

MY COPY, MARKED "A"	DR HUGHES'S COPY, MARKED "H"
Table of Contents Point 2.12	Table of Contents Point 2.12
<i>"Loss of calls to Cape Bridgewater 008 Due to programming Error by Telecom"</i>	<i>"Loss of calls to Cape Bridgewater 008 Due to programming Error by Telecom February Callers receive "Noise" on the 008 service.</i>

Again, different reporting, even though letters from my customers show that this fault occurred over a period of many months.

Even the page numbers of these two reports are different. I have asked Mr Pinnock to supply me with copies of pages 38 and 39 from this report since my copy is missing these two pages. In reply, Mr Pinnock forwarded two FOI documents (*refer Attachment 17e: FOI documents K00942 and K00943*) which he stated were the missing pages. These two FOI documents were not referred to anywhere in the report itself - the fault noted in these documents has not been addressed in the report either. Why?

When I received my copy of the Technical Report on 2nd May 1994, these two documents (K00942 and K00943) were attached to the end of the Report, without any supporting information. Am I to believe that pages 38 and 39 contain information associated with these two documents, regarding the fault in the new RCM which was installed in August 1991? This is the unmanned exchange that Telecom technicians noted, on 24 March 1994, suffered from problems created by heat. This heat problem must have been in existence from August 1991 when the exchange was installed.

I submitted the FOI document showing the technician's comments as part of my submission, together with supporting information, as just another fault found by Telecom as a result of my complaints about the Cape Bridgewater Network. This means that this heat problem had been in existence for 32 months.

Attachment 17f, FOI documents K00941 and K00942, are the fault reports I made, myself, when Cliff Matherson of Austel and I tested two different TF200 Touch Phones on the one line. One of these phones was the one that Telstra alleged had faults as a result of beer being spilt into the phone.

Please read document K00940 first. *"Following a call from Alan Smith, I have just had discussions with Les Churcher re a complaint that Alan Smith lodged earlier today (Leopard No. 364 608). I described to Les more accurately what the problem is and he will discuss my comments with Alan Miles."* In the next paragraph the writer states: *"I am concerned to note that heat may be part of the problem* "

When the four FOI documents noted at points 17e and 17f are read together we discover a very sordid set of circumstances beginning to surface and yet Dr Hughes would not allow forensic testing of the laboratory results.

On 28 November 1995, six months too late, some FOI documents were finally forwarded to me. One of these documents (FOI no. A64535 refer Attachment 17f) indicates that a hand-written notation was made during the laboratory testing. This still does not explain why Telecom manufactured evidence which was then used in their defence of the FTAP on 12 December 1994.

The following problems arise from the DMR and Lanes Report:

- (i) Pages 38 and 39 are missing;
- (ii) There are different versions of the *"Source of Information"* list;
- (iii) There are FOI documents included in the report which do not relate to any information within the report;
- (iv) There is evidence that the TIO has stated that Dr Hughes requested DMR and Lanes to withdraw from completing their intended Addendum Report on incorrectly charged calls;
- (v) The length of time that faults were in existence varies: in one instance the report shows a five months time span for one fault yet my claim documents include evidence which shows that this particular fault was in existence for 3½ years;
- (vi) Paul Howell of DMR Group Canada has still not signed the report. This means that the Arbitrator used an incomplete report, further confused by missing pages, when he prepared his Award of 11 May 1995.

ATTACHMENT 17 G:

Billing records for 055 267 230, the TF200 Touch Phone line.

These two accounts are marked as A and B. The documents marked A1 and B1 are copies of Telecom's CCAS Smart 10 monitoring analysis data.

Entries on document A, compared to document A1, for outgoing calls (OAS) on 23/9/93 shows a number of faults lasting from 5 to 12 seconds. These faults include:

- * incorrect charging
- * calls not disconnecting at the same time as the CCAS and
- * other faults on this line.

Entries on documents B, compared to document B1, for 1/6/94 shows the same faults and discrepancies were still in existence in 1994.

The TF200 Touch Phone was collected for testing by Telecom on the 28/4/94, and replaced with a new phone. Telecom were not aware that Cliff Matherson of Austel and I had already tested the line by switching phones. Both phones had the same fault of locking up and this meant that Cliff Matherson could hear me counting from 1 to 15+ in my office, after I had hung up the phone in the cradle.

The original fault complaint, lodged with Telecom's Engineer, Peter Gamble (FOI document K00940), shows that he knew of the heat problem at the RCM on 28 April 1994. Documents B and B1 show that the fault was still on the 055 267 230 line five weeks later, on 1/6/94.

Documents A and A1 show that the same fault was in existence some 7 months *before* (23/9/93) the phone was removed. This spans a time period totalling around 10 months that this fault remained on this line and yet Telecom insist that the fault was caused by beer which was spilled into the phone and which was still wet and sticky to the touch (refer Attachment 10 to the Touch Phone Report) when the phone was tested. If the fault first occurred in September 1993 then surely this is when the beer would have to have been spilled into the phone casing. If this happened then, how could the beer still be wet and sticky 7 months later, when Telecom collected the phone? Perhaps Telecom has invented an everlastingly wet beer?

What makes this situation even worse is that the *new* TF200 Touch Phone is also suffering from alcoholic problems: the faults were still apparent on the line on 1 June 1994 (*refer documents B and B1 at 1/6/94*), five weeks after 28 April, 1994, when it was first collected for testing. Who's kidding who here?

At point 2.3 in this TF200 Report there was some suggestion that coffee (with sugar) could have caused the stickiness, however this was eliminated after further tests. I have still not received copies of these test results, now have I seen any documentation to show how these eliminations were determined, even though I have asked for these particulars under FOI. Perhaps the coffee followed the beer as a sobering agent? Who knows?

As you can see, I have managed to retain a semblance of a sense of humour regarding the way Telstra conducted and presented their FTAP defence, however, the serious side of this matter is that someone in Telstra has allowed a fabricated report to cover Telstra's defence. This, coupled with the Bell Canada International Inc tests at Cape Bridgewater which were proven to be impracticable and could therefore not have taken place, leaves Telstra's Defence in a somewhat questionable state. How much more incorrect and flawed defence material did they use to cover-up their inaccuracies and the true extent of the faults that plagued my business for some 6½ years?

It is a fact that Telstra has still not supplied, under FOI, documents associated with my claim.

In relation to over-charging of calls, I provided the Arbitrator with two bound volumes of information which compared these TF200 calls and faults on all three lines (008 line, 267 230 and 267 260). These volumes "*SM18*" and "*Brief Summary 1995*" were not viewed by DMR and Lanes. In *Attachment 17c* it is apparent that there is no record of DMR and Lanes having compared or used these two volumes to further assess my complaints regarding incorrectly charged calls. This, in turn, resulted in faults also being experienced on these lines.

ATTACHMENT 18:

Record of faults taken from FOI documents received before 15 June 1994.

This record does not include the late FOI documents which also show massive faults on my service lines. Again, these claim documents were not assessed correctly by the Resource Unit.

The document marked S19 was submitted to the FTAP on 15/6/94. The contents were derived from FOI documents received up to 7 June 1994 and from letters received by me from customers etc who had also lodged fault complaints with Telstra regarding problems with my phones. This document was prepared as a guide to the faults in the indexed submissions of FOI documents, as shown below.

Attachment 17c, page 40 of "*Smith's Source of Information*" shows:

1 - 200
200 - 400
400 - 600
600 - 800
800 - 1,000
1,000 - 1289
2,001 - 2,158

This is a total of 2158 pages of indexed information which was not viewed by DMR and Lanes. These were FOI documents which supported the existence of various faults and included some 70 letters from customers who had experienced faults on my phone lines. Once again, in *Attachment 17c* at points 1a and 1b, we can see the real source of DMR and Lanes Report: **THERE IS NO MENTION OF THESE 2158 DOCUMENTS.**

I repeat there is no mention of:

- * *the seven bound volumes, Cape Bridgewater Part 1 and Part 2 (SM20 & 21);*
- * *the incorrectly charged calls noted in document SM18*
- * *further examples of additional evidence in two volumes (SM16)*
- * *further FOI material (SM17)*
- * *document S19, a comprehensive list of faults, known and acknowledged by Telecom;*
- * *the Brief Summary, 1995*
- * *Smith's Assessment Submission (SM2)*

This Fast Track Arbitration Procedure was a sham. There was no Statutory Declaration covering the TF200 Report and yet Telstra presented this report as part of their Defence Documents. The rules of the FTAP clearly state that all evidence "*shall be in the form of an Affidavit or Statutory Declaration.*" Dr Hughes allowed Telstra to break these rules.

After the Award was handed down by Dr Hughes on 11 May 1995, unbeknown to me, D M Ryan, of D M Ryan Corporate Pty Ltd, my Forensic Accountant, contacted John Rundell of FHCA to determine how FHCA had arrived at the figures they used in their "*Financial Report on the Cape Bridgewater Holiday Camp*". Mr Rundell was the Project Manager on my Arbitration and he was supposed to sign the completed report. The signatory to this report was actually a Mr Selek, refer *Attachment 19 (two letters from D M Ryan: one to Senator Alston and one to Mr John Pinnock, TIO)*.

This means that the authors of two separate reports were instructed by the Arbitrator to omit or exclude information from the finished documents: DMR and Lanes Addendum Report and now FHCA's Financial Report.

