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

4 - SEP 1996

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

Dear Mr Smith

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

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

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

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

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

Yours sincerely

PAUL FLETCHER
Ministerial Adviser for Telecommunications

Alan Smith
Cape Bridgewater Holiday Camp
RMB 4408
Portland 3305
Victoria, Australia.

Phone: 055 267 267
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Senator Richard Alston
Minister for Communication and the Arts
Parliament House
Canberra

Dear Senator Alston,

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

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

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

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

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

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

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

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

(a) **The cost of and consequential losses associated with the preparation of the FTAP were dramatically increased because of the prolonged delay in finalising my claim. I should have been promoting my business through 1994 and 1995 (or what was left of it!), but instead I was fully occupied with my claim. My business had already been slaughtered because of the phone faults and then, because there was not enough time to run the businesses and fight Telecom, a further loss of 35% can be substantiated.**

(b) **The original arrangement was put into place as a result of the involvement of Austel and it was to be non-legalistic and fast tracked. Even during the initial meeting to establish the FTAP, the COT claimants were not legally represented and Telstra forced through many of their own terms and conditions.**

(c) **The matter of professional advisers fees was discussed and it was agreed that they would form part of the consequential losses of the COT claimants. Without this agreement the COT claimants would have been unable to locate and brief professional advisers to assist them in putting their case forward to Arbitration. This matter has been totally ignored by the Arbitrator and, in some instances, the Arbitrated Awards are almost less than the professional adviser's costs in preparing the cases to go to Arbitration.**

(d) **Some of the COT claimants had previously received settlements from Telstra however these settlements were minimal and the COT claimants were coerced into either accepting them or taking Telstra to court. This was really not an alternative as the COT claimants had no means to finance a court action. This situation was recognised by Austel who overturned these settlements and proposed that all losses would be considered in the FTAP. This has not occurred in my Arbitration as the Arbitrator appears to have accepted the previous settlement as full compensation through to the date of that settlement in respect of phone faults and losses.**

(e) **The Arbitration Process has not run as planned and the Arbitrator has either been unable to access FOI documents from Telstra or reluctant to do so (refer attached submission).**

(f) Telstra has withheld FOI documents to my detriment, until after the Award appeal time had elapsed.

(g) Telstra has submitted documents to the Arbitrator which have not been lodged under Statutory Declarations as provided for in the FTAP. This may well have been done on purpose as many of the Telstra documents and statements contained inaccuracies, lies and half truths. In many cases documents were provided to support particular assertions when Telstra were aware that these assertions were incorrect and that there were many other documents available which would substantiate the fact that the original assertions were incorrect. The Arbitrator accepted these documents, even though they were lodged without Statutory Declarations.

(h) The Ferrier Hodgson Report was incorrect and D M Ryan Corporate lodged a written response to that report. The Arbitrator however did not contact D M Ryan for any further explanations.

(i) The Ferrier Hodgson Report was also amended at the request of the Arbitrator to remove much of the detail which would support their calculations. Consequently, any other person looking at the Ferrier Hodgson Report would be unable to determine how their figures were calculated and over what period of time they had made their loss calculations.

(j) Telstra 'head-hunted' certain individuals to their COT Defence Team to ensure that the hardest and most legalistic approach would be taken by Telstra in their defence of these claims.

(k) Freehill Hollingdale and Page have been engaged by Telstra to assist them in this matter and we believe that the legal costs would now be well in excess of two million dollars. This is ironic when the process was meant to be non-legalistic.

(l) I have been advised that Telstra gave a substantial contract to Hunt & Hunt during the FTAP. This represents a conflict of interest for the Arbitrator.

(m) I have been advised that Telstra have entered into retainer contracts with over forty of the major legal firms around Australia to prevent them from acting against Telstra at any time in the future.

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

Yours sincerely,

Alan Smith

copies to:

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

ORIGINAL SETTLEMENT PROCESS: 11 DECEMBER 1992

The following quotes are taken from Dr Hughes' Award:

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

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

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

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

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

Page 6, point 3.3(a):

Please refer to all details contained in this point.

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

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

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

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

2. ***Ms Rosanne Pittard's Witness Statement for Telstra's Defence of 12 December 1994:***
Ms Pittard states, at point 3 (starting at the second last line):
"During our settlement discussions Mr Smith had unlimited use of the telephone so that he could speak to his advisors if he required. I am aware that in my absence Mr Smith made several telephone conversations during the negotiation period."

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

(a) How Ms Pittard knew that I made SEVERAL telephone calls during her absence since we were the only two people using this room;

(b) I had been told that this phone service was a direct outside line and therefore, on those occasions I used this phone I believed I was dialling directly out from the building. Apparently this was not so, since Ms Pittard knew I had made these calls.

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

3. ***Telecom Confidential Document, signed by Ms Rosanne Pittard, General Manager, Commercial Vic/Tas, dated 17th June 1993 (copy attached):***
In this document, Ms Pittard states:
"I refer to our telephone conversation regarding the material in Mr Macintosh's brief case. The addressee is Manager, Network Investigations, name (blanked out)."

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

4. *The "Briefcase Incident":*

As the Ombudsman's Office has previously been informed, on 3rd June 1993, Mr Macintosh and Mr Dave Stockdale inadvertently left a briefcase in my office. This briefcase contained the information which Ms Pittard refers to as contributing to " ... *the variation between what Mr Smith was told and the contents of the Network Investigation files.*" The information in the briefcase, in regard to the many communication faults that Telecom knew were in existence on my service (055 267 267), was quite different to the information I had been given by Ms Pittard at the Settlement day, 11 December 1992, in the following areas:

(i) Telecom had stated that, in relation to my 267 267 line, there was NO historic fault data etc in existence for the time before 27th June 1991 (refer letter of 3rd July 1992 from Mr Taylor), although Telstra FTAP Defence Documents and other information which was released later, show that these historic documents *were* in existence in Telecom's archives.

