On 21st June 2009 I sent Dr Gordon Hughes a document clearly showing that clauses 24, 25 and 26 of the COT 'four-claimants' Fast Track Arbitration Procedure (FTAP) agreement were secretly altered (without the knowledge of those about to sign the agreement), after the original version of the agreement had been provided by the arbitrator's office the COT claimants' lawyers for their approval and after two legal experts had assessed the unchanged version and agreed that the claimants should sign it as it stood. These changes, which were made sometime in the last few hours before Graham Schorer and I signed the agreement, exonerated both the TIO-appointed Resource Unit and the TIO's Special Counsel from any liability for negligence that might occur while they were involved in the COT 'four' arbitrations. The clauses originally included a $250,000 cap for the Resource Unit Ferrier Hodgson Corporate Advisory / DMR (Australia) with no cap for the Special Counsel Minter Ellison. The Telstra Preferred Rules of Arbitration was re-drafted by Mr Frank Shelton, Partner of Minter Ellison in consultation with Dr Hughes, Telstra and the claimants. In other words, an agreement that had been re-drafted by Mr Frank Shelton, the then President of the Institute of Arbitrators Australia was secretly altered. These secret alterations exonerated Mr Shelton's firm, Minter Ellison, from any legal suit that might arise as a result of the arbitrations. This should be a matter of serious concern to the IAMA since a previous President of the Institute drafted the uncharged agreement.

The following information supporting these points can be provided to the IAMA on requests.

1. On 22nd March 1994, a meeting was attended by Steve Black (Telstra), David Krasnostein (Telstra's General Counsel), Simon Chalmers (Freehills), Peter Bartlett (Special Counsel, Dr Hughes (arbitrator), Warwick Smith (TIO) and the TIO's secretary, Jenny Henright. The meeting discussed the alterations to the Fast Track Arbitration Procedure (Agreement) without any COT claimants or their representatives having been advised of the meeting and therefore they had ***no*** say in regards to what clauses would remain in the agreement and/or would be altered. Telstra's transcript of this meeting is quite clear that the TIO noted that, if clause 10.2.2 of the agreement was changed in any way whereby the agreement did not meet the original clause 2(f) of the previous signed Fast Track Settlement Proposal (FTSP) commercial assessment proposal, then he would not endorse the Fast Track Settlement Procedure (FTAP) as being fair. The wording *"each of the Claimants claims"* was secretly removed from clause 10.2.2 of the FTAP in a similar fashion as the removal of clauses 24, 25 and 26 in the Agreement. At point 6 of this transcript under the heading **Exclusion of Liability for Arbitrator's Advisors** it is noted:

   "Mr Bartlett stated that he was unhappy that Telecom did not appear prepared to allow his firm an exclusion from liability.

   Dr Hughes stated that the resource unit was also not satisfied with a capped liability, but that he did not have a position in relation to this matter as it did not affect him or the performance of his functions".

   Mr Smith (Warwick Smith) *stated that he thought it was reasonable for the advisors to incur some liability, and that the only matter left to be negotiated on this issue was the quantum of the liability caps.*

   Mr Black said that he thought the liability caps proposed by Telecom in the amended rules were already reasonable.

It was agreed that Mr Bartlett would produce a re-drafted set of rules which Mr Smith and Mr Bartlett would agree was fair."

2. On 31st March 1994 Graham Schorer received the re-drafted set of rules from Dr Hughes office showing clauses 24, had no liability cap for Special Counsel (Minter Ellison) and clauses 25 and 26 for Ferrier Hodgeson and DMR with a liability cap of $250,000. 00;
3. On 12th April 1994, COT case Ann Garms, the third claimant received from Peter Bartlett the final agreement a mirrored copy of the agreement provided to Graham Schorer.
4. On 21st June 2009, The Hon Alan Goldberg AO, Federal Court Judge, was provide eight exhibits confirming that the FTAP agreement faxed from Dr Hughes office on 19th April 1994 on behalf of the COT claimants (for legal advice) was the same agreement provided to Graham Schorer 31st March 1994, Ann Garms 12th April 1994 and the agreement executed by the fourth claimant Maureen Gillan on 8th April 1994.

This meeting on 22nd March 1994: was no different to a judge meeting in his chambers with the defence team, but without the presence of the plaintiff in the matter, and planning how the judge will conduct the trial. The fact that the COT four claimants were unaware that a meeting had been convened to discuss changes to the agreement did not place them in a position to check what agreement they were signing on 21st April 1994. After all, who would expect an Arbitrator and/or the Special Counsel would secretly alter an agreement after the claimants had sought legal advice to sign the unchanged agreement?

In a letter dated 12th May 1995 (see ***Exhibit 44*** below), the day after the arbitrator had deliberated on the first of the COT claims (me), the arbitrator even wrote to the TIO, warning that the Arbitration Agreement (rules) that had been used for that first claim (mine) *"... did not allow sufficient time ...for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports."* This letter also noted that it was the arbitrator's view that *"... if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration agreement"* and *"There are some other procedural difficulties which revealed themselves during the Smith arbitration and which I would like to discuss with you when I return"* (the arbitrator was, at the time, about to travel overseas for two weeks). Although this letter was written in 1995, it was not provided to me until 2002 – seven years after my arbitration – even though I had been complaining to the Institute of Arbitrators Australia and the TIO's office (administrator of the arbitrations) since June 1995.

Early in April 2009, I travelled to Yamba, in New South Wales, and collected fresh evidence that confirms the two of the three claims that followed me, those of Maureen Gillan and Ann Garms, which were due to be deliberated on three or four weeks after my arbitration had been completed, were still going through arbitration as late as June 1996 (see ***Exhibits 56, 57*** and ***Exhibit 60*** below) which means that both these claimants were allowed twelve or more months extra time that was not allowed for in the agreement (see the arbitrator's letter of 12th May 1995, above). Graham Schorer, the next claimant to be assessed, refused to submit his claim until he had received all the documents he needed to successfully prepare his claim. This means that the arbitrator (Dr Hughes) and the administrator of the process (Warwick Smith TIO) discriminated against me because they did not allow me the same extra 12 or so months I had needed to properly prepare my claim, and my response to Telstra's defence of that claim.

I was not only discriminated against when I was not provide with the twelve or more extra months that the other claimants were allowed, I was also severely disadvantaged both before and during my arbitration because:

1. Dr Hughes's letter of 12th May 1995 was withheld from me until 2002;
2. The administrator of the arbitration process did not tell me that Garms, Gillan and Schorer had been granted an extra twelve months or more in which to prepare their claims, because of the poor time frame allowed in the arbitration agreement;
3. Dr Hughes both orchestrated and sanctioned the removal of the liability clauses in the arbitration agreement.

Point 1 meant that I could not use Dr Hughes's letter as part of an appeal against his arbitration award. Surely such an appeal would have been successful because how could an appeal judge argue against the arbitrator's own observation that the agreement used in my arbitration was not credible because of these poor time frames?

Point 2 meant that I could not use this information as part of an appeal process to gain the same extra time that the arbitrator afforded the other three claimants.

Point 3 meant that no negligence claim could be brought against either the TIO-appointed resource unit or the TIO's Special Counsel, even though the version of the agreement that Graham Schorer (COT Spokesperson) and I had been provided with for submission for legal advice had included clauses providing the opportunity for $250,000 liability claims (clauses that were re-introduced for the following 60 other arbitrations administered by the TIO).

It should be a matter of concern to the IAMA that the arbitrator was allowed to ignore vital evidence, submitted by a claimant, proving that the claimant was still experiencing numerous problems with his telephone and fax lines. Ignoring this evidence meant that those problems not only continued to affect the claimant but also continued to affect many other Australian citizens for years after the claimant's arbitration.

It should be a matter of concern to the IAMA that, on 15th November 1995 Mr John Rundell of Ferrier Hodgson Corporate Advisory (FHCA), the TIO-appointed arbitration technical consultants, told Mr Pinnock, the TIO, that FHCA had NOT addressed any of my billing claim documents during my arbitration.

