

23 January 1996

Our Ref: GLH  
Matter No:

Mr J Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE Vic 3000

Dear Mr Pinnock

**INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH**

I enclose copy letters dated 18 and 19 January 1996 from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters, including:

- (a) the cost of responding to the allegations;
- (b) the implications to the arbitration procedure if I make a full and frank disclosure of the facts to Mr James.

Yours sincerely

  
GORDON HUGHES

Encl.  
cc P Bartlett

Partner  
Peter L. Smith  
Peter D. French  
Joel M. Lightowler  
Wayne B. Cahill  
Neville G.M. Deeb  
Grant D. Sofron  
Charles Venetis  
William P. O'Shea  
David C. Wynn

Consultants  
Kenneth M. Mori  
Richard J. Kellam  
Andrew Jenkins

Associates  
Stuart C. Hird  
John S. Moirer  
Melissa A. Hensch  
Francis V. Galich  
John D.F. Morris  
Michael S. Cook

Incorporating  
Francis Abemid

Melbo

Sydney

Sydney

Brisb

Canbr

Newca

Perth

Adela

Darwi

51A

3/2



# Hunt & Hunt LAWYERS

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Gordon L. Hughes  
Mark T. Knapman  
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John D.F. Morris  
Michael S. Carrick

Incorporating  
Francis Abourizk Light

15 February 1996

Our Ref: GLH

Matter No: 5122795

Mr John Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE Vic 3000

Dear Mr Pinnock

**ALAN SMITH**

I enclose a draft letter which I propose forwarding to the Institute of Arbitrators Australia in response to the complaint by Mr Smith.

I would appreciate your confirmation that there is nothing in the proposed letter which would embarrass your office or jeopardise the current arbitrations.

You may consider it appropriate for you to provide an independent letter of support. This is of course a matter for your discretion.

I await your response.

Yours sincerely

  
GORDON HUGHES

Encl.

*See covered with Lia  
To push to Gordon re 3 matters X  
Letter in support to be prepared.  
2/2*

melbourn  
sydney  
sydney  
brisban  
canberr  
newcast  
represented in  
adelaide  
darwin

5.1.B

**LAW PARTNERS**  
**BARRISTERS & SOLICITORS**

2901  
97

LAW PARTNERS MELBOURNE  
Level 1, 140 Queen Street, Melbourne 3000  
DX 612 Melbourne  
Ph: (03) 9602 2268 Fax: (03) 9602 2039

13 December 1995

Our ref: GV/9510820

Mr Alan Smith  
Cape Bridgewater  
Holiday Camp  
PORTLAND 3305

Dear Mr Smith,

**RE: ALAN SMITH FAST TRACK CONCILIATION WITH TELSTRA CORP.**

We refer to the above matter and our discussions of the events and circumstances surrounding your claim against Testra.

We have had the opportunity to carefully consider and evaluate the information you have provided to us in relation to the "fast track arbitration process" (FTAP) in which you were recently involved.

From the extensive discussions we have had with you and the correspondance and documentation we have had the benefit of considering it would appear that the FTAP failed to meet its objective of being a non legalistic, unbiased, speedy and cost effective form of resolving your dispute with Telstra.

It also appears that there may have been numerous breaches of the rules of natural justice during the FTAP. Certainly there are allegations against some of the key figures involved in the process which prima facie appear to be capable of being substantiated.

Allegations of impropriety are made against Telstra, the independant technical experts and the arbitrator. Unfortunately we have not yet had the opportunity of putting these allegations to the parties involved in order to obtain their responce.

Overall however, we are of the opinion that the FTAP was fundamentally flawed given its objectives. The actions of Testra and other key figures in the process were to say the least, against the spirit of the FTAP. In short we believe it would be possible to set aside the arbitrator's decision on the basis of failure of natural justice during the course of the FTAP.

We enclose an account for our services to date and look forward to receiving your further instructions in relation to this matter.