(ii) Not having these historic documents on the Settlement Day of 11 December 1992 seriously disadvantaged my claim.

(iii) Ms Pittard gave me information which she knew at the time was a "variation" on the truth regarding these known phone faults.

(iv) As previously stated, Ms Pittard also appears to have been privy to several private phone calls that I made in her absence during Settlement discussions on 11 December 1992.

(v) Dr Hughes' Award cannot be changed except through the Supreme Court which an expense I am unable to meet.

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

CONCLUSION:

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

A. Dr Hughes could not assess the financial effect these documents would have had on the original Settlement, he could only make a quantum settlement on what was before him. He could not take into account the way in which Telstra arrived at the Settlement, nor could he make a judgement on what that settlement might have been, had I been supplied with the correct documents and therefore been able to substantiate a lot more.

B. Neither could he take into account what financial effect these documents may well have had on the FTAP itself.

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

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

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

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

ATTACHMENT 1:

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

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

ATTACHMENT 2:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 3:
Letter to Mr John Wynack, Commonwealth Ombudsman's Office

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

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

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

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

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

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

DMR and LANES TECHNICAL EVALUATION REPORT, April 30th 1994:
On page 14 of this report, in paragraph 5 (underlined), the report states:

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

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

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

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

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

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

Also on page 17:

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

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

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

This raises four points which need clarification:

(I) Where did Telecom get the information regarding only five junctions?

(II) Where did Austel get the *wrong* information regarding the exchange being an ARK when it was actually an RAX?

(III) Where did DMR and Lanes get their information regarding 8 final selectors?

(IV) Why did Dr Hughes state in his Award that there were five lines into and five lines out of Cape Bridgewater when the DMR and Lanes Report referred to only 8 final selectors?

SIGNING OF THE FAST TRACK SETTLEMENT PROPOSAL NOVEMBER 1993

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

Telecom agreed to Commercially Assess these claims once it became clear that there was a threat of a Senate Hearing being set up to look at the allegations made by COT. It was this threat alone which caused Mr Jim Holmes, Corporate Secretary of Telecom, to agree with Mr Robin Davey, Chairman of Austel, to settle the disputes commercially if the four COT members agreed to refrain from public comment and from campaigning in the Senate.

The Fast Track Settlement Proposal was agreed to by all parties on 21st November 1993 and signed accordingly by Jim Holmes.

At a meeting before this Commercial Agreement was signed, Robin Davey stipulated that, if our claims were proved, then preparational costs associated with preparing those claims would be classified as a consequential loss. When questioned a second time on his interpretation of 'consequential loss', his statement to Ann Garms was, and I quote: *"A loss is a loss is a loss."* This statement is a fact.

Telecom also assured us that they would provide FOI documents which would enable us, as claimants, to reach a Fast Track finalisation of our claims. These FOI documents were certainly not Fast Tracked.

Six months after the signing of this FTSP, during the time leading up to the FTAP, meetings were held with the Telecommunication Industry Ombudsman (TIO), Mr Warrick Smith and Peter Bartlett, Legal Counsel for the TIO. At this meeting I asked Peter Bartlett for his interpretation of 'consequential loss' and told him of the discussions Ann Garms and I had previously had with Robin Davey, Chairman of Austel. Peter Bartlett stated that these consequential losses would form part of my claim, if the Arbitrator found in my favour. He also stated that it would be up to the Arbitrator to award consequential losses.

Attachment 5 is a letter addressed to me from Peter Bartlett and dated 6 May 1994. In this letter Peter Bartlett states: *"I certainly told you that nothing in the procedure would prevent you from including in your claim consequential losses, flow on losses, loss of health etc. However I must emphasise that Dr Hughes can only make a decision on the material before him. It will be up to Dr Hughes to decide whether the material you put to him warrants an allowance for these parts of your claim."*

I am sure it is clear from this information why the members of COT were under the clear impression that consequential losses, associated with the preparation of our claims, would be taken into account if we proved our claims.

On April 21st, 1994 the COT claimants were informed that, if we did not abandon the FTSP in favour of the FTAP, then Telstra would walk away from the Commercial Agreement they had signed and we would be forced to take them to court. We were also told that, if we *did* adopt this FTAP, Dr Hughes would be able to seek, under the rules of the FTAP, the FOI documents we had so far been unable to obtain. As a result of this information, under duress and without any legal counsel, the COT claimants agreed to the FTAP.

What a predicament: we had no money, we had wasted the six months from November 1993 to April 1994 and we were now told that we had only one choice - the FTAP. If we didn't accept this then Telecom would abandon the FTSP and leave our claims to the courts.

We were assured that if we accepted this Procedure, then

(i) the original FTSP would form the basis of the FTAP;

(ii) this Arbitration would not be 'legalistic'; and

(iii) it would be Fast Tracked, into the bargain.

ATTACHMENT 6:

Letter to Dr Hughes from Telecom, date 1 March 1994, Title: "Fast Track Arbitration Procedure", received under FOI 23rd June 1996.

It is clear from this letter that, at least from 1 March 1994, Dr Hughes was aware that this Arbitration was to be a 'legalistic' process and yet, together with Telecom, he continued to mislead the four COT claimants into believing that the FTAP was to be 'non-legalistic'.