As part of my oral presentation to the Administrative Appeals Tribunal on 3rd October 2008, I explained to the AAT senior member, Mr G D Friedman, and the respondents, ACMA that I planned to use the FOI documents (which were under review by AAT) in a report I am preparing. I also explained that the finished report would, I believed, be in the public interest and would be provided to both the past and present Governments for comment before it was released to the public. In my AAT Statement of Facts and Contentions, I show quite clearly (using numerous exhibits) that Dr Hughes did not conduct my arbitration transparently according to the Commercial Arbitration Act 1984. After reading this document and hearing my oral presentation Mr Freidman noted: *"Let me just say, I don't consider you, personally, to be frivolous or vexatious – far from it. I suppose all that remains for me to say, Mr Smith, is that you obviously are very tenacious and persistent in pursuing the – not this matter before me, but the whole – the whole question of what you see as a grave injustice, and I can only applaud people who have persistence and the determination to see things through when they believe it's important enough.*

On the 26th September 1997 John Pinnock (TIO), advised the Senate Estimates Committee when referring to the COT arbitration process he note: *"For present purposes, though, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over that process, because it was a process conducted entirely outside the ambit of the arbitration procedures".*

Even after I contacted Mr Laurie James, then President of the Institute of Arbitrators Australia, in January 1996, complaining that my arbitration had been a sham, Dr Hughes and Mr Pinnock still withheld from Mr James, their knowledge that Dr Hughes didn't have any control over the arbitration process and that my allegations were therefore correct, because the arbitration had indeed been conducted entirely outside the ambit of the arbitration procedure. Clearly a full and proper investigation is called for since, in 2002, Dr Hughes hid this same information from the IAMA again – a second time – during their preliminary enquires into my allegations.

Because Dr Hughes failed to investigate why my business was still experiencing ongoing telephone problems and faults during my arbitration, and Mr Pinnock (TIO) would not transparently investigate my complaints that my arbitration did not address these ongoing faults I was literally forced me to sell my business to Darren Lewis, in December 2001. By August 2002, Darren Lewis was himself writing to his local Federal Member David Hawker MP about the ongoing telephone and fax problems he had inherited.

It is interesting to note the comment made on page 2 of Darren Lewis' statutory declaration dated 4th September 2004, provided to the Hon David Hawker, (now Speaker In the House of Representatives) in which he notes at point 19: *"Telstra informed us we had what is commonly known in technical words as (a line in lock-up rendering our business phone useless until the fault is fixed.*

The technicians then in hook up consultation with outside office guru's did a fault graph reading on our 55 267267 line with the outcome that their office technical staff stated words to the affect that the reading was impossible (couldn't be correct). It was then the local technician became quite annoyed when the technical guru insinuated that the equipment the local tech was using must be faulty. The local tech then informed the technical guru that there was nothing wrong with the equipment at all.

It was then that the local technician informed me that as strange as it might seem he believed that because our business was on optical fibre and was so close to the Beach Kiosk (junction box) this could very well be part of the problem. Apparently either under powering over powering was also an issue. He realised that after testing all the other optical fibre outlets with his testing equipment and still reached this impossible reading (according to the technical guru) he would move us off of the fibre."

It was on this note that the technician informed me that although it was a back ward step he was going to investigate the possibility of moving the business off the optical fibre and back to the 'old copper wiring". A copy of this statutory declaration has since been provided to the Hon Michael Kirby AC, CMG.

PLEASE NOTE: I have referred to myself in the following ***Exhibits*** as Alan Smith.

Exhibit 1
10 November 1993: Warwick Smith, TIO discloses confidential information Telstra FOI document A05993 not seen prior to Alan Smith signing the FTSP is marked CONFIDENTIAL Subject – Warwick Smith – COT Cases. In this Telstra email addressed to Telstra's Corporate Secretary Jim Holmes, copied to Frank Blount Telstra's CEO, author Chris Vanilla, Telstra's Corporate Affairs Officer.

Exhibit 2
30th November 1993: This Telstra internal memo FOI document folio D01248, from Ted Benjamin Telstra's Group Manager – Customer Affairs and TIO Council Member writes to Ian Campbell, Customer Projects Executive Office. Subject: *"TIO AND COT"* this was written seven days after Alan and Graham Schorer had signed the TIO-administered Fast Track Settlement Proposal (FTSP). In this memo Mr Benjamin states: *"...At today's Council Meeting the TIO reported on his involvement with the COT settlement processes. It was agreed that any financial contributions made by Telecom to the Cot arbitration process was not a matter for Council but was a private matter between Telecom, AUSTEL and the TIO. I hope you agree with this*." At the bottom of this memo Ian Campbell has added a hand-written comment: *"Don Panel. – Seems ok to me when I spoke to Warwick Smith I suggested that at least for the first group etc etc.*

Exhibit 3
17th February 1994: Graham Schorer, Telstra, Peter Bartlett, and Dr Hughes met to discuss the settlement ***v*** arbitration process. Telstra's transcript of this meeting confirms that the COT claimants still wanted a commercial settlement process and not an arbitration procedure. On page three of the transcript, Dr Hughes stated that this course of action would be more effective and that, as arbitrator, he *"would not make a determination on incomplete information"*

In the case of Alan Smith, as it turned out, Dr Hughes DID make his determination on incomplete information when he handed down his award even though his own technical consultants, DMR & Lanes, had asked for 'extra weeks' to complete their findings – a request that Dr Hughes denied.

Exhibit 4
25th March 1994: Ms Philippa Smith, Commonwealth Ombudsman (Re Alan Smith's FOI matters) advises Telstra's CEO Mr Blount, that Telstra had already stated to John Wynack, Director of Investigations Commonwealth Ombudsman *"...that they were concerned at the publicity and significant diversion of Telecom resources caused by the recent release of certain information by Mr Smith and that the delay in release of documents was due to the need for Telecom to check all documents prior to release so that Telecom is alert to the possible use/misuse of sensitive information. Your officers also informed Mr Wynack that they expected the vetting of the documents would take only a couple of days".*

Exhibit 5
15th April 1994 John Wynack, Director of Investigations writes to Telstra's Steve Black noting: *"I refer to previous communications concerning the complaints we received from Mr Alan Smith concerning TELECOM's handling of his application under the FOI Act. In your facsimile message to Mr Smith dated 14 April 1994 you referred to 'records' held by Telecom which refer to Mr Smith discussing with three Telecom officers over the past twelve months, a discussion Mr Smith had with Mr Malcolm Fraser. Mr Smith informed me that the records are not included among the documents provided to him by Telecom".*

PLEASE NOTE: Alan Smith has never been provided this information.

21st April 1994 on pages 45, 46 and 144 to 152 in Alan Smith's 26th July 2008 AAT Statement of Facts and Contentions (which can be provided to the IAMA) on requests) it shows quite clearly that clauses in the Fast Track Arbitration Procedure Agreement was altered in favour of the TIO-appointed resource unit and Special Counsel, either just hours before Graham Schorer and Alan Smith signed the agreement or during the six days after they signed it and before their copies, signed by Telstra, were returned to him.

Exhibit 6
6th May 1994 Ms Philippa Smith, again writes to Telstra's CEO Frank Blount noting: *"I refer to previous correspondence concerning complaints I received from Messrs Schorer and Smith and Ms Garms and Ms Gillan about Telecom's handling of their requests under the Freedom of Information ACT (FOI Act). I should be grateful if you would now respond to the outstanding matters raised in my letter of 25th March 1994".*

Exhibit 7
16th May 1994
A TIO file note, which he received late in December 2001 (under the TIO Policy Privacy Act), confirms that, on the 16th May, Alan Smith also visited the TIO's office (two blocks from Telstra House) and asked that they provide a witness to accompany him back to the Telstra viewing room to see the altered documents for themselves. Even though the TIO was acting as administrator to Alan's arbitration, they refused to send anyone back with him. When we remember that, as already noted, on 11th January and 11th July1994, Telstra's Steve Black wrote to Warwick Smith regarding the TIO-appointed Resource Unit and AUSTEL censoring Telstra documents before the COT claimants were allowed to use them to support their claims we have to ask if this is why no-one from the TIO's office would help to investigate this discovery matter. In the last paragraph of this document the deputy TIO Ombudsman, Sue Harlow wrote to Warwick Smith,

Exhibit 8
23rd May 1994: On the 18th May 1994, Alan Smith wrote to Dr Hughes, asking him to extend the claim preparation time to 15th June 1994, because of Telstra's delaying FOI tactics. Dr Hughes replied on this day by stating he had agreed to an extension until 15th June 1994, further noting that Telstra's: *"Mr Rumble has indicated that Telecom would be opposed to a further extension of time beyond 15 June 1994."*

Exhibit 9
4th July 1994: Alan Smith responded to Mr Rumble's threats in his letter stating: *"…I gave my word on Friday night, that I would not go running off to the Federal Police etc, I shall honour this statement, and wait for your response to the following questions I ask of Telecom below."* At the time of writing this letter Alan had no intension of providing the AFP with more FOI documents. However, when the AFP came back to Cape Bridgewater 26th September 1994, they started asking a number of questions concerning this Paul Rumble letter

Exhibit 10
11th July 1994: Steve Black writes to Warwick Smith TIO and the administrator to the COT arbitrations stating: *"…Telecom will also make available to the arbitrator a summarised list of information which is available, some of which may be relevant to the arbitration. This information*

will be available for the resource unit to peruse. If the resource unit forms the view that this information should be provided to the arbitrator, then Telecom would accede to this request."