ATTACHMENT 19 a:

Two letters

Derrick Ryan presented this material to Senator Alston and Mr Pinnock. He has put his own integrity on the line by stating that John Rundell told him that he (John Rundell) was instructed by Dr Hughes to remove a large part of his financial report. When I learned of this, I also rang Mr Rundell. He did not deny this fact. **IF WE HAD SEEN THE ORIGINAL, UNDELETED VERSION OF THIS REPORT, THEN JUST THE MATERIAL WHICH WAS OMITTED (WHICH WE HAVE NEVER SEEN) MAY WELL HAVE GIVEN US GROUNDS FOR AN APPEAL,** however I was not given this opportunity.

Many FOI documents were released to me after the Award was handed down and the FTAP was over. These documents are now of little use.

After badgering Dr Hughes's office for the return of my claim / submission documents for some time I finally had to drive for five hours to Melbourne to collect the documents myself, on 28 August 1995. Dr Hughes's secretary was quite angry that I had arrived at the office however, after I had explained that I had to turn around and drive back to Portland she finally arranged for a number of boxes to be brought down for my inspection. I checked some of the contents and believed these boxes contained my documents, so I returned to Portland with them.

On my return I opened the boxes and examined the contents more fully. I discovered a number of documents containing information I had not been privy to during the FTAP.

These documents are:

1. A letter to Gordon Hughes from Bruce Mathews of Austel, 8 December 1994
2. A letter to Bruce Mathews from Ted Benjamin, Telecom, 11 November 1994
3. A letter to Ted Benjamin from Bruce Mathews, 1 December 1994
4. A letter to Steve Black, Telecom from Bruce Mathews, 4 October 1994
5. A printed list of "*Assumptions*" regarding my Financial Claim (FTAP), to be viewed by Dr Hughes, sent by FHCA
6. A draft copy of the Technical Evaluation Report prepared by David Read of Lanes Telecommunications, Adelaide, regarding the Technical Faults at Cape Bridgewater, 7 April 1994
7. A copy of the original Technical Evaluation Report which I had received on 2 May 1995. This copy was dated 30 April 1995, the same date as my version.

I have already addressed the issues around the FHCA "Assumptions" in their Financial Claim, a variation on what should really have been in their report. This leaves considerable doubt as to the integrity of those who ventured to Cape Bridgewater. Their "Assumptions" were what was recorded in this report. Material provided to Sue Hodgkinson of FHCA and her assistant, in front of a Telecom employee, was not used in the completed FHCA Technical Report.

On the day that these three people visited Cape Bridgewater I could not leave my business as my partner had a dental appointment so I arranged a lunch of fresh rolls with ham and salad, and fresh pasta. The offer of lunch at my centre was declined by the FHCA people and the Telstra official, Paul Haar, and these three then lunched at the Kiosk at the beach. This was a blatant disregard for me as a claimant.

With regard to the Technical Evaluation Report, it can be seen that Paul Howell of DMR actually had very little (if any) input into the final document, even though it bears his company's name. I had made it quite clear that I had reservations about the independence of David Read of Lanes since he had been an employee of Telecom for 18 years. DMR Group Canada were then appointed and I requested that Paul Howell be the designated official in relation to this report as well as the signatory to the final version of the report. This report has still not been signed by anyone and it appears that David Read was the orchestrator of the Draft copy dated 7 April 1994: the only name on that version of the report is David Read's and the Lanes logo appears on the cover.

The basic content of the Draft copy of the report is the same as the finished report, however the Scope of the report, which lists where the information came from ("*Source of Information*") includes reference to only eleven separate volumes of claim documents which I presented to the FTAP.

ATTACHMENT 17C - 1a	ATTACHMENT 17 - 1b	ATTACHMENT 17 - 1c
<p><i>"The information provided in this report has been derived and interpreted from the following documents."</i></p>	<p>This document, dated 30 April 1994, lists the same sources of information as 1a: a total of 11 documents (omitting the Telecom Defence Documents).</p>	<p>This document is dated 30 April 1994, the same as 1b and yet there are 24 claim documents which were not assessed by DMR and Lanes.</p>

Obviously the Resource Unit provided a 'doctored' copy of the report to me thinking that would 'shut me up', never imagining that I would inadvertently uncover copies of the other two versions of the report!

Also missing from this "Source of Information" list is document S19. A copy of S19 can be seen at *Attachment 18* of this document: it is a full index of known and registered faults. It is now painfully clear that FHCA did not supply this document to DMR and Lanes. This is a very serious incident. Further included in *Attachment 18* on page 2 of the DMR and Lanes Report is the following statement:

"A comprehensive log of Mr Smith's complaints does not appear to exist."

Attachment 18, page 2 of the DMR and Lanes Report also indicates that DMR and Lanes were not privy to a large number of technical documents which I presented as claim documentation: 11 out of 25 is certainly a large difference.

I have already mentioned four letters from Austel and Telecom which I have never seen before. Under the rules of the FTAP all internal correspondence should have been circulated by the Arbitrator among all concerned parties. This was not the case for these four letters and I have since been able to prove to Mr John Wynack, Commonwealth Ombudsman's Office, that this was a common practice of Dr Hughes's.

The Austel letters were significant because the faults listed in them were factual and I did experience these faults on my service continually yet the true extent of these faults was not made known to DMR and Lanes by either Dr Hughes or FHCA. As an example of this I have attached a further two fault reports which were used in Telstra's Defence (*Attachments 22 and 23*). I am highlighting these examples because the FTAP Resource Unit have taken Telstra's Defence Documents at face value, without checking them against my claim / submission. *Attachment 17c* shows that DMR and Lanes did not view all my claim documents and this is also obvious in *Attachment 18*. This 12 page booklet (S19) is another document which was never viewed or assessed by DMR and Lanes. *Both Telstra and the Resource Unit have been NEGLIGENT in their preparation and reporting to the FTAP.*

ATTACHMENT 20:

Letters found in box of returned claim documents (refer also Attachment 21)

Letter to Austel regarding FOI request (13 May 1996)

The letter to Austel asks, under FOI, for copies of any correspondence which might be in existence between Dr Hughes and Austel from around the time of the Austel and Telecom letters of December 1994.

This makes it clear that Dr Hughes did not even take the trouble to conform with a directive from Telecom, or to let Bruce Mathews of Austel know that I *did* address these three continuing faults on my phone lines. I was left in the dark in regard to Austel's concern in these matters and this shows the contempt Dr Hughes had for me as a claimant in this FTAP.

If DMR and Lanes had been privy to these letters from Austel then they may well have challenged Dr Hughes about whether a complete Evaluation Report was actually being carried out on my claim / submission documents. I am now left to wonder which information DMR and Lanes actually saw during this FTAP.

ATTACHMENT 21:

FOI documents L69036 & L69047: letter to Dr Hughes from Ted Benjamin, 16 December 1994

Letters found in box of returned claim documents (refer also Attachment 20)

Letter from Ted Benjamin, Telecom, which is self-explanatory.

In his letter Ted Benjamin is asking Dr Hughes for direction. The last paragraph on the second page states:

"The simplest way forward may be for Mr Smith and Telecom and yourself to all confirm in writing that this information can be provided to Austel if this meets with your approval."

I repeat, I did not receive a copy of this letter, as I should have, under the rules of the FTAP.

This was a BREACH OF THE RULES OF THE FTAP UNDER 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."

There were further alarming 'breaches' of the 'rules' of the FTAP made by Dr Hughes.

On 9 May 1995 Dr Hughes forwarded a copy of my reply to the DMR and Lanes Technical Report which had attached a copy of D M Ryan's response to the FHCA Financial Report. On the same day Ted Benjamin forwarded to Dr Hughes Telstra's Submission in Response to the DMR and Lanes Technical Report, which included Telstra's response to the FHCA Financial Report.

I did not receive a copy of either of these two responses during the FTAP: I did not receive knowledge of these matters until 23 June 1996, with the response to my FOI request.

On 12 April 1995 Dr Hughes received a copy of the TF200 Touch Phone Report. Attached to this report was a letter from Ted Benjamin which stated that, if need be, Telstra would arrange for this "Report" to be covered by a Statutory Declaration which would be signed by the Research technicians, attesting to the authenticity of that report.

I have still not seen these Statutory Declarations. All evidence submitted to the FTAP should have been accompanied by an Affidavit or Statutory Declaration, according to the rules of the FTAP.

Since I was also unaware of the letter from Ted Benjamin, this is another 'breach' of the rules of the FTAP.

By offering to have this Report covered by a legal document, Ted Benjamin may well have inadvertently swayed the opinion of, and therefore the decisions made by the Arbitrator, Dr Hughes. This offer would, no doubt, have convinced Dr Hughes that this "Report" must therefore have been a factual document.

By denying me access to the original Laboratory Research Testing notes, under the FTAP, Dr Hughes disallowed me the right to use this fabricated 'report' as the 'anchor' for an amendment to my claim.

ATTACHMENT 22:

Telstra's Defence Document, page 33

In paragraph 1 of this document, Telstra makes the following statement:

"The levels of service provided to Smith in the pre-settlement period were equal to or better than those servicing other rural areas."

This statement is incorrect. FOI document C04008 (*refer Attachment 2a*) states:

"Overall, Mr Smith's service had suffered from a poor grade of network performance over a period of several years with some difficulty to detect exchange problems in the last 8 months."

