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CONTACT INFORMATION FROM 10 / 2 / 1996
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Dear Senator Evans,

Your platform, for all Australians and all nations alike, is reform. Part of your portfolio is to represent human rights and offer the opportunity for those who have been wronged to speak out, without fear.

I feel I have been wronged in my situation and wish to explain why I have continually sought to have the Fast Track Arbitration Procedure (FTAP) of Smith versus Telstra viewed by an independent panel appointed by the Senate.

As a Senator, you will be aware that an unsatisfactory situation has existed for a long time, but you are probably not up to date with the various claims that have been made by small business people in the Telecommunications area, so I will summarise, as briefly as I can, the current situation.

A number of small businesses have complained about the way the Government has handled their claims against Telstra for not supplying a telephone service comparable to their competitors. I would ask that your office contact the office of the Hon. Michael Lee for a more detailed history of this situation. Senator Lee (and various Ministers who held this position before him) have been aware of my allegations with regards to my own business - Cape Bridgewater Holiday Camp.

The Arbitration procedure that I have been involved in, included a confidentiality clause which prohibits me from speaking on various matters. I believe, however, that the ink on my signature to this agreement has just about faded by now!

I can prove, without a shadow of a doubt, that - right under the nose of your Government - the Telecommunications Industry Ombudsman (TIO) is knowingly allowing a miscarriage of Natural Justice to take place - without even one challenge from his office. I have evidence of massive corruption in the handling of my Arbitration procedure (Fast Track Arbitration Procedure: Casualties of Telstra) and I have brought this to the attention of Mr John Pinnock, the TIO. This evidence ranges from Telstra using lies to cover their Defence of the Arbitration, Telstra-Smith, Cape Bridgewater Holiday Camp to the Arbitrator, Dr Gordon Hughes, himself.

I can prove, again without a shadow of a doubt, that two (supposedly) independent resource teams, commissioned by the TIO, conspired to pervert the true findings as they appeared in their individual Reports. This was either done with the knowledge of the Arbitrator, or of their own volition. These actions resulted in denial of Natural Justice for me: denial of my rights to appeal on the grounds that the contents of these reports are incorrect. ✓

The following information is a condensed version of the evidence I have; evidence which proves my case. All these allegations can be substantiated by a wide array of documentation.

I should warn you, however, that denials will be forthcoming from a number of sources: Dr Gordon Hughes (the Arbitrator), Telstra themselves, Mr Pinnock (TIO) and others. I would like to make it clear that it is not Telstra that I am challenging here, it is the actual administrators of the so-called "Natural Justice Process" that was set up to assess the cases of four members of the Casualties of Telstra (COT) organisation: Ms Ann Garms, Ms Maureen Gillen, Mr Graham Schorer and myself. The team of Administrators of the FTAP stopped the process towards Justice in its tracks. Telstra's misleading and deceptive conduct in the FTAP is just a part of the over-all cover-up. *It should also be noted here that I have provided the Board of Telstra* ✓

with seven separate letters which clearly outline the evidence proving that Telstra Management allowed this misleading and deceptive conduct to cover their Defense of the FTAP. No acknowledgement of these letters has ever been received.

Please note the following basic information regarding the FTAP:

1. the *Arbitrator* for the FTAP was Dr Gordon Hughes of Hunt and Hunt, Melbourne. Dr Hughes was appointed by the Telecommunications Industry Ombudsman's office (TIO).
2. the *Financial Report* on the Cape Bridgewater Holiday Camp was prepared by Ferrier Hodgson Corporate Advisory (FHCA) who were also appointed by the TIO.
3. the *Technical Evaluation Report* was prepared by DMR Group, Canada and Lanes Telecommunications of Adelaide. These independent Technical Units were also appointed by the TIO.

I believe that the following documents will further clarify the situation. These documents are:

- A. D M Ryan Corporate's challenge to the improprieties of Ferrier Hodgson Corporate Advisory (FHCA) during the completion of their financial report on the Cape Bridgewater Holiday Camp (CBHC) (no. 2, above).
- B. My condensed version of the facts regarding what transpired during the FTAP; April 21st 1994 to May 11th 1995 (below)

**SUMMARY OF EVENTS
FAST TRACK ARBITRATION PROCEDURE
SMITH - TELSTRA**

PLEASE NOTE: Every statement made in this document can be substantiated with documentation.