The statement in Mr Black's letter: *"… if the resource unit forms the view that this information should be provided to the arbitrator,"* confirms that both Warwick Smith and Mr Black, are fully aware that the TIO-appointed Resource Unit Ferrier Hodgson Corporate Advisory (FHCA) had also been **secretly** assigned to vet most if not all the arbitration procedural documents on route to Dr Hughes. In other words, if FHCA decided that a particular document was not relevant to the arbitration process, it would not be passed on to Dr Hughes, or the other parties. The fact that Alan Smith and Graham Schorer were never advised of this vetting process i.e. (what arbitration documents the Resource Unit believed Dr Hughes should or should not see), again shows Warwick Smith's bias as the administrator to Telstra, and gives further argument that Telstra should not have been allowed to Board and Council meetings while the COT arbitrations were being conducted.

On page 5 of the Commercial Arbitration Act 1984, under Part 11 – Appointment of Arbitrators and Umpires it clearly states: **(6) Presumption of single arbitrator**
"…An arbitration agreement shall be taken to provide for the appointment of a single arbitrator unless

(a) the agreement otherwise provides; or

(b) the parties otherwise agree in writing.

Pease Note: none of the four claimants gave written authorisation for Ferrier Hodgson Corporate Advisory (FHCA) could act as a second arbitrator and/or vet documents on route to Dr Hughes.

Exhibit 11
12th August 1994: Alan Smith writes to Dr Hughes regarding Telstra's reluctance to provide and Bell Canada International (BCI) FOI information on the Cape Bridgewater tests noting: *"I would also like you to make the Resource Team aware that I have been denied the information regarding difficult network faults, which was sought as part of my FOI request".*

Exhibit 12
15th August 1994: Alan Smith again wrote to Dr Hughes, copying same to Paul Rumble. In this letter Alan Smith notes: *"However, again, I must draw your attention to Telecom's reluctance to forward relevant information" ...* and *..."Had I been given my true F.O.I. documentation, much would have been substantiated. I feel like a blind man without his stick".*

Exhibit 13
16th September 1994: Alan Smith responds to Telstra's Interrogatories. This 42 page reply addressed to Dr Hughes on pages 28 and 29 questions Telstra as to how can Alan Smith respond the BCI tests (information requested as per the interrogatories) if they will not supply him the BCI Raw Data and CCS7 data information under FOI? The was the reason why Alan asked Dr Hughes to convene a meeting see ***Exhibit 16*** below, so as to discuss why Telstra was still not supplying all the relevant documents Alan needed to support his claim and answer Telstra's interrogatories.

Exhibit 14
18th September 1994: Alan's letter to Mr Wynack Commonwealth Ombudsman's Office re Bell Canada International Test FOI documents. Again Alan has dammed Telstra for the way

in which they have not abided by the FOI Act, or the spirit of the arbitration agreement. This letter was copied to Dr Hughes, Paul Rumble his and Warwick Smith.

Exhibit 15
21st September 1994: Dr Hughes writes to Telstra's Paul Rumble (Arbitration Smith) noting: *"…I confirm I have not directed the production by Telecom of any Bell Canada International documents. At this stage I would be encouraging Mr Smith to defer any request for discovery until Telecom's defence documents have been submitted."*

Exhibit 16
3rd October 1994*:* Steve Black writes to Graham stating: *"…Subject to the confirmation of the consent and availability of the Arbitrator I confirm my agreement to meet with him, Mr Smith, Mrs Garms and yourself on Wednesday 5 October 1994, or such other date as the Arbitrator is available. The purpose of the meeting is to address the means by which these Arbitrations may be progressed promptly. In particularly the meeting will focus on issues relating to the production of documents both by Telecom and between the parties."*

Even though Graham Schorer (COT Spokesperson) and Alan Smith had continued to raise the production of document and obtaining further particulars issues with Dr Hughes, from February 1994, the meeting of 5th October 1994 never took place see ***Exhibit 13*** above.

Exhibit 17
27th October 1994 This letter from Alan Smith to Telstra's Ted Benjamin (copied to Dr Hughes and John Wynack, Commonwealth Ombudsman Office, explains quite clearly that Alan Smith was still not getting the FOI documents he was promised he would receive if he signed the Arbitration Agreement.

Exhibit 18
3rd November 1994 This letter from Alan Smith to Telstra's Steve Black (copied to Warwick Smith, Dr Hughes and the Hon Michael Lee Minister for Communications explains quite clearly that Alan was still not getting the FOI documents he was promised he would receive if he signed the Arbitration Agreement.

Exhibit 19
11th November 1994, confirmation Alan had not received all his relevant requested FOI material. John Wynack, Director of Investigations at the Commonwealth Ombudsman's Office, wrote to Frank Blount, Telstra's CEO. This letter was copied on to Dr Hughes and Warwick Smith – it indicates how desperate Alan was becoming regarding the non supply of FOI documents

Exhibit 20
17th November 1994: Alan Smith's letter to Dr Hughes notes: *"Considering the time delays between the signing of the Fast Track Settlement Proposal, now called the Arbitration Procedure, and the delivery of FOI documents by Telecom, there is reason for doubt as to the integrity of Telecom and the Board of Telstra".*

In Dr Hughes' draft award at 2.23 he states: *"Although the time taken for completion of the arbitration may have been longer than initially anticipated, I hold neither party and no person responsible. Indeed, I consider the matter has proceeded expeditiously in all the circumstances. Both parties have co-operated fully".* At the right hand side column at point 2.23 of this document

someone has 'hand written' the notation: *"Do we really want to say this",* which suggest they were also aware of the *"forces at work'* that had collectively stopped the Resource Unit from undertaking their work (see ***Exhibit 33*** below).

IMPORTANT 1
PLEASE NOTE: there is NO point 2.23 in Dr Hughes' final award he provided Alan Smith, and this statement at point 2.23: does not match the statement made he made in his letter to Warwick Smith on 12th May 1995: i.e.

- *"The time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;*
- *In particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;*
- *In summary, it is my view that, if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement."*

In other words, although Dr Hughes knew the combination of the poor time frames in the Arbitration Agreement and the *"forces at work"* had been to blame for the position Alan Smith found himself in without documents to support his claim that the phone and facsimile problems were still ongoing, Dr Hughes still brought down his award. The other three claimants were allowed from thirteen months to three years to access their claim material. If this is not discrimination in the most appalling way, then what is?

Exhibit 21
27th November 1994 Alan's frustration is clear from his following response to Dr Hughes' letter of 15th November 1994 i.e. *"I refer to your letter dated 15 November, 1994.*

In paragraph three you have noted that, if newly released F.O.I. material is made available by Telecom, and if that makes it necessary for me to amend my claim, I should advise you accordingly.

I have continually corresponded with both yourself and Telecom about my concerns with regard to the conduct of Telecom Management; Simon Chalmers; Freehill, Hollingdale & Page and their delaying tactics. Their drip feeding procedure, where the release of these F.O.I. documents is some twelve months late, has disadvantaged me in the preparation of my submission under the Fast Track Arbitration Procedure".

Exhibit 22
29th November 1994: This three page letter from Alan Smith to Telstra's CEO Frank Blount notes: **(1)** *"For six and a half years, I have been in conflict with Telecom manegement.* **(2)** *The newly-appointed ?Telecom Psychologist chose, as the venue for my appointment, the public Bar of the Richmond Henty Hotel.* **(3)** *I would suggest to you, Mr Blount, that you take a good long, hard look into Telecom, the whole thing has been a bloody disgrace ...a bloody Australian disgrace ...and still the lies continue. Telecom are still denying C.O.T members the right to view F.O.I. documents. What are they frightened of now? What else can I say, but, "Meet me in the Richmond Henty."*

Exhibit 23
29th November 1994: During the Australian Federal Police (AFP) enquiry into Alan Smith and Graham Schorer's allegations that Telstra had unlawfully intercepted their telephone calls, the AFP asked Alan to assist them by supplying any evidence he received under FOI, which confirmed Telstra had intercepted his telephone conversations. Mr Smith supplied various documents to the AFP as requested, believing it was his civic duty to do so, unaware that by complying with this request, prompted Telstra to discontinue supplying any further relevant FOI documents during my arbitration. The 29th November 1994 Senate Hansard on this AFP matter notes: Senator Boswell to Telstra's General Counsel Mr Krasnostein: *"Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation".*