Please note, at point (3) in this letter the reference: *"according to law".*

ATTACHMENT 7:

FOI documents A32093 and A32094 (clause 16 of the FTSP)

The members of COT were told that rules of the FTSP would form the basis of the FTAP, yet these documents show that clause 16 of the FTSP was not adhered to. This clause states:

> ***"The 'Circuit Breaker' will check the circumstances of the business and industry of each COT member business with the performances of other like businesses over a relevant period so that the Circuit Breaker may draw conclusions on how the COT members' businesses might have performed but for the matters in dispute between them and Telecom."***

Ferrier Hodgeson Corporate Advisory (FHCA) did not compare my business with other, similar businesses, refer *Attachment 7a, Group Bookings Camp Rumbug etc.*

During the FTAP I provided Dr Hughes and FHCA with information relating to six different Camps. This information included:

(i) the personal views of the owners and managers of these camps regarding the effect of booking different groups in to the Camp at the same time and how this affected both the Camp's revenue and the visiting groups themselves.

(ii) how the groups responded to this 'mixing' process - whether they felt it contributed to a feeling of personal achievement as a result of working together and whether they felt that this 'mixing together' process was the main reason for going on a camp in the first place.

I have never met the owners and managers of these venues and yet when assessing lost revenue at Cape Bridgewater due to phone faults, FHCA did not take this 'mixing together' process into account.

I also provided FHCA with a copy of a Section 52 Sale Note relating to Camp Rumbug in Foster, South Gippsland. This Sale Note showed that this Camp grossed $400,000 in 1992 and had forward bookings until 1994. In fact, they were almost fully booked from 1992 through to 1994. In 1987 the Shire had condemned the Camp buildings and I had been involved in the refurbishment of the business including the supply of fixtures and fittings and purchase of complete carpeting for the Camp. This Camp is now considered to be one of the leading Camps in Victoria.

Even though I had been involved in getting this business up and running, FHCA made no comparison between my current business and either Camp Rumbug or any of the other six Camps about which I provided information.

Under the 'Circuit Breaker' rules of the FTSP (and consequently, of the FTAP), FHCA should have made an assessment of these businesses in comparison to my business. This did not happen, even though the four COT members were guaranteed that this is how our businesses would be assessed.

The Rules of the FTAP were broken in this one instance alone, resulting in a major playing-down of the true extent of the revenue lost as a result of a *now proven* faulty phone service.

It should be noted that my average gross takings were $75,000 during the 6½ years (now 8 years) of the FTAP preparational time, compared to Camp Rumbug's declared takings of $400,000. Again, this low figure in comparison with another, similar business, was never taken into account since this information was not accepted as claim material.

ATTACHMENT 8:

Robin Davey, Chairman of Austel and Jim Holmes, Corporate Secretary of Telecom agreed that FOI was the tool which would facilitate the proof of the claims of the COT four. We were guaranteed by Dr Hughes and the Legal Counsel for the TIO that the FOI documents would be Fast Tracked to enable a quick resolution. This did not happen. This guarantee of Fast Tracked FOI documents was one of the reasons that, under duress, we signed the FTAP agreement.

Dr Hughes did not access even *ONE DOCUMENT* for me, under the rules of the FTAP, even though I lodged seventeen separate requests for further particulars. All seventeen requests were denied.

The following examples show where I supplied the Arbitrator with further particulars as per the rules of the FTAP:

42 pages, Telecom Interrogatories, 16 September 1994, Freemans, Loss Assessors, at a cost of $70.00 per hour. **Forty seven questions were answered in a professional manner by Garry Ellicott, my advisor, from Freemans and this document included 15 pages of requests from Telstra for further particulars sought under the rules of the FTAP. I provided 95% of this material at enormous cost as I believed both parties had gone into this FTAP in good faith. This document was not included in the summary of documents which I received from FHCA.**

I repeat: I did not receive one single document, through the Arbitrator, from Telstra under the rules of the FTAP, during the entire Arbitration Procedure even though I complied with all of Telstra's requests. The only conclusion that can be drawn from this is that this was a Telstra designed process.

These letters in *Attachment 8* clearly show that Dr Hughes had *NO INTENTION* of supplying FOI documentation which would support my submission / claim during the so-called "Arbitration" procedure.

ATTACHMENT 9:

Letters to Dr Hughes dated 6 January 1995, seeking FOI documents to support my claim.

This letter has *NEVER EVEN BEEN ACKNOWLEDGED* and there have certainly not been any FOI documents forthcoming as a result.

***Attachment 8 and Attachment 9* clearly show that Dr Hughes had *NEVER INTENDED* to access FOI documents for me under the agreed FTAP. This was sheer negligence on his part and this action has severely disadvantaged the preparation of my claim.**

The Commonwealth Ombudsman's Office is currently looking into Telstra's reluctance to supply FOI and how this disadvantaged the preparation of my claim. For this reason I will only mention here that, had I received the information I sought, either via Dr Hughes or from Telstra direct, I could then have provided DMR and Lanes a much more comprehensive Fault Report which would have been prepared by my own technical advisor using the technical data etc. relating to the history of faults over 3½ years. Telstra hid this information from me.

ATTACHMENT 10:

Defence Document B00 4, Telstra Defence, December 12, 1994

In their Defence, Telstra provided the Arbitrator with a Technical Report on my TF200 Touch Phone, relating to beer which was allegedly found in the phone by Telstra's Research Laboratories. The report stated that this 'beer' caused the faults on my service 055 267 230.

I have provided a copy of this TF200 Report in general written form only, although there are many different aspects to this report *(refer Attachment 10)*.

I only drink beer when I am out and in mixed company - certainly not in my office - and so I was certain that beer could not have been spilt into the phone in question. I refuted this 'report' knowing that, before Telstra took the phone away for testing on April 28 1994, I had tested the phone line with Mr Cliff Matherson of Austel, using two different phones. I did not see the 'report' until it was included in Telstra's Defence of December 12, 1994. Why was a copy not supplied to me under FOI before this?