Telstra Defence Document (*refer Attachment 22*) states in the last paragraph:

"Ongoing monthly test calls demonstrated that an annual average call success rate of greater than 99% was achieved during 1988, 1990 and 1991 years and greater than 98% was achieved in 1989."

When comparing this information with the information contained in FOI documents C04006, 7 and 8 (*refer Attachment 2a*) it is obvious that Telstra lied in their defence.

ATTACHMENT 23:

Telstra's Defence Document, page 24

Telstra stated in their report dated 21 November 1992, on the RCM, that 22 customers had complained about faults over a four day period and yet the two pages of fault reports taken from their Defence, which cover the period in question (November 21 to 24, 1992) list 26 Cape Bridgewater Customers (CBWR) complaining.

On page 23 of the DMR and Lanes Report information from Telstra's Defence is repeated, stating that 22 customers experienced this four day fault. DMR and Lanes could have uncovered the truth, as I did, simply by checking Telstra's Defence against the FOI documents included in my claim / submission. It is obvious that DMR and Lanes did not check information given to them by Telstra. *They were negligent in their reporting to the FTAP.*

Still on page 24 of Telstra's Defence, we find the following information:

"RCM - 21 November 1992. A lightning strike on 21 November 1992 caused damage to Cape Bridgewater RCM equipment resulting in some Cape Bridgewater customers having no service and others experiencing intermittent service difficulties.

Over the four day period of 21, 22, 23, 24th November 1992, Telecom received 22 customer complaints from Cape Bridgewater customers NDT, ITR, NRR, and NSY. The condition was investigated and repaired over the two days of 23 and 24 November and therefore lasted for four days."

The DMR and Lanes Report of 30 April 1995, on page 23 at point 2.8 states:

"RCM 1 failure due to lightning strike 21 November affected service for "Four Days"."

FOI document K01173 (included in this Attachment 23), however, refers to a Telecom complaint dated 9/2/93:

"I contacted Don Bloomfield Portland Customer ops to discuss Alan Smith's problems. It is his opinion and this is supported by data retrieved from OPAS that there were problems in the RCM caused by a Lightning Strike to a bearer in late November. These problems damaged PCB's etc. appeared to be resolved by late January."

This 'four day' RCM lightning strike is referred to in Telstra's Defence Documents. DMR and Lanes had no alternative but to accept Telstra's Defence Documents as fact. If they had seen my other claim documents they would have been aware that this so-called 'four day' fault actually lasted at least 60 days.

Attachments 22 and 23 are only two of many examples of incorrect fault reporting by Telstra in their Defence of 12 December 1994. If DMR and Lanes, or any other Commercial Assessor, had seen my claim / submission documents I would not be writing this document today. If the four Austel and Telecom letters, numbered 1, 2, 3 and 4, which I discovered among my own documents when they were returned from Dr Hughes's office (*Attachment 20*) were investigated, it would be obvious that the FTAP was not conducted in the way I had been told it would be conducted when I was encouraged to abandon the Commercial Assessment Proposal. Dr Hughes did not pass copies of these important Austel and Telecom letters to me during the FTAP, as he should have, according to the FTAP rules. *Dr Hughes was negligent.*

A letter to Dr Hughes from Bruce Mathews of Austel, dated 8 December 1994, clearly acknowledges Austel's concern for other customers who, like myself, would have been experiencing similar faults (if my allegations were correct). It has since been acknowledged that the Melaleuca Motel in Portland had experienced two of the faults I had experienced over several years and I had alerted Austel to this.

In a letter to Bruce Mathews from Ted Benjamin of Telecom, dated 11 November 1994, Mr Benjamin stated that Telecom would address all the faults I had complained of in their Defence of the FTAP. Telstra did not defend the RVA faults, nor did they defend the short duration and incorrectly charged calls to my service lines. Dr Hughes was aware that Telstra did not defend these issues but DMR and Lanes were not privy to this documentation.

On 23/6/96 I received documents which I had originally requested under FOI back in October 1995. This request was for copies of all letters sent to Telstra from Dr Hughes during the FTAP and all letters sent by Telstra to Dr Hughes during the FTAP.

I have discovered, among this latest delivery, many documents and attachments which I did not receive from Dr Hughes or Telstra during the FTAP. This is further proof that Dr Hughes did not honour the rules of the Arbitration, Clause 6, which states that all parties are to be privy to all correspondence sent to the Arbitrator.

ATTACHMENT 24:

Letter to Mr Pinnock, TIO, 27/5/96

Page 36 of the DMR and Lanes Technical Evaluation Report

The letter to Mr Pinnock further supports my allegations that, because DMR and Lanes did not view all the documents I submitted, incorrect assessments were inevitable and my claim was severely disadvantaged. DMR and Lanes stated, in regard to my Gold Phone (055 267 260) that there was only an 11 day fault. The letter to Mr Pinnock clearly shows that this fault lasted for considerably longer than 11 days.

On page 36 of the Technical Evaluation Report, at point 2.21, DMR and Lanes assess the service provided by Telecom to my Gold Phone and they state:

"A reasonable level of service was provided."

My claim / submission of 7 June 1994, Volume 2001 - 2158 was one of the 13 volumes of claim documents that DMR and Lanes did *not* source to complete their Evaluation Report. This volume included three of 59 letters of complaint from customers who had experienced continued faults on my Gold Phone. These letters were:

1. From the Royal Children's Hospital (in residence 19 to 23 April 1993):

"A number of our campers attempted to make calls from the Gold Phone during the week and were unsuccessful."

and

"Many of our campers and leaders had chronic illnesses, therefore it was vitally important that our group had easy access to an operating telephone system, 24 hours per day, in the event of a medical emergency. We would require a guarantee that the telephone system was fully operational before considering Cape Bridgewater Camp as a future Venue."

This group stayed at my Camp for five nights and during their stay, not only was the Gold Phone not operating but my business line was also 'dead' - a common occurrence at Cape Bridgewater. The claim documents 2001 - 2158 include letters from other customers, either ringing in or out of the Camp, who also experienced a 'dead line' fault.

2. From Prahran Secondary College (in residence 26 to 30 April, 1993):
*"The one drawback which you must try and do something about is your telephone. -
- - - Unfortunately the Gold Phone was not operational and we did not want students
using your private phone ... "*
3. From Jackie Cullen, Daylesford Neighbourhood House (in residence 2 to 5
January 1993). Ms Cullen also complains about the Gold Phone service:
" a lot of trouble to be put through."
- * Page 31 of the DMR and Lanes Technical Report (attached) discusses an 11 day
fault on the Gold Phone Line, caused by lightning strike damage to RCM 1
around March 1994.
- * Page 23 of the report talks of a four day fault caused by a lightning strike on 21
November 1992. How many lightning strikes could there have been?
- * My records show that the Gold Phone suffered continually from faults starting as
far back as 1989 and Telstra records also show this fact.
- * Just using the limited evidence available in *Attachment 24* shows that the Gold
Phone was faulty between January and April of 1993 for extended periods.

I state again, if DMR and Lanes had been privy to ALL the documents I submitted in my claim, particularly documents 2001 - 2158, then they would not have repeated such an unprofessional statement with regard to the Gold Phone fault only lasting 11 days and they would not have stated:

"Assessment - A reasonable level of service was provided."

This Gold Phone is still disconnected because I have refuted the assessment made by DMR and Lanes in their report.

Another document I have enclosed is a copy of a letter dated 30 May 1994 from a Mr Fred Fairthorn, ex-'Tom the Cheap Grocer', c/o Capehouse, Cape Bridgewater. Mr Fairthorn's comments regarding the phone service at Cape Bridgewater could also have been viewed by DMR and Lanes if they had seen my claim documents 2001 - 2158. According to Mr Fairthorn's letter he was aware of phone problems at Cape Bridgewater over the previous 5 years or more.

On page 2 of the DMR and Lanes Report (*Attachment 17a*) they state:

"A comprehensive log of Mr Smith's complaints does not appear to exist."

Attachment 24 includes a typed listing of the names of customers, tradespeople etc, who have written to me of their experiences with my phone service. There are 59 people on this list, taken from some 72 letters which were presented in my claim. The list itself was included in documents 2001 - 2158. Again, if DMR and Lanes had seen this list they would not have made such a statement regarding no log of claims.

One of the seventeen areas that DMR/Lanes did not professionally assess was my Gold phone. Telstra disconnected this phone in December 1995, and it is still disconnected, because I have disagreed with the account on the basis that the service was not up to network standard during the period shown in my claim.

GOLD PHONE (055 267 260) COMPLAINTS:

All the following information comes from Telstra's own fault data which was included in their Defence documents of 12th December, 1994, Appendices 1 to 5. These were covered by a signed Statutory Declaration.