Exhibit 24
30th November 1994: This letter from Dr Hughes to Telstra's Ted Benjamin states: *"Your letter requesting an extension of time for submitting Telecom defence in the Smith arbitration (to which I shall respond separately) has prompted me to consider my preferred timetable for the completion of the Smith, Garms and Valkobi arbitrations. It is also my preference that the Resource Unit be in a position to evaluate and investigate the Smith, Garms and Valkobi claims simultaneously".*

MOST IMPORTANT COMMENTARY
These two statements show, quite clearly, that Dr Hughes originally believed he could hand down his findings on the Smith, Garms and Valkobi/Gillan cases within a six to eight weeks of each other and this letter, together with the letters at ***Exhibit 30, 31*** and ***Exhibit 33***, indicate that it was originally expected that all three cases would be finalised reasonably closely together. Dr Hughes, however, completed Alan Smith's case on 11th May 1995 (see below) and, the very next day, he wrote to Warwick Smith, stating: *"It is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement."*

Exhibits 56, 57, and 60 (below) confirm that Dr Hughes then went on to grant an extra twelve months or more to enable Garms and Valkobi/Gillan to access the FOI documents they needed to get from Telstra (*"the production of documents"* and *"obtaining further particulars and the preparation of technical reports"*), something that was never afforded to Alan Smith. It is therefore perfectly clear that Dr Hughes and other interested parties secretly allowed extra time for the Garms and Valkobi claims, even though it was longer than was then allowed for in the Arbitration Agreement. Dr Hughes apparently chose to sacrifice Alan Smith, event to the point of withholding his own letter of 12th May 1995, from Alan, during Alan's arbitration appeal period.

Exhibit 25
7th December 1994: Alan Smith yet again writes to Dr Hughes and the Resource Team noting: *"This report is based on the FOI material which I have received late. I have put in four FOI requests to Telecom since December 1993, but there are still many F.O.I. documents that have not been provided by Telecom. There are approximately two or three issues to raise, as far as added documentation. This late preparation has again been caused by Telecom's reluctance to provide documents under the FOI Act".*

There are two alarming issues associated with this letter i.e.

1. On 30th March 1995, Sue Hodgkinson from (Ferrier Hodgson Corporate Advisory) wrote to Warwick Smith see ***Exhibit 32*** noting: *"Smith's claim was formally certified as completed in November 1994",* even though it is quite obvious from Alan Smith's letter of 7th December 1994. *"There are approximately two or three issues to raise, as far as added documentation",* that his claim was NOT certified as completed;
2. On 2nd August 1996, (fifteen months after Alan Smith's arbitration) Sue Hodkinson wrote to Dr Hughes admitting to withholding various arbitration procedural documents from being investigated during Alan Smith arbitration see ***Exhibit 62*** below. It appears as though this 7th December 1994 letter (and report) dated 7th December 1994, was one of those documents.

Exhibit 26
6th January 1995: Alan Smith's three page letter (all in point form) shows quite clearly what documents Alan has still not received under FOI, and what documents he asking Dr Hughes to seek under the arbitration discovery process.

Please note: Dr Hughes never ever responded to this letter.

Exhibit 27
30th January 1994: Alan wrote to Dr Hughes, explaining many alarming facts noting: *"It is now thirteen months since the first of four FOI applications was presented to Telstra and yet, even after all this time, Telecom have not supplied the material sought, NNI documentation, technical diary notes, ELMI raw data, CCAS7, CCAS and EOS data and voice monitoring fault records. Very little of this information has been supplied under the Arbitration Procedure."*

Exhibit 28
30th January 1994: Alan Smith's letter to John Wynack, (Director of Investigations) Commonwealth Ombudsman's Office notes: *"Even at this late date Telecom are still withholding documents requested under my FOI application".*

Exhibit 29
15th February 1995 Alan Smith's letter to Dr Hughes again raises the issue of the SVT process *"My previous letters to you in January 22nd and 26th also confirmed we were still experiencing problems with our service lines. As you are aware the verification testing was prepared in consultation with Austel and was to form the basis for determining whether the Cot cases individual telephone service was operating satisfactory at the time of our arbitration. Out previous statutory declarations confirmed the testing was not conducted as they should have under the agreed testing process.*

While this letter might seem irrelevant to the present FOI matters it is important to note that the SVT process discussed in this letter is relevant to the ongoing problems Alan Smith business was still experiencing in February 1995, five months after Telstra submitted their Service Verification Tests (SVT) stating their testing had found no faults. Alan Smith was not provided the CCAS data for the date of the SVT process 29th September 1994, until late May 1995, although Telstra documents show the FOI application was processed late April 1995.

Exhibit 30

21st February 1995. This letter, from Dr Hughes to the TIO-appointed arbitration project manager, Mr John Rundell of Ferrier Hodgson Corporate Advisory, is headed Arbitration – Smith. Except for different headings, this letter is exactly the same as the letter at ***Exhibit 31*** (following), which is also dated 21st February 1995, but headed Arbitration – Valkobi Pty Ltd. Valkobi was the company once owned by COT member Maureen Gillan.

Exhibit 31

21st February 1995. This letter, as noted above, is almost an exact duplicate of ***Exhibit 30***. In the first paragraph on page one of BOTH these letters, Dr Hughes has stated: *"As you are aware, I have been provided with all relevant pleadings in this matter. I have completed a preliminary review of the material".* Dr Hughes however, had certainly not been provided with *"all relevant pleadings"*, either for Alan Smith's case, or for Maureen Gillan's, but this didn't stop him from handing down his findings in Alan's case, even though:

(a) Like Maureen Gillan and Ann Garms, Alan was still asking for FOI documents from Telstra, right up to the day of the arbitrator's deliberation;

(b) Six days before the arbitrator deliberated on Alan's case, the arbitrator refused to allow Alan to have an oral hearing into problems with the production of documents and Alan's contention that the telephone problems and faults were still occurring, meaning that the arbitrator was therefore fully aware of both these issues, particularly the lack of documents provided to Alan;

(c) In a draft of their report, DMR & Lane (the Technical Resource Unit) had warned the arbitrator, shortly before the arbitrator prepared his final findings, that their final report into Alan's case was still weeks from completion (see ***Exhibit 37)***.

So, not only did the arbitrator discriminate against Alan by using an incomplete technical report as a basis for his final findings, he also discriminated by handing down his findings even though he knew about documents that had not been provided to Alan: clearly the arbitrator had NOT received *"all relevant pleadings"*.

Exhibit 32

30th March 1995: In this report by Sue Hodgkinson of FHCA, to Warwick Smith, TIO, it confirms Warwick Smith and FHCA were fully aware Alan Smith received numerous FOI documents two weeks after Telstra had submitted their defence. In this letter, Ms Hodgkinson states:

- *Smith continued to "drip feed" lodgement of his claim documents based on the fact that Telecom "drip fed" his FOI request (this culminated in a complaint to the Commonwealth Ombudsman and subsequent FOI review by Telecom.*
- *On 13 December 1994, Telecom delivered its defence to the Arbitrator.*
- *Smith has stated to me verbally that, on 23 December 1994, he received 90 kilograms of FOI material. As his claim was "finalised", he did not have the ability to examine these documents and add to his claim".* This statement *"he did not have the ability to examine these documents",* is most relevant to (***Exhibit 55***) below, i.e. Dr Hughes' statement to Laurie James, President of the Institute of Arbitrators Australia concerning these same late received 22,000 FOI documents.

Exhibit 33

18th April 1995: This letter from the TIO-appointed arbitration project manager, John Rundell of Ferrier Hodgson Corporate Advisory, to Warwick Smith (copied to Peter Bartlett and Dr Hughes)

states: *'It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work."*

In this same letter it is noted that Smith, Garms and Gillan/Valkobi were within one month of each other were to all have their arbitration matters reviewed by Lane Telecommunications and Paul Howell of DMR (Canada). In other words, up to this point of time all three claimants were being treated as equal including having their claims finalised within a short period of each other. This letter should be read in conjunction with ***Exhibits 24, 30, and 31,*** because all four documents show that the arbitration claims of Smith, Garms and Gillan/Valkobi were to all be finalised with a month to six weeks of each other. Further evidence that Alan Smith was not only denied natural justice, he was also discriminated against in the most appalling manner.

Exhibit 34
18th April 1995: Alan Smith's letter to Telstra's Ted Benjamin, (copied to Dr Hughes, John Wynack, and Peter Bartlett) shows quite clearly how Telstra's late and or non-compliance of the FOI Act has disadvantaged Alan Smith's arbitration claim.

Exhibit 35
28th April 1995: Alan Smith writes to John Wynack, Investigating Officer Commonwealth Ombudsman's Office (copied to Telstra and Ferrier Hodgson) alerting him once again that Telstra's non-supply of FOI documents has disadvantaged the preparation of his arbitration process.