Yours faithfully,

  
**LAW PARTNERS**

per Gene Volovich  
encl

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August 16, 1996



Telecommunications  
Industry  
Ombudsman

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

**COPY**

John Pinnock  
Ombudsman

*By facsimile 055 267 230*

Dear Alan

I refer to your letter of 12 August 1996. In that letter you request a copy of the covering letter, signed by Mr Paul Howell of DMR Group Canada, to the Resource Unit's Technical Evaluation Report in your completed arbitration.

I note that the Arbitrator was not obliged to forward a copy of this covering letter to you, as it did not, strictly speaking, form a part of the Technical Evaluation Report. However, in the interests of alleviating your concerns, I now enclose a copy of Paul Howell's covering letter.

As to the other disparaging remarks you make in your letter in respect of the Resource Unit and the Fast Track Arbitration Procedure, I reject those comments entirely.

Yours sincerely



John Pinnock  
**Ombudsman**

cc Senator Richard Alston  
Professor Alan Fels  
Mr John Wynack

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*"... providing independent, just, informal, speedy resolution of complaints."*



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By Hand

30 April 1995

*Recd  
John R 30/4/95*

Mr John Rundell  
Associate Director  
Ferrier Hodgson Corporate Advisory  
Level 25  
140 William Street  
MELBOURNE VIC 3000

Dear John,

By this letter I am officially transmitting to you the "Resource Unit Technical Evaluation Report" covering the case of Mr Alan Smith of Cape Bridgewater Holiday Camp for forwarding to the Arbitrator.

DMR Group Inc. of Montreal Canada, together with our associate Lane Telecommunications of Dulwich South Australia have, in accordance with the "Fast Track" arbitration proceedings, completed the Resource Unit technical evaluation for this Arbitration.

The report covers our evaluation and impact assessment

Naturally, we are prepared to discuss any aspect of the report with you or the Arbitrator.

Yours truly,

PAUL C. HOWELL  
Director

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Commonwealth of Australia  
**STATUTORY DECLARATION**  
*Statutory Declarations Act 1959*

I, **ALAN SMITH**

make the following declaration under the *Statutory Declarations Act 1959*:

2 Set out matter  
declared to in  
numbered  
paragraphs

On 23<sup>rd</sup> February 2006 I wrote the attached letter to Mr Bryant. Attached to that letter are: a letter dated 12<sup>th</sup> August 1996, from me to John Pinnock, the TIO; Mr Pinnock's response (dated 16<sup>th</sup> August 1996); a letter dated 30<sup>th</sup> April 1995, apparently signed by Mr Paul Howell of DMR Group Canada and two pages, both dated 30<sup>th</sup> April 1995, from an arbitration technical report prepared by DMR & Lanes. The matters related to these documents are why I have decided to prepare this document now.

In my letter to Mr Bryant, at point 3, I raise the issue of the technical consultant's arbitration report dated 30<sup>th</sup> April 1995, prepared by DMR & Lanes. For the purposes of this Statutory Declaration I now state that I received a copy of the DMR & Lanes report dated 30<sup>th</sup> April 1995, together with advice from the arbitrator, Dr Hughes, asking for my written response to the report. I assume that Telstra received the same version of the report and the same directions from Dr Hughes.

In August 1995, three months after my arbitration, I travelled to Melbourne to pick up all my arbitration claim documents. I later discovered that the arbitrator's secretary, Caroline Friend, had inadvertently also provided me with a manila envelope containing a number of documents I had not seen before. Inside the manila envelope I found two versions of an arbitration technical report, one dated 6<sup>th</sup> April 1995 from David Read of Lanes Telecommunications, and one dated 30<sup>th</sup> April 1995 from DMR & Lanes. At first I thought the DMR & Lanes report was just a replica of their report that I had been given by the arbitrator during my arbitration. When I compared the two, however, I discovered, in this newly obtained version of the report, information that was not included in the version that had been officially provided to me during my arbitration. The information omitted from the so-called 'final', arbitration version of the report included references to billing faults, and the statement "*One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems.*" The version of the DMR & Lanes report that I discovered in the manila envelope turned out to be only a draft of their report. Except for differences in the list of documents sourced in relation to their findings regarding my billing claims, the rest of this draft version is identical to the version that was represented to me as the final version of the report. The draft version of the report stated that the billing claim documents were to be assessed over the coming weeks. My billing claim included 13 bound volumes of over 2,600 documents. None of these volumes or documents is included in the list of documents sourced by the consultants. Th