Under the rules of the FTAP I also requested copies of the working notes from the tests carried out at Telstra's Technical Research Laboratory. This request was covered with a confidentiality agreement signed by Paul Westwood of Canberra and accompanied by a list of his qualifications, on his business letterhead. This list showed that he was a qualified Forensic Document Researcher. Again Dr Hughes did not supply this information. I make note however that, just weeks before my request was lodged, Dr Hughes had, under the same FTAP rules, allowed Telstra access to my private diaries so they could be tested by Telstra's Forensic Document Researcher. This application for access to my diaries was made under legal instructions from Freehill Hollingdale and Page, which meant that this FTAP was now a legalistic process, as can be seen by the way Dr Hughes administered the procedure.

Further, in response to Telstra's request for further particulars to support their defence, I provided Dr Hughes, through the FTAP, approximately 40 pages of written material and further documents, bound and delivered. This material was prepared by my advisor at a cost of thousands of dollars to me, all in response to the whim of Telstra and Dr Hughes.

My claim / submission was prepared from a limited supply of FOI documents and was therefore lacking in many areas. George Close, my technical advisor, had worked blindly, having been told that for the first 3½ years after I took over the business the phone line to my camp was connected to a newer type of exchange - an ARK. George Close did not learn that it was actually a much older and out-dated RAX exchange at Cape Bridgewater until Telstra had presented their Defence *(refer attachments 1 and 2).* This RAX exchange had been designed for low call rate areas only, not for 110 adults plus 7 teenagers.

This non-supply of correct historic documents by Telecom / Telstra severely disadvantaged the preparation of my claim. If George Close had been privy to the correct information he could have clearly defined a far greater call loss to my business.

On June 26, 1996, I provided the Commonwealth Ombudsman's Office with information showing that Telstra were aware of the existence of this historic fault data and had, in fact, provided Dr Hughes with this information, as can be seen in *Attachment 11,* the letter of April 27 1995. I did not discover that Dr Hughes and DMR were provided with this information until 23 June 1996, among late FOI documents.

A copy of the letter dated 27 April 1995 to Dr Hughes was not forwarded to me under the rules of the FTAP, Clause 6, which states:

> *"A copy of all documents and correspondence forwarded by a party to the Arbitrator shall be forwarded by the Arbitrator to the Special Counsel and the other party."*

It is clear when referring to this clause that Dr Hughes breached the rules of the FTAP and thereby severely disadvantaged the preparation of my claim.

I finally received a copy of this letter from Telstra in response to my FOI request, although it took Telstra 8 months to respond. Under pressure I amended the request to cover only letters sent over a short period of the FTAP: at least I received *some* letters this way. This material also included copies of other correspondence sent to Dr Hughes by Telstra during the FTAP, but which I did not see until this FOI response of 23rd June, 1996.

ATTACHMENT 11:

The four members of COT agreed to abandon the FTSP for one main reason: we were told that the FTAP would allow us to access the information we needed through the Arbitrator. This would have then allowed us, as claimants, to produce comprehensive reports based on this information.

I am, however, still waiting for historic fault data from Telstra: data which does exist. Telstra had knowledge of faults in the old RAX network and FOI documents demonstrate this, yet I have still not seen copies of the documents from which Telecom / Telstra produced their information. Mr John Wynack of the Commonwealth Ombudsman's Office is now looking into the situation surrounding these historic documents that were never released under FOI.

ATTACHMENT 12:

Letter to Mr Pinnock, dated 28 June 1996

The attachments to this letter clearly show the reluctance of Dr Hughes to access FOI documents for me, during the FTAP.

In particular, these letters from Dr Hughes show his reluctance to access the Bell Canada Testing Data I had sought under FOI from Telstra and also through the FTAP. Bell Canada stated that they used CCS7 equipment for their testing yet I received no CCS7 Data during the FTAP, and no other fault data. The Bell Canada International Report was assessed by Dr Hughes and placed in evidence by Telstra to support the viability of their network as of 1993.

ATTACHMENT 13:

Exerpt from Dr Hughes's Award.

This document clearly shows, at point 3.4(a) on page 6 and 3.5(a) on page 7, under the heading *"Bell Canada Report"*, that the Report itself was used in evidence to support Telstra's Defence. In paragraph 1 of FOI document N00037 and in FOI document N00005, the writer, Kevin Dwyer states: *"These BCI test results were impracticable. Mr Smith was correct."*

These two FOI documents, N00037 and N00005, were received eleven days after Dr Hughes completed his Award. If I had received this information before Dr Hughes handed down his award on 11 May 1995 I could have supported my allegations that my phone service was still not up to network standard as late as November 1993, at the time of this alleged BCI testing.

Now that I have raised questions regarding these BCI test results, Telstra has further stated that the BCI tests were carried out on two new and different days. They could not have taken place on either of these new dates because NEAT testing was also being conducted on those dates in November 1993, on the same phone line PTARS at Cape Bridgewater, 055 267 211. NEAT testing and BCI testing could not have been carried out at the same time on the same line.

I repeat, the information in documents N00005 - N00037 supported the documentation included in my submission. These FOI documents were very relevant to the support of my claim.

Telstra relied on flawed test results in their Defence.

ATTACHMENT 14:

Letter from Dr Hughes to me, 7 October 1994, including pages from the transcript of the oral hearing of 11 October 1994.

In paragraph 2 of this letter, Dr Hughes states:

> ***"The purpose of this hearing will be to consider the supplementary request for particulars and the supplementary request for production of documents which were forwarded to you this morning."***

This oral hearing lasted a full five hours without any breaks; the transcript covered 102 pages. Because of the importance of this "interrogation", I have included here a copy of a letter addressed to Mr Laurie James, President of the Institute of Arbitrators, regarding the hearing.

Under the Rules of the FTAP, if one party has legal representation then so shall the other party. Also under the same rules, this was supposed to be a non-legalistic procedure. At this oral hearing however, Telstra was represented by:

(i) Steve Black of their own Customer Response Unit

(ii) Ted Benjamin

(iii) John Rundell and Sue Hodgkinson of FHCA.