<i>APPENDIX 5</i>		<i>FAULT</i>	<i>RESPONSE</i>
<i>at point 3</i>	12.8.88	no dial tone	Cable Pair
	2.9.88	no dial tone	XMDF
	10.5.89		nil
	9.11.90		ELB
<i>at point 8</i>	3.7.91		GTGP
<i>at point 21</i>	4.12.92		nil
<i>at point 22</i>	6.4.88		Inplace Service
<i>at point 24</i>	23.10.92	no dial tone	Fault cleared at RCM
	27.11.92	no dial tone	Fault cleared 30.11.92
	4.12.92	no dial tone	no fault found?
	28.12.92	no dial tone	mechanism adjusted 30.12.92
	30.12.92	special inspection	18.1.93

APPENDIX 1		FAULT	RESPONSE
at point 5	12.7.93	System I, which I am told by Telstra was the one my Gold phone was connected to, showed an Initial error, counter readings, cut offs in one direction.	Investigation revealed that system I was running a 'large' number of degraded minutes. At this stage we had no idea over what period of time these errors had accumulated.
at point 21	12.3.93	no dial tone	hand set replaced
	15.7.93	rejects coins	exchange fault
at point 24	2.3.93		Len Banks from pair gains support rang to advise me he had several problems with the RCM system Mr Smith was previously connected to. The 'Major' problem was caused by a faulty termination of resistors on the bearer block protection, another problem was caused by non modified channel cards.
at point 25		The last exchange based fault to be identified was responsible for noisy transmission problems.	The cause was isolated to the RCM system which suffered a lightning strike. Repairs were effected on 25th February, 1993.
at point 29	March 1993	The first of three RCM systems was found to be performing poorly as a result of a problem with lightning protection modules	
at point 49	26.4.93	Gold phone off the air for six days.	Tech. in attendance
at point 53	26.4.93	Echo sound on 267 267 by campers as the Gold Phone was off the air from 18.4.93 (10 days)	
	18.6.93	Calls from Gold Phone 267 260 to 008 number cut off on answer	Incorrect charging

APPENDIX 3		FAULT	RESPONSE
<i>at point 8</i>	15:55 hours 23.9.93	1 second drop out	still took money
	16:07 hours 23.9.93	2 second drop out	still took money
	16.08 hours 23.9.93	2 second drop out	still took money
	17:14 hours 23.9.93	1 second drop out	still took money
	17.21 hours 23.9.93	1 second drop out	still took money
	21.37 hours 23.9.93	1 second drop out	still took money
	21.38 hours 23.9.93	1 second drop out	still took money
<i>at point 20</i>	9.3.94	no dial tone	lightning strike at exchange

FROM TELSTRA REPORT ON GOLD PHONE:

8.3.94	Telecom received complaints from five customers (not including Smith) whose telephone numbers were in the same number range: these faults were caused by lightning at RCM (I)
9.3.94	Telecom received a further ten complaints from Cape Bridgewater, including complaints from Mr Smith on 8th and 9th, in relation to his Gold phone.
10.3.94 and 11.3.94	Further complaints from Cape Bridgewater customers: <i>Replaced RCM equipment on this Gold Phone Line.</i>
19.3.94	Telecom received further complaints of "no dial tone" from seven other Cape Bridgewater customers.
20.3.94	Investigation showed that the line was intermittently failing.
23.3.94	Telecom technicians set up a cooling fan in the hut which holds the RCM system at Cape Bridgewater.

FOI documents state clearly that System I (Gold phone) suffered faults at the exchange from 15/7/93 to 26/2/94 with a 59% fault loss over this period.

FOI documents also show that System 1 (Gold phone) suffered faults for 60 days between 24/2/92 and late January 1993.

All these faults were logged and the information was passed to Dr Hughes in my claim documents. Dr Hughes has now written to Mr Laurie James, President of the Institute of Arbitrators, stating that he did not provide 40 letters and their attachments to the Technical Resource Unit. Why? Dr Hughes should be made to explain his actions.

David Read of Lanes Telecommunications and Paul Howell of DMR Group Canada have stated in their Final Report on the Cape Bridgewater Holiday Camp that: *"There appears to be no record of Mr Smith's logged faults"*. It is now very clear that Dr Hughes, the Arbitrator, also withheld logged faults reports which I provided to him during the FTAP. **THERE WERE A FURTHER 17 GOLD PHONE COMPLAINTS LODGED BY CUSTOMERS AND THESE WERE IN A SEPARATE THIRTY PAGE BOUND VOLUME WHICH WAS INCLUDED IN MY CLAIM DOCUMENTS.** In fact, all the information regarding these problems with my Gold phone was supplied to Dr Hughes - with attachments.

Further, I have **FIVE LETTERS** (from a total of 72) received from other customers who experienced faults with the Gold phone service when they were here. How much more proof do you need, Senator? The Report by DMR/Lanes is just one more 'mistake', just another way that Dr Hughes down-played the true facts and halted the course of justice.

The following quote is taken from a document submitted to Dr Hughes during the FTAP. The document was dated 31.1.94

"5.5 PORTLAND - CAPE BRIDGEWATER HOLIDAY CAMP

- (i) The customer complaints on file range from 1987 to 1993. Roughly one quarter of the problems related to call-cut-off.***
- (ii) Between 1987 and August 1991, the customer was connected to a RAX exchange at Cape Bridgewater."***

In June 1992 I wrote to Telecom requesting FOI data on faults known to Telecom to have been logged by 1100. This request was made so that I could lodge a submission to Telecom showing these faults, along with my own recorded data and diary notes etc.

On July 3rd 1992, Telecom responded, stating that no data regarding fault records were in existence for periods before 27th June, 1991. The information noted above at points (i) and (ii) proves that this data WAS in existence. The raises questions about what information was not provided, either under FOI, or as in response to the seventeen requests which Dr Hughes refused me during the FTAP.

I have other proof which also shows that the DMR & Lanes Technical Resource Unit were provided information by Telstra which was withheld from me during the FTAP.

THE FAULTS NOTED IN THIS LETTER RELATE ONLY TO THE GOLD PHONE. EVIDENCE REGARDING THE OTHER SERVICE LINES CONNECTED TO MY BUSINESS (267 267 - incoming calls; 267 230 - fax line and 008 service) WAS DISREGARDED IN A SIMILAR MANNER BY THESE THUGS.

I went into the Fast Track Arbitration Procedure believing in Australian Justice but we, the members of COT, were lied to by everybody involved. I have evidence that Dr Hughes:

1. *directed the Resource Unit to omit the part of their final report that covered calls incorrectly charged to my business*

2. *received letters from Austel clearly stating:*
 - (a) *that I was correct in my assessments and*

 - (b) *expressing concern that other subscribers in the Portland area could well be suffering from the same problems of short duration and incorrectly charged calls etc. and*

 - (b) *that Telstra would cover these faults in their defence of the FTAP.*

Even with this evidence, I was thwarted because Dr Hughes did nothing - not only did he not even bother to respond to Austel's letter, let alone my evidence, he then allowed Telstra to OMIT any reference to the short-duration calls and overcharging in their defence. If Telstra had been correctly called to account over this omission, I would have received a fair hearing and would never have been heard from again.

CONCLUSION

The following information is taken from a Statutory Declaration made by Ross Anderson and used in Telstra's Defence of 12th December 1994.

INCIDENT WITH PORTLAND TO CAPE BRIDGEWATER RCM SYSTEM NO. 1 - 8 MARCH 1994

25. *On 8 March 1994 a lightning strike damaged the Signalling Control Unit ("SCU") board at the Portland end of system no. 1 of the Portland to Cape Bridgewater RCM. The damage resulted in Telecom receiving intermittent no dial tone complaints from Cape Bridgewater subscribers whose telephone services were connected to RCM system no. 1. A SCU board is basically a board that controls calls transferred by RCM systems.*
26. *The only service Mr Smith had on RCM system no. 1 at this time was his 267 260 gold phone line. (NOTE: My other phone was removed from this service because of continual complaints)*
27. *The lightning damaged SCU board was replaced on 10 March 1994 by a spare SCU board provided by the Warrnambool customer Operations Group. This spare board had previously been used in another RCM system (not in Cape Bridgewater), had been found to be in need of repair and had, in accordance with standard procedures, been sent back to the manufacturer to be repaired. However, after receiving further intermittent no dial tone complaints and fleeting alarms from RCM system no. 1, the spare SCU board subsequently proved to be temperature sensitive. I explain how this was discovered in some detail below.*
28. *On 19 March 1994 Mr Smith's 267 260 gold phone line was removed from RCM system no. 1 as a precaution because ongoing investigations had not yet discovered the intermittent no dial tone fault. The reason for this delay in discovering the fault is that there were no fault reports from Cape Bridgewater customers of no dial tone or RCM alarms between 11 & 19 March 1994. When the complaints reappeared on 19 March 1994, a number of Telecom experts from CAN (customer access network) Technologies were called in to assist as a matter of urgency.*

It was concluded that because the RCM system no. 1 generally failed in the night it may be sensitive to cooler temperatures. On 23 March 1993 we therefore set up a cooling fan in the hut which holds the RCM systems at Cape Bridgewater and discovered that the RCM system no. 1 failed when the ambient temperature reduced to 74 degrees F which is about 23.3 degrees C. On 23 March 1994 we replaced the SCU board again with a new board and the fault was remedied.

This RCM was installed in October 1991. With regard to the "ambient temperature" reducing to "74 degrees F which is about 23.3 degrees C" what Telstra hasn't stated and we therefore can not know is, how many times the temperature fluctuated past the 'danger' point and over what time period this temperature fluctuation caused problems for Telstra customers at Cape Bridgewater.

**WHAT COLOURED GLASSES WERE DMR AND LANES WEARING WHEN
THEY COMPILED MY REPORT?**

ATTACHMENT 28:

My record / log of faults. This record was attached to my claim / submission, part 2.

Attachment 17c shows that this record / log of faults was not provided to DMR and Lanes by the Arbitrator, or by the FHCA Resource Unit. Part 2 of the Cape Bridgewater claim / submission is not mentioned in the "Source of Information" list.

