



OFFICE OF THE MINISTER FOR COMMUNICATIONS AND THE ARTS  
*Senator the Hon Richard Alston*

4 - SEP 1996

Mr Alan Smith  
Cape Bridgewater Holiday Camp  
RMB 4408  
PORTLAND VIC 3305

Dear Mr Smith

I refer to my telephone conversation with you of 27 June 1996 and to your previous letters to the Minister. As you are aware, I was new to the Minister's Office at that time, and not familiar with the details of your case. At the conclusion of that conversation, I asked you to send further information with a view to seeing whether there was any action which this Office could appropriately take.

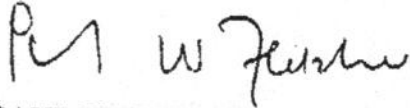
Since our telephone conversation, I have investigated the background of the Casualties of Telstra (COT) cases and conduct of the COT arbitrations. I have also consulted with the Telecommunications Industry Ombudsman, AUSTEL and the Department of Communications and the Arts on COT issues, and received from these bodies material setting out their respective positions. In addition, I have examined the material you sent to me.

On the basis of the information I have received, I do not believe that there is any action in relation to your case that would be appropriate for the Minister to take at this time. The Minister has no power to intervene in the conduct of the COT arbitrations, which are being administered by the Telecommunications Industry Ombudsman.

The Minister is extremely concerned to ensure that the COT cases are treated fairly and that your claims against Telstra are given a thorough hearing. He is regularly updated by AUSTEL and the Telecommunications Industry Ombudsman on the progress of the COT arbitrations and the conduct of the respective parties. If the Minister forms the view that it is necessary for him to take any further action in relation to the COT cases, I can assure you that he will not hesitate to act. However, the Minister currently does not believe that it is necessary or advantageous to the parties for him to do so.

I thank you for drawing to my attention the details of your case. As discussed in our telephone conversation of Friday, 23 August, I return to you the enclosed materials which you prepared to assist me in understanding your case.

Yours sincerely



PAUL FLETCHER  
Ministerial Adviser for Telecommunications

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**Senator Richard Alston  
Minister for Communication and the Arts  
Parliament House  
Canberra**

**Dear Senator Alston,**

**On Thursday 27 June 1996 I spoke on the telephone with your advisor, Paul Fletcher, who suggested that I present a written submission, supported by documents etc, showing:**

- 1. evidence regarding the inaccurate assessments that were made by the Resource Unit during my Fast Track Arbitration Procedure (FTAP)**
- 2. evidence regarding the inaccurate assessments that were made by Dr Hughes, Arbitrator, during my Fast Track Arbitration Procedure (FTAP) and**
- 3. evidence regarding the rules of the Arbitration Procedure being broken.**

**I have accordingly produced the enclosed submission in support of these three points.**

**This procedure should have remained a Commercial Assessment Procedure; the "*Fast Track Settlement Proposal*" as agreed to and signed by both Telecom and COT, 21 November 1993.**

**The COT four were assured, when we were coerced, under duress, to abandon this Commercial Process on 21st April 1994, that:**

- A. the ensuing Arbitration Procedure would be 'fast tracked';**
- B. our preparational costs would be met;**
- C. our FOI requests would be 'fast tracked';**
- D. the basis of the FTSP would form the basis of the FTAP**

**None of these situations occurred, even though it was Mr Robin Davey, Chairman of Austel, who had previously assured us that our preparational costs would be met. What is more, further consequential losses arose as a result of Telstra's reluctance to provide FOI documents. This then compounded the resultant losses to our businesses.**

**The administrators of this procedure have not taken into account the costs incurred by the claimants as they continued to run their businesses, while in dispute with Telecom. They seem not to understand the following issues which arose:**

