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SENATE

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TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE

Reference: Australian telecommunications network

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SENATE
ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY
AND THE ARTS REFERENCES COMMITTEE

Wednesday, 14 May 2003

Members: Senator Cherry (*Chair*), Senator Tierney (*Deputy Chair*), Senators Lundy, Mackay, Tchen and Wong

Substitute members: Senator Moore to replace Senator Wong for the committee's inquiries into the Australian telecommunications network and the role of libraries as providers of public information in the online environment

Participating members: Senators Abetz, Allison, Bolkus, Boswell, Brown, Buckland, George Campbell, Carr, Chapman, Conroy, Coonan, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Knowles, Lees, Mason, McGauran, Moore, Murphy, Nettle, Payne and Watson

Senator Greig for matters relating to the Information Technology portfolio

Senator Ridgeway for matters relating to the Arts portfolio

Senator Nettle for the committee's inquiry into environmental performance at the Ranger, Jabiluka, Beverley and Honeymoon uranium operations

Senator Wong for the committee's inquiry into the Australian telecommunications network

Senators in attendance: Senators Cherry, Lundy, Mackay, Moore and Tchen

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the capacity of the Australian telecommunications network, including the public switched telephone network, to deliver adequate services to all Australians, particularly in rural and regional areas;
- (b) the capacity of the Australian telecommunications network, including the public switched telephone network, to provide all Australians with reasonable, comparable and equitable access to broadband services;
- (c) current investment patterns and future investment requirements to achieve adequacy of services in the Australian telecommunications network;
- (d) regulatory or other measures which might be required to bring the Australian telecommunications network up to an adequate level to ensure that all Australians may obtain access to adequate telecommunications services; and
- (e) any other matters, including international comparisons, which are deemed relevant to these issues by the Committee.

WITNESSES

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Committee met at 11.11 a.m.**PINNOCK, Mr John, Ombudsman, Telecommunications Industry Ombudsman Scheme**

CHAIR—I declare open this public hearing of the Senate Environment, Communications, Information Technology and the Arts References Committee and welcome everybody here today. I note at the outset that we have been given leave by the Senate to conduct this hearing and that we must finish by 1 p.m.

I welcome our first witness, the Telecommunications Industry Ombudsman, Mr John Pinnock, who I am pleased to welcome in person on this occasion. Mr Pinnock gave evidence to this inquiry by teleconference on 28 March. On that occasion he volunteered to continue giving evidence after returning from an overseas trip. I know that you are extremely busy, especially with a TIO council meeting in Melbourne tomorrow, so thank you very much for giving us your time today. It is much appreciated by the committee.

Mr Pinnock—My pleasure, Senator.

CHAIR—As you were informed in March, the committee prefers all evidence to be given in public. However, should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in private, you may ask to do so and we will consider that request. You are reminded that evidence given to the committee is protected by parliamentary privilege. I also inform you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Do you wish to make an opening statement or shall we go straight to questions?

Mr Pinnock—No, I would prefer to go straight to questions.

CHAIR—Who wants to lead off?

Senator MACKAY—Thank you for coming along, Mr Pinnock, particularly in person. It was a bit difficult last time in that we were casting our eyes to the ceiling a lot, which is where your voice was coming from. I do not know whether we got inspiration—probably more from you than in normal circumstances. To kick off here, Senator Lundy, Senator Moore and I have a series of questions. We will expedite them as quickly as we can. Firstly, do you have any general comment on the level of awareness by consumers of their rights under the CSG? What sort of empirical data, if any, do you record with respect to this?

Mr Pinnock—We have no empirical data directly relating to the CSG. We have certain empirical data relating to awareness levels concerning the TIO itself, but we are not able to break that down into any specific issue in regard to the CSG, so I cannot answer your question.

Senator MACKAY—What does it say with respect to your office?

Mr Pinnock—It is not our document. In a sense, if you like, it is the telcos', but more fundamentally it is the Australian Communications Authority's regulation. I suspect that awareness levels are not as high as they might otherwise be. The issue for us is that, given that the guarantee was amended in its second form to require automatic payments, if those automatic

payments are not made for breaches and people do not know about the guarantee, then they cannot basically assert their right. But beyond a suspicion that awareness levels are not as high as they should be, I have no empirical data at all.

Senator MACKAY—In relation to people's rights under the CSG, as you rightly point out, if they are unaware, then they cannot claim. Is that prevalent?

Mr Pinnock—I cannot give you specific chapter and verse right now. I would have to look at the data in some detail. But we do get complaints from people who are not aware of it. When we look at the circumstances, we realise that a payment ought to have been made automatically for a breach and no payment has been made. But I do not have any specific data to hand on that. I just know that it happens.

Senator MACKAY—Do you keep specific data on the occurrence of that?

Mr Pinnock—No. I could not produce a report that would tease that out. We would have to go through a process of doing a statistical report on CSG complaints, getting a subcategory and then actually doing a manual run-through of all the screen dumps. We just do not keep the stats in that particular way. It would be possible to tease the information out, but it would be a fair amount of work.

Senator MACKAY—We do not want to put you to that level of work. But it would be useful in terms of the emerging debate to get at least some indication of the level of complaints or concerns with respect to consumer rights under the CSG. I do not expect you to disaggregate it in too much detail. Could you provide it at your leisure—there is no rush. With respect to the CSG particularly, as you are aware, it only allows for the repair of services within two working days. The emphasis is on 'working'. That is my understanding. Correct me if I am wrong.

Mr Pinnock—Within urban areas.

Senator MACKAY—Perhaps you could enlighten me on that. I am not an expert.

Mr Pinnock—There are different performance standards depending on where you reside. The rule is that if you report a service in an urban area, it must be repaired within the next working day. If you like, that is two working days, including the day of report. The standard varies according to the population density in the area where you live. I think the maximum timeframe is two or three days all told.

Senator MACKAY—So it pushes out from two days to three?

Mr Pinnock—Yes.

Senator MACKAY—For the purposes of the exercise, let us say broadly two to three. There are many examples; this is an actual one. Somebody who loses their service on a Friday afternoon at 5 p.m.—and this has happened—just before a Monday public holiday could be without their phone until Tuesday afternoon but not be entitled to compensation because of that provision.

Mr Pinnock—That is true.

Senator MACKAY—Or even Wednesday, if we are going to push it out, in terms of the regional areas. Estens in his report did not go directly to the issue that the criteria be tightened to refer to calendar days, not working days. But he did in his report say that there would be obvious benefits to customers if this criteria were changed in terms of the example I have used. We had a recent example of Easter and then a long weekend et cetera. What do you think about Estens's suggestion with respect to that?

Mr Pinnock—I would certainly agree with him that consumers would benefit. The real question is whether the telecommunications carriers, in particular Telstra, can meet that sort of added requirement. But your use of telephones does not work according to working days; it works according to any calendar day. So in logic there is an argument to favour it purely in terms of convenience.

Senator MACKAY—Do you think this would be a popular move with respect to the people you deal with—consumers?

Mr Pinnock—Yes, to the extent that the sort of scenario you have outlined adds to the inconvenience. I think most customers would see it as an advance. How many complaints can fall into that scenario would be difficult to know.

Senator MACKAY—Do you generally think that the amount of compensation that customers get under the CSG is adequate?

Mr Pinnock—I do. These are judgment calls, of course. These amounts of damages, as it is called, are purely to compensate on the one hand for inconvenience. On the other hand it is, I guess, a small sort of fine against the telecommunications carrier. Over and above that, of course, we deal with complaints relating to, for instance, business loss that might follow from any breaches of the guarantee. As it stands, I think the amounts are adequate.

Senator MACKAY—What are they, for customers rather than consumers?

Mr Pinnock—It is \$25 a day after the first two days, I think, and then it rises to \$40 a day for small business operators. I would have to double-check that.

Senator MACKAY—I think it is \$10 for consumers. We will check.

Mr Pinnock—I think it rises to \$25, though, after a couple of days.

Senator MACKAY—In terms of the initial rate. I will come back to that. It is \$12 per working day for the first five working days of delay.

Mr Pinnock—And then it rises to \$40.

Senator MACKAY—Then \$40 after five days. It is \$20 a day per working day for businesses, but after five days it only rises to \$40. So there is no difference in business after the first five days?

Mr Pinnock—No. It is there for matters of inconvenience. If the business loses funds as a result of that, the guarantee was never intended to cover those sorts of issues. If you suffer loss as a business, then you have to make a separate claim. The reason for that is simply that it would be very difficult to fix any payment under the guarantee, given that these are automatic payments, which is going to compensate the whole vast range of small businesses that might suffer actual loss as opposed to inconvenience.

Senator MACKAY—When you say it is open to businesses to put in a separate claim for loss, how is that open? What is that conduit?