Attachment 24, page 31, point 2.20 of the DMR and Lanes Report notes:

"A caller reports call failed five times but no fault found, receiving "dead" line, 17 August 1993."

Attachment 24, page 36, of the DMR and Lanes Report includes yet another incorrect assessment regarding this 'dead line fault' which was apparent and lasted for many months. The assessment made on this fault by DMR and Lanes was "*Indeterminate*" and at point 2.20 they go on to say:

"This fault appeared to be confined to a single occasion."

As can be seen from page 31 of the report, the date referred to was 17 August 1993.

Attachment 24a includes four letters from different sources, all reporting the 'dead line' fault. These letters cover the time frame from March to May 1993; they were all included in my claim / submission (2001 - 2158) and again, DMR and Lanes did not see them.

The examples listed in ***Attachments 24 and 24a*** are only a few of many instances which affected the decisions made by DMR and Lanes. If they been provided with ALL the documents I submitted to the FTAP they would have had to make quite different assessments.

The incorrect assessments they did make have cost me thousands of dollars: my evidence substantiated a far greater call loss than that which Dr Hughes allowed. Whoever disadvantaged my claim by deciding not to allow all my submitted documents to be viewed on their merit, was negligent in their appointed charter.

The following information will further clarify the situation I have found myself in during this FTAP and the continual problems I have encountered in trying to access FOI documents which I know exist, but which have never been provided to me.

On the 3rd June 1994 there were four 'short duration call' episodes: the phone only rang once and the line was dead when the receiver was picked up. I finally contacted 1100 and spoke with Heidi at the Bendigo TSC Fault Centre. I rang out on my fax line, 267 230, and asked Heidi if she would test my 267 267 line (which translates to 008 816 522) while I waited on the fax line. The same thing happened: one short burst of ring then nothing, the line was dead.

When Heidi came back to the 267 230 line and I asked her what she had heard she said that she had heard a message - "something about a 'camp' ". I then asked her how this could happen since I didn't speak at this end as the line was dead when I picked up the phone? Heidi then became very agitated and upset and so I asked to speak to a supervisor.

The supervisor repeated the procedure however this time the 267 267 phone rang four times before it was answered by a Mrs Trigg who was in my office at the time. Mrs Trigg only said "Hello" and then replaced the receiver back in the cradle.

Considering the problems I was having with Telecom at the time I was seriously concerned by this incident and I rang the Secretary of the Telecommunications Union, Mr Len Cooper. I explained my concerns to him and noted also that I was concerned about Heidi - what would have made her say what she did?

I then decided to have a professional, five-minute video produced at the studio of Power Productions in Portland, demonstrating what happened and explaining my concerns. Mrs Trigg wrote of her experience of the situation (*refer Attachment 30*).

Some weeks later my 008 account arrived and, you guessed right, I was charged for both these test calls (*refer Attachment 30*), both the dead line call from 1100, which translates to 054340089, where I was charged for a 3 second call (1 cent charge) and also for Mrs Trigg's "Hello" response, which took no more than 20 seconds, and which was charged at 4 minutes and 19 seconds for 91 cents.

The following issues are raised as a result of this incident:

1. A 'report' was issued by Heidi at the 1100 fault centre (*refer Attachment 30*), but I have not been sent a copy of this report even though I specifically requested it through FOI.
2. The video I made regarding this incident was accepted by Dr Hughes in support of my claim, as claim document SM6 (*refer Attachment 30, page 2 of Dr Hughes's letter of 20 July 1994 to Mr Rumble of Telecom*), however it is not mentioned in any of the three versions of the "Source of Information" list presented by DMR and Lanes in support of their Technical Report.

This incident, supported by documentary evidence, is a particularly clear example of how Telstra deliberately withheld FOI documents in order to further disadvantage me as a claimant in the FTAP, as they did during the Settlement Process, December 11, 1992.

To add salt to the already festering wound, the Arbitrator and FHCA withheld the Video (SM6) from DMR and Lanes along with other claim documents. *This is not just my imagination, Senator: the evidence is before you.*

APPENDIX 1

S19

Smith's claim document - not mentioned as being viewed in:

- 1. Draft Copy, 7 April 1994**
- 2. Dr Hughes's Copy, 30 April 1994**
- 3. Smith's Copy, 30th April 1994**

In the introduction to their Report, DMR & Lanes include a Table of Contents (Scope of Report) which includes a total of 26 assessments covering the six and a half years of lost service that I had suffered. These 26 assessments, each of a single lost call or fault, formed the base from which DMR & Lanes produced their final Report.

The following list shows just a few samples of these 26 assessments:

- A. As I will show at point 11, further on in this letter, DMR & Lanes refer a fault which lasted for five months (point 1.2 in their Report). Telstra records clearly show that this fault lasted for 42 months.
- B. Due to the Austel COT Report, DMR & Lanes had to show service problems at the RCM at Cape Bridgewater as an 18 month period.
- C. Then DMR & Lanes resort to 'nit-picking' to make up the 26 points. First they report a 16 day fault when FOI documents show that it actually lasted for three and a half years.
- D. Then they report a one day fault (AXE lock up on congestion), yet Telstra diary notes and working notes (provided in my claim documents) show a regular pattern of proven congestion on a daily basis from the Melu exchange to Portland. This exchange handled 50% of the trunk calls to our area for at least three years.
- E. Then they report software faults which lasted for "*one and a half hours*": a five day fault, a four day fault. FOI document which I provided showed that this fault lasted at least 60 DAYS.
- F. Then they list a single 9 minute fault!!
- G. And another single three hour fault.

These, and other minor faults, were all that were assessed. I will now demonstrate the truth of this cover-up. The examples in this letter do not include the information already provided to your office. I have also provided the Board of Telstra with facts, lists of Telstra Witness Statements which were based on incorrect evidence supplied and deliberate lies, told in order to down-play the true extent of the continued saga I have survived here at Cape Bridgewater over the past six and a half years. These incorrect Witness Statements were used by Telstra in their Defence of the FTAP on December 12th, 1994.

Austel has also been provided with documents that showed that a fault alarm had not been connected at the new exchange on the cut-over day in August 1991. This fault system was not connected until TWENTY MONTHS LATER. The alarm was intended to alert technicians in Portland (20 kms away) if faults were occurring in the system. My advisor produced considerable evidence of faults occurring before the cut-over day and yet DMR & Lanes never mentioned the fact that this alarm was not functioning, after the cut-over day, for another 20 months. How many more faults fell, unrecorded, through this "net" during this 20 month period? DMR & Lanes are nothing less than Criminal!

I now refer to a letter dated February 29th, 1996 from Mr James, President of the Institute of Arbitrators, Australia. The information below is supplied in response to the correspondence forwarded to Mr James by Dr Hughes. Copies of both these letters are enclosed for your information.

There was supposed to be a letter from Paul Howell, DMR Group Canada, attached to the Technical Evaluation Report of 30th April, 1995, on the Cape Bridgewater Holiday Camp FTAP. I did not receive this attachment and am therefore now requesting that the Telecommunications Industry Ombudsman provide a signed copy of this letter. John Rundell of Ferrier Hodgeson Corporate Advisory (FHCA) was supposed to sign the Financial Report but did not - I can only assume he had good reasons for not signing this Report. Mr Rundell has informed my accountant, D M Ryan, that he received instructions from Dr Hughes to remove a large portion of his Report. Mr Rundell did not refute this when I contacted him by phone.

Dr Hughes did not seek any comments from D M Ryan regarding this Arbitration after Mr Ryan and I had worked through the weekend after receiving the FHCA Financial Report. This leaves much to be desired, considering the importance of this Arbitration. Mr Ryan supplied page after page showing where Mr Rundell had not provided basic principles to indicate how FHCA had arrived at their findings: a letter from Dr Hughes on this matter would have given us a chance to appeal the Award, or confirm

our allegations that FHCA had erred in common basic accountancy principles. Dr Hughes states one thing, D M Ryan states another and Mr Laurie James, President of the Institute of Arbitrators writes to me that Dr Hughes has answered these allegations, even before Mr James has inspected the FHCA Report or spoken to Mr Ryan, as you can see by the enclosed letters.

The whole FTAP was conducted in this manner - any argument that I put forward was quashed in favour of either Dr Hughes or his Resource Unit. I am sure, when you have read the true facts, a different set of circumstances will be revealed.

On page 2 of Dr Hughes's letter to Mr James, in paragraph one, Dr Hughes states that references are made to diaries and not exercise books as being shown at the oral hearing on 11/10/94. This is quite wrong. Attached to this letter are pages 98 to 102 of the transcript from that oral hearing. These five pages show that I told those present at the hearing (representatives of GIO, Telstra and FHCA together with Dr Hughes) that the evidence I had in front of me included names of various clubs and individuals who had tried to contact me by phone but who had experienced phone faults on my service. Please note that at the bottom of page 101 I am quoted as saying *"I'm trying to show you that I did record stuff, but it's not diary notes"*.

In his letter to Mr James, Dr Hughes has inferred that the information before me at the oral hearing was contained in my diaries which were later given into the care of Dr Hughes to be "placed into evidence" for the FTAP.

In June of 1994, Mr Garry Ellicott, Loss Adjuster from Plummer and Pullinger, ex-Queensland Detective and ex-National Crime Authority Official, spent five days at Cape Bridgewater to assist with my claim. When he left Cape Bridgewater he took ALL FIVE DIARIES WITH HIM, for safe keeping. It was Mr Ellicott who forwarded these diaries to Dr Hughes's office some time early in November, 1994. Mr Ellicott will, I am sure, provide copies of the freight costs as evidence if Dr Hughes chooses to refute this information.

