attached to his letter of claim. He also covered his letter of claim with a statutory declaration as per clause 6 of the Arbitration Agreement which states that: *"...All written evidence shall be in the form of an affidavit or statutory declaration."*

These 80 plus letters and a comprehensive log of faults as shown in exhibit **(AS 322-C)** was provided to Dr Hughes;

- Why would DMR & lane make the statement in their report: *"...A comprehensive log of Mr Smith's complaints does not appear to exist"* unless it was true?

- If it is true and DMR & Lane did not see the aforementioned letters and my comprehensive log of fault complaints who withheld this information from them?

20th August 1997: Mr Ben Dunn (Lawyer) writes to Alan confirming his belief that Alan was "... *less than fairly dealt with by Telstra and the arbitrator.*"

Not long after he wrote this letter, Ben Dunn would not agree to meet Alan, nor would he return Alan's phone calls. Even his office secretary seemed to be annoyed with him on one occasion when Alan had travelled from Portland only to discover that Mr Dunn couldn't be found. **(AS 231-C)**

Alan was in Senator Boswell's office when he received Mr Dunn's letter and he passed a copy to Steve Boswell (Senator Boswell's son), who was working at the time as a young solicitor in Minter Ellison's Sydney office. Steve later phoned Alan to offer assistance but he decided not to accept because by then Senator Boswell and Senator Alston had left him off of the Senate "A" litmas investigation into the COT arbitrations and he didn't want to come between father and son.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

On 26th September 1997 Mr John Pinnock addressed the Senate Estimates Committee during their investigation into Telstra's defective supply of FOI documents before, during and after the COT arbitrations. Parts of Mr Pinnock's address (following) link directly to the Alan Smith / ACMA FOI matters currently under review by the AAT.

"*...In the process leading up to the development of the arbitration procedures – and I was not party to that, but I know enough about it to be able to say this – the claimants were told clearly that documents were to be made available to them under the FOI Act.*"

Various Senate Hansard records clearly show that the Senate found against Telstra in relation to the COT FOI matters that the Senate Estimates Committee had assessed. Telstra and AUSTEL documents indicate a number of technical discussions that took place during the time frame that covers the documents Alan Smith is now asking for, but ACMA say that, although they admit to the existence of these document, they can no longer locate them. These 'missing' documents may very well be related to documents that were withheld from AUSTEL during the COT matters that the Senate investigated in 1997, so Alan's chronology is important because it shows that, from the very first requests for documents from Telstra, the process has failed, not only in relation to the COT claimants, but now it seems also in relation to AUSTEL (now ACMA).

John Pinnock addresses the Senate Part 1

26th September 1997, Mr Pinnock writes to The Senate Environment, Recreation, Communications and the Arts Legislation Committee, regarding the many deficiencies in the COT arbitration process noted: "*... one of the potential deficiencies should have been obvious from the outset. In the process leading up to the development of the Arbitration procedures, the claimants were told that documents would be made available under the Freedom of Information Act. For present purposes, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, the arbitrator had no control over the process, because it was conducted entirely outside the ambit of the Arbitration Procedures. In the process leading up to the development of the Arbitration procedures, the Claimants were told that documents would be made available under the Freedom of Information Act.*"

Mr Pinnock then went onto state: "... Finally, as I have remarked previously, the arbitrations have been bedevilled by the inability of the parties to treat the disputes as matters of a commercial

nature and to put behind them the atmosphere of mutual suspicion and mistrust that had built up over a long period of time. **(AS 232-A)**

It is also important to highlight how all the health and financial problems that followed for the ten years after the Schorer and Smith arbitrations may well have been avoided if only Mr Pinnock had told the Senate on 26th September 1997 (regardless of how painful it may have been for him to do that at the time) that:

(a) Someone with access to the arbitration agreement secretly altered some sections of the document, after the original version had been provided to Graham's legal advisors for assessment, and without ever advising any of the claimants of these changes, and
(b) Because these secret alterations exonerated the resource unit and the Special Counsel from any liability arising from conscious negligence, they benefited the resource unit and the TIO's Special Counsel, to the detriment of both Alan Smith and Graham Schorer, thereby removing from the resource unit and the Special Counsel any incentive to look Graham and Alan's common interests.

QUESTION 1

Why did Mr Pinnock tell the Senate that the *'...resource unit* (was) *in danger of being dragged into the fray'* when he knew (but did not tell the Senate) that, on 11th July 1994, very early in the arbitration process, the TIO and Telstra had agreed between themselves, without consulting the claimants that the Resource Unit, would act as a second arbitrator for the vetting of what information the arbitrator should see and or not view (see letter 11th July 1994). This secret agreement actualy contravenes the Commercial Arbitration Act 1984 unless all parties had agreed to this in writing.

QUESTION 2

How could Mr Pinnock then tell the Senate that *"... perhaps the most difficult issue, and one that has bedevilled the arbitrations almost from the beginning, was the inability of the parties to treat these disputes as matters of a purely commercial nature"* adding that the parties to the arbitration *'...were unable to put behind them the attitude of mutual suspicion and mistrust"* when his predecessor Warwick Smith, had already been advised 18th April 1995 above that: *"...It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work?"*

QUESTION 3

Why didn't Mr Pinnock inform the Senate that had his predecessor investigated who were *"these forces at work"* that were interfering in this Government facilitated arbitrations process and had eliminated those forces in 1995, the C.O.T arbitrations might have stood a better chance of bringing some sought of justice to the claimants?

QUESTION 4

When Mr Pinnock was addressing the Senate in relation to Alan Smith's case, why didn't he advise the Senate that he knew that, on 6th May 1994, the Commonwealth Ombudsman, Ms Phillipa Smith, wrote to Frank Blount, Telstra's CEO, noting that *"It was unreasonable for Telecom to impose a condition for release of certain documents that the participants needed to make the assurances that they will participate in the FTSP; and it was unreasonable for Telecom to require the participants to make assurances while Telecom was considering the agreement related to the FTSP (the Agreement) and thereby denying the participants the opportunity to consider the rules that Telecom wished to have included in the Agreement"* (see above)

QUESTION 5

Why didn't Mr Pinnock tell the Senate that:

a) Derek Ryan of DMR Corporate had written to Mr Pinnock, as the administrator of Alan Smith's arbitration, on 2nd December 1995, to advise Mr Pinnock: *"I worked all day Saturday and Sunday with Alan Smith trying to interpret the FHCA report. After this work I considered that the report was incomplete as the calculations of the FHCA loss figures were not included in their report. On 17 May I telephoned John Rundell and he stated that he was unable to discuss anything with me until the appeal period had expired. During that telephone conversation I told him that I was unable to recalculate the FHCA figures and that I felt that the report was deficient in this regard, he then stated that he understood my problems and that FHCA had excluded a large amount of information from their final report at the request of the arbitrator?"*

b) John Rundell later wrote to Mr Pinnock (13th February 1996) confirming that he had advised Mr Ryan: *"...that the final report did not cover all material and working papers"*?

QUESTION 6

Why didn't Mr Pinnock tell the Senate that he knew that, in the technical resource unit's draft report regarding Alan Smith's case, the unit had actually needed 'extra weeks' to complete their work but this request was later mischievously deleted from the draft and the draft was then presented as a final report, in the same way that the FHCA financial report was presented as a final report?

Mr Pinnock then goes on to state: *"On an objective and dispassionate analysis in my view of the procedures, there are nevertheless benefits that have been derived, particularly for the claimants, although I am the first to admit that they do not necessarily agree with my view on these matters."*

QUESTION 7

Why didn't Mr Pinnock tell that Senate that, long after the arbitration process was supposed to fix the claimants' telecommunications problems before the arbitrator began to assess Telstra's reply to the COTs claims, and the claimants' responses to Telstra's reply, the businesses of at least two of the claimants, Graham Schorer and Alan Smith, continued to suffer from exactly the same problems that brought them to arbitration?

QUESTION 8

In Alan Smith's case (see Service Verification Tests):

a) Telstra's Peter Henry Gamble's witness statement noted that: *"The SVT, carried out in September 1994, showed that the service passed the Customer Specific Line Tests and the Public Network Call Delivery Tests. My overall conclusion based on the analysis of the selected performance parameters outlined above is that in the periods covered by these investigations (which commenced in July 1991 and concluded in September 1994), Mr Smith's service met appropriate performance levels and therefore appeared, in my opinion, to be operating satisfactorily"* and,

b) On page 23 of the arbitrator's award, at point (j), the arbitrator states: *"Another important statement on behalf of Telecom is made by Peter Henry Gamble who was involved between July 1991 and September 1994 in a series of investigations and analyses of the claimant's complaints. His overall conclusion was that during the period in question, the claimant's*

service "... met appropriate performance levels and therefore appeared, in my opinion, to be operating satisfactorily."

What would the arbitrator have put at this point in his award if he had known that Mr Gamble's opinion was based on information that was known to be false, including the fabricated September 1994 SV tests?

4th October 1997: John Wynack, Senior Director, Commonwealth Ombudsman Office writes to Telstra regarding Alan's FOI request of 18th October 1995, which has still not been fully responded to. Mr Wynack asks Telstra to inform him: *"...of the actions which Telstra has taken as to ascertain the whereabouts of the specific the file which Ms Gill described as the 'arbitration file'.* **(AS 233)**

8th October 1997: The Hon Peter Costello lends a helping hand noting: *"...I am quite seriously concerned about the allegations you make regarding the Telecommunications Ombudsman, Telstra Senior Management, the Arbitrators and the Resource Unit attached to the Arbitration. Any information you have of allegations of impropriety should be brought to the attention of Senator Alston and the Australian Federal Police."* **(AS 234)**

When Alan contacted the parties as suggested by Mr Costello, they all declined to become involved.

23rd October 1997: Senator Schacht, Shadow Minister for Communications, office faxes Senator Ron Boswell the proposed (terms of reference for the Senate Working Party), for their investigation into the COT arbitration FOI issues. This document shows there were two lists of unresolved COT case FOI issues that were to be investigated five on Schedule A and 16 names of Schedule B. Please note: Graham Schorer's name appears on Schedule A while Alan Smith's name appears on Schedule B list. In brief this list states:

1. The working party must develop a list ("List") of all document 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*
- *response to request under FOI; and*
- *appeals in respect of cases already decided*

described in Schedule A to these terms of reference

(b) if thew Working Party becomes aware of relevant case 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 reason why the Working Party considers they are relevant. The working Party will not proceed with any investigation of such additional cases or documents unless and until the Senate Environment, Recreation, Communications and the Arts Legislation Committee reserves the right to amend the Schedules to this document."

It is important to point out the heading above the 16 other COT case names shown in Schedule B

"Unresolved Matters, Including The Amount Of Settlement Offered Or Paid In Respect Of Persons Listed In Schedule B"

Graham was told that the five claimants included in list 'A' were to be investigated first because they were to be used as a 'litmus test'. He was also told that it would have taken too long to investigate all twenty-one cases, including the sixteen on the 'B' list, and that would have impacted on the privatisation of Telstra. It has since been proved beyond all doubt that Graham never received anywhere near the number of FOI documents he should have received in response to his various FOI requests, even through the Senate Working Party involvement. In other words, if the Government of an alleged democratic country couldn't obtain documents from a government owned corporation like Telstra, then what hope did any of the COT Cases and their arbitrator have of obtaining documents?

IMPORTANT

Alan Smith travelled to Parliament House in Canberra before the A list was even formed and saw how shocked Mr Pinnock was when Graham Schorer introduced Alan to him during a breakfast meeting in the Motel they shared. Alan has always believed that his name was left off the A list as a direct result of his comment to Mr Pinnock (during this breakfast meeting) that he would at last be able to have the unlawful conduct by the arbitrator, Telstra and the resource unit properly addressed by the pending Senate investigation.

Mr Pinnock could not risk a Senate investigation into Alan's FOI issues because that would have uncovered Mr Pinnock and Dr Hughes' agreement, during January and February 1996, to hide the very same FOI issues from the Institute of Arbitrators and Graham Schorer's Directions Hearing on 27th February 1997. Of course Mr Pinnock could not allow Alan Smith's FOI issues to be investigated by the Senate because any sort of investigation would have shown that FOI documents Alan should have been given during his arbitration, but which were among those not provided at all, would prove that Telstra had knowingly used flawed reports and test results to support their defence.

On page two from the award that Dr Hughes handed down on 11th May 1995, in Alan's Smith's case. In this document, at point (h), the arbitrator notes: *"... at my request, an arbitration agreement was prepared by Mr (now Judge) Frank Shelton of Messrs Minter Ellison and settled by Messrs Miner Ellison in consultation with me, Telecom and the four COT case members concerned."*

It may be argued that Frank Shelton's amended agreement was prepared collectively by Mr Shelton, Dr Hughes and the COT claimants and only included some clauses from Telstra's preferred rules but it is clear that almost all of the amended FTSP (Agreement) was based on Telstra's preferred rules see at point i.e. (ii) were taken directly from the AUSTEL-facilitated Fast Track Settlement Proposal clause 2(f), i.e.: *"... will make a finding on reasonable grounds as to the causal link between each of the Claimants claims and the alleged faults or problems..."*, which was also incorporated into Telstra's preferred rule. Could it be that Warwick Smith and John

Pinnock refused to provide the COT claimants with a copy of Telstra's original preferred rules of arbitration because that would have revealed that Frank Shelton's agreement was almost (except for cosmetic changes) the same agreement as Telstra's preferred rules and that someone had altered clause 10.2.2 and that would mean that Warwick Smith, the TIO at the time, should have kept to his promise to withdraw his endorsement of the rules, or was it because Warwick Smith and John Pinnock were concerned that the COT claimants and their advisors might compare Telstra's FTSP rules, Minter Ellison's arbitration agreement and the final FTAP agreement that Graham Schorer and Alan Smith signed, and discover yet another alteration that had been made to the version provided to Dr Hughes, so that Minter Ellison (as Special Counsel) and the two Resource Units (FHCA and DMR) were exonerated from any liability resulting from negligence and/or wrongdoing?

The original Fast Track Settlement Proposal was originally based on the AUSTEL-facilitated commercial review (which was never intended to be a legalistic arbitration) and the TIO, Telstra, the TIO's Special Counsel and the assessor (Dr Hughes) were all involved to some degree in turning the commercial review into a highly legalistic and unworkable arbitration process. And, after all this, Dr Hughes then wrote to Warwick Smith on 12th May 1995, warning the TIO that the whole process was 'not credible' anyway and the TIO told the Senate, on 26th September 1997 (see above) that the arbitrator had NO control over the process. This secret alteration to the arbitration agreement, either by Warwick Smith and Peter Bartlett alone, or with Dr Hughes' assistance, took away the only life-raft the COT claimants had – the right to sue the Special Counsel, FHCA or DMR (Australia) for negligence.

The draft AUSTEL Report see *"Attachment Two"* in relation to Alan Smith and the Cape Bridgewater Holiday camp and local exchange was not released to Alan either before or during his arbitration and he only finally received a copy in November 2007. In other words, even after Alan signed the arbitration agreement (which was one of the provisions under which the draft findings would be released) he still wasn't provided with a copy of the draft. If he had been correctly provided with a copy of the draft report before the end of his arbitration, and the arbitrator had seen it also, the arbitrator's award would have been quite different.

Letters dated 11th January 1994, from Telstra Warwick Smith both state:

- *"Information obtained from Telecom, in the course of AUSTEL's regulatory functions, and relevant to any parties involved in a formal arbitration process with Telecom under the control of the Telecommunications Industry Ombudsman (TIO) will only be released after consultation with the TIO and Telecom.*
- *The AUSTEL draft report will be expedited to ensure that it is available at an early stage of the arbitration process.*
- *The AUSTEL draft report will be released to the parties involved in the fast track arbitration process for comment in accordance with a process agreed with the TIO, and only after each party has signed a formal document committing to keeping the contents of the report confidential and giving an undertaking not to comment either privately or publicly on the report until after it has been released publicly by AUSTEL."*

28th October 1997: Mr Pinnock writes to Ted Benjamin re Mr Alan Smith: Dispute 1800 Charges noting: *"...For your information I enclose a copy of a letter received from Mr Smith concerning call charges for Mr Smith's 1800 line, in particular whether Telstra agrees that this matter was not addressed in Mr Smith's arbitration"* **(AS 212)**

Alan has never seen a response to this letter but it was the same Ted Benjamin who had written to Bruce Matthews of AUSTEL on 11th November 1994, confirming that Telstra would address the billing faults raised by Alan Smith in their defence of his claims lodged under the FTAP.

