

<b>MY COPY, MARKED "A"</b>	<b>DR HUGHES'S COPY, MARKED "H"</b>
<b>Table of Contents Point 2.12</b>	<b>Table of Contents Point 2.12</b>
<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
<i>"The information provided in this report has been derived and interpreted from the following documents."</i>	This document, dated 30 April 1994, lists the same sources of information as 1a: a total of 11 documents (omitting the Telecom Defence Documents).	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.



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.