Also note:

- (i) *The Award* was handed down by Dr Gordon Hughes, May 11th 1995.
- (ii) *The Technical Evaluation Report* was commissioned to value the evidence I presented to the FTAP regarding my substantiation, through FIO documentations, of my alleged phone faults and also to value Telstra's Defence of these allegations. This Report was received at Cape Bridgewater Holiday Camp, May 2nd 1995, by mail (refer point 3 above).
- (iii) *The Financial Report* was commissioned to independently value the monetary losses as well as the consequential and flow-on losses associated with the inadequate phone service provided to CBHC (if proven).

In November, 1993, four "Casualties of Telstra" (COT) members agreed to enter into a Commercial Settlement Proposal with Telstra. By April 21st, 1994 (six months later) Telstra had not honoured this Fast Track *SETTLEMENT* Proposal (FTSP): only limited FOI documents had been supplied to the four members of COT.

We were assured by Dr Hughes that, if we were prepared to abandon this FTSP in favour of the Fast Track *ARBITRATION* Procedure, it would mean that we would not only receive the Natural Justice we were seeking, but it would also mean that we would be able to obtain Freedom of Information (FIO) documents from Telstra, through Dr Hughes himself and this would speed up the process considerably. At this point Dr Hughes also clearly stated that this was to be a non-legalistic process. It was at this time that the Technical Evaluation Unit and the Financial Team were appointed (see points (i) and (ii), above).

Under extreme duress, and because, under the FTSP, all four COT members had not been able to access the FOI documents they needed, we agreed to these changes. I would like to repeat here: We were also under the clear impression that:

1. This was to be a NON-LEGALISTIC ARBITRATION PROCEDURE
 2. The process would be FAST TRACKED
- and
3. It would allow us to access, through the Arbitrator, all the FOI documents we needed to

support our claims.

AND SO WE ENTERED THE FAST TRACK ARBITRATION PROCESS, 21st April, 1994

I submitted my claim on June 15th, 1994, after being "badgered" to complete the FTAP, with letters from both Telstra and Dr Hughes. At that time 90% of my claim consisted of FOI documents that had been heavily censored and which were supplied WITHOUT ANY INDEXES, TABLES OR SCHEDULES. This meant that my claim had to be presented based on only the very limited information that had been supplied between February and May, 1994. I was told, however, that "all would be well".

It took me a further ten months and four separate FOI requests to acquire the FOI material I needed to further this claim. NOT ONCE did the Arbitrator supply me data through HIS FTAP. NOT ONE document was provided, even after I had applied for twenty-four points of clarification.

On the other hand, Dr Hughes sought an extra thirty-four points of clarification from me through the FTAP, at the request of Telstra. This information was supplied at enormous extra cost to me personally. In summary: Telstra received thirty-four further items, and I received NONE.

In January, 1995 a Forensic Document Researcher asked me to supply him information, through the FTAP, that was needed to substantiate the authenticity of a Report supplied by Telstra, illegally, under the Rules of the FTAP, yet still allowed by the Arbitrator. My request for this material was DENIED. One week later, the Arbitrator ordered me to release five personal diaries to be Forensically tested by Telstra's legal team, Freehill Hollingdale & Page. I supplied the diaries.

Between June 15th 1994 and May 11th 1995, the Arbitrator ignored all my requests for information.

Telstra presented their defence on 12th December 1994. At this time I was still waiting for FOI documents to be supplied. Eleven days after Telstra presented their Defence I was finally supplied with 24,000 plus documents. The first notification I had of these documents arriving was a phone call from Kendall Airways on 23rd December 1994, announcing that 72-74 kilograms of documents, addressed to me, had arrived at the Portland Airport.

I can substantiate the fact that none of the selected extracts from these 24,000 documents were ever assessed by the Arbitrator, even though they were presented in bound volumes. I can also substantiate the fact that the documentation presented by my own technical advisor, George Close, was the last to be viewed or evaluated by the FTAP Technical Resource Team of DMR/Lanes. None of the documentation I submitted after that date was assessed. In their report, NO reference at all was made to any of these later documents. What is more, the Report was not even signed by either Paul Howell of DMR Group Canada or by David Read of Lanes Telecommunications Adelaide. This Report was therefore incomplete.

I contacted both the Arbitrator and the Technical Resource Team regarding this incomplete Report but received no response. I then requested that Dr Hughes's office return my submission/claim documents. Both my requests were made after the Award was handed down on May 11th 1995.

From 23rd December 1994 to April 1995 I had worked 18-20 hour days to view, collate, evaluate and select information from the 24,000 documents and put them into some sort of order so as to finally produce my claim. The Technical Report produced by DMR and Lanes only assessed the information I presented in my letter of claim dated 15th June 1994 and the Report by George Close dated August 1994. I am disgusted that this further information, on which I worked for so long and under such duress, could be completely ignored.