Other correspondence already provided to Mr Pinnock by AUSTEL on 3rd October 1995 and referred to above shows that he had been advised that Telstra had still not addressed the billing issues then, five months after Dr Hughes had deliberated on Alan's claim. Telstra responded to AUSTEL's letter on 16th October 1995, again confirming that the 008/1800 billing issues were never addressed in Alan's arbitration and also confirming that Telstra was trying to address these same unaddressed issues from Alan's arbitration, including short duration and RVA calls, and fax faults in secret - out side the legal structure of the Fast Track Arbitration Procedure (AS 213).

By AUSTEL allowing Telstra to address arbitration matters outside of the arbitration Procedure, without giving Alan right of reply has further made a mockery of the Fast Track Arbitration Procedure. Was it unlawful under the Victorian Commercial Arbitration Act, for the defendant Telstra to secretly address arbitration issues raised by a claimant outside the legal forum of the agreed Arbitration procedure?

Please note the following:
In their attempt to convince AUSTEL that Alan's complaints about the billing issues were not valid, Telstra attached a 'Witness Statement' to their 16th October letter, which had been originally been signed by Ross Anderson, a local Portland technician on12th December 1994, and was attached to Telstra's legal submission provided to Dr Hughes. This was the same Ross Anderson technician who collected Alan's TF200 telephone from Alan's premises 27th April 1994, but the phone did not reach Telstra's laboratories until 10th May 1994. In Alan's reply to Telstra's arbitration defence see (AS 45), he provided evidence to the arbitrator that either Mr Anderson lied under oath, or his negligence as a technician attributed to the problems in the phone system. This raises another issue which has never been addressed: Telstra's use of a tainted Witness Statement in an attempt to stop AUSTEL from further investigating Alan's valid complaints.

During this same period in October 1997, the Senate became involved in this saga. They expressed outrage that Telstra had knowingly altered (blanked out relevant sections of documents) which were being supplied to the COTs under FOI, particularly in relation to Telstra 'Excel' files, which were then being given to Alan but which he had not sighted during his arbitration. Under pressure from the Senate, Telstra provided some two hundred previously unseen documents. Because there are so many, (All can be provided) we have only attached just three see (AS 93).

Page 8, 2xls, fault 185, 27th July 1992
"Tr report caller from 057 981 622 getting RVA when calling 267 267. Action – asked Ballarat OSC for assistance. They made test calls from BRAX and Bendigo. DAM in BRAX and Bendigo AXE checked. Cric Doody requested all Nodes & ARF's to make test calls."

Page 23, 2xls, fault 592, 11th December 1992

- *"Poor performance of Telecom – historically March data problem, local Portland problem fixed in October, wiring and cabling issues and RVA on congestion.*
- *Slow resolution by Telecom of past problems of Smith – both technical and claims.*
- *Mr Smith's service problems were network related and spanned a period of 3 – 4 years – possible immunities.*

Page 90, 2xls, fault 2283, 3rd March 1994
"Black states a BCI study, specifically to address Smith's network segment, showed that 12,000 test calls encountered no network problems and percentage completion was within world standard. Black will comment on audit of complaint handling 1/194"
Page 90, 2xls, fault 2298, 7th March 1994
Refers to assessment of Smith's service by Bell Canada International Result no major network problems in over 13,000 test calls. Bell Canada advised Telecom that completions world standard.

Please note: document page 90, at 2283 and 2298 is discussing the BCI tests which Alan declared during his arbitration were flawed. As previously discussed above, Technical consultant Brian Hodge, B Tech; MBA (B.C. Telecommunications) has concluded that BCI could NOT have generated the 13,000 (through the CCS7 system) because the unmanned Cape Bridgewater RCM could not facilitate this test call trapping device.

Fault data associated with Alan's complaints should never have been withheld from him under the cloak of Legal Professional Privilege. Graham and Alan believe these few examples alone show clearly how disadvantaged he was by not receiving the documents he should have received during his arbitration procedure. If these documents **had** been provided, he would have then had grounds to ask Telstra for further particulars.

Put together the Excel files that Telstra didn't supply under FOI or discovery, and the documents which were not provided to DMR & Lanes, by the TIO-appointed Resource Unit and it is clear why Alan is still fighting for a correct assessment.

The following FOI schedules can be provided to the AAT if required
This list of documents produced by using Telstra's own schedules of my claim material which they received from DMR & Lanes does match up with the list of material Alan forwarded to Dr Hughes to forward on to Telstra. Alan has matched these lists to his Telstra fax/phone account to determine which claim documents he faxed to Dr Hughes and which were then copied on to Telstra under the agreed rules of supply and discovered that Telstra did not get at least forty-one separate sets of information that I faxed to Dr Hughes's office.

Exhibit (AS 63) confirms that an arrangement existed between Telstra, Warwick Smith and FHCA, to vet arbitration documents prior to being delivered to Dr Hughes. Are we to assume that some of the 41 documents were vetted and then destroyed before reaching Dr Hughes?

A revisit regarding the conduct of Ferrier Hodgson (FHCA)

As previously discussed above, on 6th December 1995, Derek Ryan, Alan's arbitration claim account from DMR Corporate, Melbourne, was so incensed with the inaccuracies in

FHCA financial report that, without Alan's knowledge wrote to Senator Alston, **(AS 177-A)** to alert him what Mr Ryan believed was a miscarriage of justice. In this letter, Mr Ryan noted that:

"...The FHCA report was inaccurate and incomplete. I have since been advised by a staff member of FHCA that a large amount of information was excluded from their final report at the request of the arbitrator".

It has already been established that on the 20th December 1995, John Pinnock writes to Mr Ryan refuting his allegations in his letter 6th December 1995, to Senator Alston **(AS 177-B)** not to be outdone by Mr Pinnock, Derek Ryan responds to Mr Pinnock's letter naming John Rundell as the FHCA person who had advised of this incomplete report see **(AS 178)**.

Also discussed above, on the 13th February 1996, John Rundell wrote to Mr Pinnock stating: *"...I did advise Mr Ryan that the final report did not cover all material and working papers"* **(AS 179-A)**

By revisiting the very important letter dated 11th July 1994, from Telstra's Steve Black to Warwick Smith, it appears to be relevant to most of the document issue being discussed here i.e. the altering of reports by FHCA, removing information from technical reports under the guidance of FHCA, and the withholding of vital inter procedural arbitration documents from Alan by FHCA, during his arbitration. This letter from Steve Black, see: **(AS 179-B)** states: *"...Telecom will also make available to the arbitrator a summarised list of information which is available. Some of which may be relevant to the arbitration. This information will be available for the resource unit to peruse. If the resource unit forms the view that this information should be provided to the arbitrator, then Telecom would accede to this request".*

Questions

- What happened to the material that Telstra supplied to FHCA which in their opinion was not relevant to the arbitration?

- Why was Graham and Alan not advised by Warwick Smith, prior to them signing the arbitration agreement that FHCA (as the resource unit) would be vetting the material provided by the defence before it reached the arbitrator?

- Was it appropriate for Warwick Smith, as the administrator to their arbitration to give FHCA technical priority over Graham and Alan's own technical advisor George Close, to what was relevant of technical importance (to be seen by the arbitrator) and what was not?

- Was FHCA involvement with the vetting of documents between Telstra the claimants and Dr Hughes (arbitrator), also associated with the reason why the DMR & Lane (list of my claim documents supposedly assessed) was only added to after they submitted their incomplete report as the final report?

- Is it usual in an arbitration process such as Alan's to have two incomplete reports (the FHCA financial report and the DMR & Lane report) provided to the claimant and their professional advisors for official written comment?

Please note exhibit (AS 220) below, confirms FHCA wrote to Dr Hughes 2nd August 1996, (copying the same to the office of TIO), admitting to withholding a number of arbitration procedural documents from Alan Smith, during his arbitration. As can be seen from exhibits AS 216, AS 217, and AS 219, the TIO was very concerned about this matter but so far has not addressed this matter.

7th November 1997: Mr Pinnock writes to Ms Catelli, The Minister's office. This letter was written in response to Alan's letter to the Minister regarding Alan's allegations that his arbitration wasn't conducted in a transparent manner. Mr Pinnock made no reference to Dr Hughes continuing to arbitrate using an agreement he knew was not credible. Instead, Mr Pinnock advised the Department that he had *"... considered each and every one of these various allegations which I found to be without substance."* (AS 235)

Important COMMENTARY:

It is important to remember that Mr Pinnock made this statement five weeks ***after*** he had condemned the COT arbitration procedures to the Senate and the Minister's office on 26th September 1997, when stated that: *"One of the potential deficiencies should have been obvious from the outset. This deficiency revolves around the vexed question of the best method of enabling the Claimants to obtain documents held by Telstra. For present purposes, it is enough to say that the process was always going to be problematic, chiefly for three reasons, firstly, the Arbitrator had no control over the process, because it was conducted entirely outside the ambit of the Arbitration Procedures."*

17th November 1997: Wally Rothwell, Deputy TIO writes to Alan confirming that Mr Pinnock had written to Telstra on 28 October regarding charges related to his fax line. (AS 236)

Exhibit 12, in the Alan Smith CAV Relevant Information file, is a Technical Report dated 27th July 2007, prepared by Brian Hodge MBE, who concludes that part of the BCI Report dated 10th November 1993, the Cape Bridgewater addendum is fundamentally flawed. Telstra had to have known this part of their BCI report was flawed when writing to John Wynack, as they did when they placed the report into evidence during the COT arbitrations CAV when ever the time suits.

22nd January 1998: Ms Toni Ahkin, Minister's Office writes to Mr Pinnock "Further to our recent phone conversation I am forwarding Telstra's transcript of its meeting with Alan Smith, held on 14 January 1998 concerning his claim of overcharging on his 1800 number." (AS 239)

23rd January 1998: Ms Toni Ahkin, Minister's Office writes to Mr Pinnock *"I am forwarding copies of our proposed replies (that will be sent to the Minister's office today) to David Hawker and Alan Smith in response to recent Min Rep's concerning the arbitration process and overcharging on Mr Smith's 1800 number."*

This fax from Toni Ahkin suggests that John Pinnock is being provided with a draft copy of information regarding Alan's arbitration and billing problems, for his comment, before even the Minister and David Hawker received the completed letter. (AS 240)

14th January 1998: When Telstra's Lyn Chisholm and Peter Carless arrived at Alan's residence (not the Camp) they discussed the continuing fax lock-up problems and the

billing faults associated with the line still being connected even after a fax had gone through. Alan provided fax journal printouts that did not match with Telstra's accounting for those calls. They also discussed the just-disconnected 1800 billing service and the problems experienced during and after Alan's arbitration. Alan provided examples showing how the Commonwealth Ombudsman's Office had officially provided Telstra with a document that confirmed that the COO had made forty-three calls to his business, on Alan's 1800 line, until February 1997, but Telstra had charged him for ninety-six calls from the COO. He also gave Ms Chisholm one of two documents that confirmed he was also receiving faxes from different locations within the Crown Casino complex. **(AS 238)**

It is important to digress a little here, because Cathy told Alan that when Darren Kearney from AUSTEL visited the Cape Bridgewater Holiday Camp on 19th December 1995, and subsequently took some of the arbitration billing claim documents back to Melbourne, those that were not addressed during the arbitration, he commented to Cathy that he had never seen such well-documented evidence. 'It's unbelievable!' he said. Alan believes that Lyn Chisholm and Phil Carless had the same thought and he later followed Ms Chisholm's suggestion and provided some of this evidence, via the TIO's office, to Telstra. Alan's records confirm that he continued to provide evidence of fax and phone problems that were occurring throughout 1998 and 1999, to the TIO office and that Mr Pinnock wrote to tell him that these billing issues were still being investigated. Other letters confirm that Mr Pinnock was advising both Mr Hawker and the Minister's office that these matters were still 'under consideration' as late as February 1999.

Alan was never told however that, on 19th January 1998 (see above), Telstra had provided both the Minister's office and the TIO with copies of Lyn Chisholm's file notes confirming her opinion that the billing faults he raised in his arbitration appeared to have continued after his arbitration.

22nd January 1998: Ms Toni Ahkin, Minister's Office writes to Mr Pinnock *"Further to our recent phone conversation I am forwarding Telstra's transcript of its meeting with Alan Smith, held on 14 January 1998 concerning his claim of overcharging on his 1800 number."* **(AS 239)**

23rd January 1998: Ms Toni Ahkin, Minister's Office writes to Mr Pinnock *"I am forwarding copies of our proposed replies (that will be sent to the Minister's office today) to David Hawker and Alan Smith in response to recent Min Rep's concerning the arbitration process and overcharging on Mr Smith's 1800 number."*
This fax from Toni Ahkin suggests that John Pinnock is being provided with a draft copy of information regarding Alan's arbitration and billing problems, for his comment, before even the Minister and David Hawker received the completed letter. **(AS 240)**

4th February 1998: Ted Benjamin writes to Mr Pinnock noting: *"...Telstra has examined the information forwarded by your office with regard to Mr Smith's 1800 telephone service and is currently conducting an investigation into Mr Smith's complaints."* Attached to this letter was a three-page file note/transcript from Telstra's Lyn Chisholm who had investigated my billing fault evidence on 14th January 1998, as referred to by Ms Ahkin in her letter to Mr Pinnock on 23rd January 1998. These attached file notes raise a number of questions: **(AS 241)**

1. Why were these file notes only provided to Ms Ahkin (and possibly the Minister and Mr Pinnock, but not provided to Alan until December 2001, and then only because of the then-new Privacy Policy Act?

2. Why was Alan not told that Lyn Chisholm had noted that the billing faults he raised in his claim appeared to have continued after my arbitration, when the Minister's office and Mr Pinnock WERE told?

3. When the Minister's office and Mr Pinnock were told about the on-going billing problems, why didn't they instigate an enquiry?

4. First Ms Ahkin's fax of 23rd January (above) confirmed that Mr Pinnock would see the Minister's response to Alan's complaints before David Hawker; then a Telstra FOI document, I00265, dated 16th October 2002, **(AS 242)** in relation to the new owner of Alan's business, Darren Lewis, stated: *"Hopefully, the TIO will become involved and that will take the Minister and Member* (David Hawker MP) *out of the equation."* This document appears to indicate that Mr Pinnock has a lot to answer for in regard to the problems that have continued in Cape Bridgewater for so long.

COMMENTARY – Most important (1):

Regarding checking AUSTEL on dates: Mr Benjamin's statement that: *"Telstra responded to investigations undertaken by Austel on 16 October 1995"* related to correspondence from Austel on 4th October and 1st December 1994, and 3rd October 1995 – this is a misleading and deceptive comment.

Please note: The 16 October 1995, issue Ted Benjamin is referring to is when Telstra addressed Alan's arbitration 1800 billing issues outside the legal arbitration arena **(AS 213)**

The letters of 4th October also referred to by Mr Benjamin is exhibits **(AS 126** including Mr Benjamin's letter to Bruce Mathews of AUSTEL on 11th November 1994 exhibit **(AS 127)** noting that *"Each of the questions put by you in your letter 4 October, 1994 will be answered as part of Telecom's defence to Mr Smith's claims lodged under the Fast Track Arbitration Procedure."*

When he wrote his letter of 4th February 1998, Mr Benjamin knew that Telstra had waited until five months after Alan's arbitration before addressing the same billing faults he had previously told AUSTEL would be addressed under arbitration.

COMMENTARY – Most important (2):

There are far-reaching ramifications resulting from AUSTEL allowing Telstra to address arbitration matters without allowing Alan the same legal privilege of responding to this document which was arbitration information – as Alan (the Claimant) would have been able to respond if Telstra had submitted this document in their arbitration defence. Imagine what the outcome of the arbitration might have been if Alan had been able to challenge the information contained in this 16th October 1995 document, had it been submitted in the arbitration.