- (a) The cost of and consequential losses associated with the preparation of the FTAP were dramatically increased because of the prolonged delay in finalising my claim. I should have been promoting my business through 1994 and 1995 (or what was left of it!), but instead I was fully occupied with my claim. My business had already been slaughtered because of the phone faults and then, because there was not enough time to run the businesses and fight Telecom, a further loss of 35% can be substantiated.**
- (b) The original arrangement was put into place as a result of the involvement of Austel and it was to be non-legalistic and fast tracked. Even during the initial meeting to establish the FTAP, the COT claimants were not legally represented and Telstra forced through many of their own terms and conditions.**
- (c) The matter of professional advisers fees was discussed and it was agreed that they would form part of the consequential losses of the COT claimants. Without this agreement the COT claimants would have been unable to locate and brief professional advisers to assist them in putting their case forward to Arbitration. This matter has been totally ignored by the Arbitrator and, in some instances, the Arbitrated Awards are almost less than the professional adviser's costs in preparing the cases to go to Arbitration.**
- (d) Some of the COT claimants had previously received settlements from Telstra however these settlements were minimal and the COT claimants were coerced into either accepting them or taking Telstra to court. This was really not an alternative as the COT claimants had no means to finance a court action. This situation was recognised by Austel who overturned these settlements and proposed that all losses would be considered in the FTAP. This has not occurred in my Arbitration as the Arbitrator appears to have accepted the previous settlement as full compensation through to the date of that settlement in respect of phone faults and losses.**
- (e) The Arbitration Process has not run as planned and the Arbitrator has either been unable to access FOI documents from Telstra or reluctant to do so (refer attached submission).**

- (f) Telstra has withheld FOI documents to my detriment, until after the Award appeal time had elapsed.**
- (g) Telstra has submitted documents to the Arbitrator which have not been lodged under Statutory Declarations as provided for in the FTAP. This may well have been done on purpose as many of the Telstra documents and statements contained inaccuracies, lies and half truths. In many cases documents were provided to support particular assertions when Telstra were aware that these assertions were incorrect and that there were many other documents available which would substantiate the fact that the original assertions were incorrect. The Arbitrator accepted these documents, even though they were lodged without Statutory Declarations.**
- (h) The Ferrier Hodgson Report was incorrect and D M Ryan Corporate lodged a written response to that report. The Arbitrator however did not contact D M Ryan for any further explanations.**
- (i) The Ferrier Hodgson Report was also amended at the request of the Arbitrator to remove much of the detail which would support their calculations. Consequently, any other person looking at the Ferrier Hodgson Report would be unable to determine how their figures were calculated and over what period of time they had made their loss calculations.**
- (j) Telstra 'head-hunted' certain individuals to their COT Defence Team to ensure that the hardest and most legalistic approach would be taken by Telstra in their defence of these claims.**
- (k) Freehill Hollingdale and Page have been engaged by Telstra to assist them in this matter and we believe that the legal costs would now be well in excess of two million dollars. This is ironic when the process was meant to be non-legalistic.**
- (l) I have been advised that Telstra gave a substantial contract to Hunt & Hunt during the FTAP. This represents a conflict of interest for the Arbitrator.**
- (m) I have been advised that Telstra have entered into retainer contracts with over forty of the major legal firms around Australia to prevent them from acting against Telstra at any time in the future.**

**(n) The FTAP process was meant to be a process of natural justice with the benefit of the doubt being given to the COT claimants. This has certainly not eventuated and I believe that the Arbitrator has been unjust and biased in my Award.**

**Yours sincerely,**

**Alan Smith**

**copies to:**

**Ms Phillipa Smith and Mr John Wynack  
Commonwealth Ombudsman's Office, Canberra**

## ORIGINAL SETTLEMENT PROCESS: 11 DECEMBER 1992

The following quotes are taken from Dr Hughes' Award:

*Page 21, point 4.11 (a) "Previous settlement":*

This point states that the settlement made in favour of the claimant on 11th December 1992 amounts to accord and satisfaction. It adds that:

*".. 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 11 December, 1992."*

*Page 42, point 7.14 (a) "Amounts Owed to Telecom":*

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

*Page 6, point 3.3(a):*

Please refer to all details contained in this point.

I am, of course, aware that the Ombudsman's Office cannot investigate Dr Hughes' Award however I have highlighted the above points to assist, together with the following points, in showing how the non-release of FOI documents directly disadvantaged my settlement of 11 December 1992.