Mr Pinnock—They simply make a claim against their provider, which, as I say, in most instances is Telstra.

Senator MACKAY—So they get their \$40 a day after five days. What do they then do—put in a further claim to Telstra?

Mr Pinnock—That is right. If Telstra does not settle that to their satisfaction, they can bring it to the TIO.

Senator MACKAY—What is the prevalence of businesses bringing it to the TIO who have not had it?

Mr Pinnock—In the CSG scenario, not very common.

Senator MACKAY—So your contention is that the \$40, which is exactly the same for both residents and businesses, is not intended to compensate for loss of business; it is intended to compensate for inconvenience?

Mr Pinnock—That is exactly right.

Senator MACKAY—What is the difference between inconvenience and loss of business?

Mr Pinnock—You may not have any calls coming in at all or want to make calls, but you may still be inconvenienced. But over and above the lack of convenience is the fact that you may actually suffer a loss of profits. If you are dependent on the telephone for orders for your business and you do not get any because they cannot get through and you suffer losses, then that is a separate loss over and above the CSG.

Senator MACKAY—So what do businesses generally do? Do they put claims in to telcos?

Mr Pinnock—We do not know because we do not see those figures. I can only say what happens when we get complaints, and we do not get too many of those regarding this situation.

Senator MACKAY—So that is something we should ask Telstra, then?

Mr Pinnock—Absolutely.

Senator MACKAY—Do you think customers are generally happy with this level of compensation, the \$12 per working day and then the \$40 thereafter, in your experience?

Mr Pinnock—To the extent that we get that sort of feedback, yes, as far as I am able to tell. I certainly do not have my staff coming to me saying that people are complaining about the inadequacy of the damages amounts under the CSG. But, again, it is very much a judgment call. Some people would find it an adequate compensatory measure and some would not.

Senator MACKAY—Are you aware that there are fairly widespread allegations that Telstra is basically just paying people out because it is so low—\$12 per day for the first five and then \$40 for both businesses and residents?

Mr Pinnock—That it pays rather than meets the standard?

Senator MACKAY—Yes, pays rather than fixes.

Mr Pinnock—I am aware of that as an allegation. That allegation has been around since the foundation or establishment of the CSG. All I can say is that, to the extent our figures show anything, they probably do not show that. I know that Telstra vehemently denies that that is its approach. After all, one of the problems it has is that it has to report on compliance with the CSG. It does not like being under the gun from the regulator when its reports look bad. So my experience in general does not support that allegation. Have there been instances where it might have happened? I am sure there probably were.

Senator MACKAY—What is your view, if this is occurring?

Mr Pinnock—If it is occurring, it is a matter for the regulator to take action. The regulator has very extensive powers to look at systemic issues which contribute to, in this instance, an inability to meet the performance standards under the CSG. If there is evidence that Telstra were paying people out as a way of simply not meeting the standard, that would suggest there are systemic problems, and the authority has very extensive powers to get at that sort of conduct. So it is very much a matter for the regulator.

Senator MACKAY—So do you see any role within your office in terms of, say, alerting the regulator?

Mr Pinnock—Absolutely. If we find evidence of this sort of thing, not just in CSG matters but in systemic type complaints which relate to issues the regulator controls, we report them as a matter of course.

Senator MACKAY—So do you keep statistics with respect to reporting to the ACA?

Mr Pinnock—Yes. First of all, we supply the ACA on a regularly quarterly basis with all of our statistics. As part of those, they include statistics relating to possible or confirmed breaches of industry codes. We also highlight any systemic issue that we have been able to identify as a result of an analysis of those statistics. On an ad hoc basis throughout the year, if what we regard as a serious systemic issue comes up, we will take that to the authority. It might be that we will take it to the ACCC if it is a matter relating to the TPA.

Senator MACKAY—Is this information you provide to the ACA publicly available?

Mr Pinnock—No.

Senator MACKAY—It just goes to the ACA?

Mr Pinnock—Some of the information is publicly available to the extent that we might publish it in a publication like this, *TIO Talks*, or I might make public comment on certain information. But otherwise I suppose you could say it is not in the public domain. Some of the information would be information given to the carriers as members of the TIO on a quarterly basis with their invoices, but other information would be information provided only to the authority or, if it relates to code breaches, to the Australian Communications Industry Forum.

Senator MACKAY—If we want that, we would have to go to the regulator and ask?

Mr Pinnock—You could come to us and ask.

Senator MACKAY—Can we have that information as a Senate committee?

Mr Pinnock—As a regular matter, or the most recent quarter?

Senator MACKAY—We just want a general snapshot of what information the TIO provides to the ACA. Presumably you have some spreadsheets et cetera.

Mr Pinnock—Certainly I can give you that sort of document.

Senator LUNDY—I want to go down a slightly different path. In a way, it is all related, because it is about the sort of complaints you are actually receiving that could possibly result in a CSG payment being made. In particular I refer to my work with respect to finding out the truth about Telstra's use of pair gains and how that impacts on quality of service. Can you share with the committee your experience about how you go about addressing pair gains related problems? When did you become aware of and were able to tackle that issue by helping consumers out in providing information? What has been your experience with Telstra being forthcoming about information relating to pair gains and their use in the network?

Mr Pinnock—Because of the peculiarity of a series of complaints we have received, we have probably spent more time on trying to fix problems related to the ANT1 technology than pair gains in particular, but the issue is much the same. We are pretty much at the limit of our jurisdiction in being able to use leverage against Telstra to rectify this situation.

First of all, in a general sense, it is not for the Ombudsman to tell any member of the scheme how to conduct its business in a commercial sense. If Telstra, for instance, decides that in order to meet increasing demand for ordinary telephony services it uses technology such as pair gains or ANT1 technology, then it is not for me to say they cannot do that. What then happens, though, for instance, is that someone might decide to take up a Telstra offer for something like ADSL. They find that there are problems because they have pair gains, or they want to port their local number and they are told, 'I'm sorry, your service is an ANT1 service and, therefore, under the

code we define it as being a complex service and you can't get a simple port.' We have a long, long battle with Telstra to get our way there.

In the ANT1 situation, it took us 12 months to get there. We pretty much got to the stage where we got an agreement between Telstra and Optus, because that was where the local number porting was going, to treat those ports as simple ports, and they went ahead. We were aided there by the ACA's agreement with us about how these sorts of services ought to be regarded under the code. However, that did not solve the problem that there was still a piece of equipment sitting on the customer's premises—namely, the ANT1 box. I believe, however, that Telstra has in fact recently changed its policy basically to remove this technology. They were saying, apart from anything else, that it is a matter of how it designs and runs its network. The box is part of the network. They were claiming, basically, that we could not tell them to remove it in any circumstance. Pair gains is much the same situation but more difficult.

Senator LUNDY—In the interests of clarity, could you explain to me the attributes of the ANT1 technology and how it works.

Mr Pinnock—The ANT1 technology is a way of getting a second line out of one line. It gives you, in effect, two lines.

Senator LUNDY—But it happens at the house as opposed to in the pillar or the exchange?

Mr Pinnock—That is right. There is a little box put on your premises. Sometimes people, having got that, then revert to a single line. So the technology is there for two lines but essentially they have only got one. Telstra says, 'Because of the way we have configured this, if you want to port your local number to Optus, we regard this as a complex port under the code.' That costs a lot of money. Telstra and Optus fight over it and the customer is left with nowhere to go. Optus then turns around and says, 'This is anticompetitive conduct.'

Senator LUNDY—I was just going to say that. It effectively becomes an issue of competition policy. How involved can you get? Do you as an Ombudsman make representations to the ACCC as far as your knowledge and awareness are concerned?

Mr Pinnock—Commonly. We certainly discussed the ANT1 issue with the commission. The commission made some preliminary inquiries, as I recollect, about it, but was not convinced there was evidence that it was anticompetitive conduct. So it really fell back to the TIO and the Australian Communications Authority to try to solve the situation. It took a long while.

Senator LUNDY—Do you think it has been resolved now?

Mr Pinnock—With ANT1, certainly; I am less sanguine about the situation with pair gains.

Senator LUNDY—Let us move to that. This committee is becoming very proficient in our understanding of the many different types of pair gain technology. What is the hot point for you when it comes to dealing with complaints in relation to pair gains, or is it very broad?

Mr Pinnock—It is the more broad topic. Telstra is saying in effect that it is not my job to tell them how to design their network or to meet demands on services. I keep pecking away, I guess,

at the idiocy of having a situation where you are using pair gain technology and at the same time trying to sell ADSL technology to residential consumers, who then turn around and say, 'I'd like this very much,' but have been told they cannot have it, which just seems to me to be Telstra's left hand not talking to its right hand. But I am at the limits of my jurisdiction. I can highlight the issue but I cannot turn around and say to Telstra, 'Well, you've got to get rid of all your pair gains.'