The second paragraph on page one of the letter dated 4th February, from Mr Benjamin to Mr Pinnock, is also interesting because of Mr Benjamin's statement: *"Telstra will not be investigating complaints relating to the period before the Arbitration award that was handed down on 11th May, 1995 as Telstra considers that this matter was included in the arbitration and is finalised."* How can Mr Benjamin make such statement when, later in the same letter (page two) he admits that Telstra addressed the 4th October and 1st December 1994 matters on 16th October 1995 – five months after 11th May 1995 (the end of the arbitration)?

26th February 1998: Wally Rothwell Deputy TIO writes to Alan advising him that his office had received my letters of 17th and 18th (regarding billing information that was

withheld from Alan during his arbitration), and noted that: *"... the Ombudsman has asked me to seek the opinion of the Special Counsel to the TIO under the FTAP, as to whether the aspect raised in those letters are matters* which *were or should have been decided by the Arbitrator in the Award he made."* **(AS 243)**

In her letter of 2nd August 1996, to Mr Deeble of the TIO's office, Sue Hodgkinson had already admitted, to both Dr Hughes and the TIO's office, that these billing documents WERE withheld from Dr Hughes, and from Alan, during his arbitration **(AS 220)** How then can Dr Hughes have either addressed the billing issues raised in these documents, or included them in his award?

Mr Pinnock's statement is somewhat confusing since he had already told Mr Hawker, on 28th March 1996 (see above) that the faults were addressed in Alan's arbitration. Once more Mr Pinnock concealed his own knowledge that FHCA had admitted on 15th November 1995 (see above) that DMR & Lanes didn't address the 008 billing problems or diagnose the causes of the faults, but left the problems 'open' (see the technical report).

When Warwick Smith left at the end of 1995, as soon as I knew John Pinnock was the new Ombudsman and allowed him a month to get his feet under the table, I rang him and said 'Right. New broom to start clean. I want to talk to you about lots of things, I want to discuss about how we've been pushed into this process under duress, how the process has failed and more importantly I want a copy of this particular document that Peter Bartlett has.' That's when I had the first telephone conversation with John Pinnock and he yelled and screamed."

Mr Anthony Hodgson, Chairman of Ferrier Hodgson misleads Mr Alan Cameron, Chairman of the Australian Securities Commission

17th March 1998: Even though John Rundell Ferrier Hodgson had written to Mr Pinnock, on 15th November 1995, advising him that DMR and Lanes had NOT addressed Alan Smith's billing claim documents **(AS 104)** Mr Hodgson still told Mr Cameron that: *"DMR and Lanes did address all the claim documents submitted to the Arbitration."* **(AS 249)**

What the TIO and his legal Counsel failed to grasp throughout this arbitration process is that they had a duty of care to see that the process was conducted transparently and ethically. What the Arbitration Dr Hughes failed to understand is, that once he realised that the Arbitration Agreement he dammed as not credible was not allowing the claimants their proper entitlements to access documents from Telstra or that the process allowed reasonable time for the preparation of the technical reports, he should have refused to carry on as Arbitrator.

Most reasonable minded people would have believed that once Dr Hughes' letter of 12th May 1995, to Warwick Smith had reached the TIO Board and Council, the letter that stated: *"...it is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement,"* the Board and Counsel would have immediately aborted the process until a new agreement had been drafted for consideration of all parties involved.

It is a national disgrace and a mark against the Australian Legal System, that in the end because Dr Hughes Warwick Smith and John Pinnock wouldn't act legally via the Supreme Court of Victoria

in compelling Telstra to abide by the originally agreement reached between the parties before the COT Cases signed for arbitration (that they would get the relevant documents they needed through the FOI process), that the Senate had to become involved, and due to their own work load could only partially assist (only some of the COT cases).

21st May 1998: Mr Pinnock writes to The Hon David Hawker, MP noting "...Recently, Mr Smith has raised a question as to whether the Arbitrator's Award *dealt with his complaint that he had been overcharged on his 008 (now 1800) freecall service. As this is a matter which I can properly consider, I have made preliminary enquiries of Telstra and have also sought advice from Mr Peter Bartlett, Special Counsel, Minter Ellison.*" **(AS 245)**

Mr Pinnock's statement is somewhat confusing since he had already told Mr Hawker, on 28th March 1996 (see above) that the faults were addressed in Alan's arbitration. Once more Mr Pinnock concealed his own knowledge that FHCA had admitted on 15th November 1995 (see above) that DMR & Lanes didn't address the 008 billing problems or diagnose the causes of the faults, but left the problems 'open' (see the technical report).

29th May 1998: Senator Alston, writes David Hawker MP, noting: "*...I understand that Mr Smith gave Telstra an undertaking in January 1998 that he would provide Telstra with any documentation he had in his possession supporting his claims. The Telecommunication Industry Ombudsman has also advised the matter is still under consideration.*" **(AS 246)**

9th June 1998: Wally Rothwell Deputy TIO writes to Alan noting: "...The purpose of my intended meeting with Mr Hughes is to clarify whether he did consider the 1800 issues during the arbitration. The Ombudsman's advice to me though, is that he is only prepared to discuss or investigate the 1800 matter of overcharging and the Gold Phone issue if that appears to be necessary, after I have looked into it initially." *(AS 247)*

Question: How could Dr Hughes have considered the technical issues when:

(A) DMR & Lanes stated, at point 2.23 in their technical report that "*... the level of disruption to overall Cape Bridgewater Holiday Camp (CBHC)...*" was not clear; that the "*... fault causes...*" had not been diagnosed, and that therefore they expected that "*... these faults would remain **'open'***"

(B) There was no provision in Dr Hughes's award for future damages that might arise out of the faults that DMR & Lanes admitted they had not investigated; and

(C) DMR & Lanes admitted, in their official arbitration report, that they only assessed approximately 11% of the faults I registered.

17th June 1998: Wally Rothwell Deputy TIO again writes to Alan "...I understand that you are going through a hard time at the moment and while I cannot guarantee a successful outcome of your 1800 complaint, hope that you can bear with the delay."**(AS 248)**

CHAPTER SEVEN

FAXING PROBLEMS CONTINUE

29th June 1998: William Hunt, Solicitor writes to Alan about lost faxes noting: "...There are enclosed six sheets of paper which are the material received by fax from you this

morning. I have numbered each of the pages at the bottom in ink and signed my name on the two blank pages. There is a seventh separate page which is read-out from our fax machine as at to quarter to three this afternoon" **(AS 249** and **(AS 250)**

COMMENTARY – most important
Also attached here as exhibit **(AS 250)** is Telstra FOI document K01489 dated 29 October 1993 which states: *"...During testing the Mitsubishi fax machine, some alarming patterns of behaviour were noted, these affecting both transmission and reception. Even on calls that were tampered with the fax machine displayed signs of locking up and behaving in a manner not in accordance with the relevant CCITT Group 3 fax rules. A half A4 page being transmitted from this machine resulted in a blank piece of paper 4cm long, the relevant protocol printout in sample #2 shows that the machine sent the correct protocol at the end of the page. Even if the page was sent upside down the time and date and company name should have still appeared on the top of the page, it wasn't."*

Please consider the six following examples:

- Exhibit **(AS 253)** dated 24th July 1998, confirms Chrissy Hawker, Secretary Services has also recorded her experience of receiving similar half pages, including blank pages while doing work for me during 1998.
- Exhibit **(AS 254)** dated 24th July 1998, confirms Ronda Fienberg, Secretary Services has likewise recorded similar experiences when receiving faxes via my office between August 1994 and July 1998.
- Exhibit **(AS 255)** dated 25th July 1998, confirms Robert Palmer, Education Consultant has recorded experiencing similar transmission problems (over a two year period) when receiving faxes from my office.
- Exhibit **(AS 270)** dated 30th January 2000, confirms Margaret Van Run, Secretary Services has recorded experiencing fax problems when working over the Christmas period of 1999.
- Exhibit **(AS 250)** dated 21st January 2003, confirms Darren & Jenny Lewis (the new owners of my business) wrote to David Hawker MP confirming their experience when sending faxes.
- Exhibit **(AS 250)** dated 23rd January 2003, confirms Mr & Mrs Lewis raised their faxing complaints with John Pinnock, TIO.
- Exhibit **(AS 250)** dated 29th January 2003, from Senator Alston's office to David Hawker MP, stating: *"...Thank you for your representation of 20 January 2003 on behalf of Darren Lewis concerning Telstra services. The issues raised in your letter are receiving attention and the Minister will respond to you shortly."*
  Please note: Alan has never seen the *"received information from Mr Bartlett."*

16th July 1998: Wally Rothwell writes to Alan *"...With regard to the 1800 and Gold Phone matters, I have received information from Mr Bartlett and have asked Dr Hughes about his consideration of the matters during arbitration. I further outlined your concerns about fax pages which you considered did not reach the arbitrator."* **(AS 251)**

Please note: Alan has never seen the *"received information from Mr Bartlett."*

IMORTANT COMMENTARY

Throughout Alan Smith's Chronology and supporting information his Relevant Infromation File), he has maintained during and for years after his arbitration, that the problems and faults raised in his claim continued until he and his partner, Cathy were literally forced to sell their business because Telstra and the TIO would not investigate their valid claims.

The importance of the Relevant Infromation File, is that with the attachments its shows that if the Senate had not been involved in Graham Schorer's FOI investigations he would not have received his local Telstra exchange log-book, where in the case of Alan he is still waiting.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

Exhibit 15 in ACMA's **The Respondents Section 37 Document [No 1836 of 2008],** the following letter dated 11th November 1994, is discovered along with four other letters from the Commonwealth Ombudsman Office, to Telstra's CEO Frank Blount. Alan Smith originally wrote to Ms Alison Jeremy, ACMA Senior Lawyer on 2nd March 2008, attaching these letters in support of his contention that ACMA (in good failt) should release to Alan, all his requested FOI documents free of charge in the public interest.

This particular letter from John Wryneck, Commonwealth Ombudsman Office, dated 11th November, 1994 to Telstra's CEO Frank Blount notes: *"...At the request of ms Geary, I am notifying you of the details of the complaints made to the Ombudsman by Alan Smith.* On page 2 it is noted for the date of 7/11/94 that: *"...Telecom unreasonably refused to provide the Portland/Cape Bridgewater Log Book associated with the RCM at Cape Bridgewater' for the period of 2 June 1993 to 6 March 1994."*

Alan Smith wanted this log-book to show Dr Hughes, arbitrator that the Cape Bridgewater exchange trunked off of the Portland AXE, was still suffering with phone problems, even though the Bell Canada International (BCI) tests stated otherwise.

Also attached as **Exhibit 15,** in ACMA's **The Respondent Section 37 Document,** is a Sworn Statement by Des Direen, an Ex – Telstra Protective Service officer dated 10th August 2006, confirming at points 20, 21 and 22 that:-

(20) *"...I had cause to travel to Portland in western Victoria in relation to a complaint involving suspected illegal interference to telephone lines at the Portland telephone exchange.*

(21) *As part of my investigation, I first attended at the exchange to speak to staff and check the exchange log book which was a record of all visitors to the exchange and a record of work conducted by the technical officers.*

(22) *When I attended at the exchange, I found that the log book was missing and could not be located. I was informed at the time by the local staff that a customer from the Cape Bridgewater area south of Portland was also complaining about his phone service and that the log book could have been removed as part of that investigation."*

Alan Smith has never been provided the Portland/Cape Bridgewater Log Book, consequently by Telstra withholding this vital information from Alan, stopped him using up-today documentation which would have assisted him in showing the arbitrator, the problems and faults were still ongoing.

It is important to note that Alan made the following statement in his letter to Ms Jermey:
"...Points 20 to 22 of Mr Direen's statutory declaration confirms that Telstra's Portland Log Book was missing when Mr Direen arrived at the Portland exchange during his investigation into the interception on my telephone conversations and also notes that the log book would have a record of all work conducted in the area, which is exactly the information AUSTEL needed during their investigation into my matters see 3rd March 1994, draft – Bruce Matthews AUSTEL 179 page report, their investigation in my matters."

24th July 1998: Alan writes to Wally Rothwell re lost faxes during Alan's arbitration *"Another chronological list of faxes which have been lost in transit to Dr Hughes is enclosed. The pieces of the puzzle are beginning to fit together now that iy appears that nether the Arbitrator or the resource team actually saw all the claim documents I believed I had submitted and which I intended Telstra to address in their defence of my claims."* **(AS 252)** Alan has attached three testaments dated between 24th and 25th June 1998, from business associates who have documented the type of phone and fax problems they experienced since Alan's arbitration **(AS 253, AS 254** and **AS 256-A)**

Attached also is a letter dated 31st December 2005, from Linda Johnson, Alan and Cathy's resident caretaker at the Holiday Camp from 1997 to 2000. Linda has documented the problems she and her husband experienced with the phone service during this three year period see **(AS 256-B)**

25th August 1998, Mr Pinnock writes to Alan noting:*"...The only issues that I am considering, as the former Administrator of your arbitration, are the alleged overcharging for your 1800 service and matters pertaining to your Gold Phone service, and whether they were considered in the final award."* **(AS 257)**

16th October 1998: The Hon David Hawker, MP, writes to Mr Pinnock *"...I would appreciate your assistance in resolving Mr Smith's complaint.*
I look forward to receiving your advice in due course." **(AS 258)**

Exhibit (262) confirms Mr Pinnock was still investigating the billing issues in February 1999, even though he had been advised **(AS 104)** had not been addressed in Alan's arbitration.

COMMENT 2

The following example dated 18th April 1995, is an extract reproduced here as it appears in the Alan Smith CAV Chronology.

18th April 1995, John Rundell (FHCA) writes to Warwick Smith – (Part One)
In 2001 under the TIO Privacy Policy Act, Alan Smith received a document dated 18th April, from John Rundell of FHCA to Warwick Smith. Part of this document advised Mr Smith that: *"Paul Howell, Director of DMR Inc Canada arrived in Australia 13th April 1995 and worked over Easter Holiday period, particularly on the Smith claim. Any technical report prepared by draft by Lanes will be signed off and appear on the letterhead of DMR Inc."* **AS 160)**

The relevance of this letter is split up in the following two points:

- DMR (Australia) signed an agreement with the TIO Warwick Smith in April 1994, (as displayed in the Arbitration Agreement) that they would act as the independently arbitration technical resource unit.

- March 9, 1995, Warwick Smith advised me that DMR Australia was unavailable to provide locally based technical assistance. This letter confirms that Paul Howell of DMR (Canada) would be appointed as the principal technical advisor to the Resource Unit and Lanes (based in Adelaide) would assist Mr Howell, stating: *"Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith"* **(AS 161)**.

- Please note: the above statement by Mr Rundell in his letter confirms he was prepared to transfer Lanes technical findings onto the letterhead of DMR (Canada) as a guise that Paul Howell prepared the final report **(AS 160)**

- Document **(AS 162)** confirms Paul Howell on 21st March 1995, only received three of Alan Smith's 22 submitted claim documents along with Telstra's defence.

- Document **(AS 163)** confirms FHCA advised Mr Howell 5th April 1995, that David Read would have his draft technical report prepared by 7th April 1995.

- Dr Hughes' draft Award page 3 at (i) and (j) states: *"...pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit," comprising Ferrier Hodgson, Charted Accountants, and DMR Group Australia Pty Ltd, to conduct such inquires or research as I saw fit; On 21 February 1995, by the time I was satisfied that the submissions of all relevant material by both parties was complete, I instructed Ferrier Hodgson and, through them DMR) to conduct certain inquiries on my behalf"* **(AS 164)**.

- Dr Hughes' final Award states on pages 3 and 4 at (i) and (j) *"...pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit" comprising Ferrier Hodgson, Charted Accountants, and DMR Group Australia Pty Ltd, to conduct such inquires or research as I saw fit. By consent of the parties, the role of DMR Group Australia Pty Ltd was subsequently performed jointly by DMR Group Inc and Lane Telecommunications Pty Ltd; On 21 February 1995, by which time I was satisfied that the submissions of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquires on my behalf"* **(AS 165)**.

Summary of document **(AS 160 to (AS 165)** follows in point form:
1. Paul Howell didn't receive any of the technical claim and defence material until 21st March 1995 see **(AS 162)**
2. Paul Howell and David Read wasn't officially appointed by the TIO until 9th March 1995 and/or officially accepted by letter of consent **(AS 161)**

All the technical findings in both the draft and final Awards (except for the removal of the alleged liquid spillage segment) are one of the same mirrored word for word. However, in the draft Award the author states by 21st February 1995, he called on DMR Group Australia Pty Ltd to conduct inquires, The fact that DMR (Canada) was not appointed until 9th March 1995, and didn't receive the technical claim and defence material until 21st March 1995, see

(AS 162), How could the technical findings in the Award have been prepared by DMR (Canada) when the technical findings in both Awards are one of the same?