By his own statement in his letter to Mr James, Dr Hughes has shown that the evidence I had of customers who had reported to me that they had problems in contacting me by phone, and which was contained in four exercise books, was not accepted at this oral hearing by Dr Hughes as evidence in support of my claim to the FTAP. *This is just one example of where the Resource Unit refused to use evidence which I supplied.*

DMR Group Canada and Lanes Telecommunications also refused to view or ignored evidence in support of my allegations that customers and others had experienced similar phone faults to those listed in the exercise books. This set of "logged customer faults" is attached at the back of part 2 of my submission (Cape Bridgewater Part 2) yet DMR & Lanes state that there appears to be NO logged faults in my submission.

Much of the logged material was put together before I received many of the Freedom of Information (FOI) documents I now have. This information had been presented to your office during and leading up to a meeting we COT members had with you and Senator Boswell, in your office in Melbourne late in 1993. I mention this point as I have since received from Telstra (in 1994) further FOI documents including 1100 Fault Reports on leopard and Telecom technicians' own notes, as well as copies of letters which I had received from various people who had experienced problems trying to get through on the phone to my business. This assorted information, received six months later through FOI, matches the information on logged faults which was presented to your office in 1993. In their Technical Evaluation Report, DMR Group Canada and Lanes Telecommunications stated: *"A comprehensive log of Mr Smith's complaints does not appear to exist."*

Also included with this letter is a set of logged faults (referred to above), which were presented to the FTAP, but *not assessed by DMR & Lanes*. I have forwarded this information in order to demonstrate to you how I felt after first losing a wife of 20 years only 18 months after I took over Cape Bridgewater and then, only 20 months later, losing a partner who was hospitalised as a result of stress when she lost \$50,000 that she had invested in this business after being assured by Telstra, in June 1991, that

a new service would rectify all the phone problems. I have a Telstra file note of this exact phone conversation which I acquired through FOI.

These records of logged calls were not the only documents that *DMR Group Canada and Lanes ignored* and which, if assessed properly, would have shown a truly comprehensive picture of the massive phone faults we were suffering at Cape Bridgewater.

On 28th January, 1994, Freehill Hollingdale & Page (Telstra's outside Solicitors and Solicitors to the FTAP Defence of Telstra) wrote to me stating that my allegations that I had complained to Telecom's Fault service more than nine times between 1st January and 9th August, 1993 were wrong. This letter was included as evidence at point 1104 of my claim documents (Smith / FTAP).

I wrote to Mr Benjamin of Telstra's Customer Response Unit on 5th January 1995 and forwarded a copy of the letter to Dr Hughes via fax to 03 614 8730 at 12:38 the same day, as an evidence claim document. In this letter I refuted the above statement made by Freehill Hollingdale & Page by supplying Telstra's own FOI documents together with my registered fault complaints (also shown on Telstra's own records). These documents showed a total of 56 phone calls to various fault centres within the Telstra system. Either Freehill Hollingdale & Page lied to me, or Telstra did. *These were further logged faults that DMR Group Canada and Lanes Telecommunications did not take into account* when they stated that a comprehensive log of my complaints did not appear to exist.

So far in this letter I have demonstrated that, by his own admission, Dr Hughes did not accept the notes, papers etc which I presented, attached to the four exercise books, during the oral hearing on October 11th, 1994. In doing this, he stopped the Technical Resource Team from understanding the full impact of all these faults.

As mentioned previously, I have already forwarded to you copies of more than 183 faults, logged in 1993, which DMR Group Canada and Lanes Telecommunications either could not or would not view in support of my evidence, plus I also presented, as part of my June 7th submission, a further 70 odd letters from my customers,

complaining of faults. These letters should have been accepted as genuine logged faults also, considering that each one included the name and address of the writer.

Finally, in contradiction of Freehill Hollingdale & Page's statements, there are another 56 faults logged over a space of 8 months which were not included. How can DMR & Lanes say there were no records of logged faults?

Further documents attached to this letter are numbered A1, A2 and A3. These are copies of documents that DMR & Lanes say they used to reach their findings and to produce their Report. A1 and A2 are draft copies of the completed Technical Evaluation Report. Please note that, when comparing these with the copy I received from the Arbitrator on 2nd May 1995, DMR & Lanes have not included all my claim documents as having been viewed, in fact they did not source 75% of the evidence I produced in my claim.

In the 2nd Draft Copy, dated 30th April 1995, and in my copy, received 2nd May 1995 but dated 30 April 1995 the contents are the same, except that DMR & Lanes did not present their Addendum Report (a further discrepancy) with this draft copy which also shows a *five month*, continued 12.5% NRR (Not Receiving Ring fault) - Telstra's own FOI documentation however, and my own evidence, shows this to be a *42 month* continued NRR fault. Another cover-up by DMR & Lanes? The original two draft copies therefore, show, in the Source of Information section, that many of my claim documents were not assessed at all. I can prove that none of the documents I submitted after Telstra had presented their Defence received even one mention in the assessment by DMR & Lanes - NOT ONE MENTION. This is fact, not fiction.

In his letter to Mr James, Dr Hughes would like him to believe that my assertions that a technical expert refused to discuss technical information while visiting my business were incorrect. The truth of this matter is, however, as follows. I rang Dr Hughes's office to explain that I had just received 24,000 late delivered FOI documents from Telstra - 11 days after they had submitted their defence. I went on to ask for an oral hearing before I began to read, collate and photocopy all this material and compare it with existing FOI documents so that I could present it in an organised, technical

manner after speaking with the Technical Resource Unit, at the direction of Dr Hughes. My technical advisor could no longer work for me since I was not in a position to pay his account. Dr Hughes told me to carry on the way I was going and then advise the visiting Technical Resource Unit of my concerns when they visited my business, where they could view this evidence.

When David Reid of Lanes Telecommunications did visit Cape Bridgewater he acted within his interpretation of Dr Hughes's directions, and did not view any of the documents relating to short duration faults, nor any of the technical documents which I wanted to show him. *Again, evidence was not viewed.*

Dr Hughes states, in his letter to Mr James, that Mr Reid acted in accordance with directions which prohibited him from speaking to one party in the absence of the other party at a site visit. This confirms, in Dr Hughes's mind anyway, that Mr Reid acted in accordance with instructions not to speak to me on my own. At approximately 4.10pm on the afternoon in question, however, Mr Reid left my business in the company of Peter Gamble, Telstra Engineer, who is a person I have proved to be a liar. I do not know how long these two were together but the plane left Portland Airport at 7.20pm and it is a 20 minute drive to the Airport from my property. In this instance it obviously did not suit Mr Reid's purpose to adhere to the directions issued by Dr Hughes: he left my property with Mr Gamble - surely this was actually against Dr Hughes instructions?

Much of the material I have at hand has been viewed by independent observers. This material includes FOI documents, Telstra Defence documents and other information. These independent observers believe, in their own professional opinion, that my Arbitration Procedure was glossed over in the Award presented by Dr Hughes. In other words, they believe that Dr Hughes did not arrive at his final Award independently.

Austel currently has documentation that I have presented to them and which was originally presented to DMR & Lanes. One quarter of this information has already

been viewed by an independent Technical expert who was not associated with the FTAP. This expert also confirms that DMR & Lanes did not correctly assess my submission. Even a non-technical person can clearly see that they also glossed over their Report. I am now awaiting Austel's response regarding the above-mentioned evidence which was provided to DMR & Lanes and which they did not assess correctly. They chose only to look at 26 faults over six and a half years. Who is kidding who here?

This independent Technical observer, mentioned above, has stated that all three of my phone services suffered from the following list of massive faults and that incorrect charging was one of these major faults on two of those services.

1. DMR & Lanes never mentioned overcharging as a fault in their assessments.

This shows their bias.

2. DMR & Lanes never mentioned short duration calls as a fault in their assessments.

This shows their bias.

3. DMR & Lanes never mentioned a 5 minute video of my verbal explanation of 1100 attempting to contact my business and lying on the phone. This videoed explanation included information about how I was then charged on my 008 service for a recorded message that the number being called by 1100 was not connected. To make matters worse, another call which *did* connect and which was answered by a Mrs Trigg in my office, lasted only 20 seconds (as attested to by Mrs Trigg in a written statement) and yet my 008 account was charged for 4 minutes.

This shows their bias.

4. DMR & Lanes did not include in their assessments information I provided showing ELMI tape monitoring which indicated 26 not-connected, short-duration calls to my business over a five day period and which registered on the ELMI tape as 1 and 2 second short-duration calls. Twenty-six lost calls to a small business in five days is horrendous.

This shows their bias.