Senator LUNDY—What can you say to Telstra and what have you said to Telstra?

Mr Pinnock—In individual cases, we have sometimes used some leverage to manage to get a customer onto an ADSL service. I can say to Telstra, 'I can formally report to you in terms of my constitution that your particular policy, which I cannot go behind, contributes to complaints.' But, having said that, that is it. Telstra well knows my view. I am sure there are people within Telstra who support the TIO's position. Telstra is far from a monolithic organisation, as you would probably be aware; there are lots of different views in Telstra.

Senator LUNDY—In terms of Telstra's continued use and continual maintenance and, even in some cases, continued installation of different types of pair gains, how far are you able to go in advising complainants to you of the limitations of that technology? Do you have that information? Are you able to—

Mr Pinnock—Not the detail in terms of the whole variety. What we have tried to do is to highlight it as an issue for consumers generally, if they use pair gains. The first thing is trying to tell a customer what pair gains are.

Senator LUNDY—Don't worry; I know the difficulty.

Mr Pinnock—Most consumers do not want to know. All they want is some sort of seamless process that gives them what they want. So we have to first of all let them know how the service is being delivered to them or might be delivered to them using this technology and then point out the downside. In this instance, it would be that if they want to get to, say, ADSL, they are going to have problems.

Senator LUNDY—I will use the six by 16 type of pair gain as an example. It is used primarily, as I understand it, in older rural exchanges. Do customers know that if 16 customers effectively share six lines and they all tried to make a phone call, 10 of them would not get dial tone?

Mr Pinnock—No. They would not know that.

Senator LUNDY—Can you provide people with that advice when they ask about it and you find out that they are on a six by 16?

Mr Pinnock—We can if we have that level of detail provided to us. But, of course, it is always after the event. We are giving information, but it does not help the consumer to put themselves in any better position other than to perhaps try to exert pressure on Telstra to get their own line.

Senator LUNDY—You mentioned before you that you are at the edge of your jurisdiction.

Mr Pinnock—I am an Ombudsman. I am not really a regulator, even though people call me that.

Senator LUNDY—I know. I am just trying to get a feel for how much information you have to work with. You can appreciate, with the pair gain victims campaign that I have been working on, that half of the issue is just the big mystery about what people are actually on and finding that out. I have to say that I refer people to you because I think—

Mr Pinnock—Yes, I know.

Senator LUNDY—maybe you can shed more light on that situation. For example, this committee has been able to draw out from Telstra—it has been a bit like pulling teeth—specific information about the technology in individual exchanges, and subsequently a table which talks about the attributes of the type of technology used. Will you be able to use that information in helping solve people's mysteries about their poor service?

Mr Pinnock—We probably would. Much of the problem is that many people do not even realise they are on some sort of pair gain system. There is no use having this information if you cannot get it to the targets. If you just send it out into the ether, it is just more information. My own view—it happens to be my view; I have an old-fashioned view about regulatory intervention—is that this is a matter for the authority, frankly.

Senator LUNDY—And improving that standard?

Mr Pinnock—Yes.

Senator LUNDY—So you are talking about the standard telecommunications service definition?

Mr Pinnock—Yes.

Senator LUNDY—I am sure you are aware Telstra relies on the fact that it is 2.4 kilobits and to say all they have to deliver is dial tone.

Mr Pinnock—It is a bit like Telstra saying in relation to dial-up Internet when you get repeat dial complaints, as we used to do for ages, 'Well, we just run a voice grade service' et cetera when they are the biggest dial-up Internet provider in Australia.

Senator LUNDY—I want to come back and talk to you about ISPs, but I will hand over to Senator Mackay.

Senator MACKAY—Inevitably, you are going to get some jumping around here.

Mr Pinnock—That is all right.

Senator MACKAY—We are trying to save time.

Mr Pinnock—That is fine.

Senator MACKAY—I have one final question on that line of questioning previously regarding the CSG. This is also an issue with pair gain, but we will deal with it separately. Do you think it is satisfactory that only those customers who ring Telstra to notify them of a fault receive any compensation, it seems? Do you think that is a satisfactory situation?

Mr Pinnock—How else would faults be detected?

Senator MACKAY—Telstra—

Mr Pinnock—Unless the A party rings about a fault on the B party's line, which, by the way, Telstra is meant to be able to capture and record anyway.

Senator MACKAY—That is the point. We will come to this later in relation to mass service disruptions et cetera. It is very much customer initiated. They do put ads in the paper. Are you satisfied that generally the information is pervasive enough, or do you think there could be more proactivity?

Mr Pinnock—As I said, I do not have clear statistics on this. I have some concerns that, once a fault report is made and where the standard is not met, automatic payments do not always occur. If in every instance an automatic payment was made, then I would have no concerns about a possible lack of knowledge on the part of the consumer. But we do get instances where automatic payments have not been made, which leads us to have some concern, obviously.

Senator MACKAY—Do you think this is something else that the regulator could look at?

Mr Pinnock—My view is that we can provide statistical information to the regulator on these matters and look at individual complaints, but it is very much a matter for the regulator to enforce it if it believes there is some systemic breach or failure to perform under the standard. It is in fact a regulation formulated and administered by the authority.

Senator MACKAY—Point absolutely taken. We had the last hearing in March. You said you did not have any particular concerns at that point with regard to the use by Telstra of mass service disruption notices. Is this still the case, or have any complaints been raised with you?

Mr Pinnock—As you appreciate, I have been away for a fair while. I had a quick check. I spoke to our policy and research manager, who is not only on top of things generally but was one of the office experts on CSG and MSDs. There is nothing there that we can suggest to the committee gives us cause for concern at the moment. I think on the last occasion I mentioned to you there had been one or two recent instances where there had been a question as to whether a notice had been provided to us in due time. I think I said it was 24 hours or 48 hours late. I have confirmed that that was the case.

We do get individual cases where there is a complaint, in effect, that the MSD, which has been declared for one reason or another, should not have affected this particular service and that a proper claim for damages under the CSG can be made. We look at those on an individual basis. We have also got a case at the moment—I have to be careful in highlighting it to the committee

because it is a one-off—where an existing fault report was made and the fault was not attended to in due time. There was then some instance—I assume it was heavy rain or something—beyond the carrier's control. An MSD was brought in and in effect it was said there was some sort of relation-back exercise to cover the situation where there had already been a default. The carrier is resisting making a payment, and we are investigating that. Because we predicted that this might occur, looking at it a long time ago when we were dealing with submissions relating to the CSG, we have jumped on this. But I have to say that it is the first case we have seen of that. It might suggest there is a little loophole in the guarantee.

Senator MACKAY—I think there is going to be an increasing focus on the mass service disruption issue, particularly considering it has started to rain around Australia, particularly in Sydney and Queensland. We had some discussions when we talked to you previously about the powers of the ACA to determine the veracity of an MSD notice. Do you believe that the ACA has the powers, in terms of being the regulator—I take your point that you are not—to be more rigorous in this matter?

Mr Pinnock—It is a very loaded question.

Senator MACKAY—The ACA, to be blunt, say they have no power with respect to an MSD. They said in estimates that they rely entirely on information provided from the telco, which in this case is Telstra. They do not undertake an examination to see whether it is true or not.

Mr Pinnock—It is generally true that it is a self-notification or self-report.

Senator MACKAY—It is self-regulation, effectively.

Mr Pinnock—It is not true, in my view, though, to say that the authority, if it had doubts about the applicability of an MSD in any given circumstance—in other words, its veracity—would not be able to look at the issue. I just do not agree with that. First of all, there is a very powerful, as I mentioned earlier, power relating to the rectification or the investigation of systemic failures in relation to noncompliance with the CSG. Admittedly, that is certainly at one end of the extreme.

As I said in my earlier evidence, when the whole process about the development of MSDs was under examination because of doubts about the legitimacy of some that had already been issued, there were extensive discussions between Telstra in particular and the authority about the methodology that might be used to justify the issue of an MSD. That was not done simply because the authority felt it was an interesting thing to do. It was done because the authority thought it was important and because, without necessarily exercising any formal regulatory power, there were in fact powers to force the issue.

If the authority is satisfied with that methodology, then even if I have some qualms from time to time, again, the guarantee is its regulation. But if the authority is saying to the committee, 'We do not have any powers to inquire into this,' I just do not agree with that. It may not wish to or feel that there are grounds to do so, but the authority has very extensive powers under its act.

Senator MACKAY—I do not want to necessarily verbal them.

Mr Pinnock—I appreciate that.