QUESTIONS

Is there a link between DMR Group (Australia), Lane Telecommunications and Dr Hughes, all having a conflict of interest (after their appointments) to Graham's arbitration?
Why did it take Warwick Smith from September 1994 to March 1995, to inform Graham and Alan Smith, that DMR (Canada) would be appointed as their technical resource unit?

4th November 1998: Wally Rothwell writes to Mr Peter Bartlett noting: *"...In light of Dr Hughes' response, the Ombudsman has asked to seek your advice as to whether you would therefore be of the opinion that both matters were, for all intents and purposes, addressed in the arbitration."* **(AS 259)**

On 28th April 1995 Peter Bartlett drafted a letter to the then-TIO, Warwick Smith (see separate list re W. Smith CAV Target), pressuring Warwick Smith to write to Dr Hughes, before he left for a two week trip to Greece, noting that: *"It would be unacceptable to contemplate the delivery of the Award being delayed until after your return."*

On 30th April 1995, DMR & Lanes presented the draft of their arbitration technical report to Dr Hughes, noting that the report was still incomplete stating the report needed extra weeks to investigate the billing faults raised in Mr Smith's claim. The extra weeks needed to complete this report, was denied, even though Alan's billing claim documents showed that the phone problems were still occurring.

The draft of the technical report was then altered and Dr Hughes presented it as the final and complete report, still dated 30th April 1995.

How could Peter Bartlett and/or Dr Hughes then turn around and claim that the billing faults were investigated correctly and addressed thoroughly by DMR & Lanes when they extra weeks that was needed to investigate ALL Alan's claim documents in the very same week that Dr Hughes set off for his trip to Greece was not allowed?

11th November 1998: Ms Southwell, Minister's office writes to Mr Pinnock sking for advice *"... on the likely time-frame for finalising Mr Smith's claim of overcharging on his 1800 number. A meeting has been proposed between Mr Smith and Senator Ian Campbell and your response will form the basis for the proposed meeting."* **(AS 260)**

29th January 1999: Mr Dunstone, from the Minister's office writes to Mr Pinnock Noting: *"...I would be grateful if you could advise the status of the TIO's investigation into Mr Smith's claim of overcharging – I understand this matter has been before the TIO for some years."* **(AS 261)**

10th February 1999: Mr Pinnock writes to The Hon David Hawker, MP in response to a letter from Mr Hawker on 11 December 1998, Mr Pinnock wrote: *"The only matter outstanding which the TIO is considering is whether the Arbitrator considered Mr Smith's claim for overcharging on his then 008 service when he made his award."* **(AS 262)**

This statement shows that Mr Pinnock had still not told Mr Hawker that the TIO-appointed Arbitration Resource Unit had admitted that NONE of Alan's billing claim documents had

ever been investigated and/or addressed during his arbitration. It also confirms that, although Mr Pinnock appears to have received advice from both Dr Hughes and Peter Bartlett on these very same issues, at this time he was still considering the matters.

COMMENTARY:

The Resource Unit's admission that the billing faults were not addressed is supported by John Rundell's letter dated 15th November 1995, to Mr Pinnock (see above), in which Mr Rundell clearly states that the arbitration did not allow enough time for full investigation. This is the letter that also states, incorrectly, that Alan did not raise the billing faults until April 1995, when exhibits (AS 105) Transcripts from Alan's oral hearing and exhibits (AS 126 to AS 129) letters between AUSTEL and Telstra confirms otherwise.

Even Dr Hughes refers to the lack of time allowed for in the Arbitration Agreement when, in his letter dated 12th May, to Warwick Smith (AS 180) he notes: *"The time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic; in particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of Technical reports."* This was the same 'poor time frame' that Dr Hughes and Minter Ellison supposedly drafted into the Arbitration Agreement in the first place. The same inadequate time frame that stopped DMR & Lanes from getting the extra weeks they needed, so they could properly investigate the continuing billing problems, so Telstra could address them before Dr Hughes handed down his award. Poor presentation of Alan's claim was not what caused his business to continue to suffer after the arbitration; it was the bad decisions of Dr Hughes and Minter Ellison when they drafted the agreement, including the *"forces at work"* that was *"collectively beyond the reasonable control"* of the TIO-appointed Resource Unit.

10th February 1999, Mr Pinnock again misleads an interested party concerned about Alan's continuing billing complaints when he advised Mr Mark Dunstone, from the Minister's office *"Mr Smith, however, raised issues in 1998 which I considered merited investigation, viz whether the arbitrator had, in his Award, dealt with Mr Smith's claim that he had been overcharged on his 008 (now 1800) telephone service as well as complaints concerning his fax line. The TIO has carried out some preliminary, if protracted, investigation of the former claim."* (AS 263)

Please note: Mr Pinnock had discussed these same billing issues with AUSTEL 3rd October 1995, and with John Rundell, FHCA 15th November 1995. What ever made Mr Pinnock state that the Alan only raised the billing issues in 1998?

26th February 1999: Alan Smith fax account confirms he faxed three separate documents to Graham's office at 10:55 am, 11:20 am and 01:37 pm. Graham's facsimile journal for this date confirms there was no 11:20 pm document received by Graham.

Graham's fax journal does not coincide with Alan's Telstra fax account for faxes charged as sent. In the Graham Schorer and Alan facsimile interception files Exhibit 2 & 3, it has been confirmed that faxing problems between Graham's office and Alan's (similar to the above problem) was nothing new. These files also confirm sensitive legal (client to solicitor) faxed Telstra related document were first intercepted prior to the document being forwarded on by Telstra to the intended destination (AS 265)

26th February 1999: Alan Smith wrote to the co-ordinator of the Public Law Clearing House Melbourne, on the advice from the of John Phillips, Chief Justice of the Supreme Court of Victoria noting: *"...Back in August 1992, Austel, the telecommunication Regulator, became involved, and Freedom of Information (FOI) documents show that Amanda Davis, then the General Manager for Consumer Affairs at Austel, also suffered from incorrect charging when making contact with my business. This continuing fault had existed on my phone line from 1988/89 and so, in December 1992, I had Telstra connect another service to handle a 1800 freecall number, in the hope that it would give prospective customers easier access to my business.*

There are documents in the draft if my book which show that Telstra wrote to Austel on 11/11/94 stating that they would address this incorrect charging in their defence of my arbitration claims but this never happened.

What is more, Telstra also wrote to the arbitrator on 16/12/94, confirming that they had informed Austel that they would address the incorrect charging in the defence of my arbitration claim. and – *the incorrect charging to my 1800 account continued right through my arbitration and for at least a further 20 months after the 'completion' on my arbitration on 11/5/95."*

26th May 1999: Mr Pinnock writes to Alan stating
"...I refer to numerous letters addressed to the Chairman of the TIO Council, the Hon Tony Staley, and which I have forwarded to him. The Chairman has asked me to advise you that Council will discuss the matters raised in your letters at its next meeting scheduled for 21 June 1999." **(AS 264)**

I have never received a response to the outcome of that meeting.

2nd June 1999: John Pinnock, writes to the Hon Tony Staley, Chairman of the TIO Council, regarding the pending Brian - Furton Smith Arbitration process noting: *"...I am even more strongly of that view today. In part my position has hardened because of the many problems and deficiencies to the Arbitration process which Telstra established."* **(AS 266-a)**

21st September 1999: Alan again writes to John Pinnock concerning his continuing fax problems "...Since the problems with my fax line were not addressed in my arbitration procedure I would be grateful if you would now ask Telstra the following questions:

- *How can they charge me for a fax delivery to Mr Schorer's office when it did not arrive there?*
- *Since, according to my Telstra account, I dialled the correct number when I sent this fax, and since it clearly did not go to that number, where did this fax go to?* **(AS 266-b)**

It is important to note that Alan provided Mr Pinnock a copy of Graham's fax journal and his Telstra account proving yet again, that the fax problems were just as bad in 1999, as they were prior and during his arbitration.

19th October 1999: Mr Pinnock writes to Alan noting:*"...I have reviewed the resources which the TIO has devoted to dealing with your extra ordinary number of complaints and letters over the past years and advise you that I do not propose to take any further action in relation to these matters."* **(AS 267)**

Cathy and Ronda Fienberg, provide testaments

24th October 1999: An excerpt from a statutory declaration Cathy sent David Hawker MP: *"...Mr John Pinnock (Telecommunication Industry Ombudsman) has refused to address a number of Alan's complaints. Living with this type of no win situation has left both Alan and I exhausted and unsure if we can trust our business future."* **(AS 268)**

Cathy and Alan continued to experience this type of problem until they sold their business December, 2001.

28th October, 1999: the Hon Tony Staley Chairman TIO Council writes to Alan stating: *"...The Ombudsman has repeatedly advised you in the past of your rights of appeal in relation to the Award of the Arbitrator, advice which you have not followed."* **(AS 269)**

Dial-A-Secretary has problems faxing to Alan's office

30th January 2000: *To Whom It May Concern*

"...On the 28th December, 1999 I contacted by Alan Smith from Cape Bridgewater Holiday Camp re doing some computer work for him. Alan rang and we organised for him to fax the work through. One page and a small portion of the next came through and then the line disconnected. Alan tried numerous times to get the fax through, but to no avail he eventually had to make other arrangements for the work to be done nearer to him.

On 5th January 2000 Alan again contacted me regarding doing some work for him. He tried so many times over a period of about 3 hours and finally the work came through. **(AS 270)**

Attached is Alan's fax account for this period in question showing Telstra charged for these non transmitted calls.

12th February 2000: Alan decided to contact Ray Bell, author of the TF200 Report. In this letter Alan asked Mr Bell to consider his position stating 'Many years ago, in the Court of Tiflis of then Empire of Russia, the following legal precedent was set:

"...that no mane can take advantage of his own wrong, and that it is a principal of law that no action can be maintained on a judgement of a court either in this country or in any other, which has been obtained by fraud of the person seeking to enforce it. That the defence is good..." **(AS 271)**

9th May 2000: Alan Smith writes to Ms Roslyn Kellcher (acting chairperson) ACA (now ACMA) Melbourne, clearly defining in point form where Telstra broke the law during his arbitration, including detailing where the arbitrator and/or TIO treated his valid allegations with utter contempt: noting: *"...I would be most grateful if you could see you way clear to assist me in some way; perhaps you could suggest where in Australia I can go to have these valid complaints correctly investigated by an impartial assessor or ombudsmn. Surely there must be some people within the Austrlian Goverement who have not lost their ethics and moral values."* **(AS 272)**

13th June 2000: Frank Nolan, Manager Codes and Consumer Safeguards, ACA (now ACMA) responds to Alan Smith's letter of 9th May 2000, see above, noting: *"...I refer to your letter of 9 May 2000, in which you raise yet again a number of concerns relative to your Fast Track Arbitration Procedure and subsequent events. You raised similar issues to the Australian Communication Authority (ACA) dated 26 January 2000. In his response to that letter dated 15 February 2000, Neil Whitehead indicated the ACA;s opposition with respect to such issues.*

This position has not changed, and I have nothing to add save to emphasise that it is not part of the ACA's role to pursue these matters and that it does not intend doing so. **(AS 273)**

29th October 2000: Alan writes to the Hon David Hawker's secretary Megan Campbell *"...In support of these allegations of phone taping I have enclosed two documents. In relation to problems with my mail, I enclose a copy of a letter recently sent to me from the Portland Post Office, and dated October 28, 2000. This letter confirms that overnight mail that I had posted had not arrived at its intended destination five days later."* **(AS 274)**

19th December 2000: Alan alerts a number of Senators, regarding what he has uncovered from the TIO latest release of document under the Privacy Act. This letter discuses his concern regarding: Privacy issues, Mail either lost completely or having been opened by persons unknown before delivery including phone interception issues as well as Telstra FOI documents confirming they carried out surveillance of COT Case premises and the TIO's office reluctance to investigate their valid claims against Telstra. **(AS 275)**

Maybe some of Alan's arbitration claim documents that do not appear on the arbitrator's list of documents received were lost during road transit as well as through Telstra's fax-streaming process?

11th January, 2001: Alan writes to David Hawker MP advising that: *"...Phil Carless and Lyn Chisholm (both from the same department as David Thompson) did subsequently visit my business early in 1998 and were both provided evidence confirming that Telstra had, in fact, billed me incorrectly on the following three on my business phone lines:*

1. *Facsimile service 55 267230*
2. *Free call 008/1800 service*
3. Goldphone service 55 267260 **(AS 276)**

12th July 2001: Ronda Fienberg, Alan's Melbourne based secretary along with Alan do a number of line tests on the incoming and outgoing fax line. Prior to Ronda and Graham Schorer doing these line tests, both Cathy and Graham had also experienced the same lock-up problems when doing similar line tests during this period. This note from Ronda clarifies there were lock-up problems still apparent on Alan's business service lines mid July, 2001. **(AS 277)**

Please note: this was the same type of lock-up fault that Telstra acknowledged was a moisture related problem experienced with the EXICOM TF200. On 27th April 1994, Telstra removed an alleged drunken TF200 from the camp premises and installed a similar EXICOM TF200, could this new installed EXICOM been have been part of Alan's problem?

CHAPTER EIGHT

Threats from a Senator

16th August 2001, Senator Eggleston threatens Alan with possible legal action noting: *"...The fact that you have received unauthorised confidential committee documents is a serious matter, but if you disclose these documents to another person, you may be held in contempt of the Senate."* **(AS 278)**

One of the Senate documents referred to by Senator Eggleston is an In-Camera-Hansard dated 6th & 9th July 1998, which shows that a group of Senators are attempting to address Telstra's conduct during and after the COT arbitrations. Please note: Ted Benjamin who was being asked a number of questions in the Senate was Telstra's liaison officer to Graham and Alan's arbitration, including being a member of the TIO Council at the time.

SENATE

"...Can you see the whole thing is unfair? When I said 'starve people into submission,' Mr Benjamin shook his head in opposition to my comment, which he is fully entitled to do. Madam Chair, about the difficulty of those who have had their cases resolved under arbitration. Many of them will tell you that, if they did not accept it, they could not fight on. Some people are fighting on.

With statements about Telstra like this from Australia's sitting Senators, is it any wonder why Alan haa been threatened the way he has. Of course the Coalition Government didn't want Telstra's unethical conduct towards the Cot Cases exposed while they were selling off this government asset.

26th August 2001: Alan Smith's letter to Tony Shaw, Chairman of the Board notes: *"...The ACA (Australian Communication Authority) is already in receipt of documentation confirming the ACA has knowledge that Telstra knowingly and unlawfully used deficient and or corr upt defence documentation during the COT arbitration's, including my own.*

We suggest that any Regulator and or agent of the Federal/Crown, who possessed knowledge of the nature of these unlawful acts and events by Telstra during the AUSTEL facilitated COT arbitration procedure, and specifically have concealed these acts by not broadcasting to the appropriate law enforcement agencies, would be acting outside of the law, and would be engaging in prima facie abuse of office, and obstruction of justice.

In all these respects, the law is clear, it prohibits such conduct. **" (AS 278-b)**

14th September 2001: Senator Nick Minchin's Secretary writes to Alan noting: *"...I have been in contact with the office of the Hon Richard Alston, the Minister for Communications, Information Technology and the Arts, and I have been advised that a reply will be sent to you shortly addressing the matters raised."* **(AS 279**

18th October 2001: Alan wrote to John Neil, Executive Manager ACA stating: *"I... advise you on 30 July 2001 that it is not the role of the ACA to address these matters. I note you have previously raised them with other authorities including the Commonwealth Ombudsman and the Victoria Police. I do not propose to engage in further correspondence with you on these matters."* **(AS 280)**

7th November 2001: Senator Brett Mason writes to me *"...As advised in my first contact with you, the Minister for Communications, Information Technology and the Arts had undertaken to investigate your concerns and respond to you on behalf of the Coalition.* **(AS 282)**

28th December 2001: Alan writes to a number of Government Ministers noting: *"...As you are already aware, I recently sold my business, the Cape Bridgewater Holiday Camp*

and Convention Centre. The new owner Jenny and Darren Lewis took over on 23rd December 2001. Alan further alerts the Ministers that, Mr and Mrs Lewis are experiencing phone problems and then went on to say: **(AS 281)**. *"...How is it that, although the TIO, John Pinnock, is more than fully aware of the problems I have faced because of Telstra (problems which lasted for fully five years after the so-called 'completion' of my arbitration), he has never done anything to assist me?*

19th February 2002: Alan offered to provide Senator Richard Alston fresh evidence via David Hawker's office concerning his continued allegations *"...Ms Sue Owens, Barrister, received the following information from the Telecommunication Industry Ombudsman's office early this year. The information confirms the role played by the TIO's office in covering up criminal behaviour by Telstra, and others, during my arbitration.* **(AS 283)**

Would you prefer me to forward this fresh evidence to your office or to Senator Alston's office?