On the other hand I had no representation *at all.*

On the 7th October 1994 I advised Dr Hughes that I intended to submit further claim material showing that I had attempted to set up a Singles Club for over 40's. This material included many letters which demonstrated that the members of this club, as well as a Melbourne Social Centre, had extreme difficulty making contact with me via phone from 1990 to 1993. Some of the evidence relating to this situation was contained in exercise books which was not accepted at the oral hearing.

My letter to Mr James shows that Dr Hughes clearly disregarded my efforts to present these claim documents.

This was a breach of the original rules of the FTAP: I was not allowed to submit legitimate claim evidence which was contained in these four exercise books. These books included lists of the names of people interested in becoming members of this Singles Club and these names were very relevant to proving further business loss due to the phone faults.

Since Dr Hughes would not accept this evidence, FHCA could not address this particular area of loss of future business. As *Attachment 7* has shown, the FTAP was based on the appointment of a 'circuit breaker' who would compare my business to similar businesses. FHCA did not follow this procedure when they made their assessment.

When COT originally signed the FTSP, the 'circuit breaker / assessor' was to be a Loss Assessor but Dr Hughes was appointed as the Assessor, with assurances from Austel and the TIO that the assessment process itself would remain the same.

Sue Hodgkinson and another staff member of FHCA came to Cape Bridgewater to assess the location of my business, the business structure and the viability of the business. I am of the opinion that neither of these people are licensed Real Estate Valuers, nor are they accredited assessors in relation to the catering or tourism industry. This opinion is based on material included with my returned documents.

I have continually refuted the FHCA assessments which were given to Dr Hughes in relation to my business. FHCA did not send accredited assessors and this is another breach of the conditions under which the COT four signed the FTSP / FTAP: conditions that stated that professional assessors would value our businesses.

Dr Hughes was negligent in assuring me that Sue Hodgkinson was an accredited Catering Advisor with certificates of accreditation within the tourism industry.

ATTACHMENT 15:

Pages 36, 38 and 39 from Dr Hughes's Award

I question the following comments at point (d) on page 38:

1. Unsuitability of the premises for the needs of some targeted groups.

How did Dr Hughes or FHCA know who did or did not avail themselves of the facilities available here? What qualifications did Sue Hodgkinson have to enable her to arrive at her conclusions regarding the suitability or unsuitability of this camp? Ms Hodgkinson did tell me that she believed that perhaps I had targeted the wrong groups and she therefore thought that this may be a reason for lost business.

Dr Hughes was ill advised and negligent in recording the information supplied by FHCA and ignoring the true facts of the matter.

2. A decline of tourist interest in the area.

FHCA's attachment to their own document, page 15, under the heading *"Reply"* shows that this statement is incorrect (refer attachment).

The following figures have been taken from the Bureau of Tourism Research: Great Ocean Road.

	Number of Visitors	*% Increase*
1991 / 1992	*1,396,000*	
1992 / 1993	*1,490,000*	*6.0%*
1993 / 1994	*1,565,000*	*5.0%*

How could Dr Hughes fabricate such irregularities in his award? He stated that there was a decline of tourist interest in the area even though FHCA had been told by the Bureau of Statistics that there was an *increase* of tourists to the area (refer attachment, page 15 of FHCA's "Reply".

This is just more of the same cover-up in favour of Telstra by FHCA who then passed this information on to Dr Hughes. *This was, again, negligence by the Arbitrator.*

3. The remoteness of the location.

Cape Bridgewater is not a remote position. It is situated on a made road; a major tourist route, only 20 kilometres from Portland which has a population of 11,000. Between Portland and Cape Bridgewater there are two different routes, both sealed roads. One of these roads takes the tourist past the Portland Airport, Bridgewater Lakes and the Discovery Bay Coastal Park; the other tourist route takes in Shelly Beach and Cape Bridgewater Bay.

The Camp itself overlooks Cape Bridgewater Bay and nearby scenic attractions include the Seal Colony, Blowholes, Petrified Forest, Natural Springs and the Great South West Walk.

Dr Hughes was ill advised and negligent in recording the information supplied by FHCA and ignoring the true facts of the matter.

4. Increase in popularity of competitor Camps.

In assessing the Victorian tourist areas in the East, South, North and West (not including Melbourne), the South West Region, which includes Cape Bridgewater, has the lowest number of Camps. This information can be verified by the Camping Association of Victoria (CAV).

Dr Hughes was ill advised and negligent in recording the information supplied by FHCA and ignoring the true facts of the matter.

5. Inability to fund improvements.

Since DMR and Lanes, the technical resource unit to the FTAP, produced their report showing the call loss they agreed my business had suffered, I have proved an even far greater call loss. FHCA and Dr Hughes withheld from DMR and Lanes much of the technical information that I provided in my submission and which proved that my phone service was indeed faulty. Some 17 assessments were not correctly reported by DMR and Lanes, faults which I had included in my late submitted claim / submission. This information was submitted late as a result of the 'snow ball' effect of the late delivered FOI documents from Telstra. Of course I had an inability to fund improvements! How could I generate revenue when, for the first three and a half years of operation, my business shared only 8 lines with another 110 adults and 7 teenagers?

In the summer holiday period, which should have been my busiest time for occupancy, even further congestion was experienced due to local tourism, friends visiting residents etc. This compounded the faults: the loss of tourism dollars due to the phone faults and the consequential loss of tourism dollars due to the inability to earn enough to fund improvements which was as a result of the phone faults in the first place.

6. *The claimant's financial settlement with his former wife.*

When we moved to Cape Bridgewater, my wife of 20 years and I saw a chance to venture into a joint partnership, a way of working together and a new start for a stale marriage. My wife left 18 months later. She left because:

* friends couldn't contact us by phone
* there were constant engaged signals
* callers were getting continual Recorded Voice Announcements
* clients couldn't ring to make bookings
* our life savings were going down the drain
* the pressure and stress created in both the business and in the home which constitutes a consequential loss as a result of the phone faults.

