

THE  
INSTITUTE of  
ARBITRATORS & MEDIATORS  
— (A) —  
AUSTRALIA

Your ref: *Conflict Management Expertise*

30 January 2002

Mr A Smith  
Seal Cove Guest House  
RMB 4409  
Cape Bridgewater  
Portland Vic 3305

Dear Mr Smith

**Re – Complaint against Dr G Hughes, Arbitrator**

As Chairman of the Professional Affairs Committee of the Institute of Arbitrators and Mediators Australia (IAMA), your correspondence making a complaint against Dr Hughes has been referred to me for my Committee's consideration.

At the outset, I indicate to you that Dr Hughes is known to me, both personally and professionally. I am satisfied nonetheless that I and the Committee which I chair can consider your complaint impartially and fairly. In the arbitral community in Australia many of the senior arbitrators are well known to each other. If you have any objection to me being involved, please let me know.

It is perhaps also important at the outset to indicate that IAMA does not in any way act as a "Court of Appeal" or body to review awards made by its members. Such rights as the parties to an arbitration may have in that regard are set out in the Commercial Arbitration Act. IAMA is not able under its memorandum and articles to do other than review the conduct of its member arbitrators.

At this stage I have been provided with 4 letters from you, 3 of them dated 10 January 2002, one dated 22 January 2002. I am not sure why you have chosen to write three separate letters on 10 January. It does not help to give me an overall understanding of your concerns.

I will not at this stage attempt a detailed analysis of the material contained in those letters, as there is plainly a large background which is not known to me.

I will attempt to make some preliminary comments on each of your letters so that I can better understand what it is that you are saying, and when I have your response I, and my committee, will proceed to consider your complaint in respect of Dr Hughes' conduct.

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However, in the meantime will you kindly send me:

1. The arbitration agreement
2. Dr Hughes award
3. The documents upon which you rely to say that Dr Hughes was "your Arbitrator".

In relation to item 3 above, I suspect that you may mean that Dr Hughes was the arbitrator in your dispute with Telstra which was conducted pursuant to an arbitration agreement, which is a contract entered into between yourself and Telstra. In most circumstances it would not be appropriate for Dr Hughes to be described as "your Arbitrator" any more than it would be appropriate for him to be described as "Telstra's Arbitrator". Perhaps you can tell me what it is that you intended to convey.

I will try to assist you by referring to a number of specific matters against each of the letters you have written.

1. Letter one of 3

- 1.1 You will need to identify the principles of natural justice which you say were breached.
- 1.2 You say that your arbitrator deliberately misled and deceived you a number of times during your arbitration thereby perverting the course of justice. Will you please provide details of what it is that you say the arbitrator did to deliberately mislead and deceive you, and how that perverted the course of justice? Unfortunately your attachments are not clearly marked and it would be desirable to send me a clearly marked set of attachments if in fact those attachments demonstrate that Dr Hughes deliberately misled and deceived you.
- 1.3 It is also important to explain that it is necessary for you to identify what it is that you say Dr Hughes has done that warrants criticism. Your letters descend into a great deal of detail about which I simply have no knowledge, but you need to be explicit in your complaint.
- 1.4 At page 4.7 you say "my Arbitrator prematurely brought down his award". Presumably he did so either pursuant to a timetable or because he was asked to do so. Did you ask him not to do so? Can you please let me have details of such a request if you made it?

2. Letter 2 of 3

- 2.1 It is not clear to me how this demonstrates anything involving criticism of Dr Hughes. Perhaps you will identify what the criticism is, and where it arises.

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