Exhibit 36
28th April 1995: Peter Bartlett wrote to Warwick Smith stating: *"Further to our discussion, it seems to me that we should put to Gordon Hughes that we expect his Award to be made prior to his departure on 12 May 1995. Attached is a draft letter to Gordon. It is in reasonably harsh terms.* In this draft letter under the heading Arbitration – Smith Mr Bartlett notes: *"I am becoming increasingly concerned at the delays in the finalisation of this matter. The Resource Unit tells me that it expects its technical and financial reports to the Arbitrator will be released today to the parties. The parties will then of course have the right to a reasonable period within which to comment of these reports.*

However, I understand you are to present a paper in Greece in mid May. I would expect the Award would be delivered prior to you departure. It would be unacceptable to contemplate the delivery of the Award being delayed until after your return."

By this time, Peter Bartlett, Warwick Smith and Dr Hughes all knew about the *"forces at work"* that were collectively beyond the Resources Unit's *"reasonable control"*, and they all knew that these 'forces' were causing severe delays for the arbitration process (see ***Exhibit 33***). Still they handed down a finding on Alan Smith's claim, at least twelve months before the other claims were processed. According to this information, together with ***Exhibits 37***, not only did Dr Hughes know about the delays being created by these 'forces', he also knew on the day he deliberated on Alan Smith's claim, he was using a technical report that was then still incomplete, but still he handed down his findings in Alan's case.

A combination of disastrous affect that Telstra's non-supply of FOI documents to the claimants the *"forces at work"*, the incomplete (DMR & Lane technical report) and Dr

Hughes's own written admission of 12th May 1995 that the arbitration agreement was 'not credible', created an arbitration process that was a total sham for all four COT claimants.

Question
Why was Peter Bartlett allowed to dictate to Dr Hughes, that he MUST bring down his Award before he left for Greece?

Exhibits 37
30th April 1995: On page 2 of the DMR & Lane draft Report dated 30th April 1995, provided to the Arbitrator it states: *"It is complete and final as it is. There is, however, an addendum which we may find it necessary to add during the next few weeks on billing, i.e. possible discrepancies in Smith's Telecom bills"...*and on page 3 notes…*"One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems. Otherwise, the Technical Report on Cape Bridgewater is complete".* On page 27 of this draft it is also documented what claim and defence documents were investigated by DMR & Lane in order for them to make their draft findings i.e. *"The information provided in this report has been derived and interpreted from the following documents".*

Exhibit 38
30th April 1995: In the second paragraph on page I of the alleged finial DMR & Lane Report, (also dated 30th April 1995), provided to Alan Smith and Telstra only the wording: *"It is complete and final as it is"* is displayed on this page. However, on page 2 the wording as shown in the arbitrators copy (see ***Exhibit 37*** above) i.e. *"One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems. Otherwise, the Technical Report on Cape Bridgewater is complete",* has been removed.

Just as alarming is the additional documents on page 40 of this report showing someone has added 13 extra sets of claim documents (totalling over 1200 documents) to the same list in which was provided to Dr Hughes under the heading: *"The information provided in this report has been derived and interpreted from the following documents".* It is blatantly obvious someone added these 13 claim documents to this list in an attempt to convince the casual observer that ALL of Alan Smith's claim documents were investigated, see also ***Exhibit 69*** below.

Any person with average intelligence would conclude that both reports dated 30th April cover the same twenty-three assessments and include the same technical information. The arbitrators list of sourced documents, are minus 13 documents to that which appear of the final report list. So who added the 13 sets of claim documents to the final list?

Questions
1. How could the report Alan Smith received be complete when the arbitrator's version with the same date needed extra weeks more to complete?
2. How can two reports have identical technical findings 'word for word' when their conclusions were apparently reached after one of the reports had assessed 1,200 more billing claim documents and a further varying 1,100 claim documents (than the other?
3. How can a report that sourced 2,300 more claim documents (half consisting of billing claim material) not disclose one single billing issue as being addressed in the report?
4. Who disallowed DMR & Lanes the extra weeks they needed to complete their report?

On 5th May 1995, see ***Exhibit 41,*** Dr Hughes wrote to Alan Smith, noting: *"I reiterate that any comments regarding the factual content of the Resources Unit Reports must be received by me by 5.00pm on Tuesday 9 May 1995.* Because of the short notice (time) allowed by Dr Hughes fo Alan to respond to the DMR & Lane report Alan had to respond himself unable to get technical assistance. After all, Dr Hughes had a more important engagement on 12th May 1995, his plane trip to Greece.

Exhibit 39
3rd May 1995: Alan Smith again writes to John Wynack Commonwealth Ombudsman's Office copied to Dr Hughes noting: *"If what I have shown here is any example of the effect that this non-compliance with the FOI Act has done to my claim you would have to conclude that Telecom has disadvantaged my claim by these actions, in breach of the FOI Act".*

Exhibit 40
5th May 1995: Alan Smith writes to John Wynack, Commonwealth Ombudsman's Office noting: *"I present here, further documentation and fault data, documents which still have not been received under my FOI request."*

Exhibit 41
5th May 1995: In response to Alan Smith's letter of 4th May 1995, to Dr Hughes (see above) and regarding a subsequent telephone call from Alan on the 4th May to Dr Hughes' secretary Caroline Friend, Dr Hughes noted: *"I refer to your telephone message of 4 May and your facsimile of 4 and 5 May 1995 and advise I do not consider grounds exist for the introduction of new evidence or convening of a hearing at this stage. I reiterate that any comments regarding the factual content of the Resource Unit must be received by me in writing by 5.00pm on Tuesday 9 May 1995."*

Exhibit 42
10th May 1995: Unaware that Dr Hughes would be handing down his findings (tomorrow) findings that would be based on Alan's incomplete submission as well as the DMR & Lane complete technical report Alan shows Dr Hughes once more just how bad this non supply of FOI documents has had on Alan's claim noting: *"As you will see, attached are further examples of how Telecom approaches FOI requests and the Fast Track Arbitration Procedure. This letter clearly shows that the information received yesterday may well have substantiated evidence to support my claim".*

Exhibit 43
11th May 1995: On page 3 of the Alan Smith Award, Dr Hughes states: *"I considered it essential that both parties had every reasonable opportunity to place relevant material before me, regardless of the time frame set out in the arbitration agreement."* Many of the statements made by Dr Hughes in his award are misleading and/or deceptive but this statement in particular does not add up, considering that Dr Hughes allowed Garms, Gillan at least twelve more months or more to prepare their claims than that allowed for Alan Smith and, as shown above, he was originally going to deliberated on the Garms, Gillan and Smith claims within five or six weeks of each other. This means that Dr Hughes knew, even while he was preparing Alan Smith's award, that he was using an arbitration agreement that he planned to declare as 'not credible' on the very next day.

At point (e), on page 3 of the Award, Dr Hughes notes that: *"…a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim"* but he makes no reference to the problems Alan Smith had as a direct result of Telstra withholding most of the relevant documents Alan needed to support his claim and as well as to be able to respond to Telstra's request for further particulars: documents Alan had legally requested under FOI. Dr Hughes also neglected to mention that, together with Warwick Smith and Peter Bartlett, he had been warned about the *"forces at work"* collectively beyond the *"reasonable control"* of the Resource Unit, which had delayed the Resource Unit in undertaking their work. A comparison of Dr Hughes's draft Alan Smith Award (attached) shows at point 2.23, the hand-written note asking *"Do we really want to say this"*; and the statements on page 3, and elsewhere, in the final Smith award, proves that Alan Smith's arbitration needs investigating.

The statement at point (j) in this Award that : *"on 21 February 1995, by which time I was satisfied and the submission of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain enquires on my behalf."* This is most relevant to ***Exhibit 44*** below.

Exhibit 44

12th May 1995: Dr Hughes writes to Warwick Smith: Alan received a copy of this letter from the TIO's office in 2001/2, and he has so far only touched briefly on its significance here. A more in-depth study of this letter raises the following questions:

Dr Hughes states: *"… as far as I could observe, both Telecom and Smith co-operated in the Smith arbitration."*

- How could he make such a statement when he had received so many letters from Alan Smith alerting him to the numerous FOI documents that Alan had still not received at the time Dr Hughes wrote this letter;
- How could he make such a statement when he had received written notification that the Government Solicitors had to be brought in to force Telstra to comply with FOI requests by the COT members? and
- How could he make such a statement after seeing a copy of John Rundell's letter of 18th April 1995, to the TIO, which stated: *"It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work."*

Was the man totally blind, or was he just afraid to expose the truth?