1. *Letter from Mr Taylor, Telecom Warrnambool General Manager, 3rd July 1992 (copy attached):*

In this letter, Mr Taylor states that Telecom could not provide details of the fault history relating to my 267 267 line, for any time prior to 27th June 1991. A copy of a letter from Ted Benjamin, dated 23rd December 1994, also follows. This letter contains a further reference to the missing documents.

In the letter dated 3rd June 1992, Telstra acknowledges previous FOI requests I had lodged during 1992 however NO documents relating to the period before 27 June 1991 were released to me before the December 11 settlement proposal (the 3rd June letter states that these documents could not be provided).

2. *Ms Rosanne Pittard's Witness Statement for Telstra's Defence of 12 December 1994:*

Ms Pittard states, at point 3 (starting at the second last line):

*"During our settlement discussions Mr Smith had unlimited use of the telephone so that he could speak to his advisors if he required. I am aware that in my absence Mr Smith made several telephone conversations during the negotiation period."*

Ms Pittard is correct in that I did speak to my advisors but my concerns are:

- (a) How Ms Pittard knew that I made SEVERAL telephone calls during her absence since we were the only two people using this room;
- (b) I had been told that this phone service was a direct outside line and therefore, on those occasions I used this phone I believed I was dialling directly out from the building. Apparently this was not so, since Ms Pittard knew I had made these calls.

I believe this indicates that Telecom did not conduct themselves in a manner befitting a large Australian Corporation.

3. *Telecom Confidential Document, signed by Ms Rosanne Pittard, General Manager, Commercial Vic/Tas, dated 17th June 1993 (copy attached):*

In this document, Ms Pittard states:

*"I refer to our telephone conversation regarding the material in Mr Macintosh's brief case. The addressee is Manager, Network Investigations, name (blanked out)."*

This letter goes on to say: *"Please find attached a letter from Austel requesting information regarding the incident. Whilst I can respond to the details regarding the information provided to him (meaning myself - Alan Smith) at the time of the settlement, I cannot comment on the variation between what Mr Smith was told and the contents of the Network Investigation files. I need assistance for this. Can we discuss as soon as possible please?"*



4. *The "Briefcase Incident":*

As the Ombudsman's Office has previously been informed, on 3rd June 1993, Mr Macintosh and Mr Dave Stockdale inadvertently left a briefcase in my office.

This briefcase contained the information which Ms Pittard refers to as contributing to " ... *the variation between what Mr Smith was told and the contents of the Network Investigation files.*" The information in the briefcase, in regard to the many communication faults that Telecom knew were in existence on my service (055 267 267), was quite different to the information I had been given by Ms Pittard at the Settlement day, 11 December 1992, in the following areas:

- (i) Telecom had stated that, in relation to my 267 267 line, there was NO historic fault data etc in existence for the time before 27th June 1991 (refer letter of 3rd July 1992 from Mr Taylor), although Telstra FTAP Defence Documents and other information which was released later, show that these historic documents *were* in existence in Telecom's archives.
- (ii) Not having these historic documents on the Settlement Day of 11 December 1992 seriously disadvantaged my claim.
- (iii) Ms Pittard gave me information which she knew at the time was a "variation" on the truth regarding these known phone faults.
- (iv) As previously stated, Ms Pittard also appears to have been privy to several private phone calls that I made in her absence during Settlement discussions on 11 December 1992.
- (v) Dr Hughes' Award cannot be changed except through the Supreme Court which an expense I am unable to meet.

Points, (iii) and (iv), are nothing short of criminal.

## **CONCLUSION:**

Telstra brought the Settlement Proposal of December 1992 into their FTAP Defence of 12th December 1994. This, in turn, led Dr Hughes to take this Settlement into consideration when making his Award. By not supplying historical documents prior to the Settlement in December 1992, Telstra contributed to an original loss for me; when this Settlement was accepted by Dr Hughes and used by him when making his Award at the Arbitration the effect was compounded:

- A. Dr Hughes could not assess the financial effect these documents would have had on the original Settlement, he could only make a quantum settlement on what was before him. He could not take into account the way in which Telstra arrived at the Settlement, nor could he make a judgement on what that settlement might have been, had I been supplied with the correct documents and therefore been able to substantiate a lot more.
- B. Neither could he take into account what financial effect these documents may well have had on the FTAP itself.