*Alan Smith*  
c. 34859

JIF

clearly states that, on 30<sup>th</sup> April 1995, when they prepared the draft of their report, the consultants still needed extra weeks to resolve the billing fault issues and yet the so-called final report, which now included the 13 volumes of 2,600 documents in the documents list, was submitted to arbitration on the same date and forwarded to me for my official response, even though the arbitrator knew I would then be responding to a report that was incomplete.

The attached letter dated 12<sup>th</sup> August 1996, to Mr John Pinnock, confirms that I wrote to the Institute of Arbitrators because the DMR & Lanes report had not been signed off. Mr Pinnock apparently also wrote to the Institute and provided them with a copy of what he called a covering letter supplied by Paul Howell of DMR Canada. As you can see, when he wrote to me on 16<sup>th</sup> August, his advice was that he didn't believe the arbitrator was obliged to supply me with a copy of the DMR 'covering letter'.

Just days after my arbitration, in shock at finding that none of my billing claim documents had been addressed, and after uncovering information that was not uncovered during my arbitration, I collapsed with a suspected heart attack and was rushed to hospital by ambulance. On my return, five days later, Mr Paul Howell of DMR Canada telephoned me at home. I had not spoken to Mr Howell before, but he told me he had heard that I had been in hospital and was phoning to wish me well. Mr Howell then went on to tell me that my arbitration was the worst process he had ever been associated with and that, had it been conducted in North America, it would never have been allowed to continue under such an atrocious administration. I told him I appreciated his concern, but was disappointed with his technical report and asked him why he had not signed it off. He replied in words to the effect that he hadn't signed the report because it had never been completed.

Why would Mr Howell admit that the report was never finished yet still provide a covering letter with the same date as that unfinished report?

Who would write a covering letter stating that a final report (with the same date as a draft of the report) was complete, when the draft clearly stated that it was not complete and needed extra weeks to resolve billing issues?

Clearly someone mischievously added the 13 bound volumes of billing documents to the list of sourced documents, thereby indicating that they had all been investigated. This simply confirms that my arbitration was not conducted lawfully, a fact that is supported by a TIO document noting that the TIO was afraid to investigate my arbitration concerns in case it would 'open a can of worms'.

Two versions are attached of the index to the DMR & Lanes arbitration technical report. Both versions are dated 30<sup>th</sup> April 1995, thereby confirming that someone was prepared to deceive me (and probably Telstra also) into believing that all 13 volumes of billing claim documents were assessed. I have asked the TIO to compare these two versions of the technical report because, with the exception of the missing 13 volumes and reference to billing issues, they are otherwise word-for-word.

*Handwritten signature*  
Sc/134854

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In a letter dated 15<sup>th</sup> November 1995, from the TIO-appointed arbitration project managers, Ferrier Hodgson Corporate Advisory (FHCA), to Mr Pinnock, FHCA admitted that the arbitration technical consultants never assessed ANY of the billing claim documents I submitted to my arbitration. Still, on 17<sup>th</sup> March 1998, Mr Anthony Hodgson, Chairman of FHCA, wrote to ASIC stating categorically that ALL the documents I submitted had been addressed. Mr Hodgson's letter was also copied on to Mr Pinnock – who, as noted above, had already been notified (in November 1995) that none of my billing claim documents had been addressed.

Again and again, my evidence proves that my billing claim documents were not assessed at all.

This Statutory Declaration has been prepared as further testament to my contention that neither John Pinnock or his office, or Telstra, can be included as a party to any independent Casualties of Telstra Assessment process. I believe the Minister, the Hon Senator Helen Coonan, should investigate my claims regarding both the illegal tampering with arbitration evidence that is described in the attached letter to Mr Bryant, dated 23<sup>rd</sup> February 2006, and DMR & Lanes, particularly as DMR & Lanes were the TIO-appointed technical consultants to all the COT arbitrations – the same arbitrations that are under review now.