15th March 2002: David Hawker MP writes to Alan *"...I have ensured the Minister for Communications and Information Technology is aware of your offer to provide fresh evidence."* **(AS 284)**

27th March 2002: David Hawker's interim reply on behalf of Senator Alston *"I have received an interim response from the Minister for Communications, Information Technology and the Arts, Senator the Hon Richard Alston MP, informs Alan the matter is currently receiving attention and will be responded to shortly."* **(AS 285)**

12th July 2002: Senator Alston responds to David Hawker MP *"...As the material provided by Mr Smith relates to the arbitration undertaken by Dr Gordon Hughes of Hunt and Hunt, under the administration of the Telecommunications Industry Ombudsman (TIO), I have referred your letters to the TIO for advice."* **(AS 286)**

17th July 2002: The Ministers office writes to Alan regarding his offer to provide irrefutable evidence that his arbitration was not conducted transparently by the TIO-appointed arbitrator and resource unit noting: *"...I would, therefore, ask that you refrain from providing any further material until the Telecommunications Industry Ombudsman has provided advice on the material you have supplied to date."* **(AS 287)**

14th October 2002: Senator Alston's office writes to David Hawker MP *"...Thank you for your representation of 23 September 2002 on behalf of Mr Alan Smith concerning Telstra. The issues raised in your letter are receiving attention and the minister will respond to your shortly."* **(AS 288)**

16th October 2002: Telstra FOI folio 100264 concerning Mr Lewis' phone faults Telstra's fault records show the new owner of Alan's business Darren Lewis is having phone problems: *"...Customer has contacted MP again e service as he is not receiving calls on message bank or *10# Customer is aware previous owner of business also had problems with service. Customer said he was told by Telstra that there was a problem in his exchange."* **(AS 289**

18th October 2002: Telstra FOI folio 100266 re Mr Lewis' phone problems citing:

"...The TIO have now raised a Level 1 complaint on behalf of Mr & Mrs Lewis. The TIO have specifically mentioned in their correspondence that the TIO have previously investigated a number of complaints raised by Alan Smith the previous account holder for this service." **(AS 290)**

15th November 2002: Senator Alston's Office writes to David Hawker MP
"...Thank you for your representation of 8th November 2002, on behalf of Alan Smith concerning Telstra. The issues raised in your letter are receiving attention and the Minister will respond to you shortly." **(AS 291)**

Evidence provided to Mr Ralph, Deputy Chairman Telstra Board confirms Telstra acted unlawfully during Alan's arbitration

16th December 2002: Alan's letter and attachments sent to Mr Ralph, was regarding the Channel Nine Sunday Program on the COT arbitration issues. **(AS 292)**

"...I understand your anger, as a board member of Telstra, but I suggest you seek out the truth of the matter before any more unfounded allegations."

20th December 2002: Mr Gration, Telstra's Corporate Secretary writes to Alan stating: *"...I refer to your letter dated 16th December to Telstra's Deputy Chairman, John Ralph. Mr Ralph has asked me to review the material enclosed with your letter and respond on his behalf. I expect to be in a position to do so in January 2003."* **(AS 293)**

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

ACMA would be able to supply AAT, a letter from Alan Smith, dated 23rd December 2002, to Mr Tony Shaw, Chairman alerting him that regardless of all his work in assiting AUSTEL with the 008/1800 Telstra systemic billing problems he had still not received a response for his efforts noting: *"...Recently received FOI documents show that, in a letter dated 16th October 1995, Telstra used an arbitration witness statement, sworn by Ross Anderson (one of Telstra's Portland technicians) in an attempt to discredit my claims regarding the 1800 RVA faults and short duration calls. Furthermore, it has now been proved that Mr Anderson lied in this Witness Statement to the arbitration regarding a number of issues related to my phone lines. Telstra's use of this confidential arbitration Witness Statement to support this letter to AUSTEL without advising me, meant that I was not provided with a right of reply."*

On 14th January 2003, John Neil, Australian Communication Authority, Executive Manager Consumer Affairs responded to Alan's letter noting: *"...You ask if the ACA will now conduct an investigation in the matters raised by your letter. The events cited in your letter occurred more than seven years ago, and do not relate to a breach of the telecommunications Act 1997. To the extent that those matters relate to Telstra's conduct in reaching a settlement with you, it seems that your best course is to pursue it as an individual matter."*

The issue related to the 23rd December 2000 (see above) is raised again here because it highlights the way AUSTEL (now ACMA), a Government-funded Regulatory Agency, was secretly accepted by the defence as an unofficial arbitrator and then stripped the claimant, Alan Smith, of his legal right of reply. If Alan had been provided with the right of reply to which he was legally entitled, he could have provided AUSTEL with further

evidence to support his claims that, because the 008/1800 service was routed through his 055 267 267 line, some of the ongoing 008/1800 billing problems could have been caused by the lock-up problems on the 055 267 267 line.

If, instead of waiting for five months after the arbitrator had handed down his findings before secretly attempting to address these issues with the regulator (nod, nod, wink, wink), Telstra had addressed them legally in the appropriate arbitration arena, Alan's technical team would then have been able to show the arbitrator that the causes of the billing problems were two-fold: the 008/1800 billing problems and the related 055 267 267 lock-up problems – the same kind of problems that AUSTEL's Bruce Matthews referred to in his draft report of 3rd March 1993, when he wrote: *"... it is apparent that the Camp has had ongoing service difficulties for the past six years which has impacted on its business operations causing losses and erosion of customer base"* See (*Attachment Two*).

By the time AUSTEL and Telstra were in secret negotiations regarding how to address Alan's billing issues outside of the arbitration process (without alerting Alan to these discussions), the process had already cost Alan in excess of $180,000.00. Then AUSTEL had the gall to accept Alan's hospitality on 19th December 1995, when, after driving for five hours to Cape Bridgewater, they collected the billing material Alan had printed, collated and bound and drank tea and ate toasted sandwiches Alan prepared for them. After this appalling and unethical behaviour, the arbitration process then cost Alan a further $180,000.00-plus in his attempt to have these matters assessed.

19th January 2003: Darren Lewis writes to the Hon David Hawker MP. This eleven page letter discusses all the phone problems Mr and Mrs Lewis inherited after they purchased the Cape Bridgewater Holiday Camp **(AS 294)**

31st January 2003: Telstra FOI 100274 re Mr Lewis' phone problems
This document was enclosed in Darren & Jenny Lewis' report from the TIO.
TIO L3 Complaint received. Complaint is complex and has been on-going for a while. Please refer to files for full details. **(AS 295)**

31st January 2003: Mr Gration, Telstra Corporate Secretary refuses to investigate the issues Alan raised in his correspondence to Mr Ralph, Deputy Chairman of the Board. Mr Gration does then go on to state: **(AS 296)**

*"...*However *Telstra will of course consider fairly and appropriately any fresh evidence brought to our attention in support of your claims."*

Please note on the 3rd April 1993 (see below) Alan did provide fresh evidence confirming that:

- Telstra did knowingly use flawed (BCI Cape Bridgewater) test results;
- Telstra knowingly used deficient Cape Bridgewater (SVT tests report); and
- Telstra conjured a manufactured TF200 report as arbitration defence material.

26th February 2003: Mr Pinnock writes to Alan (just more of the same denials:-
"...In your letter of 3 February you state that the TIO has a duty to speak to the new owners of Cape Bridgewater Holiday Camp who, are blaming you for not disclosing to

them ongoing problems with the telephone service. That is a matter between you and the new owners." **(AS 297)**

21st March 2003, Harwood Andrews (Lawyers) writes to Darren Lewis, re Alan Smith's misleading conduct

"...Terms of Engagement – Investigation of possible action against Alan Smith, former owner of the Cape Bridgewater Holiday Camp, for misrepresentation in the sale of the camp in 2001. **(AS 298)**

In defence of that statement

When Alan sold the business to Mr Lewis, he honestly believed that the continuing problems still being experienced at the Holiday Camp were being orchestrated by disgruntled Telstra employees. He believed that as soon as a new owner had purchased the business these continuing phone and fax problems would fade away.

23rd March 3003: Alan Smith writes to the Australian Federal Police noting: *"...As explained in the attached copy of my letter to Senator Alston, David Hawker and John Pinnock, there is a very strong possibility that the new owners of the Cape Bridgewater Holiday Camp may well take me to court. They say that, before they purchased the business, I advised them that all the phone faults had been fixed during my arbitration but they now have conclusive evidence that I was actually complaining to many people of the exact opposite, that is, I was complaining of phone faults which had continued after my arbitration and which were still occurring at the time I was negotiating the sale of the business to them.*

I misled Jenny and Darren Lewis into believing the phones were all working properly as a direct result of all the trauma my partner Cathy and I have had to endure at the hands of Telstra and others who acted outside the law, both during my arbitration process, and since. When I was contacted by the lady in Cairns (referred to above) I truly believed all that she told me because I had already experienced enough to have had a taste of what could happen and I had already begun to suspect that Telstra's retribution would eventually ruin my life. I then came to believe that the phone and fax faults at my business would continue until I sold the business to someone else and Telstra therefore had no reason to focus on the camp. I was sure that, once the business was sold and Telstra knew I was no longer involved, they would fix all the phone problems. Clearly the problems were actually more network related than I thought.

3rd April 2003: Mr Gration, Telstra's Corporate Secretary writes to Alan Smith: -
This letter has to be read to be believed. Mr Gration refuses to acknowledge that the:

- Bell Canada Report was fundamentally flawed.
- Telstra's TF200 arbitration Report was fundamentally flawed
- Telstra's SVT tests conducted at my premises 29th September 1994 were deficient.
- That Alan's evidence regarding the 008 billing problems was incorrect **(AS 299)**

Please note: This is the fresh evidence that Mr Gration stated in his previous letter he would not assess.

15th April 2003: Stringer Clark, Solicitors write to Darren Lewis regarding possible action against Alan Smith for misleading and deceptive conduct **(AS 300)**

Towards the end of April 2003, Darren and Alan was discussing amicably how to overcome his anger towards regarding Alan and the phone and fax problems he had inherited when he purchased the business. These discussions stopped any legal action against Alan, see above exhibit

14th August 2003: Doug Field, Assistant Ombudsman officially transferred Alan's fax interception complaints over to none other than, John Pinnock. Alan's concerns that Mr Pinnock might not investigate his facsimile claims independently is displayed in Alan's letter to him in exhibit **(AS 301** and **AS 304**

19th August 2003: Senator Alston's office writes to David Hawker MP: *"...Thank you for your representation of 8 August 2003 on behalf of Alan Smith concerning Telstra services. The issues raised in your letter are receiving attention and the Minister will respond to you shortly."* **(AS 302)**

24th August 2003: In this letter Alan provides Mr Hawker, the evidence he provided Doug Field, Assistant Commonwealth Ombudsman, on 14th August 2003, confirming: **(AS 303)**

- *"...Telstra has continued to selectively intercept his faxes up to and including 24th December 200;*
- *Telstra perverted the course of Justice during the COT arbitrations;*
- *Telstra advised Mr Pinnock that they had knowingly withheld 40% of the FOI documents Alan asked for during his arbitration - until after the arbitrator had deliberated on his claim.*

28th August 2003: Alan again wasts his time in writing to Mr Pinnock.
In this letter Alan makes a number of statements where documents faxed by him during his arbitration apparently were not received by Dr Hughes. Alan also confirmed that Telstra's arbitration defence actually acknowledges that on one occasion Dr Hughes' office could never have received some of Alan's faxes yet his Telstra fax account shows they were faxed.

Alan also stated: *"...I sincerely hope you will provide me the results of your current investigation and thereby avoid yet another failure in your duty of care."* **(AS 304)**

3rd September 2003: Alan wrote to Doug Field, Assistant Commonwealth Ombudsman Office, alerting Mr Field, to the fact that he first raised these fax issues with the TIO's office back in 1994 stating: *"...When the TIO's office began their first investigation into the problems I was experiencing with my fax during my settlement/arbitration process in 1994, I told Warwick Smith, who was the then TIO, I had not provided all the information I had in support of my claims but he still didn't ask to see the balance of my evidence. During the second TIO investigation into the same matters in 1997/98, I advised Wally Rothwell, then the Deputy TIO, that I still had not provided all the information I had because there were so many documents. Again the TIO's office did not ask to see the rest of my evidence.* **(AS 305)**

I await your response regarding how my evidence can be officially presented to the TIO".

During this period Alan received no advice from either Mr Field or Mr Pinnock, as to where he could officially send the balance (of his fax evidence) for investigation purposes. The evidence in question is now attached to the Graham Schorer and Alan Smith fax interception file dated December 2006, Exhibit 2 & 3, which Alan has offered to provide the Administative Appeals Tribunal, in his reponse to the AAT Registrar see exhibit **(AS 307-b)**

12th September 2003: David Hawker MP responds to the above letter (see **AS 305**) *"...I can assure you that this week while in Canberra I personally delivered the report and a copy of your covering letter to the Minister for Communications and Information Technology."* **(AS 306)**

7th October 2003: Mr Pinnock refuses to investigate the interception fax issues *"...As you note, on 14 August 2003, the Commonwealth Ombudsman formally transferred to the TIO your complaints relating to "fax screening and the blank fax pages..." In my opinion, the information you have supplied amounts to no more than speculation and innuendo and I am not persuaded that there is credible evidence to warrant an investigation by the TIO."* **(AS 307-A)**

COMMENTARY – Most important
Also attached as exhibit **(AS 307-B)** is a sworn testament from Peter Ross Hancock, 8 The Rise, Diamond Creek, Victoria dated 11th January, 1999. In this statement Mr Hancock acknowledges he has given Telecommunications services to Golden Messengers since 1992. Mr Hancock concurs that after *extensive fax testing at* Golden *Messengers, Queensberry Street, North Melbourne on 4th January 1999, and 11th January 1999,* (that he observed) *"...the discrepancies (that is the second footprint) in the fax headers raised by the tests referred to above and the differences in the fax headers attached (marked "B") relating to faxes".* Mr Hancock then investigated further exhibits of faxes that had either been received and/or sent between Golden Messengers and their Lawyers, COT case premises and *"...Alan Smith at Cape Bridgewater."*

This testament then states:
"...I have also reviewed a large number of facsimiles from mid 1998 to 4th January 1999 provided by Mr Schorer, which clearly include a second imprint on the facsimile foot print. It is my opinion from the evidence provided that a third party has been intercepting all of the faxes referred to above.

In my experience there is no other explanation for the discrepancies in the facsimile footprints in question. I have read the report of Scandrett & Associates Pty Ltd and concur with it's findings".

Alan Smith, the applicant, will supply AAT on request, numerous examples showing Telstra COT related Supreme Court documents faxed by a lawyer to a COT client at a different location than the clients normal business address arrived with the lawyer's correct fax identification displayed on the document, as is the case with all the lawyers other clients. In other words, when this lawyer faxed similar Telstra related Cot court dcouemnts to this client at his nomal business address, the lawyers correct business identification is displayed.

Alan, can supply similar examples, where a Telstra related document faxed from his office to a one location arrives with Alan's correct business identification displayed on the document, yet when the same document is faxed to the ACA (now ACMA) five minutes latter, Alan's business identification is not displayed on the document received by ACMA,

This same file which can be supplied to AAT and ACMA, suggests that Telstra COT Telstra related documents intended only for the eyes of AUSTEL and ACA were intercepted during at least 1994, to 2002, before being re-directed on. The reason the applicant, Alan Smith is willing to supply this file, as the material leaves doubt as to whther all the faxed me material to AUSTEL and ACA, was always re-directed on.