Senator MACKAY—What is of concern to the committee is that it seems to be painted almost as self-regulation and it is not. Because it is going to become more prevalent, we are keen to take it up.

Senator LUNDY—I will turn to ISPs. Again, it is kind of interlinked with all of the other issues Senator Mackay and I have raised. Do you handle many complaints from ISPs per se in their handling of customers or their complaints about Telstra regarding what they know are Telstra related problems that they are unable to fix on behalf of their customers?

Mr Pinnock—In a sense, we handle none because we will not deal with industry complaints, as you know. That is a rule across the board. We will never let any provider of any communications service to an end-user customer say, 'We can't act because it is the fault of some upstream provider to us.' More commonly, the sort of complaints that ISPs have wanted the TIO to act on are complaints about a failure to supply lines in due time for their end-user customers to access the Internet as opposed to administrative lines.

There is a peculiarity that if you are a small business ISP and you have a delay in getting your administration lines—the ordinary lines you have for looking at your business—the TIO will take those cases up, even though it is one member against another, because they are small businesses. But we will not take up complaints relating to the delay or the failure to supply lines for end-user access to the Internet because that is the business case. Generally speaking, the small ISPs do not want to accept the TIO's position on that. It constantly comes up as an issue. Of course, it is not just a matter for me as Ombudsman; it is a matter for my council particularly. The council is absolutely committed to the view that we will not deal with member to member disputes.

Unfortunately, it seems that the industry as such has failed to provide any reasonable forum for this to be dealt with. Again, this is a perennial topic. A month ago I wrote to the chairman of the authority asking whether he believes the authority has any role in this. That was at the specific request of my council. He wrote back just recently and said that he did not think he did. Actually, I tend to agree with him. This is a matter either for a forum such as ACIF—but there is not even an informal mechanism within ACIF at the moment to deal with it—or, if in fact you can say or prove that Telstra is behaving in an anticompetitive way, it is a matter for the commission.

The commission has looked at it from time to time but has never taken action. Again, the ISPs come back to me and say, 'We're just small businesses. The commission is not going to listen to us. The ISP listens to small businesses, but the commission is too big and it has too many issues on its plate. You're the ideal forum.' We just keep saying no. It is an unresolved issue.

Senator LUNDY—You can clearly see a void out there for a forum to resolve ISP related issues?

Mr Pinnock—Yes. At one stage some years ago, Telstra introduced a free call number for ISPs specifically related to this issue as a way, it said, of trying to resolve the problem. But I think it just died a natural death. It just withered away.

CHAIR—I return to your council's view on company to company disputes. Is that because essentially you have five companies on the council?

Mr Pinnock—No. When I say the council has taken that view, I was the first to enunciate it. There is a technical provision in our constitution, and always has been, which has ruled this out. From the early days, even before we had this much broader coverage, when we had the three carrier members and then a series of service providers who joined the scheme voluntarily who then wanted to bring complaints against, say, Telstra, I just said, 'Look, I'm not an Ombudsman here to deal with industry complaints. I'm here to deal with consumer and small business complaints.' The council backed me up on that, and that has been the council's policy ever since but not because we have carrier members. The council was absolutely unanimous on this.

CHAIR—Does the ACCC have jurisdiction over those sorts of complaints?

Mr Pinnock—Yes, if it can show that they are in breach of the competition rules, but not otherwise. It could issue a competition notice.

Senator LUNDY—It may be useful for this committee to get a copy of that correspondence. I am particularly interested in the ACA's response to you that they are not the body to handle those complaints. Could you provide correspondence relating to these matters to the committee?

Mr Pinnock—Yes.

Senator LUNDY—I want to go back to an earlier point about Telstra's promotion of their ADSL broadband service in areas where they are obviously aware that it is not able to be provided or may only be provided to a very small percentage of customers in the region they are targeting. You have said that you have written letters about those kinds of things. Have you received any response from Telstra about that issue?

Mr Pinnock—No, not in that particular sense. Comments are made in the ordinary way of complaint investigation letters, but I have had no high-level letter from Dr Switkowski saying, 'Well, this is Telstra's view on this, John, thank you very much and we'll see you later.' There has been nothing to that extent.

Senator LUNDY—Have you asked for it? Have you asked for a response from Telstra?

Mr Pinnock—I have not asked Telstra for a full explanation about that simply because I agree with its argument that I am at the limit of my powers. I can highlight this as an issue. I do not need to know, in a sense, what has gone wrong inside Telstra, which is what I think classically has. They have an advertising campaign out there selling a service with the classic asterisk and the line 'may not be available in your area'. It seems to me to be a pointless way of running a campaign. If you are going to have a mass campaign, you have to be able to give a mass service, otherwise you have a targeted campaign. I can highlight that in public forums. I do not need to see the chapter and verse from them. Apart from anything else, I am sure they are well aware of the problem themselves because they have created a rod for their own back. They have generated demand and now they are unable to meet it.

Senator LUNDY—I have raised the same issues with the ACCC. You are quite right; it is the asterisk and the fine print that excuses them under that act regarding potentially false and misleading advertising.

Mr Pinnock—I have a different view about disclaimers, but far be it for me to say to the commission, ‘I don’t necessarily agree with the way you interpret your act.’ It is like ‘free’ and ‘unlimited’. My view is that ‘free’ is free and you cannot have a disclaimer saying it is something else. The commission does not take quite as hard and fast a view as that. One of the things you have to be careful about is keeping to your own patch.

Senator LUNDY—You are finding your fences all the time, it seems.

Mr Pinnock—I think it is because we are very activist, so we tend to work towards our boundaries. We are sometimes testing the limits of those boundaries. But it is very important for regulatory bodies, quasi-regulatory bodies and ombudsmen not to step on every other’s toes. Otherwise it just becomes messy. We have a very complicated regulatory regime here. It is very important that you understand where your limits are and, apart from anything else, you do not duplicate the other person’s work.

Senator LUNDY—Certainly. You mentioned ‘free’ and ‘unlimited’. You can refer that to the use of download caps in just about every broadband and ISP related product. Do you get a lot of complaints about download caps, particularly because many of those packages are very unclear and, I believe, misleading in what they advertise?

Mr Pinnock—Particularly in the broadband area, we have done a lot of work recently. As you know, Telstra is activist in advertising access to broadband. It is a great idea, in my view. We are finding that there are a lot of neophytes coming on. In other words, they are not going the dial-up route first and then migrating to broadband. They are going straight to broadband. The common complaint is, ‘Well, we put broadband on because we needed access to the Internet for our children. We don’t do much work with or understand much about computers. We leave it all to the kids.’

Senator LUNDY—They are breaching their download limits and copping a hefty bill. Is that what is happening?

Mr Pinnock—Yes. Then you get into problems when you have things such as file sharing software. Not only have you got downloading of music; you have the uploading of it. That counts as well. We had one case where a young woman had accumulated charges of something like \$1,700 in two months. We said to the provider, ‘Look, here is a customer who is new to this. This is all about information provision. You have to tell people exactly how this all works.’ To its credit, Telstra waived the charges there. If you look at the amount of work Telstra has done over the last 12 months in upgrading its information-giving exercise in relation to broadband customers, it is—

Senator LUNDY—They did not do it voluntarily, though, did they? They did it with a lot of pressure from people like you and people like us.

Mr Pinnock—Yes. We have spent a huge amount of time on it. It has been our longest running general investigation on the Internet over the last 15 months.

Senator LUNDY—Download caps?

Mr Pinnock—No. A whole variety of things in relation to Telstra broadband. The fact is that it had a mix and match definition of megabytes and gigabytes. For megabytes it used a binary notation definition. For gigabytes it used a decimal notation. They said, ‘There’s no standard.’ We said, ‘We know, but you can use one or the other but not both.’

Senator LUNDY—Can you explain the effect of that on how neophytes or new customers interpreted what they could use?

Mr Pinnock—If they worked to the megabyte definition based on the binary notation, it meant that they would not accurately be able to see what their usage was as they climbed through into gigabytes. I can say categorically that no-one suffered financially as a result of this. We just said to Telstra, ‘You just cannot use two different standards.’ They have changed. They have also now changed their usage meter, which was giving them awful problems.

Senator LUNDY—In what way?

Mr Pinnock—The usage meter, first of all, did not give real time usage. There was a considerable lag in time.

Senator LUNDY—I remember getting complaints about that.

Mr Pinnock—More to the point, it could not separate out sites which would otherwise be billed as free sites, where you would not be billed at all. So you could be misled as to where you were in relation to your actual limits. That has been changed. A new usage meter comes in today.

Senator LUNDY—How do Telstra promote their free sites? My understanding is that if you go through their sites or their partner sites there are free downloads. This is one way they vertically bundle.