Also in this same letter, Dr Hughes makes the following comments, which all need to be explained:

- *"The time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;*
- *In particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;*
- *In summary, it is my view that, if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement.*

It has been shown that:

1. the arbitrator wrote to the TIO on 12th May 1995, after the end of the first arbitration, noting that it would be *"... necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement"*;
2. The TIO and the arbitrator then ***secretly*** allowed the second, third and fourth claimants thirteen months or so more than he allowed the first claimant in which to prepare their claims and reply to Telstra's defence – extra time was not allowed for in the arbitration agreement.

This is clearly collusion on the part of the arbitrator and the administrator of the process, because they did not act in the best interest of ***all four*** of the COT claimants who had signed the ***same*** arbitration agreement. It was not only clear discrimination against Alan Smith; it also stopped any of the claimants from legally challenging the process as not being workable. If the arbitrator had followed the guidelines of the Commercial Arbitration Act 1984 and openly alerted all the claimants to his letter to the TIO on 12th May 1995 and the arbitration project manager's letter of 18th April 1995 (regarding the *"... forces at work collectively beyond our reasonable control that have delayed us in undertaking our work"*), then all four claimants would have had a good chance of being granted a mistrial on the grounds that the original agreement was not workable.

Exhibit 45
24th May 1995: In this letter from Telstra's Ted Benjamin to Alan Smith it is noted: *"Further documents have recently come to light that fall within your FOI request of 1994. Copies of these documents are enclosed.*

Telecom makes the following comments in relation to the documentation –

1. *At least 50% of the material being forwarded to you has been forwarded to you previously in other Files;*
2. *Telecom's defence team did not have the opportunity to use this information for its defence."*

It is confirmed however from ***Exhibit 50*** that FOI documents N00005 N00006 and N00037, were not received before Dr Hughes' deliberation confirms that the Cape Bridgewater Bell Canada International (report) used by Telstra as arbitration defence material was known by Telstra to be impracticable.

Exhibit 46
20th June 1995: This letter from Alan Smith to Dr Hughes (arbitrator) is linked to FOI documents N00005, N00006 and N00037, which confirms Telstra knew their Cape Bridgewater (BCI-Tests) were flawed, but still used the results as defence material.

Exhibit 47
21st June 1995: Dr Hughes writes to John Pinnock (TIO) noting: *"I enclose a copy letter from Alan Smith dated 20 June 1995. I do not believe I have jurisdiction over this matter any longer, nor do I consider it appropriate for me to enter into correspondence with either of the parties regarding the conduct of the proceedings or matters which may or may not have come to light subsequent to the delivery of my award."*

Exhibit 48
22nd June 1995: This TIO Facsimile Cover Sheet from Pia Dia Mattina (TIO office) to Peter Bartlett (TIO-Special Counsel) discusses Dr Hughes 21st June 1995 letter to John Pinnock (see ***Exhibit 47***) above, noting: *"Peter, could you please have a look at Hughes' letter to Pinnock dated 21 June 95 re Alan Smith. John wants to discuss it on Monday, and what the approach should be re parties seeking to revisit issues post Arb'n* (Arbitration). *His position is not to open the can of worms, but would like to discuss strategy with you".*

Please Note: a 16 page report consisting of 46 exhibits titled: *"Bell Canada International (BCI) Telstra's Misleading and Deceptive Conduct"* dated March/April 2009 can be provided to the IAMA which confirms the BCI (Cape Bridgewater Addendum) Report placed into evidence by Dr Hughes, was more than just fundamentally flawed. This is the same BCI Report/information that would have opened the 'can of worms' had my claims been investigated by Dr Hughes during my arbitration or around the dates of 21st and 22nd June 1995.

Exhibit 49-a
21st August 1995: This letter from Telstra's Steve Black to John Pinnock (TIO) is headed "Fast Track Arbitration Procedure – Alan Smith" and notes: *"I refer Dr Hughes' letter to you dated 21 June 1995, which enclosed a copy of a facsimile to Dr Hughes dated 20 June 1995",* (see ***Exhibits 46*** and ***47***, above). *Dr Hughes copied his letter to Telstra".* Together with ***Exhibits 46, 47*** and ***48***, this letter shows that, by August 1995, Dr Hughes, John Pinnock, Peter Bartlett and Telstra (the defendants) were all aware that, in response to legal FOI requests lodged by Alan Smith during his arbitration, Telstra withheld many of the most vital documents (including the BCI documents referred to in ***Exhibit 50*** (see folio *N00005, N00006 and N00037*) until after Alan's designated arbitration appeal period had expired.

On 22nd December 1995, Derek Ryan of DMR Corporate (Alan's financial advisor) wrote to John Pinnock see attached here as (***Exhibit 49-b***) explaining that the report prepared by arbitration financial advisors Ferrier Hodgson, in relation to Alan's case, was incomplete and Mr Ryan was therefore not able to determine how FHCA arrived at their loss figures noting: *"On 17 May I telephoned John Rundell and he stated he was unable to discuss anything with me until the appeal period had expired. During that telephone conversation I told him that I was unable to recalculate the FHCA figures and that I felt that the report was deficient in that regard. He then stated that he understood my problems and that FHCA had excluded a large amount of information from their final report at the request of the arbitrator."*

Also attached as ***Exhibit 49-c*** is John Rundell's letter dated 13th February 1995, to John Pinnock noting: *"I did advise Mr Ryan that the final report did not cover all material and working papers."* In other words, if we compare the 30th April 1995, DMR & Lane draft Technical Evaluation Report disguised and submitted as the final report see ***Exhibit 37*** and the FHCA final report dated 3rd May 1995 minus a large amount of information that should have accompanied the report was excluded at the request of the arbitrator including the admission by John Rundell that the billing faults were not addressed in the arbitration because Alan submitted that information late in his claim see ***Exhibit 51*** when FHCA own letter to Dr Hughes 2nd August 1996 show Alan submitted this claim information early in the arbitration and it becomes blatantly obvious FHCA did not act impartial as the Resource Unit. Compare this fact with the fact that FHCA and Special Counsel was secretly exonerated from any liability of suit when the arbitration agreement was altered without Graham Schorer and Alan Smith being advised, and it is evident that we are dealing with collusive practices by a number of parties in the worst possible way.

Exhibit 50
12th September 1995: This letter was written by John Pinnock to Ted Benjamin, regarding Alan Smith's evidence showing that Mr Benjamin waited until after Alan's appeal time had expired before releasing relevant FOI documents. In this letter Mr Pinnock notes: *"You have also responded that Documents N00005, N00006 and N00037 were first supplied to Mr Smith under FOI on 26 May, and that they were not available prior to that date. Could you please clarify why this is so?"* Alan Smith has never seen a response to Mr Pinnock's letter.

Exhibit 51
15th November 1995: John Rundell FHCA writes to John Pinnock noting: *"At a late stage of the Arbitration process, at the time of preparation of the Technical Evaluation Report, there was discussion about billing issues which had been raised by Mr Smith. A draft of the technical Evaluation Report therefore included reference to the billing matters, which it was thought might require further work beyond the time of issue of the Report"…* and...*"A second matter involved 008 calls. Again, this matter was current at a late stage (April 1995) of the Arbitration process. As no further progress was likely to be made on these matters, the formal version of the Technical Evaluation Report did not leave the billing issues open".*

Exhibit 52-a, is a letter dated 16th December 1994, from Telstra's Ted Benjamin to Dr Hughes noting: *"Please find enclosed a copy of the following documents:*

1. *Letter dated 4 October 1994 from Austel to Telecom,*
2. *Letter dated 11 November 1994 from Telecom to Austel;*
3. *Letter dated 1 December 1994 from Austel to Telecom.*

You will note from the correspondence that Austel requested Telecom to provide information relating to charging discrepancies reported bt Mr Smith for short duration calls on his 008 service. These issues form part of the subject matters of Mr Smith's claim under the Fast Track Arbitration Procedure".

The 16th December 1994 letter and accompanying attachments actually confirm that Alan Smith raised the 008 billing issues at least before 4th October 1994, NOT in April 1995 as quoted by John Rundell in ***Exhibit 51*** above.

Exhibit 52-b from the formal Technical Evaluation Report actually notes at 2.23: *"Continued reports of 008 faults up to the present. As the level of disruption to overall Cape Bridgewater Holiday Camp (CBHC) service is not clear, and fault* causes *have not been diagnosed, a reasonable expectation is that these faults would remain "open".*

Question
Why did John Rundell tell John Pinnock (TIO) see ***Exhibit 51*** (above) that:*" As no further progress was likely to be made on these matters, the formal version of the Technical Evaluation Report did not leave the billing issues open"?*

On page 9 in Telstra's official response to the same Technical Evaluation Report at point 2.23 see ***Exhibit 52-c*** it is noted: *"The resource Unit refers to complaints relating to the Claimants 008 service. Although the Resource Unit would have preferred such complaints to have been left "open", there is no evidence of any "real fault" which may have had an impact on the Claimants telephone service."*

Are we to assume that Telstra was provided with a totally different Technical Evaluation Report to respond to) than the one that Mr Rundell has referred to in his letter to Mr Pinnock?