This AUSTEL and ACA, fax interception issue is directly related to the present FOI matters under review, because ACMA has been unable to locate Telstra COT related technical documents which the applicants records including examples in the Statement of Facts and Intentions the (chronology of events) show do exists, therefore it is most important for AAT to view the (chronology of events) in ist entirety.

3rd December 2003: The Hon Daryl Williams, new Ministers for Communications writes to David Hawker MP *"...Thank you for your representation of 14 November 2003 on behalf of Mr Alan Smith concerning Telstra. The issues raised in your letter are receiving attention and the Minister will respond to your shortly."* **(AS 307-C)**

11th December 2003: Mr Gration, Telstra's Corporate Secretary writes to Alan stating: *"...As I have stated in previous correspondence, there are clearly significant difference between your position and Telstra's on matters you have raised."* **(AS 308)**

12th January 2004: Philip Ruddock, Attorney General writes to Alan noting: *"...I refer to your letter of 13 November 2003 in relation to the arbitration of your dispute with Telstra. As indicated in my letter of 10 November 2003, I am not in a position to comment on the actions of Telstra in this matter, nor am I able to comment on the conduct of the arbitration of your complaint by the Telecommunication Industry Ombudsman."* **(AS 309)**

27th January 2004: The Ministers office again writes to David Hawker: *"...Thank you for your representation of 18 December 2003 on behalf of Alan Smith concerning Telstra issues. The issues in your letter are receiving attention and the Minister will respond to you shortly."* **(AS 310)**

3rd February 2004: The Federal Attorney-General's Office writes to Alan: *"...I refer to your letter of 2 December 2003 to the Attorney-General, the Hon Philip Ruddock MP, regarding alleged unlawful interception of telecommunication services. The Attorney-General has asked me to reply on his behalf. I would encourage you to draw this to the attention of the AFP."* **(AS 311)**

11th February 2004: The Minister writes to David Hawker MP *"...Telstra advised the Department that it rejects Mr Smith's claims that his facsimile messages have been intercepted.* **(AS 312)**

The TIO advised the Department that it wrote to Mr Smith 7 October 2003, advising that the information provided by Mr Smith, both directly and through the Commonwealth Ombudsman, amounted to no more than speculation and innuendo. I understand that the TIO further advised Mr Smith that the material did not warrant any further investigation by the TIO."

19th February 2004: David Hawker MP writes to Alan *"...At my request the Minister has again investigated your claims and he clearly supports the previous Minister's advice that the Government is regrettably unable to assist you any further with these issues.*

I hope you can now consider this matter closed" **(AS 313)**

25th March 2004: John Rohan Chairman - TIO Board writes to Alan *"...Despite many criticisms of the procedures the Board also notes that at no time did you seek to exercise the right of appeal provided for by the procedures. Further, that the Senate Committee did not suggest that the Award should be re-opened."* **(AS 314)**

COMMENTARY

1. The Senate committee referred to by Mr Rohan, were going to investigate Alan's maters as soon as the first nominated COT five had their matters investigated by the committee. Senator Richard Alston confirmed that the first COT five was the litmus tests for the remaining other sixteen COT members on the Senate B list. Exhibit **(AS 314)** confirms on page four under the heading Schedule B, that Alan was one of the nominated (sixteen names) to have his FOI arbitration FOI matters investigated. It was only due to a Coalition political intervention that the sixteen were not treated in a similar fashion as the first COT five. Mr Rohan is totally incorrect when he states that: *"the Senate Committee did not suggest that the Award should be re-opened.*

2. During the Senate Committee investigation John Pinnock informed Senator Alston, that Alan's Telstra related arbitration issues were still under investigation. Exhibit **(AS 262)** dated 10th February 1999, confirms Mr Pinnock was informing Colation government ministers (during the period the committee was winding down from their investigations) that Alan's billing issues he raised in his arbitration were still under investigation.

12th May 2004: Phillip Carruthers from the TIO's office writes to Alan regarding information provided for assessment purposes noting: *"...The letters for Ms Marsh, Hon Staley, Rev Dr Newell, Mr Cleary and Mr Brown will be passed on to them by hand at the Council meeting scheduled for 19 May 2004."* **(AS 315)**

29th July 2004 The Hon Tony Staley Chairman TIO Council writes to Alan *"...I have been authorised by the Council of the telecommunication Industry Ombudsman (TIO) Scheme to reply to letters which you have sent to various members of Council, including myself. Council is aware that you have sent the same or similar letters to Directors of the TIO Board.* **(AS 316)**

It is not within the role of the TIO Council to reconsider the Arbitrator's conduct or the Award made."

8th October 2004 Mr Rohan Chairman TIO Board and Mr Staley write to Alan:

"...Mr Warwick Smith has not been an employee of the TIO Ltd for many years, meaning that the Board and Council have little or no practical ability or need to reprimand him even if any misconduct by him could now be proven.

In light of all of the above, neither the Board nor Council considers it necessary or appropriate to consider your recent claims any further." **(AS 317)**

10th January 2005: Mr Rohan and Mr Staley try to hose down Alan and the truth of concerning what he had uncovered by stating: *"...Having read that letter, it remains the case that neither the Board nor Council of the TIO Limited considers that Mr Warwick Smith or Mr John Pinnock has acted inappropriate regarding your arbitration or associated matters. Neither the Council nor the Board considers it necessary or appropriate to consider your recent claims any further. Insofar as your claims relate to alleged criminal conduct, they should be referred to the proper authorities."* **(AS 318)**

22nd April 2005: Senator Helen Coonan's office writes to Alan Smith noting: *"...I refer to your further correspondence of 22 March 2005 to the Hon David Hawker MP concerning your claims against Telstra. I wish to correct the impression that the Minister is investigating further claims against Telstra, including claims by some of the original 'Casualties of Telecom'.* **(AS 319-A)**

16th September 2005: Senator Barnaby Joyce writes to both Graham and Alan separately and informs them: *"...As a result of my thorough review of the relevant Telstra sale legislation, I proposed a number of amendments which were delivered to Minister Coonan in addition to my request, I sought from the Minister closure of any compensatory commitments given by the Minister or Telstra and outstanding issues.*

I am pleased to inform you that the Minister has agreed there needs to be finality of outstanding COT cases and related disputes. The Minister has advised she will appoint an independent assessor to review the status of outstanding claims and provided a basis for these to be resolved." See Relevant Information File **(GS 419)**

22nd September 2005: Internal Coalition email concerning the agreed to COT Commercial Settlement Proposal from Nikki Vajrabukka noting: *"...Key issues for consideration include:*

- *Analysis of Senator Joyce's request, and Minister response*
- *What the Minister can an can't do*
- *Whether there is any basis to re-open the investigations/appoint an independent assessor*
- *If so, who will that be?*
- *What powers does the Minister have to direct a person to do so (for example direct the TIO to revisit the cases?)*
- *Whether there were any compensatory commitments or warrants of compensation given by the Minister, the Department or Telstra."*

Please note: the questions (as to whether the Minister had the power to grant a commercial assessment was only raised with Senator Joyce) after the Coalition Government had secured his crucial vote for the full privatisation of Telstra.

15th September 2005: Senator Barnaby Joyce writes to Alan noting: *"...I am pleased to inform you that the Minister has agreed there needs to be finality of outstanding CoT cases and related disputes. The Minister has advised she will appoint an independent assessor to review the status of outstanding claims and provide a basis for these to be resolved.*

I would like you to understand that I could only have achieved this positive outcome on your behalf if I voted for the Telstra privatisation legislation." **(AS 319-B)**

21st December 2005: Email from David Lever, advisor to Senator Helen Coonan, (to no other than) John Pinnock TIO

Subject: FW: **independent assessment of claims against Telstra**

John: "...Some of the former 'COT's are among the 22 who will be asked if they wish to participate in the process.

The assessment will focus on process rather than the merits of claims, including whether all available dispute resolution mechanism have been used."
the Ministers Independent assessment process and require a number documents held by the TIO. **(AS 320)**

3rd March 2006: In this letter Alan advised Mr Pinnock, that that he is about to enter the Ministers Independent assessment process and require a number documents held by the TIO. **(AS 320)**

As of July 2008, Alan still hasn't seen the documents he requested.

Why did the Federal Government give Senator Joyce their commitment for his vote in allowing for the Telstra privatisation bill to be passed, and then as soon as they secured the Senator's vote, do a back flip on that committment?

The Hon David Hawker, Speaker in the House of Representatives assists Alan in his Independent Assessment Process

17th March 2006: Mr Lever, Senator Helen Coonan's office writes to Alan (the day before Alan signed the Ministers Independent Assessment process) noting: *"...If the material you have provided to the Department as part of the Independent assessment process indicates that Telstra or its employees have committed criminal offences in connection with your arbitration, we will refer the matter to the relevant authority."* **(AS 321)**

COMMENTARY

Attached to Alan's Independent assessment claim was evidence supporting the following:

- that the BCI tests allegedly conducted at the Cape Bridgewater RCM, could not have been performed at the times and dates as shown in the report;
- that regardless of Telstra being advised by the regulator that their SVT (tests) carried out at Alan's premises were deficient they still provide the arbitrator sworn testaments contrary to the advice given
- used fundamentally flawed laboratory findings (TF200) to the arbitrator
- Interception and privacy issues
- That the Ericsson CCS7 testing equipment could not be operated at the same time, while the Ericsson Neat Testing was being performed (on the same line) yet the arbitrator accepted they could.
- That the Ericsson AXE 104 Portland telephone exchange was suffering with problems and faults right through and after Alan's arbitration.

Question:

Why didn't Alan receive one piece of information surrounding the Ericson equipment and how it was supposed to function?

6th June 2006: This letter from David Hawker MP to Alan notes: *"...Further to recent representations I have made on your behalf, please find enclosed copies of relies from the Minister for Communications, Infromation Technology and the Arts, Senator the Hon Helen Coonan."*

This attached letter from the (not so Honourable) Senator Coonan to the Hon David Hawker states: *"...Mr Smith has indicated that he would like the terms of reference for the assessment to be wider, requiring the Department to make judgement about the fairness of the arbitration process undertaken by Dr Gordon Hughes, under the administration of the Telecmmunications Industry Ombudsman, in 1994. While this is understandable, it is not reasonable to expect the Department or indeed any other person at this point in time to make judgements about the circumstances surrounding Mr Smith's arbitration. The terms of reference for the assessment are therefore more forward looking, aimed at identifying whether any firther dispute resolution processes may be available to be pursued by claimants and Telstra in order to resolve their disputes."*

Comment: This statement by Senator Helen Coonan:

1. Does not coincide with the commitment given by Senator Coonan's advisor David Lever 17th March 2006, see (AS 321) to Alan, prior to Alan signing the agreement that: *"...If the material you have provided to the Department as part of the independent assessment process indicates that Telstra or its employee's have committed criminal offences in connection with your arbitration, we will refer the matter to the relevant authority."*
2. Does not coincide with her commitment given to Senator Barnaby Joyce see *"...As a result of my thorough review of the relevant Telstra sale legislation, I proposed a number of amendments which were delivered to Minister Coonan. In addition to my requests, I sought from the Minister closure of any compensatory commitments given by the Minister or Telstra and outstanding legal issues,* and

The Minister has advised shw will appoint an independent assessor to reveiew the status of outstanding claims and provide a basis for these to be resolved.

I would like you to understand that I could only have achieved this positive outcome on your behalf if I voted for the Telstra privatisation legislation."

Clearly the one crucial vote that the Government needed to pass the Telstra privatisation (Senator Barnaby Joyce's vote) was given on the base of a commitment that Senator Coonan had any intention of honouring – that an independent assessor would be appointed to assess the merits of each COT cases claims. The three letters referred to above, can be supplied to the ATT, on request.

20th April 2006: John Pinnock responds to Alan's letter 3rd March 2006 noting: *"...I refer to your letter of March 2006. I am seeking advice about your letter and will write to you as soon as possible.* **(AS 322)**

13th July 2006, the Senator Helen Coonan writes to Alan **(AS 323)**
"...Dear Mr Smith

Claims against Telstra

Thank you for participating in the assessment process recently conducted at my request by the Department of Communications, Information Technology and the Arts.

I trust that the assessment report will assist you with possible avenues that may be available to resolve any remaining areas of disagreement that you have with Telstra.

Mechanism available to claimants

Avenues of assistance available to consumers in the telecommunications sector include the Telecommunication Industry Ombudsman (TIO), the Australian Competition and Consumer Commission (ACCC) and state or territory fair trading agencies."

6th September 2006: Alan, at the invitation of Senator Helen Coonan and Senator Barnaby Joyce, attend a meeting in Parliament House Canberra, to discuss their unresolved Telstra issues. Alan left a copy of the following Senate Estimates Committee hearing Hansard dated 26th September 1997, with Senator Joyce.

COMMENTARY

The following points are most important:

(a) Before Graham Schorer and Alan Smith signed for arbitration they were told that Dr Hughes had drafted the Fast Track Arbitration Procedure Agreement in consultation with Frank Shelton of Minter Ellison.

(b) Graham and Alan were also told that Frank Shelton was then the President of the Institute of Arbitrators Australia, further their belief that the agreement had therefore been drafted totally independently of Telstra, and that any alterations would be agreed to by both Telstra and the COT claimants.

(c) The final agreement was provided to Graham and Alan via William Hunt on 20th April 1994, the day before they were to sign it, but it only had ***one*** Confidentiality Undertaking form attached when it was expected that there would be one for the claimants and one for Telstra. Peter Bartlett explained this by saying that Telstra and the Resource Unit would provide their Confidentiality Undertaking forms separately.

(d) Graham and Alan signed their Confidentiality Undertaking (witnessed by Barry O'Sullivan) but they have never been provided with a copy of the same form signed by Telstra, FHCA or Paul Howell of DMR (Canada) although, in May 1994, they were given a copy of one signed by Mr Blah of DMR (Australia).

(e) If Peter Bartlett was truly independent of Telstra and FHCA, why didn't Alan and Graham receive confidentiality agreements from Telstra and FHCA in the same way they received the agreement from DMR (Australia)?

(f) Why did Warwick Smith and Dr Hughes both refuse to give Graham a copy of Telstra's proposed rules of arbitration and why has John Pinnock followed in their footsteps?

(g) If Frank Shelton really drafted the FTAP agreement from the beginning, why does it mirror most of the major clauses in the Telstra proposed agreement that John Pinnock provided to Pauline Moore? The duplication of Telstra's proposed clauses clearly indicates that Minter Ellison did NOT draft the agreement at all.

(h) Clauses 16, 16.1, 16.2, 16.3 and 17 of the Confidentiality Undertaking include strong and clear directions, including noting that the claimants would not be allowed to discuss the conduct of the arbitration.

(i) Why would Frank Shelton include the clauses referred to in point (h) when the High Court of Australia judgement, in 1994/95, regarding ESSO Australia Resources (Appellants) Plowman and others (Respondent) states at {183 CLR 10}:

a. *"The courts have consistently viewed government secrets differently from personal commercial secrets (67). As I stated in* ***"The Commonwealth v John Fairfax & sons Ltd (68), the judiciary must view the disclosure of government information through different spectacles"****. This involves a reversal of the onus of proof: the government must prove that the public interest demands non-disclosure (69). This approach was not adopted by the majority of the House of Lords in British Steel Corporation v Granada Television Ltd (70)"* and

b. *"If a part to an arbitration agreement be under any obligation of confidentiality, the obligation must be contractual in original. A term imposing an obligation of confidentiality could be expressed in an arbitration agreement but such a term would be unusual. Nor is such an obligation imposed by the* ***Commercial Arbitration Act 1984 (Vict).***

This information is taken from a transcript of the full High Court 1994-1995, On Appeal From the Supreme Court of Victoria, re ESSO v PLOWMAN, *Arbitration – Agreement – Hearing in private –Implied terms – Confidentiality of documents and information disclosed – Documents produced at direction of Arbitrator.*

IMPORTANT

Although it was the duty of the Special Counsel to ensure that FHCA and Telstra both sign the Confidentiality Undertaking, it was not signed by FHCA or Telstra, only by DMR (Australia) and the claimants (Schorer and Smith). This supports the allegations that the arbitration was, from the very beginning, biased towards Telstra. The secret

alterations that were made to the arbitration agreement clauses 10.2.2, 24, 25 and 26, before the claimants signed it but without their knowledge, further proves that the whole arbitration was set up to benefit Telstra and no-one else.