5. DMR & Lanes did not assess the four of these 26 short-duration calls (point 4) which I was actually charged for on my 008 account. My claim documents included a 12 page index/appendix which clearly listed where DMR & Lanes (and the rest of the Resource Unit) could find the faults I presented and which I had derived from Telstra's own FOI documents, as well as my own supporting evidence. *This shows their bias.*

6. There are 613 faults listed in this 12 page index, all from Telstra's own FOI documents. The index also includes conflicting statements made by Telstra, CCAS mistakes not registered, CCS7 mistakes not registered and information on where to find further evidence in my claim. This index/appendix was not viewed correctly by DMR & Lanes. Their Technical Evaluation Report notes only 26 assessments viewed. *This shows their bias.*

7. Page 2 of this index/appendix (point 5 above) shows 91 incorrectly charged or short-duration calls to my 008 service in the 12 month period between 18/6/93 and 17/6/94 alone. DMR & Lanes did not mention this in their assessments. *This shows their bias.*

8. My 008 account shows that on 18/8/93 there were 63 unsuccessful test calls charged to my 008 number. Telstra's own working notes state: *"Test calls unsuccessful did not hear STD pips on any calls to test no. I gave up tests."* This evidence appears in the Technical Report produced by my advisor, Mr George Close, however, this fact was not shown in DMR & Lanes's assessment. *This shows their bias.*

9. At appendix 11 in my claim I cite an example from a letter from a Telstra Technical Manager: *"With further investigation it appeared one of our problems may be more temperature related as when the remote (un-manned exchange) end was not left open for some time, that appeared to be when we had the failures."* Refer FOI document K00942. This was not shown in DMR & Lanes's assessment. The door to this un-manned exchange remained closed and locked when there were no technicians in attendance. *This shows their bias.*

10. In the DMR & Lanes Report, at point 2.8, they state that a lightning strike affected the RCM exchange for four days from 21st November, 1992. Telstra FOI documents, submitted as part of the Cape Bridgewater claim (Part 1 and Part 2), show that this four day fault was not acknowledged as being fixed until late January, 1993. This is not a four day fault, but a 60 day+ fault. This fault was not correctly assessed in the DMR & Lanes Report. Obviously they did not view my evidence on this matter. *This shows their bias.*
11. I have shown Mr James, President of the Institute of Arbitrators, where the draft copy of the DMR & Lanes Report indicates, at point 1.2, a 12.5% exchange fault occurred from March to August 1991, a total of FIVE MONTHS. Telstra's own evidence shows that this fault continued for 42 MONTHS. This fault was not reported correctly by DMR & Lanes. *This shows their bias.*
12. In the index/appendix to my claim, on page 4, I present an example of a fault with my Goldphone. Telstra's own CCAS data (the state of the art technology as mentioned in the Coopers and Lybrand Report) showed that, over just three particular days, there were 77 short-duration calls. In case you think this is a typing error I will repeat that number: Seventy-seven short-duration calls (shown on Telstra's own CCAS data). DMR & Lanes, however, have stated in their Report at point 2.21 that "*A reasonable level of service was provided ...*" to my Goldphone. They did not view my claim documents in a professional manner. *This shows their bias.*
- I might add at this point that Telstra disconnected this Goldphone ten weeks ago (December 1995) because they refute their own evidence which shows that this was a very poor service. They demand that I pay back accounts - would you, Senator?
13. In their Report, at point 2.4, DMR & Lanes comment on a small number of calls incorrectly receiving an RVA "This number is not connected" message at the dialling end. "*Since considerable network testing was done on at least ONE of these calls, with No Fault Found, and no subsequent similar pattern of reports, reasonable service may have been achieved if appropriate advice was given to*

customers, and the fault remained 'open' and not cleared."

While visiting Cape Bridgewater, Mr Peter Gamble, Telstra's Senior Engineer, stated to me in the presence of Mr Reid, Technical Advisor to Lanes, that this RVA message was the fault of the customer mis-dialling. It appears that Mr Reid listened to Mr Gamble and did not view my evidence. *This shows their bias.*

The following quote comes from an FOI document that you read to the Senate in 1994: *"ie complaints from Mr Smith taken from FOI document 2/7/92 ' Our local technicians believe Mr Smith is correct in raising complaints about a "Recorded Voice Announcement (RVA)" saying that the number is not connected. They believe that it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE exchanges.' "*

To back up my allegations about this RVA I provided the FTAP with copies of letters from clients who, in desperation, finally drove to my business to place a booking because they couldn't get through on the phone. Continued Voice Announcements were heard on my business lines from 1988 through to 1994. An FOI Telstra three page document, included in my Claim, stated that there was "RVA on congestion". This is an indication of the poor performance of Telstra. This document then goes on to say: *"Overall, Mr Smith's telephone service had suffered from a poor grade of network performance over a period of several years, with some difficulty to detect exchange problems in the last 8 months."* This document was dated before 11th December, 1992, and the pages were numbered FOI C04006,7 & 8.

There is another FOI document which states: *"Mr Smith has had ongoing complaints for more than five years. His services were initially provided by an exchange using older technology which suffered faults and congestion".* FOI documents prove that Telstra had admitted that there was an incorrect Recorded Message on congestion over many years. The combination of all this information only proves again that DMR & Lanes did not act independently during this FTAP. *This shows their bias.*

14. Further evidence of the horrendous cover-up that has taken place links to point 4 of this letter. Records which show these five days of faults on my service were accidentally left at my business by a Telstra technician. Telstra have refused to supply me with the results of the entire three month analysis (May to August 1993) obtained by using this ELMI monitor. The table below is an exact copy of my technical advisors comments on this five day assessment.

Why did DMR & Lanes not address the Report supplied by Mr George Close?
This Report showed a 52% loss of calls on my incoming business line.

This shows their bias.

15. Tabled below is an exact copy of my Technical Advisor's Summary of the faults shown from the material we had available from FOI documents. DMR & Lanes did not comment on, nor did they assess this continued fault. They never even acknowledged this technical information which was supplied by my technical advisor in his report. *Another non-assessed MAJOR FAULT.*

This is just one more example of where my Technical Advisor, Mr George Close, can show large numbers of faults on the phone service both in and out of my business.

This shows their bias.

16. DMR & Lanes must be made to address the question of why they ignored so many of the faults which are included in the Letter of Claim and in George Close's Technical Report.

It is documented in the DMR & Lanes Report that "... a comprehensive log of Mr Smith's complaints does not appear to exist." This clearly shows that either they did not read my Letter of Claim of 7/6/94 or they lied to cover-up for Telstra. An exact copy of a paragraph taken from page 16 of my Letter of Claim is tabled below. A letter to Mr Warrick Smith, TIO, shows that there was a log attached to the Letter of Claim I presented to Dr Hughes. What did Dr Hughes do with this Log?

The only conclusion that can be drawn from DMR & Lanes's comments about a lack of records of my complaints is that they did NOT act independently when making their assessment of my Claim/Submission to the FTAP.

This shows their bias.

17. Among the documents accidentally left at my premises by a Telstra technician on June 3rd, 1993 (refer point 14 of this letter), was another set of documents which contradicted information I had been given regarding the length of time my service may have been suffering from faults.

I had originally received a letter from Telstra, before settlement day (11.12.92) which stated that Telstra were acknowledging a 50% loss of calls to my business **OVER A TWO DAY PERIOD** only. I continued to insist that these RVA messages ("The number you are ringing is not connected") existed over many months, with some customers actually writing to me as early as October 91 and through until June 92, and other complaints about this same fault which went back as far as 1988. Finally Telstra wrote to say that new evidence had come to light and it was now accepted that this RVA had been in existence for **THREE WEEKS**, and that I could well have lost 50% of incoming calls during this time.

One of the documents found among those mentioned at point 14, however, showed that this fault could have existed from the cutover day from the old RAX Exchange, in August 1991. Another internal Telecom memo, from Gordon Stokes, Portland Technician, and dated 24/7/92, notes that "*Network should have been brought in before now, as this RVA fault has gone on for 8 months.*" These letters were all included in my Claim documents to the FTAP.

In their Report, DMR & Lanes say this was a 16 DAY fault. This information came from a Witness Statement made by a Telstra employee. I can substantiate, beyond all doubt, that this witness lied on other issues in his Witness Statement which was included in the Telstra Defence of 12th December, 1994.

Again, DMR & Lanes:

- (a) did not view the logged faults that I supplied evidence of**
- (b) did not read many of the 70 letters that I provided to the FTAP from other people who had experienced phone faults when trying to contact my business**
- (c) did not take evidence from Telstra internal documentation, instead relying on the word of a Telstra technician who had been in charge of my phone service for six and a half years and who had a vested interest in proving that he had done a good job during that time.**

DMR & Lanes did not weigh up the documented evidence included in Telstra's own records. There are two separate documents which provide evidence that this particular fault was in existence for at least 8 months, with a 50% loss of incoming calls to my business over this time, and not the 16 days noted in their Report.

This shows their bias.

Mr Pinnock has continually stated that I have no grounds to complain. He insists that I was dealt with correctly. After reading all these 17 points I believe anyone would be convinced that there has been a massive cover-up by the FTAP Resource Team. If this is not convincing enough then I can provide another 17 examples of where the Resource Units have played footsies with Telstra.

Ann Garms, another of the four COT members, has also found that the information supplied by her Technical Advisor, and the information in her Letter of Claim and Technical Report was not addressed correctly by the parties associated with the FTAP.

APPENDIX 2

Senator Alston's Letter

DMR and Lanes

Incorrect Assessments during the FTAP

APPENDIX 3

Letter to Peter Gamble

TF200 Touch Phone

ATTENTION: SENATOR ALSTON

With regard to the TF200 Touch Phone mentioned in the following letter to Peter Gamble - on the 7th July 1996 I tested this phone again and it still works perfectly, without locking up.

This phone can be supplied to your office for further testing if necessary.