Mr Pinnock—That is true. We have no problem with that. It is a question of whether the usage meter is able to winnow them out in terms of where you are at with your usage. It was not able to, not in reasonable real time.

Senator LUNDY—Can you tell me whether the usage meters do operate in real time now?

Mr Pinnock—I am not completely up to date. There literally have been changes. I am an ADSL user myself. I noticed the other day there was quite a long email to me. I have not had a chance to read it. I checked with my office. All I know is that they have changed the usage meter. How close it is to being real time, I am not quite sure. My investigation officer who deals in this area said that it is a considerable improvement.

Senator LUNDY—Would you be able to provide to the committee just a summary of the proportion of complaints you have that relate to broadband matters.

Mr Pinnock—I think I can do that.

Senator LUNDY—And Internet matters. Obviously they cross over. You would probably get a lot of dial-up Internet issues relating to pair gains that are not necessarily broadband.

Mr Pinnock—In the most recent quarter, we had 16,356 complaint issues. You have to be careful that that is issues, not complaints. One complaint can be more than one issue. That is 16,356 complaint issues, which is an increase of 597 on the previous quarter.

Senator LUNDY—That is a huge increase.

Mr Pinnock—It is 3.8 per cent. It is reasonable. Of those 16,356, 9,823 were landline, 4,541 were mobile and 1,992 were Internet. In case you are looking at this information later in comparative terms, we have to be very careful. The Internet complaints component of total complaint numbers has dropped from 16 per cent of the total to 12 per cent of the total. You might wonder why that has improved when the others have not.

That is almost wholly attributable to an in-house decision we made to categorise a series of complaints against one Internet provider, Just Internet, which has since gone into administration and receivership, as unallocated inquiries rather than complaints. So the numbers there are skewed by that decision.

In relation to those 1,992 complaints, I can, I think, tease out some figures which will certainly relate to Telstra broadband. I can tease them out. As to how many others I can tease out as being broadband as opposed to dial-up, I will see what I can do. We are certainly getting more and more complaints about broadband. It reflects not only the take-up but also the fact that it is open fields. There are no regulatory controls there. There are no standards in place. Everyone is trying to feel their way, Telstra as well. You would also know, I assume, that until recently Telstra offered no service level guarantee about its broadband service.

Senator LUNDY—Indeed.

Mr Pinnock—It has introduced what we regard as a very limited type of guarantee. It is a moving from nothing, though.

Senator LUNDY—You are talking about the cash back if your ADSL is down for too long?

Mr Pinnock—Yes.

Senator LUNDY—Are you across the detail of what that offer entails?

Mr Pinnock—Not in terms of the dollar value or the percentages. I am more concerned about the fact that essentially all they are guaranteeing is the performance of the backbone. They are guaranteeing nothing else. So I say, 'You can call it what you like, but don't call it some sort of service guarantee because it really relates to your network performance or the backbone performance.' For instance, bear in mind when you get ADSL you get a bundled service, because you also get a Telstra modem. You pay for that as part of the service. If the modem goes down through no fault of yours, then Telstra says, 'You're not covered by the guarantee.' We say,

'Hang on a moment. If you rent a fixed line from Telstra and as part of that you rent your handset and your handset goes down, Telstra is liable to fix that.' If, for argument's sake—I know it would be unusual—your handset was away for a month, they would not be entitled to charge you your line rental for that month. We have dealt with complaints about that.

Senator LUNDY—With respect to the scenario where the modem goes down and it is a Telstra supplied modem on an ASDL service, Telstra have not been letting people off? It is unbelievable.

Mr Pinnock—In individual cases, Telstra has agreed, when we have pushed them, to give a rebate, say, of the monthly access fee.

Senator LUNDY—But they do not do it as a matter of policy?

Mr Pinnock—They do not do it as a matter of policy and it is not caught by the guarantee.

Senator LUNDY—That is very interesting information.

Mr Pinnock—Before I went overseas, that was the case, and I do not believe there has been any movement since.

Senator LUNDY—We will find out at Senate estimates, I guess. Thank you.

Senator MOORE—Are those successful results published? Do other people know that in individual cases you have been able to achieve such a good result?

Mr Pinnock—Not necessarily, no. They would be pretty much buried away in general statistics. We have certainly done a facts sheet, which is available to anyone who wants it, relating to broadband issues. I do not think it necessarily covers the fact, blowing our own trumpet, that we have had these successes, no.

Senator LUNDY—Is that a real dilemma for you? Clearly, when the regulatory regime forces you to pursue each complaint as a special case with what sounds like a reasonable degree of success, is the dilemma that if you promote that too much, you will get swamped and your resources will be strained? So do you just do it and keep quiet and when the next one comes in, you reinvent the whole complaints process again?

Mr Pinnock—No. We have quite a sophisticated way of dealing with what we regard as systemic complaints. Eighteen months ago, we trialled a systemic complaint investigation procedure—what a mouthful—and now that has been formalised. The idea there is to jump on complaints which affect groups or classes or large numbers of customers as soon as possible. It has been quite effective. That is the way in which we approach these broadband complaints. But I guess it is a matter of just how many hours there are in a day. You do as much work as you conceivably can. You highlight those issues for public comment which you think are important. In doing that, you have to make choices. There will always be issues—this is a perfect example—where you say, 'Have I issued a media release saying that we've had this success in this area? No, we haven't.' We just cannot publicise everything.

Senator LUNDY—Thanks for that.

Senator MACKAY—I want to return to the CSG issue again. I am sorry about this, but that is the way it goes. We put a question on notice for Telstra about the criteria that Telstra uses for determining exemptions from CSG eligibility. This goes to the issue of the relationship between the Telstra work force and mass service disruption notices. It appears from the answer, which I am happy to give you a copy of, that Telstra is saying that once the customer service guarantee criteria, such as extreme weather conditions or whatever, are satisfied, they then do an internal assessment of what their staffing and workloads are before making a determination about the duration of a mass service disruption. So there is—

Mr Pinnock—That is in accordance with my understanding.

Senator MACKAY—There is a nexus of having enough staff and the length of time for an MSD. In the last week or so, Telstra has indicated that there is going to be a further major cut to the work force that is essentially working on the network. Hopefully, we will get more information. We cannot get a general quantum, but we think broadly it is about 10 per cent across the board. We suspect, in terms of a narrow thing, it is likely to be focused more on the operating staff who look at the network particularly. That is the trend. My view is that there is a nexus. The lower the number of field staff available to fix faults, the longer customers will have to wait for their services to be restored. I understand that in Bunbury evidence was given to this effect when the committee was there last week. Do you believe there is a nexus?

Mr Pinnock—In the sense that if you have 1,000 faults to fix and you have 100 people to fix them, the whole issue is productivity based, yes, undoubtedly. My concern, I guess, is that the methodology Telstra has used to underpin the MSD regime is wholly and solely based on productivity aspects. That means that the regime of notices can vary from time to time not only because of things such as staff leave commitments and these sorts of things but also because of decisions Telstra takes in a commercial sense as to what staff are going to be available as a whole. This is a perfect example. I am not saying it is necessarily a one-to-one-relationship and, therefore, that if it further reduces staff, the length of MSDs we will see in future will blow out. I do not think it is as unsophisticated a relationship as that. But I have never been entirely satisfied that this is the proper basis for assessing an MSD notice. First of all, the weather condition provision is under a generic type of exception which talks about factors beyond the control of the carrier.

Senator MACKAY—That was my next point, but please continue.

Mr Pinnock—Then it talks about extremes of weather conditions. I remember having endless debates with Telstra representatives and officers of the authority about the situation, for instance, in the north of Australia, particularly in the Northern Territory and Far North Queensland, during the wet when lightning strikes do a lot of damage. They do a lot of damage because there are so many of them. The question is: what is extreme in any given set of circumstances? It is a very difficult question. By the way, when we pursued this with the authority, the authority—I know this; I do not know the detail—talked to the Bureau of Meteorology to try to see whether you could get some averaging throughout Australia in certain regional areas about what might be regarded as extreme. Basically, the authority's officer said to me, 'John, it is all too difficult. It's just about impossible.' The result has been to almost entirely ignore this question of whether it is

extreme or not just to say, 'It's pretty bad.' Then you move straight away to the productivity thing.

I am not against the productivity argument. I think the first part has been left out. The fact is that Australia is a huge island continent with a variety of weather patterns at a variety of times. Some of these are entirely seasonal. Viewed from Sydney's point of view or some other place, the number of lightning strikes in Far North Queensland during the wet might be regarded as extreme, but it is not necessarily extreme in Far North Queensland. It might be that it is simply too difficult to get some methodology in place. But I think the issue has been shunted entirely to one side. It is solely based now on a productivity assessment.