My wife began to believe we should never have come to the area in the first place and arguments developed over money as well. All this because we were connected to a service shared by close to 120 people and with only 8 lines.

Six months after my wife left a partner came into the business. This partner injected $50,000 into the business. FHCA failed to include this in their assessment of losses even though I made strong reference to this point.

This partner, Karen, left 18 months later as a result of the stress of seeing her investment going down the drain. Telecom had promised that the phone problems would be fixed when a new exchange was installed at Cape Bridgewater. An FOI document refers to this conversation we had with local Telecom technicians. The technician states:

> *"It appears from the 'fault history' that the problem may be in the exchange and that the next RCM would solve these problems."*

This technician also advised me that he would have a look at the service at the time and try to get it working correctly until cutover.

I note here that I have STILL not received a copy of the historic fault data records referred to by this technician.

One Saturday two incidents occurred which were more than Karen could cope with:

(a) **Sister Maureen Burke, a Nun from the Loretto Order in Ballarat, arrived at our Camp after a 3½ hour drive. She had been unable to get through on the phone even though she had been trying from the previous Monday. Because she was aware of the phone problems we had suffered over previous years, she decided to drive down in order to make her booking.**

(b) **Just as the Sister turned into the Camp a phone call actually connected. This call was from a prospective Singles Club candidate who had also been trying unsuccessfully to reach us by phone over many days previously. Karen took the call and, consequently, the abuse from this man who wanted to know why we bothered to advertise if we weren't going to bother to answer our phone: he was very angry and quite abusive.**

Sister Burke arrived in the office just as Karen turned from the phone and 'clocked me one' on the jaw. Sister Burke than advised me that she believed that Karen should leave the camp site at once. In fact, Karen ended up in hospital suffering from a nervous breakdown.

To return to the last two statements in Dr Hughes's Award, on page 38 at point (d). How was I expected to fund improvements and keep a family at the same time when no-one could reach my business to make bookings? This is a consequential loss, the same consequential loss that Robin Davey, Chairman of Austel, had referred to in discussions with Ann Garms before we signed the FTSP: *"A loss is a loss is a loss - if you can substantiate your claims."*

On page 15 of the FHCA *"Review of the Financial Claim"* there is mention of Tea Rooms I had designed in July 1990. FHCA further note that the (now) Snuggles Tea Room was not open on the day that the Resource Unit was here, which suggested that they were only open on weekends and holidays. Let me assure you that this Tea Room was open five days per week at the time, and six days per week during the holidays. FHCA did not even take the professional approach of determining the truth and making a correct assessment for this Review.

At the bottom of page 15 of this report, FHCA refers to the contracts and associated revenue I lost with Bus Companies around the same time as I was proposing to add the Tea Rooms to my business. FHCA noted that there were no letters of complaint from my customers at this time and yet I had included in my claim / submission documents

6 logged faults between September and December 1989
8 faults plus 4 letters (Telecom data)
23 logged faults between January and December 1989
4 faults plus 13 letters (Telecom data)
49 logged faults between January and March 1992 and;
69 logged faults between December 1992 and December 1993.

Included in my claim of June 15 1994, at 2001 - 2158, there are a further *45 logged faults* in 1993 and *more than 72 letters*. FHCA have not read my submission in full, particularly the evidence which supports faults that were prevalent between February 1988 and June 1994.

These assumptions and guess work by FHCA disadvantaged my claim. I have serious doubts regarding the professionalism of the people who visited Cape Bridgewater to make these assessments. FHCA were negligent in their reporting.

The four members of COT were assured that appropriately qualified people would assess our individual businesses *(refer Attachment 3)*. I believe I have proved here in *Attachment 15* that this was not the case where FHCA was concerned.

I have appropriate qualifications which enable me to carry out my chosen business:

(i) A Diploma in Hotel Motel Management, May 6, 1972
(ii) I am a qualified Chef, with a Maritime Catering Certificate (English & Australian)
(iii) I have also been a Hotel Motel Licensee, and
(iv) I have managed a group of Melbourne Restaurants etc.

I believe the matter regarding the qualifications of the two FHCA staff who visited my business must be looked into as a first priority. Their incorrect assessment cost me many thousands of dollars.

I might add here that I obtained my copy of this page 15 of the FHCA review quite inadvertently. It was included among some of my own original claim documents which were returned to me from Dr Hughes's office.

There is another incorrect statement on this page 15 of the FHCA Review . Please note the connotations or interpretations that anyone reading this would naturally assume:

> *"Smith intended to contact specific groups / night accommodation where buses would stop at Cape Bridgewater Camp for lunch or tea. Smith stated he could not get through to the bus companies due to telephone problems ..... "*

FHCA further try to imply that there are no records of complaints or letters from bus companies *"in and around the proposed period of Smith's intended building the tea rooms."*

(i) I did have plans drawn up by Trevor Rowe Designs, as FHCA have stated, however the plans were not for a separate building to be erected at great expense as is inferred, they were simply for renovations and refurbishment of the existing house on the Camp site - so that it could be used as Tea Rooms.

(ii) If FHCA had properly read my claim documents they would have found:

(a) at 2001 - 2158, three letters in 1991 complaining of continued voice announcements being heard on my business line.

(b) at 2119 - 2148, logged phone complaints which included the name of the person phoning in, and the name of the club or organisation they came from.

The following FOI documents show that Telecom acknowledged faults around this period:

* K02604: *Congestion between C'Bridge & P/land had been prevalent*
* 1174: *Only 5 lines C/Bridge, it apears from the fault history that the problem is in the exchange.*
* 0451: *Mr Smith has had ongoing complaints and service difficulties over 5 years.*
* C04007: *(Legal Position) Mr Smith's service prolems were network related and spanned a period of 3 - 4 years.* Refer attachments (1) and (3).