I believe that this supposedly non-legalistic FTAP was quietly converted into a very legal process, to the detriment of the members of COT. The Austel Chairman, Robin Davey and the legal counsel for the TIO, Peter Bartlett, both stated that consequential losses would be considered as part of my claim. I have a letter to support this statement. This letter states that the flow-on loss would also be viewed by the Arbitrator, if my case was proved. Robin Davey went so far as to state that as long as Legal Counsel was not included as part of the flow-on-losses as preparation claim, then the preparation of my claim would be considered a

flow-on loss. His statement was "a loss is a loss is a loss".

I am now advised that, by using legal terminology, and stating to the Arbitration that I should "amend my claim under clause such and such" then I was obliged to respond under the legal process of the arbitration procedure. As I didn't have legal counsel to advise me however, I lost out again. Remember: this FTAP was supposed to be a Non-legalistic Process towards Natural Justice.

As a result of viewing the previously referred to 24,000 late FOI documents and sorting them into bound volumes it became apparent that there were still many areas I could not include in my written submission since I did not have enough technical knowledge. I approached Dr Hughes's secretary (Caroline) and requested an oral hearing regarding these technical matters. Dr Hughes rang me in late March and advised me to keep researching so that I could discuss the situation with the Technical Unit when they came to Cape Bridgewater.

David Read of Lanes Telecommunications arrived at my business on 6th April 1995, representing the Technical Unit. I now state, on oath, that the following is correct: Mr Read said that he could not view any information I might have since he was only there to discuss the submission I had already presented and TELSTRA'S DEFENCE. These words of David Read's further support the fact that Dr Hughes and the Technical Evaluation Team did not take into account any of the late presented FOI documents (how could they?). Telstra had responded to my claim on 12th December 1994 (before I received these late documents).

I believe that Telstra forced Dr Hughes into an exceedingly technical and legalistic role by claiming that I didn't use the correct terminology when I submitted my late claim (based on the late FOI documents), ie because I didn't refer to it as *an amendment to the original claim*. The whole exercise of Telstra supplying FOI AFTER their Defence was a ruse. They knew I didn't have legal counsel.

After the award was handed down in May 1995 I was taken to hospital in an ambulance. I spent four days there, diagnosed as suffering from stress. I returned to my business and then received two phone calls: the first from John Rundell, Project Manager, FTAP, Ferrier Hodgson and, a few days later, a call from Paul Howell of DMR Group Canada.

John Rundell stated, and I have a witness who was at my bedside at the time, that "things" may not have gone my way, but "... Alan, get on with your life and show THEM what you can do" (my emphasis). I am left wondering what "things" and who "them" referred to. Was this Mr Rundell's conscience speaking?

When Paul Howell rang he used words to the effect that it was a 'disgusting' process - this would never have happened in North America. Again I wonder what he actually meant - what was 'disgusting' and what would 'never have happened in North America'?

When I collected documents from Dr Hughes I discovered that a number of extra documents had been inadvertently included in the four boxes of my claim/submission. These included, in particular:

1. Two letters addressed to Austel from Telstra which acknowledge two faults on my service and which state that the faults would be addressed in their Defence of the FTAP. *These two faults were not covered in Telstra's Defence.*
2. One letter to Telstra from Austel and
3. One letter to Dr Hughes from Austel, dated 8th December 1994 and which states that the attached two letters from Telstra acknowledge that they would address these two faults in their Defence. Dr Hughes, therefore, must have been aware - after assessing Telstra's Defence Documents, that these two faults had not been covered.

Was I supposed to turn the other cheek and allow these documents to go unchallenged because of the confidentiality agreement both parties signed? The fact is that copies of these letters should have been provided to me by the Arbitrator under clause 6 of the FTAP agreement. This clause states that all

correspondence associated with the FTAP was to be circulated to all persons involved in the FTAP.

Also included in the four boxes from Dr Hughes's office, were:

- a. A draft copy of the Technical Evaluation Report produced by David Read of Lanes Telecommunications and dated 6 April 1995.
- b. A completed copy of the DMR & Lanes Technical Evaluation Report dated 30 April 1995.

Both these reports show that the information sourced to produce the report included ALL of Telstra's Defence Documents but ONLY 25% of my submitted material.

This is an alarming fact on its own but there was also further acknowledgement in the Report dated 30 April 1995 that DMR/Lanes were to supply an Addendum Report within a couple of weeks. This Addendum Report was to cover incorrect charging - one of the faults that Telstra had previously acknowledged to Austel that they would address in their Defence.