Exhibit 53
23rd January 1996: Dr Hughes writes to John Pinnock re Laurie James (President of the Institute of Arbitrator's Australia) letters of 18 and 19 January 1996, to Dr Hughes, regarding the Institutes concerns that Alan Smith's arbitration might not have been conducted according to the Commercial Arbitration Act 1984 noting: *"…I enclose copy letters dated 18 and 19 January 1996, from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters, including;*

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

Had Dr Hughes advised Mr James in his letter of 15th February 1996 see ***Exhibit 54*** below, that he had already dammed the arbitration agreement as not a credible agreement (in which to conduct the COT case arbitration's under see ***Exhibit 44*** above, or that he had no control over the arbitration process because it had been conducted entirely outside the ambit of the arbitrations procedures see ***Exhibit 63*** below, the institute would have found that Alan Smith's allegations were valid. Had this have happened in January 1996, Alan would still be the owner of the Cape Bridgewater Holiday Camp.

Exhibit 54
15th February 1996: Dr Hughes again wrote to John Pinnock regarding Mr Laurie James, then the President of the Institute of Arbitrators, Australia, noting: *'I enclose a draft letter which I propose forwarding to the Institute of Arbitrators Australia in response to the complaint by Mr Smith. I would appreciate your confirmation that there is nothing in the proposed letter which would embarrass your office or jeopardise the current arbitrations."*

Exhibit 55
16th February 1996,
In this letter Dr Hughes spins a tall story to Laurie James. There are many inaccuracies in this letter but the most important is at point 1 on page two, where Dr Hughes states: *"…contrary to Mr Smith's assertion on page 3, his 24,000 (sic) documents were all viewed by me, Ferrier Hodgson Corporate Advisory, DMR Group Inc (Canada) and Lane Telecommunications."* This statement however is quite wrong and highlights just how far Dr Hughes was prepared to go to cover up the unconscionable way Alan Smith's arbitration was conducted.

For the record:
The 24,000 FOI documents referred to by Dr Hughes in his letter to Mr James, relates to Alan's original letter to Senator Evans, where Alan alerted the Senator to the unlawful process as did Ann Garms state in her letter to the Hon Daryl Williams AM, QC, Attorney General and Minister for Justice on 27th June 1996, see ***Exhibit 60*** below. On page 4 of this letter to Senator Evans Alan alerts him to the 24,000 documents he did not submit into the arbitration process stating: *"…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.*

The most alarming aspect about Dr Hughes' statement in this letter to Laurie James that: *"contrary to Mr Smith's assertion on page 3, his 24,000 (sic) documents were all viewed by me, Ferrier Hodgson Corporate Advisory, DMR Group Inc (Canada) and Lane Telecommunications",* is that on 30th March 1995, Sue Hodgkinson of Ferrier Hodgson Corporate Advisory had a complete different story altogether about these 24, 000 FOI documents when discussing this issues with Warwick Smith see ***Exhibit 32*** above where she notes: ***"****Smith has stated to me verbally that, on 23 December 1994, he received 90 kilograms of FOI material. As his claim was "finalised", he did not have the ability to examine these documents and add to his claim".* Here is further evidence that the 90 kilograms of material (24,000 FOI documents) received by Alan Smith, were never assessed during his arbitration.

Exhibit 56
8th March 1996: Under the heading Arbitration – Gillan Dr Hughes writes to Telstra's Ted Benjamin noting: *"I refer to my letter of 20 February 1996. Documentation was made available to the claimants on or before 6 March 1996. If this has not occurred, could you please advise me when the delivery of that documentation is expected to take place".*

Exhibit 57
27th March 1996: Amanda Davis' letter to Dr Hughes notes: *"The documents recently provided by Telstra contain new relevant information which clearly has an impact on the Claimants position".* Please note: ***Exhibits 56, 57*** have been included here to show that Dr Hughes had allowed Ms Gillan more than twelve months extra time not afforded Alan Smith, in which to assist here in properly preparing her claim and response to Telstra's defence. The attached letter dated 25th June 1996, to Ms Gillan from Telstra's Ted Benjamin and accompanying Commonwealth Bank deposits slip for $225, 000.00 confirms, here arbitration award was not handed down until June 1996.

Exhibit 58
25th June 1996: Alan Smith writes to Mr Pinnock regarding the 008/1800 letters referred to (see ***Exhibit 51*** above), and why these letters were never provided to Alan during his arbitration. When Alan later received a copy of this letter back from the TIO's office, a hand-written note had been added, stating: "*John, we are still waiting on a response from Gordon on this."*

Exhibit 59
26th June 1996: Alan Smith's writes again to Mr Pinnock concerning further letters that were not provided noting: *"I find it very sad to be in possession of so many FOI documents which support my allegations that many, many copies of internal correspondence I forwarded to Dr Hughes during the FTAP was never seen by the Resource Unit or Telstra." It is equally sad that copies of Telstra letters, which were also part of the FTAP, were not forwarded to me."*

When this letter was later returned from the TIO, it also had a hand-written note stating*: "These are quite serious allegations, we need to respond to specific letters Smith says weren't forwarded or received and provide answers on each."* Alan Smith has never received a response from Mr Pinnock regarding this matter.

Exhibit 60
27th June 1996: Ann Garms writes to the Hon Daryl Williams AM, QC, MP Attorney General and Minister for Justice noting: ***Re: Defective Administration and unlawful corporate conduct by TELSTRA Corporation.*** *I wish to submit a formal complaint concerning Defective Administration and unlawful conduct by Telstra Corporation. I am in Arbitration with Telstra. The Arbitration is*

known as the "Fast Track Arbitration Procedure". Attached to this exhibit is a sworn statutory declaration dated 13th May 1998, prepared by Telstra's Rodney John Kearney showing quite clearly Mrs Garms was still receiving arbitration letters from Telstra's Ted Benjamin as late as 24th June 1996.

Exhibit 60 has been included here to show that Dr Hughes had allowed Ms Garms more than twelve months extra time not afforded Alan Smith, in which to assist here in properly preparing her claim and response to Telstra's defence

Exhibit 61
11th July 1996: Sue Harlow from AUSTEL writes to Senator Richard Alston, Minister for Communications noting:– **Conduct of the Arbitrations**: *"…The TIO believes some comment on the behaviour and attitude of Telstra in the conduct of these Arbitrations is warranted. The TIO believes that Telstra has, in all claims, responded in an overly legalistic manner. It has shown a tendency to deny liability under ever potential clause of action on the basis of perceived statutory and contractual immunities. I has lodged lengthy and detailed request for further and better particulars in most arbitrations. In short, while the arbitration procedure has sought to relax the legal burdens, Telstra's conduct has certainly not.*

There have also been considerable delays in the provision of claim and defence materials and further information from both claimants and Telstra. Telstra has taken excessive time in the provision of material requested under FOI."

Exhibit 62
2nd August 1996: This letter from Sue Hodgkinson (FHCA) to Dr Hughes admits that a number of letters were withheld from the arbitration procedure, noting: *"At the time of the letter from Austel, Mr Smith's telephone problems were being addressed in the Arbitration. Due to a number of factors including confidentiality, it was felt not appropriate to answer Austel's comments in detail, in particular the issue was under consideration in the Arbitration. As agreed the Resource Unit did not respond to the Austel letter."* This statement raises the following serious matters:

1. The 'Austel' letter Ms Hodgkinson refers to was dated 16th December 1994, from Telstra to Dr Hughes, with another three letters attached. The attached letters had been exchanged between AUSTEL and Telstra. Ms Hodgkinson is therefore deflecting the issue i.e. all four letters should have been provided to Dr Hughes and Alan Smith see ***Exhibits 52-a*** (above).
2. When Austel wrote the letter Ms Hodgkinson refers to, Alan Smith's telephone problems were NOT yet being investigated *'… in the Arbitration'* because Telstra only submitted their defence on 12th December 1994 (4 days before the AUSTEL letter was written) and the arbitrator had as per the (Arbitration Agreement) had to allow Alan Smith one month in which to reply to Telstra's defence of Alan's claims.
3. ***Exhibit 43*** (above) explains that the arbitrator stated, in Alan's award, at point (j), that: *"…on 21 February 1995, by which time I was satisfied and the submission of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain enquires on my behalf"* which indicates that the official investigation into Alan Smith's claims, Telstra defence of the claims and Alan's response to the defence didn't begin until 21st February 1995. Why did Ms Hodgkinson tell the arbitrator that the billing issues in Alan's claim were already

under investigation by16th December 1994, when FHCA had not started their investigations until 21st February 1995?