The ESSO v PLOWMAN confidentiality issues also show quite clearly that Government agencies expect to be treated differently to the general public and ordinary commercial businesses and this further suggests that the FTAP agreement was drafted by Telstra and not Minter Ellison (see also Telstra's proposed rules of arbitration).

The comment at point (i), section b, above, regarding the High Court document in relation to ESSO v PLOWMAN also suggests that Frank Shelton, as the then President of the Institute of Arbitrators Australia, would have known that the confidentiality rules that were applied to the FTAP were not standard in an arbitration agreement and it could therefore be assumed that he would not have included them unless he was directed to, either by Dr Hughes or Telstra.

This confidentiality issue is yet another example of the way, even before the agreement was signed, the arbitration was designed to protect Telstra to the detriment of the claimants.

ATTENTION – ADMINISTRAIVE APPEALS TRIBUNAL

In ACMA's **The Respondents Section 37 Document [No 1836 of 2008]** provided to AAT, attached as, is the following two letters one to Ms Jodi Ross, the other Ms Clair O'Reilly It appears from the attachments which accompanied Alan's letter that ACMA has been fully aware since 19th October 2005, that the previous Minister, Senator Helen Coonan advisors, had knowingly misled Alan into spending thousands of dollars to prepare his most recent 2006, DCITA assessment claim, fully aware his material would not be assessed on its merit.

19th January 2008: a letter from Alan Smith to Ms Jodi Ross, Principal Lawyer for ACMA, alerts Ms Ross to FOI documents recently received by Alan, which proved that, although the Communications Minister agreed to appoint an independent assessor to assess the merits of each of the unresolved COT claims, there was never any intention to honour this commitment to Senator Barnaby Joyce, which was made in return for his vote to privatise Telstra.

A number of internal Government emails are attached to Alan's letter to Ms Ross. These emails include statements like: *"The process will focus on process rather than the merits of the claims, including whether all available dispute resolution mechanisms have been used"* and *"Jodi may be getting confused about what the assessment is meant to do (or at least what we are recommending) i.e. an assessment of process and what further resolution channels may be available to people. We are arguing strongly that the assessment should not be about the merits of each case."* These comments show that the entire Telstra Privatisation Legislation Bill was based on misleading and deceptive conduct designed to acquire Senator Joyce's vote at all costs while all the time knowing that the promised commercial assessment process would never eventuate and, once again, the COT claimants' evidence, including proof of continuing phone problems that affected their businesses even after their arbitrations, would be buried.

The Hon David Hawker, who was the Speaker in the House of Representatives at the time of the alleged independent assessment process, submitted a number of claim docuemnts to the Minister, on behalf of Alan Smith. We wonder how the Hon David Hawker MP, is feeling now, knowing that even the claim material he provided to the Minister on Alan's behalf wasn't assessed on its merit?

28th January 2008: Alan writes to Ms Clair O'Reilly, ACMA entitled **Letter one** and **Letter two.** Ms Jodi Ross advised Alan by email dated 28th January 2008, that Ms O'Reilly will be his FOI contact until 31st March 2008. Becasue Alan is asking the ACMA to waver all FOI charges for his latest FOI application in his Jodi 19th January 2008, letter to Ms Ross he sent a replica of the previous 19th January letter this time dated 28th January 2008, addressed to Ms O'Reilly.

The second letter two to Ms O'Reilly, Alan attaches a cheque for $75.00 as a deposite to 'get the ball rolling' although still hopeful that ACMA will eventually agree to waive the FOI charges.

Commentary:
In both letters to Mr Ross and O'Rielly Alan states: *"...My involvement in this DCITA assessment process in 2006 cost me quite a few thousand dollars and it turned out to be a sham anyway, as can be seen by the attached copy of an email sent by Senator Coonan's advisor (David Lever) to the TIO (John Pinnock) on 21st December 2005, noting that: "The assessment will focus on process rather than the merits of claims, including whether all available dispute resolution mechanisms have been used."*

In this letter Alan further states: *"...The Federal Liberal Government clearly misled Senator Joyce in a deliberate move to secure his vote so they could pass the legislation required for the privatisation of Telstra but, once this aim had been achieved, Senator Coonan executed a 'back-flip' on the Government;s commitment to Senator Joyce. Mr Lever's email is quite clear – nether he nor the Minister ever had any intention of honouring the commitment givene to Senator Joyce.*

The ACMA, the TIO and DCITA all know that Telstra relied on fundamentally flawed and manufactured reports to support their defence of my arbitration claim, but this evidence was not referred to the relevant authority.

The negation of these Government guarantees is an enormous indictment against Australian democracy."

The letters written by Alan Smith to Ms Ross and Ms O'Reilly of ACMA have been included because Graham Schorer and Alan are concerned about the legal advice that Minter Ellison provided to ACMA, the TIO and Government advisors regarding the COT arbitration process, particularly in relation to their administrative role when the Fast Track Arbitration Procedure agreement was initially being drawn up (before Graham and Alan signed it). There are a number of questions regarding whether or not Minter Ellison had a vested interest in hiding some of the legitimate complaints lodged by the COT claimants, see the following Agenda.

Scenario 1 – Alterations to the COT Arbitration Agreement

The following letters shown below can be provided to AAT on request.

23rd February 1994: Telstra's Steve Black writes to Dr Hughes re Clause 24: *"Telecom is of the view that Special Counsel and the Resource Unit should be accountable for any negligence on their part in relation to the arbitration process, given that these parties are acting in their capacity as experts. Therefore, this clause should not be amended so as to include an exclusion from liability for Special Counsel and the Resource Unit."*

31st March 1994: Dr Hughes faxes Steve Black the latest draft of the FTAP agreement (see page 1 of Telstra's FOI Schedule dated 21st June 1996, attached as (Agenda – Appendix One). It seems that Dr Hughes did not forward the same document to Graham Schorer or Graham's solicitor, William Hunt, as he should have, as no such document has been found among Graham's documents. Agenda – Appendix Two (attached) is page 2 of the Telstra FOI schedule. It confirms that the next document Telstra received from Dr Hughes during the FTAP arrived on 1st September 1994.

19th April 1994: When Caroline Friend, Dr Hughes' secretary, faxed a copy of the arbitration agreement to William Hunt and Mr Goldberg, Ms Friend noted, on the fax cover sheets: *"Further to my telephone discussion with Mr Graham Schorer of today's date, at his request, I attach for your attention, a copy of the "Fast Track" Arbitration Procedure of 31st March 1994."* It has now been established (see above) that, **after** these faxes had been sent, someone removed clauses 25 and 26 from the version of the document including altering clause 24 that was later presented to Graham Schorer and Alan Smith, without notifying Mr Hunt, Mr Goldberg, Graham or Alan of those alterations when they signed the agreement on 21st April 1994.

20th April 1994: In mid-afternoon, Graham introduces Alan Smith to William Hunt and they discuss whether or not Graham and Alan should sign the FTAP. Mr Hunt provides the copy of the agreement that he had received, via fax, from Ms Friend the previous day (see point 9, above). Graham was adamant that he did not want to sign the agreement because it was too legalistic and did not mirror the original FTSP agreement, but Mr Hunt suggested that it was probably the best they could hope for under the then-present circumstances. Alan remembers that Mr Hunt also noted that, if they didn't sign the agreement then, the process would be delayed even more than it had already been delayed and 'who knows where you might end up'. Alan and Graham believe strongly that, if Mr Hunt had known that clauses 25 and 26 were to be secretly removed including the alterations to clause 24, without their knowledge or consent, and that removal would relieve FHCA, DMR (Australia) and the TIO's Special Counsel of any liability for negligence, conscious or otherwise, Mr Hunt would never have advised that Graham and Alan should sign the agreement. They also believe that Mr Goldberg would have strongly gone against Graham and Alan signing the agreement had he known it was to be secretly altered after he had provided legal advice on it, before the agreement was presented to Graham and Alan for their signatures.

21st April 1994: Graham and Alan sign the FTAP agreement unaware of the removal and changes to the aformentioned clauses.

22nd June 1994: This Facsimile from Pia Di Mattina, to AUSTEL's Norm O'Doherty, was accompanied by a letter also dated 22nd June 1994, from Steve Black to Peter

Bartlett, which discusses a further attached (draft arbitration agreement) entitled – (Special Rules for Arbitration of 12 Claims Referred to Telecom by Austel) see Clause 11.2, this version states: *"The liability of any independent expert resource unit by the Arbitrator, for any act or omission on their part in connection with the Arbitration, shall be limited to $250,000.00."*

24th June 1994: Is a faxed letter to AUSTEL's Acting Chairman, Neil Tuckwell from Steve Black, (copied to Warwick Smith, TIO) entitled: Special Arbitration Procedure for Twelve Cases notes: *"...I understand that the Telecommunication Industry Ombudsman spoke to you yesterday concerning the above procedure, and that the applicable rules of arbitration are now agreed. Enclosed is a copy of those rules which incorporates the final change requested by the Telecommunication Industry Ombudsman. I would appreciate receiving confirmation of your agreement to those rules as soon as practicable to facilitate the introduction of the procedure."*

On page 6 of this document at Clause 11.2, it states: *"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."*

Scenario 1 – Alterations to the COT Arbitration Agreement

Steve Black's letter to Peter Bartlett was dated two months after Graham Schorer and Alan Smith signed the FTAP agreement, unaware that the $250.000.00 liability cap had been secretly removed. Two months 22nd June 1994, Steve Black and Peter Bartlett, have reintroduced the $250.000.00 liability cap for the remaining COT 12 Claimants.

It is now clear that there are similarities to versions of the FTAP agreement that was provided to all the COT claimants (the first four and the following twelve), for assessment by their respective legal experts, (and in the case of Graham and Alan) only thirty-six hours before the agreement was signed, included a $250,000.00 liability cap, but the version that was presented for Graham and Alan to actually sign had the liability cap secretly removed, after they had been given a legal opinion but before they signed the agreement. Does this mean that Graham and Alan or the CAV have a moral obligation to inform the TIO of this discovery and/or ask the TIO:

a. If the same $250.000.00 cap was also removed from the Special 12 arbitration agreement (used for the twelve COT arbitrations) after the claimants had agreed to arbitration but before they actually signed the agreement, or

b. Was this secret alteration only made to the versions used for the first four COT arbitrations or were any of the following 12 arbitrations agreements selectively altered?

c. If the Special Rules For Arbitration used to arbitrate the group of twelve claimants and clause 11.2 did remain in tact and therefore anyone of the 12 claimants could have used the $250.000.00 cap if they believed they had good grounds to do so, why were the first four COT claimants singled out and discriminated against so that they could not use the $250.000.00 cap in relation to the problems can now be proven did arise in their arbitrations

1. Is the ACMA aware that someone with access to Minter Ellison's office altered the arbitration agreement less than thirty-six hours before Graham and Alan signed the original (unchanged) version of the agreement?

Alan believes that, in 1994, AUSTEL (now ACMA) would have immediately called for an official Government investigation into this unlawful act if they had known that these changes had been made, without claimants knowledge.

ATTENTION – ADMINISTRATIVE APPEALS TRIBUNAL

If ACMA chooses to argue that *"Attachment One"* of this document does not include information that is relevant to the public interest, or to the supply of FOI documents free of charge, then perhaps ACMA and/or their lawyers should be asked to consider that AUSTEL (now ACMA), Graham Schorer and Alan Smith all believed that the Regulator-facilitated COT arbitration would be a transparent process but, even before the claimants signed the agreement, malfeasance had already taken over.

Alan Smith's FOI issues that are currently before the AAT go back to similar FOI issues that occurred in 1994 and are also linked to the Bruce Mathews document that is discussed in *"Attachment Two"* so it is important for ACMA and the AAT to understand that the secret alterations to Alan's arbitration agreement led directly to Alan's matters being before the AAT now.

Scenario 2 – Alterations to the COT Arbitration Agreement

It is important to stress the dates involved in discussions before Graham Schorer and Alan Smith signed the Fast Track Arbitration Process agreement. The formal agreement was faxed to William Hunt and Mr Goldberg on 19th April 1994 and discussed at a meeting between William Hunt (Solicitor) and Graham and Alan on ***20th April*** *1994.*

This meeting on ***20th April*** was held late in the afternoon and Alan vividly remembers thinking at the time that Graham seemed quite angry with Mr Hunt. Alan's impression was later confirmed to be correct and he also learned, over the following ten years, that William and Graham had an unusual client/friendship relationship so, at the meeting on 20th April, when William raised the idea of a $250,000 limit for liability for the resource unit, in clauses 25 and 26, Alan recalls that Graham was extremely angry and claimed that there should be NO limit in the agreement for any of them, noting that his own claim was worth millions, he had lost years off his life and he couldn't see how anyone had any right to put a cap on how much he should be able to sue the resource unit for, in relation to the resource unit's negligence and/or misconduct.

AAT will be supplied on request, information that establishes that Caroline Friend (Dr Hughes' secretary) faxed a copy of the Fast Track Arbitration Procedure agreement to Mr Goldberg on 19th April 1994 at 12:29 pm, and to William Hunt on the same day at 1:59 pm.

ATT will be supplied on request, a copy of William Hunt's interim account for 24th June 1994 notes: *"In April, lengthy discussions with Mr Schorer re steps, obtaining appointment with Mr A. H. Goldberg Q. C., preparing Brief for advice, appointing and attending conference with Mr Goldberg and then attending on* ***short notice*** *at the office of Minter Ellison in general conference before (Dr Gordon Hughes) re working out items of the Fast Track procedure."* This confirms William Hunt's meeting with Dr Hughes before Alan and Graham signed the Fast Track Arbitration Procedure could only have been held on ***20th April***

ATT will be supplied on request, information confirming William Hunt's records for 3rd May 1994 note: *"On a date to be determined (last week or the week before) spending from 9:30 to 3:30 at the pre-conference with Dr Gordon Hughes and Bartlett of Minter Ellison etc."* – further confirmation of the meeting on ***20th April***.

AAT will be supplied on request, information that establishes that, at some time between the afternoon of ***19th April 1994*** (when the agreement was faxed to Mr Hunt and Mr Goldberg) and the morning of ***21st April 1994*** (when Graham and Alan signed the agreement) someone with access to Minter Ellison's office removed clauses 24 and 25 and altered clause 26 of the agreement.

However, the William Hunt file note for 3rd May 1994, and his interim account for 24th June 1994, confirm he had a morning and afternoon FTAP meeting with Dr Hughes and Peter Bartlett, after he received the formal ***19th April 1994*** FTAP (Agreement), so the alterations to the FTAP (Agreement) had to have taken place after William Hunt's meeting of ***20th April 1994.***

In summary:

1. ***19th April 1994***: after 12:29 pm, the agreement document was faxed to Mr Hunt and Mr Goldberg
2. ***20th April 1994***: between 9.30 and 3.30, Mr Hunt, met with Dr Hughes and Peter Bartlett at (the 'short notice' meeting referred to in Mr Hunt's notes of 24th June 1994) to discuss the agreement that had been faxed to Mr Hunt the previous day.
3. ***21st April 1994***: *between* 10 am and close of business, Graham and Alan attended Minter Ellison's offices to sign the agreement.

So the changes made to the agreement had to have been made by someone with access to Minter Ellison's offices **after** the Mr Hunt left Minter Ellison's offices at 3.30 on 20th, but **before** Graham and Alan arrived at Minter Ellison to sign the agreement on 21st April, at 10 am.

AAT will be supplied on request, a draft copy of the Fast Track Arbitration Procedure agreement with clauses 24, 25 and 26 intact, faxed from Dr Hughes' office to Graham's office (Golden) at 4:43 pm on ***31st March 1994.***

AAT will be supplied on request a copy of the same Fast Track Arbitration Procedure agreement with clauses 24, 25, and 26 intact, faxed from Peter Bartlett of Minter Ellison to Ann Garms on ***13th April 1994*** – Please note: Mr Bartlett made NO reference in the covering facsimile to Ms Garms that this copy of the FTAP agreement was only a draft.