Mr Pinnock of the TIO's office has recently acknowledged that Ferrier Hodgson, David Read and Gordon Hughes did not tell me about this proposed Addendum Report because Dr Hughes allowed an offset in his award for over-charging on my 055 267 230 phone account. What Mr Pinnock did not acknowledge is that *all three* of my phone lines have massive incorrect charging over many years. I have evidence of short-duration calls that was also not assessed by Telstra, Dr Hughes or the Technical Evaluation Unit.

On top of all this, when Dr Hughes's copy of this Technical Evaluation Report and my copy of the same report are compared there are five variations - and each difference supports Telstra. In one instance there is reference to a fault lasting for *five months* when, in fact, it lasted for *three and a half YEARS* (believe it or not!).

Mr Pinnock has now suggested that this second version of the Report, which is dated the same as my version (delivered to me on 2nd May 1995), is actually 'another' draft copy. So now we have two draft copies, one dated 6th April 1995 with David Read as the only researcher, and a second 'draft' dated 30th April 1995, with both Paul Howell of DMR Group and David Read of Lanes Telecommunications as researchers.

Mr Pinnock also informs me that this second draft was not the one Dr Hughes deliberated on. Since April 30th 1995 was a Sunday and mail takes a full day to reach Portland, and I received my copy of the report on Tuesday 2nd May, it appears that Dr Hughes must have worked with Paul Howell of DMR and David Read of Lanes on a Sunday (30th April) in order to correctly assess this Draft and produce the finished report by the next morning (Monday 1st May). Who's kidding who here?

Even if we were to believe this Report of 30th April was, in fact, another draft copy, the fact still remains that ALL THREE VERSIONS OF THE REPORT ARE BASED ON 26 POINTS TAKEN BEFORE TELSTRA'S DEFENCE WAS LODGED: my extra information was not taken into account.

The Technical Resource Unit did not view all my submitted evidence. DMR & Lanes have acknowledged that the material that was assessed came from only a very limited source. Even my first claim/submission of 15th June, 1994 was not fully assessed: six volumes of this claim/submission were not viewed at all. Surely this makes the bias of the Resource Unit quite plain?

In conclusion: we now have two Reports

- one Technical Report, not signed by either of the people that are supposed to have produced it and
- one Financial Report, not signed by John Rundell, who was the Project Manager and who has now left FHCA, but signed by another person who was not the person designated.

I assure you, Senator, that I can produce documentation to support these allegations; information taken from Telstra's Defence Documents, which prove that much of what the Arbitrator's Award was based on was lies and misleading, deceptive material. When these Defence Documents are compared with Telstra's FOI documents it is clear that Telstra based much of their defence on this type of material. **THERE IS NO DOUBT AND THERE CAN BE NO MISTAKE** - I can show those who are concerned

about the conduct of this FTAP that Telstra's Defence could only have been produced in this way if those involved in the FTAP were prepared to turn a blind eye to the quality (or rather, lack of quality) of the information Telstra was using.

MY CLAIM WAS NEVER VIEWED under a true arbitration procedure, yet I supposedly had to abide by the arbitration rules. I believe it would probably take only two days for a team of three people, appointed by the Senate, to assess the allegations I am making and find that I am correct.

Fifteen, twenty and thirty years ago, complaints made by children living in orphanages about the treatment they were subjected to were dismissed by the authorities, and others, as unbelievable. The complaints were therefore not investigated. Because these valid complaints were not investigated the conduct of violating these children continued.

In the last few years the Australian court system has finally produced findings leading to jail sentences which validate the complaints from fifteen to thirty years ago. Untold damage was incurred for the children in question because these complaints were not further investigated at the time they were made. Now my complaints about Telstra and the FTAP appear to be unbelievable because they remain un-investigated. This does not, however, alter the validity or the seriousness of the complaint. Will the four original members of COT continue to be stalled and denied Natural Justice?

I await your support,

Sincerely,

Alan Smith

cc Mr John Wynack, Commonwealth Ombudsman's Office, Canberra
Mr John Pinnock, Telecommunications Industry Ombudsman, Melbourne
Senator Richard Alston, Shadow Minister for Communications, Canberra
Senator Michael Baume
Bronwyn Bishop, MP
Senator Ron Boswell, National Party, Canberra
Senator Vicky Bourne, Australian Democrats, Canberra
Senator Coulter
Leigh Cunningham, Chief Administrator, Institute of Arbitrators, Victoria
Senator Haradine
The Hon Duncan Kerr MP, Office of the Minister for Justice
The Hon Michael Lee, Minister for Communications, Canberra
Senator Dee Margetts
The Hon Jan Wade, Minister for Fair Trading, Victoria
Mr Mark Woods, President of the Law Institute, Victoria