If FHCA had read my reply to Telstra's Defence, at SM53, including FOI documents C04006, 7 and 8, they would have found remarks made by Senior Telstra Management in December 1992.

C04006 **refers to RVA on congestion. Point 7 of this document states:** ***"Many letters stating not getting through to Alan Smith."*** **I have continually asked Telstra to return these** ***"many letters"*** **to me and I am still waiting for 11 of them which were given to Rosanne Pittard in the time leading up to and during the Settlement of December 1992.**

C04008 **states:** ***"Overall Mr Smith's telephone service had suffered from a poor grade of network performance over a period of several YEARS (my emphasis) with some difficulty to detect exchange problems in the last 8 months."***

It is quite clear that FHCA have not read much of my claim / submission, for instance, on page one of document 2119, there is reference to an attached letter which mentioned 183 faults logged between 1989 and 1994. This letter was also addressed to FHCA. Did they take the trouble to read this letter? A copy of this letter follows overleaf. Please read the last two paragraphs.

TELSTRA'S NON-SUPPLY OF DOCUMENTS:

If FHCA had read my claim documents in a professional manner, particularly:

1. **the last two paragraphs of the preceding letter**
2. **the remarks included in FOI documents C04006, 7 and 8**
3. **the full list of logged faults as shown in claim documents 2001 - 2158 etc. etc.**

then they would not have commented on page 15 of their *"Review of the Financial Claim" - "THESE LETTERS WERE NOT AROUND THE TIME THAT SMITH PROPOSED TO BUILD THE TEA ROOMS."* Obviously there were letters dated around that time, FHCA just didn't read them.

In summary; this whole exercise, including the visit to Cape Bridgewater, was conducted unprofessionally. FHCA negligently sent non-accredited and unlicensed Real Estate Valuers, people who were not even certified in the Catering and Tourism industry. In doing this, FHCA severely disadvantaged my claim: they did not present a true understanding of the consequential losses attributed to the poor network performance admitted to by Telecom / Telstra.

TELSTRA ALSO CONTRIBUTED TO THE PROBLEMS EXPERIENCED BY FHCA:

This whole non-supply of FOI documents has had a 'snow ball' effect and this is just one example of that effect. I supplied Telecom / Telstra with letters from my customers, detailing their experience of phone faults prior to 1992. If Telecom / Telstra had returned these letters to me then I could have passed them on to FHCA who would then have had a much clearer picture of the true facts. FHCA could have used these letters as further evidence of phone faults, if they wanted to. However, since Telecom / Telstra did NOT return these letters to me, I couldn't pass them on to FHCA.

ATTACHMENT 16:

Three letters dated 14, 15 and 27 December 1995 to David Hoare, Chairman of the Board of Telstra regarding Telstra's continued misleading and deceptive commercial practices which filtered through into the Fast Track Arbitration Procedure.

These are only of a few of some eight letters I have forwarded to Mr Hoare regarding my allegations that, before and during the FTAP, Telstra employees conspired to defraud me by not presenting facts as they were recorded by Telecom / Telstra.

Much of the information in these letters, which included proof of the misconduct of these Telecom employees, was never seen by DMR and Lanes.

This false reporting by Telstra employees would have falsely contributed to the assessments made by DMR and Lanes. The truth was withheld from them during the FTAP. Apparently they were not aware that the information they had was not the truth since they state on page 4 of their Technical Report *(refer Attachment 16)* that they found no deliberate malfeasance on the part of Telecom.

***Attachment 16a*, a letter to Dr Hughes dated 11/11/94, refers to an accompanying letter to Frank Blount of Telstra from John Wynack of the Commonwealth Ombudsman's Office. Mr Wynack explains in his letter the extreme difficulty I had with Telstra regarding the supply of FOI documents etc.**

DMR and Lanes did not see these letters either, as can be seen from the summary covering the documents I received back from FHCA. In fact, I calculate that there are some 40 letters which were not forwarded to the Resource Unit by Dr Hughes, refer to a letter addressed to Tony Hodgson of FHCA *(refer Attachment 16)*. This omission was a serious error on Dr Hughes's part.

If DMR and Lanes had seen the missing 40 letters and their attachments: if they had also seen ALL my claim / submission documents, they would never have been able to state that there was "no deliberate malfeasance on the part of Telecom".

The letter of 14/12/94 to Mr Hoare, together with the accompanying material, shows that the Senior Telstra Technician at Cape Bridgewater, Mr Gordon Stokes, lied regarding the ELMI Smart 10 equipment which was connected to my 267 267 service line and which, on 13/10/92, picked up FOUR incoming calls which did not connect to my office. Mr Stokes stated to Telstra management, incorrectly, that no such equipment had yet been connected.

It is clear from this letter to David Hoare that the attachments (CCAS Smart 10 monitoring tapes for 13/10/92) show that an ELMI was, in fact, connected to my service line on the day that Gordon Stokes stated it was not connected. This is only one of many examples of incorrect reporting of the true facts regarding faults on my phone service, by Gordon Stokes and his technical unit at Cape Bridgewater.

The letter of 15/12/94 to Mr Hoare outlines another false report, this time a report included in Telstra's Defence of the FTAP, 12 December 1994. In this report Ross Anderson states that no other person or business in Cape Bridgewater had complained of phone faults that would have affected their businesses in a manner similar to my complaints. By referring to Telstra's own fault reports we can see that Ross Anderson was quite wrong.