Senator MACKAY—I think that is quite right. The drought is exactly about that: how do you actually determine seasonal patterns and so on? That is very interesting. Are you saying that this was looked at in some detail initially?

Mr Pinnock—Yes. This was in relation to the very first CSG before the new one came in on 7 July 2000, I think. By that stage, Telstra had already started issuing MSDs. I think I have the timing right. We have been arguing about this since some time in 1999, I think.

Senator MACKAY—You are right. The section of the act does say literally 'not beyond the control of the provider'. What does 'extreme' mean? I do not understand why some methodology cannot be struck. The Bureau of Meteorology is able to determine weather patterns from year to year or predict them based on what happened in previous years. I appreciate it might be difficult, but there is a huge element of subjectivity currently. You have the issue of the weather. Surely—I agree with you on that issue—there is a nexus between the frequency of weather patterns and the number of staff available to fix something. Therefore, you could look at what level of staff you may or may not require in a given period. You could also do it with regard to the state of the network. My contention would be that the state of the network itself is also something which is within the control of Telstra.

Mr Pinnock—It is not in anyone else's control.

Senator MACKAY—So you would agree with that?

Mr Pinnock—Yes.

Senator MACKAY—I come to the other issue of the corrosive sealant gel.

Mr Pinnock—I know it is an issue. I know nothing about it, though. I have not followed up on that one. I understand the suggestion has been made that the very sealant that was there to protect the system in fact has degraded it.

Senator MACKAY—Have you had anything to do with this issue at all?

Mr Pinnock—No. It may be in individual cases that that is the argument for the defect or fault in the network that is affecting an individual customer, but we never get down to that level of detail, no.

Senator MACKAY—I want to finalise this line of questioning. Do you think the issue of the weather and the Bureau of Meteorology's involvement is something the ACA should revisit?

Mr Pinnock—That has always been my view. I have held that for a long while, and I have not been able to convince the authority that it ought to be looked at again. I recall mentioning in my earlier evidence that there was one MSD notice that the authority used as a test case. It tried to tease it apart to see whether the methodology satisfied them. It was one issued a long while ago, probably in 1999 or 2000. It related to Perth. I cannot remember the details, but I remember some of the officers of the authority telling me that they had used that. They did not get too far with it. I do not think they felt confident that they were able to really pull it apart. Yes, I think the whole issue of extreme weather conditions ought to be revisited, but I think I am alone in taking that view.

Senator MACKAY—The next line of questioning is, ironically, about Perth. However, I will hand over to Senator Lundy.

Senator LUNDY—I want to go to the resourcing issue. It is about how you manage your resources and what sort of pressure you are under, given an obvious consistent increase in the number of complaints you have to deal with. What has your budget looked like over the last few years and, given it is Wednesday and not Tuesday, what does your budget look like over the next couple of years? What are you having to do to perform your duties within that budget constraint?

Mr Pinnock—My scheme has one great factor in its favour over, for instance, many statutory ombudsmen in that it is recognised that the scheme is a demand-driven scheme, and the funding follows that. I used to be the Deputy Ombudsman in New South Wales for a number of years. I used to deal with battles with the New South Wales Treasury over funding issues, so I know what can happen in the statutory realm. Our formula is such that if the complaint numbers go up, for whatever reason—the driver has generally been the level of industry activity and levels of awareness about the TIO—more money comes in and I put more staff on. There is, of course, always a slight lag effect. If the numbers start escalating rapidly, you have to be careful about your ability to bring on and train staff quickly.

Our funding works basically this way. Ideally, 50 per cent of our costs should be borne by our direct case fees that we charge to the members. The other overhead components of our undertaking should also account for 50 per cent. Each member that has complaints will pay their respective proportion of that other 50 per cent. The board has said that while that is an ideal, they would be content if the ratio was 45 direct and 55 indirect. There are reasons why the indirect component has been growing. I will touch on them in a moment.

The budget that we have cast just now in draft form and which goes to my council tomorrow and then to the board next month is sitting at a ratio of 43:57. There are two reasons for that. Again, one is, as I say, this continued growth in our overhead component but also because our direct case handling fees have not quite kept pace with things. So we are proposing to increase the lowest level of fee by a modest amount of money in the first six months of the next financial year. At the same time, we will do a work values study about just how much it costs on average to deal with the other complaints. We will do that ourselves internally and present it to the board in December.

Overhead components rise more quickly than the others because we have been put under increasing expectations by, in a sense, scheme members, by consumers, by the community generally and by regulators to do more in other areas, such as our role involved in the drafting of codes. We are expected to do more in terms of research and policy on our own database. We have a goldmine here that we are barely able to scratch the surface of. All those costs have grown.

However, in general terms, my view as Ombudsman is that my funding is adequate to the task. Could I do with more money? I could always do with more money. But you have to be careful. Given that it is demand-driven money, you also have to realise that it is not a blank cheque. The other thing you have to be careful about as an industry Ombudsman in any event is that the regulatory regime is very costly to the industry. As you know, the statement of regulatory policy that is in the legislation puts great emphasis on self-regulation to the greatest extent possible. But even where it is self-regulation—quintessentially, I am self-regulatory because I am an industry Ombudsman—the costs are enormous. After all, the carriers pay. If they are a mobile operator, they pay for their spectrum. We all know they pay too much. Nevertheless, they pay for it. They have to pay for their numbers. They have to pay for certain work of the ACCC. They pay for ACIF and they pay for the TIO. Particularly at the moment, as you know, with the industry being fairly quiescent and cost cutting going on everywhere, everyone is looking to save money left, right and centre.

The major carriers are taking the view that the regulatory regime as it stands is too costly. I am not immune from that sort of oversight. However, my budget, which is going to council tomorrow, for the next financial year is \$6.9 million, which is a substantial amount of money. It is adequate for the task. Would I like it to be \$7½ million? Yes, I would love it to be \$7½ million. Do you think I could persuade the members that it should be \$7½ million? No, I do not think I can. If it comes through at a tad under \$7 million, I will be content.

Senator LUNDY—You say there is a general industry view that the regulatory system costs too much. Does that bring downward pressure on the size of your budget?

Mr Pinnock—I am aware that there is this view within the industry. Let's see what happens at the board meeting next month. This is one of the strongest reasons I have for supporting this tripartite division we have with the TIO. Some of the other industry schemes have merged their council and board. I am always frightened when you get that that the money start dominating. In my scheme, if the council sets a policy, theoretically, it determines the money, and the board has to find the money. There are always arguments at the margin. I have always been worried that if you merge the two, instead of policy driving money, the money will drive the policy. To date, although it is an added expense to operate the scheme that way, it has been a very important guarantee of the funding, in my view.

Senator LUNDY—Do you see it changing, or are you confident it will stay?

Mr Pinnock—I have become a little more agnostic about this. I have been a staunch defender of the division of functions. But there are a number of things that have happened over the past 12 months which might suggest that perhaps we should look at merging them. I would be prepared to listen to arguments. Of course, I am just the Ombudsman. It is a matter for the whole scheme. There are costs involved in doing it, mainly administrative costs. We have eight meetings of the

council, roughly, a year and four or five of the board. If you could condense that to seven meetings of the lot, obviously, it frees up my internal work considerably. But I just regard that as a consequence of the way the scheme is set up, and it is worthwhile devoting that time. But that is, again, a personal view.

Senator MACKAY—I want to go back to the issue of droughts and flooding rains. I do not know if you are aware, but Telstra has now added to this issue of extreme weather conditions. It is starting to talk about lightning storms, damaging winds, severe rain and torrential rain on MSD notices. Going to the issue of subjectivity that you raise, presumably, this would be further evidence, from your perspective, of something that seems to be fairly subjective.

Mr Pinnock—I think it is entirely subjective. Sydney, where I live, has periodically very heavy rain. You get this sort of weather pattern where we have three days worth of rain. Is that extreme? It certainly produces problems in that faults go through the roof. Again, we have this issue of whether a CAN is properly protected against water penetration. Is it an extreme condition? I do not think it is an extreme condition. I have lived in Sydney all my life. It is just par for the course. It is a seasonal event. But I do not regard it necessarily as extreme. Where is the cut-off point? I agree you get into subjectivity. Obviously, if you cannot get into an area because it is physically flooded—

Senator MACKAY—Exactly. That would be reasonable.

Mr Pinnock—But when you move back from that, what is the demarcation line between, again, extreme and otherwise? Ordinary weather patterns in places I do not think should qualify necessarily as being extreme, but they tend to be treated as such because it all goes back to this productivity argument and productivity alone.

Senator MACKAY—That is great. Lightning seems to strike twice in the same place, from what we can gather. It happened in Tasmania; it literally did that. Twenty out of the 30 MSDs for this year have been declared because of lightning damage.

Mr Pinnock—I think they would be very much in northern Australia.