Telstra have, from June 1992 through to the end of the FTAP, disadvantaged BOTH CLAIMS due to their non-release of FOI documents.

This letter, together with its attachments, demonstrates clearly that I have been severely disadvantaged by the non-delivery of historic FOI documents which were in existence and should have been released to me well before the Settlement Day of 11 December 1992.

As can be quite clearly seen also, this situation was continued through the Fast Track Arbitration Procedure since Dr Hughes referred to the Settlement of 11 December 1992 as being taken into account when he was deliberating on the Award. This all leaves me wondering what real Dollar value I actually lost due to Telecom originally not supplying me with these historic FOI documents.

I hope this draws your attention to the amount of money I may well have lost and how I began to lose that money from when I first requested, unsuccessfully, that Telecom supply me with FOI documentation. Thank you for the opportunity to bring this matter to your attention.

***ATTACHMENT 1:***

***Letter to Mr John Wynack, Commonwealth Ombudsman's Office.***

**When combined with *Attachments 2 and 2a*, this document is self-explanatory.**

**ATTACHMENT 2:**

**Letter to Mr John Wynack, Commonwealth Ombudsman's Office, dated 13 June 1996.**

**This letter, with two attachments, demonstrates clearly that Telecom / Telstra have continued to mislead me, as a claimant, both during the Settlement Process of 11 December 1992 and during the Fast Track Settlement Process / Fast Track Arbitration Procedure (FTSP / FTAP) process of 1993 / 94 / 95.**

**FOI Attachment 2a (Source of Information, DMR Group and Lanes Telecommunications Pty Ltd, 30 April 1995) and documents numbered C04006, C04007, C04008 show that Telecom / Telstra was aware of continuing historic faults on my service, right up to 11 December 1992.**

**The hand-written note at the bottom of FOI document C04008 was added by Ms Rosanne Pittard, Telecom's Commercial General Manager for Vic / Tas. This note states:**

***" ... these are prepared notes recorded at the time of settlement. "***

**This remark, combined with the letter addressed to Mr Wynack (which incorporates further Telstra improprieties) shows a consequential loss, not only resulting from the non-supply of FOI documents, but also as a result of Telecom / Telstra's reluctance to facilitate the speedy conclusion of the Fast Track Settlement Process of 1993 or the following Fast Track Arbitration Procedure of 1994 and 1995.**

**Telstra submitted their Defence eleven days *before* I received copies of these three FOI documents (C04006, 7 and 8) and their appendices.**

**On page 27 of Attachment 2a, in the centre of the page and marked by an arrow, is a reference to the Reply to Telecom's Defence (SM50) lodged by George Close & Associates in his Report of 20 January 1995. There is no mention of my reply to Telstra's Defence (SM53)**

My reply to Telecom's overall submission was numbered SM53 and included 53 pages plus 28 attachments. DMR and Lanes did not view this reply when they were making their assessment of my phone faults as there is no mention of this document in their "Scope of Information" listing (*Attachment 2a*).

The information I refer to here was located among the 24,000 FOI documents I received on 23/12/94, AFTER Telstra's defence. It took me until May 1995 to correctly assess, collate, revise and summarise these late FOI documents. Naturally, this severely disadvantaged my claim. •

Dr Hughes was "Negligent" in not providing a copy of document SM53 to DMR and Lanes. If they had viewed these three FOI documents, plus numerous other comments I substantiated in my reply to their original submission then they would have been aware that Telecom had prior knowledge of historic faults on my service lines, e.g. FOI document C04006, at point 6, notes that a Recorded Voice Announcement (RVA) occurred on congestion. That message was "*The number you are ringing is not connected*". This message would have been heard by customers trying to reach my business whenever this old technology RAX at Cape Bridgewater became congested.