Ross Anderson stated in his Witness Statement Statutory Declaration to the FTAP, 12 December 1994 *(Attachment 16)*, at point 38:

> ***"To the best of my knowledge none of the above listed commercial enterprises or busness persons has claimed that their telephone service is adversely affecting their business."***

He further states, in relation to Barry Wilson, a stock buyer for Australian Meat Holdings, who has a facsimile and telephone service:

> ***"I know Mr Wilson personally and in the evening he is constantly making and receiving telephone calls and transmitting facsimiles in relation to buying stock. Ph. No. 267 280. Fax 267 281."***

Mr Anderson then mentions Crayfisherman Mr Le-Page and others who have apparently not had any problems with their phone service.

I investigated Tesltra's fault data records *(refer Attachment 16)* and made an alarming discovery. *Barry Wilson,* the stock buyer and personal friend of Mr Anderson, phone number 267 280, actually *reported eight faults* on his phone service between January and March of 1994 and *Mr Le-Page*, crayfisherman, phone number 267 268 *reported five faults* between March and May 1994. Further, the *Seaview Guest House* in Cape Bridgewater which only opened in 1994, phone number 267 217, *reported five faults* between March and July 1994.

I made these discoveries of Mr Anderson's incorrect statements known in my reply to his Witness Statement - or so I thought.

This reply to Telstra's Defence (SM53) is one of the Claim Documents that DMR and Lanes have acknowledged they did not view when they were making assessments for their Evaluation Report on the Cape Bridgewater Camp. What makes this all so alarming is that both GordonStokes and Ross Anderson were in charge of my phone service for many of my troubled years of faults. Perhaps Ross Anderson never spoke to Mr Fred Fairthorn regarding the 5 years or more of complaints he notes in his letter *(attached).*

If DMR and Lanes had correctly viewed Telstra's Defence (which is where I gained my information), or if they had been privy to my reply to Telstra's Defence (25 January 1995, document SM53) they would have been aware of Ross Anderson's statement.

The Resource Unit's approach to this Arbitration Procedure must surely be questioned.

In *Attachment 16a*, on line two of page 3 of the DMR and Lanes Report, under the title *"Cape Bridgewater Documentation"* we find the quote: *"More than 4,000 pages of documentation have been presented by both parties and examined by us"*, however, on page 4 of Dr Hughes's Award *(also Attachment 16a)* he says: *"I have read in excess of 6,000 pages of documentary evidence submitted by both parties".*

I have taken the trouble to count the pages submitted in Telstra's Defence, and the documents and attachments included in my claim / submission, and the total comes to well in excess of 6,000 pages.

If the Arbitrator, Dr Hughes, read in excess of 6,000 pages of evidence as submitted and DMR and Lanes only read "more than 4,000 pages" of documentation then we have a puzzle. Even if we allow for a discrepancy of some 400 or 500 pages between these two parties, a decrease of 50% (2,000 pages) is much too great. DMR and Lanes have spelled it out quite clearly. They were never privy to ALL my claim documents.

The Arbitrator and FHCA were negligent in that they did not allow my claim material to be correctly assessed.

ATTACHMENT 17:

Letter dated 13/3/96 to Senator Alston

Document marked 1(a), *Attachment 17b* is taken from a draft copy of the report submitted by David Read of Lanes Telecommunications.

Document marked 1(b), *Attachment 17b* is a taken from a copy of the DMR and Lanes report dated 30 April 1995.

Document marked 1(c), *Attachment 17b* is taken from a copy of the same report dated 30 April 1995, however the scope of the source of information is not the same as that included in the copy of the report which was forwarded to me on 2 May 1995.

Please compare the contents of these three documents and the way they assess the faults on my phone service. Documents 1(b) and 1(c) are of particular interest since they have been taken from separate versions of the full report dated 30 April 1995. Document 1(b) is from the copy I received and it can be seen, when comparing 1(a) and 1(b) against 1(c), that DMR and Lanes only viewed part of my earlier submission. This means that now we have:

(i) DMR and Lanes stating that they read 4,000 documents

(ii) Dr Hughes stating that he read 6,000 documents and,

(iii) The full Technical Evaluation Report of 30 April 1995 which did not include any assessments derived from documentation which was presented as claim / submission documents after Telstra had lodged their Defence of 12 December 1994.

I supplied the Arbitrator with four bound volumes of documents which were to be incorporated into my submission. As has been mentioned previously, these documents were derived from among the 24,000 late released FOI documents which Telstra sent to me eleven days after they had submitted their Defence.

Attachment 17 shows that these claim documents were not seen by DMR and Lanes. *Attachment 17c* clearly demonstrates that DMR and Lanes either did not act independently or they were unaware of the deceit that would take place later, after they had completed their Technical Report: the deceit perpetrated by Dr Hughes and FHCA.

The four pages of *Attachment 17c,* are also from the DMR and Lanes report and the major differences are highlighted in the table below.

MY COPY, MARKED "A"	DR HUGHES'S COPY, MARKED "H"
Page 1 , paragraph 2	Page 1 , paragraph 2
"It is complete and final as it is."	*"It is complete and final as it is. There is, however, an addendum which we may find it necessary to add during the next few weeks on billing ie: possible discrepancies in Smith's Telecom bills."*

Attachment 17d, taken from Dr Hughes's report, compared to my copy of the same page shows the following differences:

MY COPY, MARKED "A"	DR HUGHES'S COPY, MARKED "H"
Table of Contents Point 1.2	Table of Contents Point 1.2
"... an exchange fault." (note that there is NO MENTION OF A TIME PERIOD)	*"... an exchange fault from only March 1991 to August 1991."*

I have shown in FOI documents, in letters and in logged faults that this old exchange suffered faults on congestion and that these faults resulted in a Recorded Voice Announcement. My reply to Telstra's response proved that, in 1992, Telecom acknowledged a poor grade of network service on this old RAX exchange, however we now have DMR and Lanes showing one set of faults for March to August 1991 when they should have seen evidence which proved that this phone service was continually riddled with faults from February 1988 to August 1991, which is when the new RCM was installed.