Senator MACKAY—Yes. There are incidents in Western Australia that I referred to earlier in which there were three MSD notices in a very short period of time, from 21 to 29 March. Three within that period were all cited as a result of lightning.

Mr Pinnock—It comes with the monsoons.

Senator MACKAY—That is right. All three MSD notices issued were roughly in the same geographical area. We have heard anecdotally that some customers in Perth have been without a telephone service for a fortnight, which I would have thought would be a concern.

Mr Pinnock—I would regard that as obviously of concern. Certainly I would be amazed if we had not picked up on that.

Senator MACKAY—You haven't heard anything with respect to that?

Mr Pinnock—No. What time was that?

Senator MACKAY—It was 21 to 29 March. Three MSD notices were issued. Within that period there were three issued.

Mr Pinnock—In Perth?

Senator MACKAY—Yes. All in roughly the same geographical area.

Mr Pinnock—I will check it out. It has not been brought to my attention. That is a rule of thumb I work on in the office. People report to me by way of exception. I will certainly look at it.

Senator MACKAY—The other issue with respect to lightning damage is that we were advised there is capacity to lightning-proof the network and that the technology does exist.

Mr Pinnock—There is certainly equipment that can protect various components of the network, including customer premises equipment. However, I am not technically adept at this nor do I know about it in detail.

Senator MACKAY—That is fair enough; nor should you. You are not aware of whether the ACA is onto this?

Mr Pinnock—No.

Senator MACKAY—We will talk to them, then. An MSD notice raised in this inquiry in Launceston on 24 April concerned such a notice in Tasmania. People had to wait up to eight days for their phones to be fixed. The geographical coverage of this MSD notice was quite extensive. I have a copy of it here if you want to look at it. Essentially, it was claimed that it was the result of a fairly insignificant lightning storm with very little rainfall. Could you look at that one as well.

Mr Pinnock—What was the date of the MSD?

Senator MACKAY—I could give you a copy.

Mr Pinnock—That might be helpful. I will look at it.

Senator MACKAY—Telstra are required, to comply with the regulatory arrangements, as you know, to advertise an MSD within three working days by public notice. The lightning storm was on 19 March. Telstra declared an exemption from CSG standards from Friday, 21 March to Saturday, 29 March. This MSD notice was for 122 services.

Mr Pinnock—For how long?

Senator MACKAY—The MSD was for eight days. The storm was on the 19th. The MSD was issued from Friday, 21st through to Saturday, 29 March for 122 services, consumers presumably.

Mr Pinnock—This was in Launceston itself?

Senator MACKAY—No. The MSD covered a huge proportion of Tasmania. It went right up to the islands. But this is the interesting thing: it was 122 services—customers, presumably—but it was a very broad geographical area. The notice did not appear in the *Mercury* until Friday, 28 March, which is after I put out a press release about it saying there was no notice in the paper.

Mr Pinnock—A backdated notice.

Senator MACKAY—Yes. Could you check that one for us.

Mr Pinnock—Yes, sure.

Senator MACKAY—It is a bit rich that we have to find these things out in this fashion. It is clearly not in conformity with the provisions of the act.

Mr Pinnock—Of course not. You say this notice covered a very large area, the whole of Tasmania, in relation to one lightning storm?

Senator MACKAY—How about we get you the documentation.

Senator LUNDY—We have all experienced—

Mr Pinnock—I will have a look at that.

Senator LUNDY—We have all experienced and seen quite bizarre MSD claims and definitions. The other thing I take the opportunity to draw your attention to is Telstra's front of house. When people have a complaint and follow through, it often gives conflicting advice. I am sure you are aware of this.

Mr Pinnock—It is an issue across the board.

Senator LUNDY—I recently dealt with a complaint of that nature in Rockhampton.

Mr Pinnock—I should say that I have the greatest sympathy for front-of-house staff because the volume of information and the nature of information they need to know is absolutely enormous. They find themselves in the situation where they have all sorts of prompts and scripts on their screens to cover a wide variety of issues. Generally speaking, if you have a problem that falls within any of those issues and the sorts of prompts and scripts they have, it will be fixed. If you come forward with anything that is outside the ordinary, they are totally lost because they have nothing to guide them.

Senator LUNDY—I sympathise with them as well. But it is a systemic and management issue within the organisation. It is not helped by the fact that when we visit the service centres that are designed to handle complaints we hear about job losses and cuts in those areas.

Mr Pinnock—I should also say in fairness to them—we do not keep figures on this sort of thing because we do not know individual market share and the members are very reluctant to tell

us—there is no doubt that, as far as TIO is concerned, Telstra has put a huge amount of effort into reducing its complaint numbers over the last three years such that they are down to around 40 per cent of our workload. On whatever basis you might suggest, that is far below Telstra's market share. So there have been considerable improvements, but there are some pretty egregious cases where there should be further work done.

Senator MACKAY—I think we have traversed the weather issue et cetera sufficiently. That was very useful. There was a document tabled by the CPU.

Mr Pinnock—I have a copy here.

Senator MACKAY—It is quite extraordinary. Were you aware that it existed?

Mr Pinnock—This document, no. But it does not surprise me.

Senator MACKAY—The bit that struck us was the almost coaching about your office.

Mr Pinnock—What page are you on?

Senator MACKAY—The first page is entitled 'Complaint Root Cause'. The second page is headed 'Key Learnings from all Business Units' et cetera. The second sentence talks about the in-house project identifying those staff that tended to have high levels of their resolutions being referred to the TIO. Do you have any comment on that?

Mr Pinnock—In what sense? As long as they are not after the staff in giving them a rap over the knuckles. As long as this is a training issue so that they are giving better information, I think it is a terrific idea.

Senator MACKAY—Are you satisfied that it is?

Mr Pinnock—I do not know one way or the other. We are constantly on the major members of the TIO to lift their internal dispute resolution performance as a way of trying to bring down complaint numbers.

Senator MACKAY—That is admirable. I appreciate that.

Mr Pinnock—I have to say that the responsiveness of the members is very varied. Telstra has been more responsive than any of the others. I have not seen this document, but I know this sort of forum exists. I did not know the name of it. Some of it is quite interesting, actually. I do not know one way or another whether they have gone and roasted particular members of staff or whether they have just looked at it in terms of trying to lift performance. If it is the former, it is not the way I would go. If it is the latter, I think it is commendable. But I do not really know. I also know that with some of the members, in their escalated points where people are liaising directly with us, the individual employees have performance measures linked to our work. For instance, if they have a complaint they are handling where they are liaising with us at a level 2 and it gets escalated to a level 3 because they have not provided us with sufficient information in due time, that is reflected in their performance. That is admirable. But you can use that in wrong ways. As I say, some of this is—

Senator MACKAY—Interesting reading.

Mr Pinnock—interesting reading, yes.

Senator MACKAY—You would probably be taking it up with Telstra at some point?

Mr Pinnock—No. It is a matter for them. On the face of it, I do not know whether they are motivated by proper matters or not. Even if they are not, it is not a matter for me to tell Telstra how to deal with its staff. I will put it this way: it is intelligence.

Senator MACKAY—Fair enough. The other bit that I found interesting was the code breach data on page 9. There is a caveat, I suppose, that the potential breaches are based solely on judgments by TIO staff and, therefore, the industry should be cautious.

Mr Pinnock—More to the point, they are based on the fact that overwhelmingly those figures relate to level 1 complaints which are dealt with by referring a customer back to their provider at an escalated level with a TIO complaint number so that the escalated people know that the person has been to the TIO. The idea is you get your last chance to resolve before a formal investigation. So you see at that stage we have only heard the complainant's version. It is more that they have never been fully and formally investigated. On the face of it, it looks like a code breach. We have not heard the other side of the story, so they are put down as possible. That is the real thing.

Senator MACKAY—I understand what you are saying. I do not think it is very accurately reflected in terms of this document.

Mr Pinnock—It might be. That is not quite right where it says potential breaches of these are based solely on judgments. That is not true. It is particularly because they are based solely on the complaint itself.

Senator MACKAY—It is good that you have been able to come here and tell me that.

Mr Pinnock—That is quite right, yes.

Senator MOORE—When we spoke to you last, we talked about awareness and your concerns about where complaints were coming from. We talked a little on the phone about that. You were saying then that you made some comparisons in your report about where the complaints came from. You said the fact there were not as many complaints coming from regional areas could have been linked directly to awareness of consumer rights in those areas. You were intending through your organisation to do an awareness raising campaign to see whether people were aware of their rights in those regions. Has that progressed at all?