I am aware of the seriousness of these allegations.

3 Signature of person making the declaration

3



4 Place  
5 Day  
6 Month and year

Declared at <sup>4</sup> Portland on <sup>5</sup> 23 of <sup>6</sup> February 2006

Before me,

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

7 

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

8 Joanne Mavee O'KEEFE  
Constable of Police  
Portland Police Station.  
Portland 3305.

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

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

SIF



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MELBOURNE VIC 3000  
PHONE: 61 3 9670 1505  
FAX: 61 3 9670 1551  
EMAIL: hrc@in@telstra.com.au

Our Ref. MR8:BJD  
Your Ref.

August 20, 1997

Mr Alan Smith  
CA- Senator Ron Boswell  
National Party  
CANBERRA ACT  
VIA FACSIMILE NO. (062) 773 246

Dear Alan,

Re: Alan Smith v Telstra Corporation

Mr Smith has approached me to write this letter regarding my views of his dealings and difficulties with Telstra and his telephone services at Portland.

I have read Mr Smith's account of the affair together with numerous other documents including a report by a forensic accountant and source materials obtained from Telstra via FOI request. I was given the materials to enable me to advise Mr Smith regarding what legal remedies he may have in the matter. From the materials I have seen, there is little doubt that Mr Smith has a legitimate grievance and has been poorly dealt with by Telstra in trying to resolve his complaint.

The materials seem to me to disclose the following points:

- a) There was clearly a serious fault with the exchange affecting Mr Smith's service and causing him a loss of many calls and, consequently, business;
- b) From the outset, Telstra were either remiss in discovering the cause and extent of the faults or less than completely candid regarding them. One suspects the situation moved from the former to the latter circumstance over the course of their dealings;
- c) It seems clear that at the time of reaching the initial settlement with Telstra, Mr Smith had not been fully informed by them of the extent of the problems with the exchange and that Telstra, wittingly or unwittingly, withheld information relevant to the settlement to Mr Smith's detriment;

-2-


- d) The conduct of the arbitration which followed was highly dubious and open to attack as inviting questions of bias since the arbitrator ruled out many relevant documents to the detriment of Mr Smith's claim, refused to acknowledge the problems with the original settlement and was from a legal firm which was in line for or had received large contracts from Telstra. All of these circumstances and the fact that the entire arbitration was conducted in a highly legalistic manner much in favour of Telstra on rules it forced into place suggest that Mr Smith was less than fairly dealt with by Telstra and the arbitrator.
- e) Telstra have implemented a "starve-them-out" obstructionist policy in dealing with Mr Smith and the other COT cases. This is amply demonstrated in their approach to the release of FOI material which they initially resisted handing over and then, when forced to, they released in unnecessary and overwhelming volume. It is also demonstrated in their internal memoranda obtained under the FOI report.
- f) It seems from the documents provided to me that Telstra have at times misstated the results of testing undertaken on the exchange and Mr Smith's service and even the fact of testing having been undertaken.
- g) Mr Smith has suffered losses as a direct result of the faults and further, from Telstra's dispute "resolution" strategies for which he has not but is entitled to recover.

Please note that I have not seen all the documents nor interviewed witnesses in this matter. Obviously the case is involved and extremely time consuming and Mr Smith lacks the resources to fund such an undertaking and, even with the best will in the world, I am not in a position to do so pro bono. That said, I have asked a member of Counsel here in Victoria to look at the materials on a pro bono basis and his view is also essentially that outlined above.

Undercover of these qualifications, I reiterate my view that Mr Smith has not had a fair go in this matter and is well and truly poorer for it.

Please feel free to call the writer to discuss any matter pertaining to these remarks.

Yours faithfully,  
**MICHAEL BRERETON & CO.**

  
Per Ben Dunn

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