AAT will be supplied on request, copy of the same Fast Track Arbitration Procedure agreement with clauses 24, 25 and 26 intact faxed from Dr Hughes' secretary to William Hunt and Mr Goldberg on ***19th April 1994*** noting: *"...Further to my telephone discussions with Mr Graham Schorer of dodays date. At his request, I attach for your attention a copy of the "Fast Track" Arbitration Procedeure of 31st March 1994."*

Then, some time between ***3.30pm on 20th April 1994*** and ***10.00 am on 21st April 1994***, someone decided to alter the agreement before Graham, Alan and Ann Garms signed it and without ever alerting Graham, Alan or Ann to the changes, even though they were

fully aware that, by not disclosing these alterations they were placing Graham, Alan and Ann at a severe disadvantage in the forthcoming arbitration process.

AAT will be supplied on request, a letter dated 22nd March 1994, which Peter Bartlett faxed, with attachments, to Graham. This letter, headed Fast Track Settlement Proposal notes: *"Attached are the comments on the Telecom draft I delivered to Gordon Hughes on Friday 18 March. Clearly a number of amendments suggested by Telecom are unacceptable. If Gordon can receive your comments on the Telecom draft, he can form an opinion as to what, in his view, is fair and reasonable."*

On page four of this letter Mr Bartlett goes on to say, regarding ***Clause 10.2.2***: *"This is potentially the most difficult clause. Clause 2(f) of the FTSP provides: "... that in conducting the review the assessor will make a finding on reasonable grounds as to the causal link between each of the COT Cases claims and alleged faults or problems in his or her telephone service."*

Clause 10.2.2 of the Minter Ellison procedure provides that: "... the Arbitrator will make a finding on reasonable grounds as to the causal link between the claimant's claims and the alleged faults or problems with the relevant telephone service."

Clause 10.2.2 of the Telecom draft provides that: "... the Arbitrator will make a finding as to the causal link between the alleged service difficulties, problems and faults in the provision to the claimant of telecommunication services."

Telecom has deleted "on reasonable grounds" from the first line. Those words come from clause 2(f)."

Whether the words *"... each of the Claimants claims"* were left out of clause 10.2.2 deliberately or by mistake, it is clear that clause 10.2.2 was still under discussion on 22nd March 1994 and, because Mr Bartlett has not referred to this part of clause 10.2.2 being deleted, we must assume that *"... each of the Claimants claims"* was still included in the agreement at this point. On page 8 of this letter however Mr Bartlett does refer to clauses 24, 25 and 26 as still being under discussion.

When Dr Hughes wrote to Graham on 31st March 1994 (see above), nine days after Mr Bartlett, he simply noted: *"I am enclosing the latest draft of the Fast Track Arbitration Procedure which has been forwarded to me today by Messrs Minter Ellison Morris Fletcher..."*. He does not make any reference to changes in clauses 24, 25 and 26, as can be seen from that document all three clauses were still intact, although the wording: *"each of the Claimants claims'* had been removed without advising the COT Cases.

To summarise:

1. Peter Bartlett writes to Graham on 22nd March 1994, suggesting that clauses 24, 25 and 26 need further discussion.
2. Dr Hughes writes to Graham on 31st March 1994, attaching the agreement, without any mention of any alterations to clauses 24, 25 and 26, or that the wording *"each of the Claimants claims"* in clause 10.2.2 had been removed.
3. Peter Bartlett writes to Ann Garms, attaching the same FTAP agreement that Dr Hughes had sent to Graham, still with no mention of any alterations to clauses 24, 25 and 26, and 10.2.2.

4. Dr Hughes' secretary, Caroline Friend, faxes to William Hunt and Alan Goldberg the same FTAP agreement that Dr Hughes sent to Graham and Peter Bartlett sent to Ann Garms, again with no mention of any changes to clauses 24, 25, 26 and 10.2.2.

We have previously established that William Hunt used the agreement that was faxed to him by Caroline Friend in discussion with Minter Ellison on 20th April 1994 (the day after he received it) and that there is no record of either Ann Garms, Graham or Alan agreeing to the removal of, or alterations to, clauses 24, 25, 26 and 10.2.2. The changes that were done secretly, without the claimants' knowledge or consent, appear to have been done with the full knowledge of those who benefited from these deltions, Ferrier Hodgson Corporate Adviosry and the Special Council, Minter Ellison.

IMPORTANT

Although the clauses referred to above were either removed or changed without the claimants' knowledge, it seems that this must have been done with the full knowledge of the defendants because Telstra did not sign the agreement at the same time as Graham, Alan and Ann Garms signed it and because Peter Bartlett informed Graham, Alan and Ann that the agreement had to be couriered to Telstra for signing by Steve Black because he was not available at the time. Peter Bartlett later sent Graham his copy in the mail – Graham received it on 29th April 1994 but the letter was dated 22nd April 1994, and the agreement showed that Steve Black had signed it on the 21st April.

This report should convince ACMA, that they have a public duty to provide Alan Smith all the relevant information he needs free of charge in the public interest.

27th April 2007: Melissa Siah, ACMA, Lawyer, Legal Division emailed Alan Smith advising that ACMA had found a letter dated 19th May 1995 from Telstra's Steve Black, to AUSTEL, which was part of his November 2006, FOI request. This 19th May 1995, letter was originally forwarded to AUSTEL's Carrier Monitoring Unit, by the then TIO Warwick Smith, and was related to the arbitrator's comments regarding Telstra's legal liability in Alan's pervious arbitration matters; **(AS 324)**

For the regulator to continue to withhold this 19th May 1994, document when it has been established exists, is of public interest.

2nd March 2008: Alan Smith's letter to Ms Jermey, ACMA Senior Lawyer included attachments confirms that, during Alan's arbitration, Telstra withheld legally requested FOI documents; altered information in documents provided under FOI; and disguised technical documents so they could be classified as being withheld under Legal Professional Privilege **(AS 325)**. Please note: the exhibits originally attached to this letter has already been supplied to AAT and ACMA, by Alan Smith.

16th May 2008: Alan Smith's letter to Mr Chapman, ACMA Chairman, included documents showing that the arbitrator instigated the removal of a number of clauses from the arbitration agreement after one of the claimants had already signed it. As a lawyer, Mr Chapman should have been seriously alarmed to learn about this secret removal of clauses from an agreement that had been previously endorsed by AUSTEL and signed by Alan, unaware of those changes. Alan Smith also explained to Mr Chapman that, on 11th May 1995, the day after completing his deliberations on Alan's arbitration claim, the arbitrator advised the TIO (administrator of the arbitration) that, because of the poor time

frames allowed in the arbitration agreement for the 'production of documents, obtaining further particulars and preparation of technical reports' the arbitration agreement (the one Dr Hughes had allowed to be secretly altered) was not a 'credible document' and so should be revised before any more cases were arbitrated. The arbitrator and the TIO however, continued to arbitrate on the remaining three COT claimants – using the 'not credible' agreement and aware that clauses 24, 25 and 26 had been secretly removed. The removal of these three clauses meant that the claimants could not successfully sue the Special Counsel or the Resource Unit. The arbitrator must therefore have known, well before he completed Alan's arbitration, that the agreement he had allowed to be altered to protect the Special Counsel and the Resource Unit was failing the COT claimants, but he deliberately hid his knowledge from the claimants. **Please note:** there are 12 pages to exhibit (AS 326)

Exhibit (AS 327) a document dated 2nd February 1994, to Telstra is most relevant document and had Alan Smith received it during his arbitration, it would have supported his arbitration claim that the RVA – MELU exchange faults had lasted for at least 7 months, not the 16 days period Telstra alleged to the arbitrator. Alan has attached this document as an example of the type of document that does not appear on the FOI ACMA schedule of documents under review by AAT.

Exhibit (AS 328) a copy of ACMA's FOI schedule details the documents that ACMA has located in relation to Alan's FOI request of 6th December 2007. This list does NOT include the document described at (AS 327)

Exhibit (AS 329) a letter dated 17th March 1994, from AUSTEL to Telstra. Page 2 last paragraph notes: *"...Could you please advise me whether any special network improvements of similar activity is in hand which may have had a short-term effect on customers in the Cape Bridgewater area, and if so, what is the objective of the exercise."* There is no reference in the ACMA FOI schedules showing a response was provided by Telstra to AUSTEL.

Exhibit (AS 331) a letter dated 8th April 1994, from Telstra to AUSTEL, Page 4 refers to Alan Smith personally, and the Cape Bridgewater Holiday Camp, and includes references to Telstra letters of 27th January 1993, and 2nd , 11th and 23rd February 1994. All three references relate to information associated with the draft AUSTEL COT report but this exhibit in NOT on ACMA's FOI schedule (AS 328).

Exhibit (AS 331) a letter dated 8th April 1994, from Telstra to AUSTEL, discussing numerous issues associated with the Cape Bridgewater Holiday Camp and the draft AUSTEL report. This document should therefore have also been included in the ACMA schedule (AS 328) but was not included.

Exhibit (AS 332) two transcripts of an interview Alan had with the Australian Federal Police on 26th September 1994, confirming (questions 80 and 81) that AUSTEL's John McMahon had provided the AFP with documents realted to Telstra's interception of Alan's telephone conversations. This John McMahon document should therefore have also been included in the ACMA schedule, but was not included.

Exhibit (AS 333) Official Federal Government letter dated 25th February 1995, to AUSTEL's John McMahon, discusses Alan Smith's continuing phone and fax problems and interception issues. While this is not a document that was actually exchanged

between Telstra and AUSTEL (and therefore not included in Alan's FOI requests) it supports (AS 327) that John MacMahon showed Alan, but did not provide him with, confirmation that Telstra had voice-monitored his telephone over an extended period, including the period between February and April 1994.

Exhibits (AS 327 – AS 328 – AS 330 AS 331 and AS 332), prove that there are documents in ACMA's archives that were not included in their recent (2008) FOI schedule and support Alan Smith's contention that they should be included in the ACMA schedule.

Exhibit (AS 334 the regulator acknowledges, in the AUSTEL COT Report, page 24 point 1.65 that: *"...(Letter dated 11 April 1994, Telecom's Group General Manager Customers Affairs to AUSTEL"* This 11th April 1994, document should therefore have also been included in the ACMA schedule, (AS 328 but was not included.

Exhibit (AS 335) the regulator acknowledges, in the AUSTEL COT Report, page 74 point 4.40 that: *"...By letter dated 7 April 1994 Telecom informed AUSTEL as follows* - This 7 April 1994, letter should therefore have also been included in the ACMA schedule, (AS 328) but was not included.

Exhibit (AS 336) the regulator acknowledges, in the *AUSTEL COT Report*, page 165 point 7.32 that: *"...Telecom's more recent (18 February 1994) summary of the effect of the fault upon Mr Smith's service was to the following effect (letter dated 18 February 1994, Telecom's Group General Manager, Customer Affairs to AUSTEL."* . This document should therefore have also been included in the ACMA schedule, (AS 328 but was not included.

Exhibit (AS 337) The regulator acknowledges, in the *AUSTEL COT Report*, page 168 point 7.40 that: *"...AUSTEL recently became aware that Telecom had prepared an internal document on the subject of this AXE fault and on 21 March 1994 sought a copy from Telecom."* This 21st March 1994, document should therefore have also been included in the ACMA schedule, (AS 327 but was not included.

Exhibit (AS 324) see above, is the email dated 27th April 2007, to Alan Smith's email address capecove12@bigpond.com.au from Melissa Siah Lawyer, ACMA Legal Division notes: *"...Search partially complete*
As discussed on the phone, I have located some of the documents that you requested:

1) *A letter dated 19th May 1995 from Steve Black at Telecom Australia; and*
2) *Correspondence between 30/9/94 and 28/2/95 regarding verification testing that was conducted at your premises.*

While I received most of the relevant FOI documents discussed in point 2, I did not receive the 19th May 1995, letter. PLEASE NOTE: this email has been attached here again, to coincide with the letter from John Pinnock dated 23rd May 2000, concerning the same 19th May 1995, arbitration document.

Exhibit (AS 338) this letter to Alan Smith dated 23rd May 2000, from John Pinnock TIO, notes: *"...I refer to your letter of 17 April 2000 concerning a letter dated 19 May 1995 from Mr Steve Black to the former Ombudsman, Mr Warwick Smith. This letter is referred to in a letter dated 24 May 1995 from the then Ombudsman to the Arbitrator Dr Hughes, a copy of which you have. You have requested me, as Administrator of your arbitration,*

to supply you with a copy of the first mentioned letter. I have caused an exhaustive search of your arbitration files held by the TIO but have been unable to find the letter." and *"...The construction you place on the letter is incorrect."*

Exhibit (AS 339) is Warwick Smith's letter dated 24th May 1995, to Steve Black, refrrring to Steve Black's letter of 19th May 1995.

ATTENTION – ADMINISTRATIVE APPEALS TRIBINAL

It has been confirmed that the document dated 19th May 1995 proves that Dr Hughes, as arbitrator, provided a legal opinion of Telstra's liability regarding the COT arbitration agreement, an agreement that, in a letter to the administrator on 12th May 1995, the arbitrator had already declared was not credible. It is also clear that the arbitrator and the TIO still allowed other Australian citizens to go on using an arbitration deficient agreement that only Dr Hughes and the TIO Warwick Smith, (but not the claimants) knew was not credible. It will be of public interest, if the regulator ACMA, continues to withhold the document dated 19th May 1995.

Some of the material in the ACMA-provided brief (No. 1836 of 2008) confirms that the regulator (then AUSTEL now ACMA) has spent fourteen years concealing from the public various crimes they knew Telstra had committed against Alan Smith during this Government-endorsed arbitration process. It is unconstitutional for an Australian Government-funded Agency (like AUSTEL/ACMA) to continue to conceal information they have uncovered, during their regulator duties, which proves that another Government organisation (like Telstra) has committed such acts against an Australian citizen.

I believe that most Australians would agree that while ACMA was assessing each of my letters and the aforementioned exhibits that accompanied that correspondence would have gained knowledge of the nature of these unlawful acts and events by Telstra during my arbitration, and specifically have concealed these acts by not broadcasting to the appropriate law enforcement agencies, would be acting outside the law, and would be engaging in prima facie abuse of office, and obstruction of Justice.

Conclusion 2

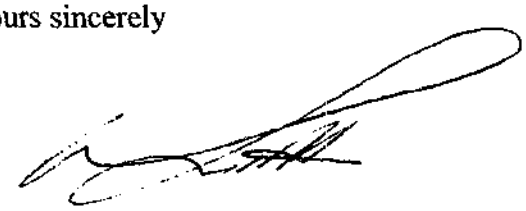
We also believe that from the information shown above, including the information contained in *Attachment Two,* that both the Administrative Appeals Tribunal and ACMA will see they have no option but to grant Alan Smith the information he is seeking free of charge in the public interest.

As already stated above, on 19th November 2007, ACMA provided Alan, a copy of the Bruce Matthews draft Alan Smith AUSTEL COT Report dated 3rd March 1994, see *(Attachment Two)* which should have been made available to the arbitrator and the claimant Alan Smith, during the arbitration. ACMA and the TIO have so far failed to understand that, in Alan's case if this report had been made available during the arbitration it would have saved him as the claimant one hundred and eighty thousand dollars in consultancy fees because the Government regulator had already found (see page 68 point 209) that the: *"...Cape Bridgewater Holiday Camp has a history of service difficulties dating back to 1988. Although most of the documentation dates from 1991 it is apparent that the camp has had ongoing service difficulties for the past six years which has impacted on its business operations causing losses and erosion of customer base."*

Some of the technical issuess raised by Bruce Matthews in his draft report, had to have been supplied to AUSTEL, by Telstra duing the *AUSTEL COT Case Report* period. The most serious issue in relation to the sixty-nine page report is that even the arbitrators's own Tehcnical Resource Unit had to use numerous documents obtained from Telstra's defence, because they could not access the same kind of evidence that Telstra provided to AUSTEL. This has resulted in three areas in the Technical Resource Unit's report and in the arbitrators's award, varying considerably when compared to the information in Mr Matthews' draft report, which has been acknowleged to be based on Telstra's own documents.

The Bruce Mathews technical documents aforementioned above do not appear on the FOI schedules that ACMA provided Alan Smith, in their correspondence of 18th February 2008, the same FOI documents that are presently under review by the Administrative Appeals Tribunal.

Yours sincerely



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