Mr Pinnock—We have started. We are building on something that is always happening. The real issue—again, this is in our current business plan to go to council—is that we have just run a two-year strategic plan and business plan. Basically, the council and board said, 'We are happy with the awareness levels,' as reported on our own surveys at the moment, 'and we should leave it at that.' Now, however, there is an argument that we really should be lifting awareness levels in particular areas. The regional areas are the most obvious ones, but also with youth in

particular and small business, where there has been a very significant fall-off in awareness levels.

So the current business plan going to council proposes reasonably modest efforts on our part. Our fundamental goal, of course, is to investigate complaints. Broad-based marketing campaigns of whatever nature are hugely expensive and well beyond the TIO's role and resources. That is why, as I say also at the present time there is a committee of council and board members looking at the issue of whether there should be a formal requirement on members to advise their customers about the TIO. It is funny that after 10 years we do not actually have that as a rule. There is an expectation.

CHAIR—Even the banks do that.

Senator MOORE—Even Centrelink does that.

Mr Pinnock—When Graham McDonald was the banking ombudsman, he was on a big campaign about that. The banks used to keep all the brochures down behind the potted plants at the other end of the banking chamber. I remember talking to Graham about that. The other issue is not only whether there should be a positive obligation but, more importantly, how you ought to perform that. There are a variety of ways of giving information, as you would appreciate.

One of the issues raised in the ACA's discussion paper is the new price cap regime. The discussion paper is suggesting there is going to be a service provider rule where the telcos will have to tell their customers about this price cap regime. They claim what the authority is suggesting is very onerous. Of course, one of the suggestions about the TIO is that you have it as a bill message. Interestingly enough, I feel very strongly about this. Initially, I was a very strong supporter of it. Then I became a little more open-minded about it before recently veering back to supporting it as an option.

The carriers generally see it as anathema. They say they are worried that it will encourage first-resort complaints. People will come to us in the first instance. My response is that you solve that by the way in which you write the message. Moreover, look at some industry schemes, particularly the Energy Ombudsman's scheme in Victoria and New South Wales. Without any qualms or anything else, all the major members of those schemes put messages either on their bills to customers about the industry ombudsman or, more importantly, they put it on their disconnection notices. So I just think, 'What's the big deal?'

Funnily enough, and some of my members will be a bit livid about this, when I was in England recently talking to the new ombudsman there and we were talking about this issue, she produced for me a standard Vodafone bill over there. On the second page, it has reference to the old regulator, Oftel. It says, 'Should you have a problem, take it to Oftel.' The agreed text between the ombudsman and Vodafone to have a substitute message there is, 'Take it to a regulator or tell the Ombudsman,' with the name, number and address. My view is that if Vodafone, as one of the major mobile providers in the United Kingdom, can have a bill message, I do not see why the carriers in Australia cannot.

There are all sorts of arguments, as you would appreciate, about how people process information. If they do not need it, do they process it? I think it is an absolutely fundamental view that it ought to be on the bill for everyone once a year at a minimum.

Senator MOORE—In many of the places we have gone, one thing we have found is that there is a wide variance in people's knowledge and understanding. You have people who are absolutely expert and can use the language and it just flows. At the other extreme, you have people who are totally confused. We have received evidence from a few people that suggests there is a role in the system for a totally independent, like yourself, advice-giving body so that if you are a consumer, there is somewhere you can go to say, 'I am a consumer. This is what I need for myself and my business. Can you give me some advice.' Would you like to comment on that?

Mr Pinnock—Go back as far as the Wallis report. Wallis said, and I am not sure I agreed with him at the time, that there was considerable consumer confusion about the existence of the schemes and their availability and access. A set of benchmarks was put out by the Department of Industry, Science and Tourism in 1997. One of the benchmarks for these sorts of schemes is accessibility. You tell people about yourself, and so do the members of your schemes. But Wallis proposed a gateway. He said to reduce consumer confusion, what we should really have for all these sorts of consumer rights bodies, be they complaint handling or industry based or otherwise, is a single telephone number for the whole of Australia, which is your gateway. As soon as you go through the gateway, you have an interactive voice response menu like 'press 1 to 1,000' for whichever one it is that directs you in the right way.

Senator MOORE—Which says, 'We value your call.'

Mr Pinnock—Yes, 'We value your call.' At the time when Wallis came out with this, I did not agree with it. Apart from the assertion, there was no evidence I could see that there was this level of consumer confusion. As recently as Monday when I was in Perth hosting a consumer forum, we were talking about the complaint rating in Western Australia. It is 1.45 per 1,000 of the Australian population against the average of 2.02. One of the consumer credit counsellors—it was largely from that group at the forum—said in her opinion one of the problems about awareness levels is that really you should always be targeting the consumer groups to bring this information to consumers. If there is an absence of those sorts of consumer groups, like the consumer legal service or one of those things or they are absent entirely, you are never going to get your message through. That again raises the question of whether you are better targeting the whole of the population as such, say on the basis of customers of telcos through their bill messages, or whether you are better trying to target, in the TIO's case, the consumer groups, which is what we try to do. We just do not indulge in mass marketing campaigns. It is impossible. Preferentially, we go after the target groups of consumers and then hope that that lifts the awareness levels.

But on its own, the TIO would only have a very small impact on this. We have been going for 10 years and people do know about us. But if I go to the Northern Territory, for instance, and say that I am the TIO, they say, 'What, the Territory Insurance Office?' So you have to be careful about this, hence the importance of my view about putting pressure on the major carriers in Australia to tell their customers directly.

Senator LUNDY—This is my final question. How do you handle complaints that people might have about the TIO? For example, people may be frustrated because they do not think you have done enough or you just cannot do anything about it, where the people have hit a brick wall and you are a convenient brick wall for them to keep hitting?

Mr Pinnock—There is such a variety of complaints. If someone complained about any member of my staff, I would deal with that personally. If they complain about me, I send it to my council. The rule is that, though, my decision is final in relation to any particular complaint. The council does not sit in any way as a reviewer of my decision making. There are good reasons in policy for that. The council is entitled to look at whether I have properly handled the case in accordance with established procedures. The council is also entitled to look at change to those procedures which it might want.

Otherwise, I guess, there are two sorts of issues that might arise. One is that they do not like the limits on the scheme. They do not like your boundary conditions. It might come to me or the council. If we think that the particular limit is there for a very good reason, we will not do anything about it. The most obvious one is that we will not deal with a complaint that, in a sense, is more than two years old. The technical wording is that the circumstances which gave rise to the complaint must have become known to the complainant within the last 12 months or, at the Ombudsman's discretion, within the last two years. If someone comes to us with a complaint that is 10 years old, we will not deal with it. There are obvious reasons why you are not going to deal with it. On the other hand, someone might come to us with a complaint such as, 'I've just discovered that Telstra has factored my debt. What are you going to do about it because the factor is outside your control?' It did not quite happen that way. Telstra itself came to us and said, 'We've factored some debt.' That created an enormous debate within the TIO. The council and the board promptly amended the constitution to make it clear that Telstra still retained liability to the TIO for that decision.

So it is a matter of assessing it as a matter of policy. Is this a sensible limit on the scheme? If so, we will defend it. Has someone found an issue where, in a sense, the scheme is defective because it cannot deal with a certain thing? There is a process for dealing with that and making an assessment as to whether it should be dealt with. Ultimately, do not forget that nothing I do actually binds the consumer. If I make a decision that a consumer does not like, they do not lose anything. They still have all their legal rights accruing to them. For instance, if I make a determination about a complaint and a consumer is paid \$5,000 in compensation by a carrier when they are wanting \$20,000, the carrier has to pay that \$5,000 unless the customer turns around and says, 'I'm not going to take it.' In that case, all bets are off and the parties are back to their normal position.

But the consumer cannot sue me, as it were, and say, 'I want \$10,000.' Finally, even though I am a private ombudsman, it is almost certainly the case that I am amenable to intervention by a superior court because I do have the right to affect rights and liabilities. I can, for instance, make a determination against a member which binds them. No-one has ever done it. One of our members at the moment is threatening to do it. They will lose and spend an awful lot of money. I am only aware of one case where it has ever happened. One of the energy companies took my colleague the Energy Ombudsman of Victoria to court in the Victorian Supreme Court and lost spectacularly.

Senator LUNDY—Do you incur the financial responsibility for defending those cases?

Mr Pinnock—The scheme does.

Senator LUNDY—So it does not come off your operational budget?

Mr Pinnock—Yes. We have to find the money. On the other hand, if, for argument's sake, it happened at a time when we were fully committed and had no funds left, the board would simply turn around and levy the members, including the member suing me.

Senator LUNDY—Thank you very much.

Senator MACKAY—That was very useful. Thank you.

CHAIR—Thank you for your evidence today. It has been very helpful to the committee.

Mr Pinnock—Thank you.

Committee adjourned at 12.54 p.m.