

The Hon. Michael D. Kirby AC CMG

9 July 2009.

Mr. Alan Smith,  
Seal Cove Guest House,  
1703 Bridgewater Road,  
PORTLAND VIC. 3305

*Dear Mr Smith,*

On 2 July 2009, you wrote to me raising a complaint concerning the conduct of an arbitrator who is a member of the Institute of Arbitrators & Mediators Australia. You wrote to me in my capacity as President of the Institute.

In accordance with established procedure, I have referred the complaint to the Ethics and Professional Affairs Committee of the Institute.

In due course, you will be informed following this reference.

Please direct future correspondence to the Chief Executive Officer of the Institute, Mr. Paul Crowley, PO Box 1364, Law Courts, Melbourne, Vic. 8010.

*Yours sincerely,*

*Michael Kirby*

Cc Mr. Paul Crowley

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Level 7, 195 Macquarie Street  
Sydney NSW 2000 Australia  
Website: [www.michaelkirby.com.au](http://www.michaelkirby.com.au)

Telephone: +61 2 9231 5800  
Facsimile: +61 2 9231 5811  
E-mail: [mail@michaelkirby.com.au](mailto:mail@michaelkirby.com.au)

Seal Cove Guest House  
1703 Bridgewater Road  
Portland 3305  
Phone: 03 55 267 170

20<sup>th</sup> July 2009

Mr Paul Crowley  
Chief Executive Officer  
C/o the Ethics and Professional Affairs Committee  
Institute of Arbitrators and Mediators Australia  
PO Box 13064, Law Courts  
Melbourne 8010

Dear Sir,

My letter to you on 16<sup>th</sup> July advised that the following documents would be hand-delivered to you. These reports are now attached for your information:

1. Service Verification Tests (SVT) – Telstra’s Misleading and Deceptive Conduct – Part 1, pages 1 to 38 (August 2008);
2. Bell Canada International (BCI) – Telstra’s Misleading and Deceptive Conduct – Part 2, pages 39 to 50 (September 2008);
3. 008/1800 & Fax Billing Issues – Telstra’s Misleading and Deceptive Conduct – Part 3, pages 1 to 23 (3<sup>rd</sup> October 2008);
4. Statement of Facts and Contentions as submitted to the Administrative Appeals Tribunal (26<sup>th</sup> July 2008);
5. Nine bound spiral bound volumes of exhibits 339 in total have been provided in support of my AAT submission, numbered as 1 to 47; 48 to 91; 92 to 127; 128 to 180; 181 to 233; 234 to 281; 282 to 318; 319a to 323; and 324 to 339;
6. A document titled Questions to the (IAMA) and accompanying 58 *Exhibits*;
7. A draft manuscript titled the “COT CASE” *One of the stories from the “Casualties of Telstra’ saga’*. This document has been provided to give a human interest side of the saga.
8. Draft & Final Arbitrators Award,
9. Lane Technical report dated 6<sup>th</sup> April 1995;
10. Draft DMR & Lane Report dated 30<sup>th</sup> April 1995;
11. Formal DMR & Lane Report dated 30<sup>th</sup> April 1995;
12. Letter of Claim submitted to arbitration 15<sup>th</sup> June 1994;
13. The Arbitration Agreement faxed on 19<sup>th</sup> April 1994, from Dr Hughes’ office to Mr Alan Goldberg AO (Now a Federal Court Judge), please note page 12 of this agreement shows clauses 24, 25 and 26 was firmly in place when this document was received.
14. The Arbitration Agreement I signed on 21<sup>st</sup> April 1994, showing clause 24 exonerated Peter Bartlett and the Resource Unjt – both clause 25 and 26 regarding the liability clause have been deleted (i.e. do not match the agreement faxed to Mr Goldberg).
15. Report to the Senate Environment, Recreation, Communications and the Arts Legislation Committee (Ministers Office) from John Pinnock (TIO) dated 26<sup>th</sup> September 1997, noting on page 4: “*Firstly, the Arbitrator had no control over the process because it was conducted outside the ambit of the Arbitration Procedures*”. Senate Hansard (attached) noting the same.

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