Here is a further example why Ferrier Hodgson Corporate Advisory (FHCA) should never have been allowed to act as second arbitrator and/or have been exonerated from any legal liability under any circumstances.

Exhibit 10 (above) confirms that Telstra and the TIO (Warwick Smith) secretly agreed that the Resource Unit would have first access to arbitration procedural documents, before they were provided to the arbitrator for his assessment. This clearly contravenes the assurance given by Warwick Smith (TIO) and Peter Bartlett (Special Counsel) that Dr Hughes would be the only arbitrator assessing the first four COT claims and therefore the FTAP (Agreement) did allow the resource unit to make decisions of their own volition (as was the case in Alan's arbitration) which also contravened the Commercial Arbitration Act 1984, under which the four COT arbitrations were being conducted.

Exhibit 63
26th September 1997: Senate Estimates Hansard confirms the TIO John Pinnock, advised the Senate Estimates Committee that: *"In the process leading up to the development of the arbitration procedures – and I was not party to that, but know enough about it to be able to say – the claimants were told clearly that documents were to be made available to them under the FOI Act.*

Mr Pinnock then when onto say that:*" For present purposes, though, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over the process, because it was a process conducted entirely outside the ambit of the arbitration procedure".*

If the TIO and/or the TIO's Special Counsel had told Graham and/or Alan that the arbitrator would not have any control over the arbitration because it was going to be conducted outside the ambit of the procedure and would therefore not be conducted according to the Commercial Arbitration Act 1984, neither Graham nor Alan would have abandoned the already-signed FTSP for the proposed arbitration process.

Exhibits 10, 52-a and ***62*** confirm that FHCA was allowed to decide which documents the arbitrator would see and which would be discarded before he saw them. If the hand-writing added at point 2.3 on page 4 of the draft of Alan Smith's award is Dr Hughes', then ***Exhibit 43*** confirms that Dr Hughes was required to ask for permission regarding what he could or could not include in the final version of the award.

If it really was Dr Hughes who prepared Alan's award then, on page 3 of the draft version of the award, Dr Hughes only refers to DMR Australia as providing the technical information on which the award was based but then, in the final version of the award, he states that, during the arbitration, DMR (Australia) was replaced by a combination of DMR (Canada) and Lane Communications and that all three assisted him in preparing his findings. The technical findings in both the draft and final versions of the award however are exactly the same. This is explained further below.

In 2001 under the TIO Privacy Policy Act, Alan received a document dated 18th April, from John Rundell of FHCA to Warwick Smith see ***Exhibit 33*** above. Part of this document advised Warwick Smith that: *"Paul Howell, Director of DMR Inc Canada arrived in*

Australia 13th April 1995 and worked over Easter Holiday period, particularly on the Smith claim. Any technical report prepared by draft by Lanes will be signed off and appear on the letterhead of DMR Inc," also attached here as ***Exhibit 65***.

The relevance of this letter is split up in the following two points:

- DMR (Australia) signed an agreement with the TIO Warwick Smith in April 1994, (as displayed in the Arbitration Agreement) that they would act as the independently arbitration technical resource unit.

- March 9, 1995, Warwick Smith advised me that DMR Australia was unavailable to provide locally based technical assistance. This letter confirms that Paul Howell of DMR (Canada) would be appointed as the principal technical advisor to the Resource Unit and Lanes (based in Adelaide) would assist Mr Howell, stating: *"Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith"* ***Exhibit 64***

- Please note: the above statement by Mr Rundell in his letter confirms he was prepared to transfer Lanes technical findings onto the letterhead of DMR (Canada) as a guise that Paul Howell prepared the final report ***Exhibit 65***

- Document ***Exhibit 66*** confirms Paul Howell on 21st March 1995, only received three of my 22 submitted claim documents along with Telstra's defence.

- Document ***Exhibit 67*** confirms FHCA advised Mr Howell 5th April 1995, that David Read would have his draft technical report prepared by 7th April 1995.

- Dr Hughes' draft Award page 3 at (i) and (j) states: *"...pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit," comprising Ferrier Hodgson, Charted Accountants, and DMR Group Australia Pty Ltd, to conduct such inquires or research as I saw fit; On 21 February 1995, by the time I was satisfied that the submissions of all relevant material by both parties was complete, I instructed Ferrier Hodgson and, through them DMR) to conduct certain inquiries on my behalf"* ***Exhibit 68***

- Dr Hughes' final Award states on pages 3 and 4 at (i) and (j) *"...pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit" comprising Ferrier Hodgson, Charted Accountants, and DMR Group Australia Pty Ltd, to conduct such inquires or research as I saw fit. By consent of the parties, the role of DMR Group Australia Pty Ltd was subsequently performed jointly by DMR Group Inc and Lane Telecommunications Pty Ltd; On 21 February 1995, by which time I was satisfied that the submissions of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquires on my behalf"* ***Exhibit 69***

Summary of document ***Exhibit 64*** to ***Exhibit 69*** follows in point form:

1. Paul Howell didn't receive any of the technical claim and defence material until 21st March 1995
2. Paul Howell and David Read wasn't officially appointed by the TIO until 9th March 1995 and/or officially accepted by letter of consent ***Exhibit 64***

All the technical findings in both the draft and final Awards (except for the removal of the alleged liquid spillage segment) are one of the same mirrored word for word. However, in the draft Award the author states by 21st February 1995, he called on DMR Group Australia Pty Ltd to conduct inquires, (who had been sacked prior to this date for conflict of interests) The fact that DMR (Canada) was not appointed as a replacement for DMR (Australia) until 9th March 1995, and didn't receive the technical claim and defence material until 21st March 1995 see ***Exhibit 66,*** how could the technical findings in the final Award have been prepared by DMR (Canada) when the technical findings in both Awards are one of the same?

Exhibit 70 is a list from the DMR & Lanes Report dated 30th April 1995, which Alan Smith has marked Arbitrators copy. ***Exhibit 71*** is marked Final copy also a list from the DMR & Lanes Report dated 30th April 1995. Both lists include the words *"The information provided in this report has been derived and interoperated from the following documents."* Any person with average intelligence (after viewing both reports) would conclude that both reports dated 30th April cover the same twenty-three assessments and include the same technical information 'word for word. The arbitrators list of sourced documents, are minus 13 bound claim documents (comprising over 2,300 documents) to that which appear of the final report list. So who added the 13 sets of claim documents to the final list?

In the 30th April 1995, DMR & Lane report which Dr Hughes provided for Alan's official written response (as directed by the arbitration agreement) see ***Exhibit 38*** was different to the draft report dated 30th April 1995 see ***Exhibit 37***, that noted the report was still incomplete as needing extra weeks to investigate Alan's billing claim documents.. Not only had the aforementioned 13 bound claim documents been added to the (final report) but the reference to billing discrepancies had been removed, along with the reference to the report being incomplete. In other words, the technical findings in the draft arbitrator's award and the draft DMR & Lane Technical Evaluation Report are both fundamentally flawed in the worse possible way.

Taken together, ***Exhibits 37*** and ***68***; including Derek Ryan's letter concerning the incomplete FHCA financial report; John Rundell's admission to the TIO that he *"…did advise Mr Ryan that the final report did not cover all material and working papers"* (see ***Exhibit 49-b*** and ***49-c***); and Dr Hughes's decision to submit the incomplete FHCA report for comment from both Telstra and Alan Smith, all point to a conspiracy involving various parties, including the arbitrator and the TIO, to ensure that Alan Smith's claim would not be investigated correctly. This collusion (by the 'forces at work' that have been referred to elsewhere perhaps?) meant that there was never any proper assessment of Alan's ongoing telephone problems or his financial losses associated with these ongoing faults.

Exhibit 72
17th March 2006: David Lever from DCITA wrote to Alan Smith noting: *"If the material you have provided to the Department as part of the Independent assessment process indicates that Telstra or its employees have committed criminal offences in connection with your arbitration, we will refer the matter to the relevant authority".*

It is quite clear from Alan Smith's DCITA claim documents that Telstra perverted the course of justice at least twice, during Alan's arbitration because, among the various documents that were returned to Alan at the end of the DCITA assessment process was proof that the assessors had definitely received Alan's documents that showed how, under oath and in

support of their defence of Alan's arbitration claims, Telstra used two reports they knew were false. Alan Smith has since prepared a ninety-nine page report regarding these two Telstra documents (and one other), proving that they were all fundamentally flawed and naming the Telstra employees who knew this at the time these reports were submitted into arbitration. This document can be provided to the IAMA on request.

Thank you

Alan Smith