SUMMARY

FTSP / FTAP: SMITH - TELECOM / TELSTRA

The Fast Track Settlement Proposal (FTSP) included three major conditions. These conditions were:

1. An independent Assessor would value each claimant's business as compared to other similar businesses and would assess the growth and performance of the other businesses over a relevant period, in order to reach a reasonable conclusion as to how the COT member's business would have performed, had it not been for the matters in dispute between them and Telecom.
2. FOI documents would be supplied by Telecom to enable each of the four COT claimants to present their claim in a reasonable time-frame and, at the same time, allow the four claimants every chance to prove their case. Robin Davey, Chairman of Austel, was aware of known communication faults associated with some of the COT claimant's service lines and network performance, hence the need for FOI documents to support our claims.
3. Consequential Losses, associated with the FTSP, were to be taken into account by the Assessor. At the time of the FTSP negotiations, after discussing my need for professional help to prepare my claim, Robin Davey stated that, according to his interpretation of a consequential loss, this expense would be included as part of my claim - if the COT claimants proved their claims. At this point in the discussion Ann Garms (another COT member) interrupted to ask Mr Davey to explain more fully what he understood by the term "consequential loss". Mr Davey's reply was "*A loss is a loss is a loss.*".

These three conditions of the FTSP were to form the basis of the Fast Track Arbitration Procedure (FTAP). The signed FTAP included the fourth and fifth conditions of the FTSP: This procedure was to be "Non Legalistic" and "Fast Tracked". Neither of these conditions were abided by, either by the Arbitrator, Dr Hughes or by Telstra.

During and leading up to the Arbitration Procedure, meetings were held with the members of COT in the offices of the Telecommunications Industry Ombudsman (TIO) with the then TIO, Warrick Smith together with Peter Bartlett, Legal Counsel for the TIO. During these discussions I mentioned Robin Davey's interpretation of 'consequential loss'. Peter Bartlett stated that if the COT claimants proved our cases then consequential losses, preparational costs and flow on costs would form part of the loss attributed to the matters in dispute regarding our phone faults. This information is supported by *Attachment 5*, which is a letter from Peter Bartlett to me regarding 'consequential losses'.

At this point I had not yet employed a professional to assist with my claim.

Because of the type of claim I was lodging against Telstra, I was advised to employ a Forensic Accountant who would have a far greater knowledge of the consequential losses which I had experienced through these phone faults and so I appointed D M Ryan.

At this time, my Chartered Accountant, Selwyn Cohen of St Kilda, had already presented an interim report regarding his professional understanding of the cost to my business and the losses incurred as a result of six years of phone faults. His figures were used in a legal matter, allowing for monies owing by me to be adjusted. His figures, strange as it may seem, are similar to those produced by D M Ryan, when he was employed to produce my FTAP submission.

The day that Dr Hughes handed down the "Award" in my Arbitration, in May 1995, we had two different accountants who had produced figures relating to my business: Selwyn Cohen's figures were only slightly higher than D M Ryan's. Dr Hughes, on the other hand, had been provided with figures by FHCA. These were less than 10c in the dollar when compared to Selwyn Cohen's and D M Ryan's figures. No wonder FHCA have been appointed to handle all the Arbitrations for the second tier of COT claimants: with those assessments, FHCA are guaranteed of a lasting arrangement with Telstra.

Under the rules of the FTAP, Telstra agreed to supply FOI documents as required. It has now been proved by the Commonwealth Ombudsman's Office that Telstra did not follow these rules, rules which had been signed by both parties as the instrument to enable the four COT claimants to prepare their claims.

I have shown in this submission that Telstra's reluctance to provide this FOI documentation has had a 'snow ball' effect. I was not able to present all the facts as they actually were because I was not able to access the material from Telstra.

All four COT claimants were told that the FTAP would allow us to present our claims fully. Telstra's non supply of FOI documents halted this process.

On 4 May 1995 I rang the office of Hunt & Hunt, Melbourne, to speak to Dr Hughes regarding the submission of further claim material (*refer Attachment 12*). As I have shown in this submission, Dr Hughes did not access ANY FOI DOCUMENTS from Telstra as per the rules of the FTAP. Right through the Arbitration Procedure, for reasons known only to himself, Dr Hughes continued to deny me access to FOI documents I sought under the so-called 'rules' of the FTAP.

ATTACHMENTS 7 and 12

Attachment 7 is a document asking for a major consideration to allow specific information to form part of my claim. The material submitted was denied.

Attachment 7a shows that this information was very relevant to my claim and formed the base of the FTAP. The material related to the Assessor checking the circumstances of each COT claimant's business and comparing their individual businesses performance, over a relevant period, with other businesses in the appropriate industry. Even though this was one of the basic rules of the FTAP, Dr Hughes still would not allow submission of this material which would have formed the basis of my claim. This material included information from Camp Rumbug, a camp similar to my own and which I had helped set up.

As I have shown in this submission, Camp Rumberg had produced a Section 52 document which showed a gross takings of \$400,000 annually. My gross takings over the previous seven years, in comparison, averaged only \$75,000.

This situation alone indicates clearly that the whole FTAP was conducted in a way that meant that the COT claimants were not allowed not demonstrate consequential losses.

Again, as I have shown in this submission, Dr Hughes also did not provide to me copies of all the Telstra correspondence he received during the FTAP.

On 23 June 1996 I received documents in response to my FOI request of 18 October 1996. This request was for letters sent to Telstra by Dr Hughes and letters sent to Dr Hughes by Telstra during the FTAP (*refer Attachments 20 and 21*). As I have stated in this submission, there were a number of documents in this delivery that I had not seen before. My concerns are: did the Resource Unit see copies of this correspondence? Was I the only one who did not see this material? If the Resource Unit did *not* see this material then this is, no doubt, part of the reason why the Resource Unit's figures and assessments are so inaccurate when compared with FOI documents, tourism statistics and commonsense accounting principles.

Whichever the case may be, it can at least be seen that Dr Hughes breached the rules of the Arbitration Procedure, a procedure that we COT four were led to believe would allow for Natural Justice to occur after years of operating our businesses with an inadequate phone service.

Dr Hughes has been negligent, however, on more than one occasion.

Attachment 27 includes a copy of a letter to Tony Hodgson of Ferrier Hodgson Corporate Advisory (FHCA), which clearly defines material / correspondence which Dr Hughes did NOT send to FHCA during the FTAP. This material included 40 letters (with attachments) which I had written to Dr Hughes, believing that they would automatically be circulated to the Resource Unit.

These 40 letters covered information that both FHCA and DMR/Lanes should have assessed while they were preparing their reports.

Attachment 27 includes a letter from Mr Laurie James, President of the Institute of Arbitrators, Australia. Mr James acknowledges that Dr Hughes is not a Graded Arbitrator. I have been reliably informed that, during my FTAP, Dr Hughes sat for and failed his exams. This gives me grave doubts as to his competence to conduct my Arbitration; his conduct has certainly not been that of an unbiased umpire.

Dr Hughes breached the rules of the FTAP and also erred very badly in my Arbitration and this matter should now be investigated. The result so far has been that I am now left with:

- * wrong assessments made by FHCA**
- * wrong assessments made by DMR and Lanes**
- * wrong assessments made by Dr Hughes.**

It seems to me that Dr Hughes may have made incorrect assessments during my Arbitration for the following reasons and I believe I have a right to raise these serious issues.

- A. A copy of a letter to Graham Schorer, spokesperson for the four COT claimants is attached. This letter, dated 24 May 1994, was written by Peter Bartlett, Legal Counsel for the Office of the TIO and is accompanied by a Confidentiality Undertaking signed by Jan Blaha of DMR Group Australia Pty Ltd. DMR Australia were the original Technical Resource Unit and the four COT claimants had agreed to their appointment to assess our claims.**

I am told, however, that DMR Australia pulled out of the FTAP because they had been offered a sizeable contract by Telstra either during or leading up to this Arbitration. If they pulled out because they saw a conflict of interest then they should be complimented on their commercial principles.

B. I am further led to believe that Hunt & Hunt, Lawyers, the company that Dr Hughes is a Senior Partner of, accepted a four million dollar contract while Dr Hughes was presiding over the four COT Case's Arbitrations. If this is so, and I have no reason to doubt the information, then both Telstra and Dr Hughes were wrong to allow this to happen.

I am not saying that Dr Hughes deliberately disadvantaged my claim purely in response to matters that could have, or might have swayed his judgement, under the instructions of Telstra but, whatever the case may be, Dr Hughes has not conducted this Arbitration Procedure in a way that gave both parties equal rights.

In particular, it should be of some concern that he has breached his own rules of Arbitration.

I have also been told that associates of the legal firm appointed to Arbitrate on the third tier of COT type cases have, like Hunt & Hunt, accepted substantial tenders while they are presiding over the Arbitration.

George Close, my Technical Advisor during the Arbitration Procedure, was approached by Telecom in regard to a tendering-type process. He told Telecom that if he accepted, he would not remain independent and unbiased in relation to work for other clients. This leaves Telecom's tendering process open to question: people associated with the FTAP were approached by Telecom / Telstra, in one way or another, regarding a retainer-type contract. It can be seen quite clearly that the two Arbitrators mentioned and their companies, who did accept tendering contracts with Telstra, did not see this in the same light as George Close and Mr Blaha of DMR of Australia. This raises questions about what is 'conflict of interest' and what is 'independence'.

Thank you for reading this submission. Further documents can be supplied to support this information.