There were 66 families connected to this service, consisting of 110 adults and seven teenagers. Telecom / Telstra has now acknowledged that this RAX had only 8 final selectors to service these 110 adults and 7 teenagers. DMR and Lanes acknowledged that "*.. if there were, say, four local to local calls in progress, then only four calls to local numbers could be handled from outside the area at the same time.*"

DMR and Lanes also acknowledge in their report, and I quote: "*These situations (i) and (ii) could well explain many of the "False Busies" occurring right through the 3¼ years of this configuration, in particular during the July / early August period 1991.*"

DMR and Lanes should also have been alerted to Telecom / Telstra's acknowledgement that there was an RVA on congestion. This is also acknowledged in FOI document C04008, paragraph two:

***"Overall, Mr Smith's telephone service had suffered from poor grade of network performance over a period of several years."*** This acknowledgement, combined with the known number of people using this old technology RAX, would, of course, have made it perfectly obvious that there was often congestion and therefore there was, of course, many, many instances of the RVA being used.

**Dr Hughes played down the true extent of my phone faults by not supplying this Claim Document Reply (SM53) to DMR and Lanes.**

**ATTACHMENT 3:**

*Letter to Mr John Wynack, Commonwealth Ombudsman's Office*

This letter, when combined with *Attachments 1, 2 and 2a*, further supports my allegations that late FOI disadvantaged my claim / submission.

The information in these three letters to Mr Wynack clearly indicates that I would have been able to highlight the historic fault data in my first claim, submitted to the FTAP on 15th June 1994, if only Telecom / Telstra had provided copies of the relevant information under FOI. Also, if Dr Hughes had provided DMR and Lanes with a copy of my reply (SM53) to Telstra's Defence then the true extent of my phone faults over the 3½ years between 1988 and 1991 could have been made apparent during the FTAP.

These continuing faults were acknowledged by Telecom / Telstra, particularly the problems caused by the old and obsolete RAX exchange. If I had been provided with this information my technical advisor would have highlighted the fact that the problems caused by the old exchange were continuing into the 1990's.

**DR HUGHES' AWARD:**

In this Award, on page 5, at point (h) Dr Hughes refers to both RAX and ARK exchanges at Cape Bridgewater and on page 27, at point 5.6 (c), he states:

*"Although the Claim Documents erred by understanding the number of lines servicing the Cape Bridgewater Holiday Camp (there were five incoming plus five outgoing lines, not five in total as stated) ...."*

When we compare pages 5 and 27 of Dr Hughes' Award we find reference not only to two different exchanges but also a different number of lines: five in and five out making ten in all BUT, the documents I included in my claim, numbered 1174 and 1167, state that there were only five lines into Cape Bridgewater.

**DMR and LANES TECHNICAL EVALUATION REPORT, April 30th 1994:**

On page 14 of this report, in paragraph 5 (underlined), the report states:

*" ... prevalent as only five junctions available ...."*

DMR and LANES TECHNICAL EVALUATION REPORT, April 30th 1994:

On page 14 of this report, in paragraph 5 (underlined), the report states:

*" ... prevalent as only five junctions available .... "*

On page 17, however, the report states at point (ii):

*" ... 8 final Selectors gave availability to only 4 incoming calls and four outgoing calls at any one time ... "*

Also on page 17:

*"A total of 8 locally terminated calls from any source at the one time could be handled, if there were, say, four local to local calls in progress, then only four calls to local numbers could be handled from outside the area at the one time."*

I have not seen any historical FOI information relating to these "8 final selectors".

Dr Hughes was supposed to have used the DMR and Lanes Report as a basis for his Award and yet he quotes (see above) five lines in and out (making a total of 10 lines), while DMR and Lanes refer to 8 lines.

This raises four points which need clarification:

- (I) Where did Telecom get the information regarding only five junctions?
- (II) Where did Austel get the *wrong* information regarding the exchange being an ARK when it was actually an RAX?
- (III) Where did DMR and Lanes get their information regarding 8 final selectors?
- (IV) Why did Dr Hughes state in his Award that there were five lines into and five lines out of Cape Bridgewater when the DMR and Lanes Report referred to only 8 final selectors?

#### ***SIGNING OF THE FAST TRACK SETTLEMENT PROPOSAL NOVEMBER 1993***

The four members of the Casualties of Telstra (COT) originally claimed that their businesses had been, and continued to be, adversely affected by the poor telephone service provided by Telecom. they alleged that this poor telephone service had ruined their businesses, their health and any opportunity their businesses might have had to continue to grow.