

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,

M Kirby

Cc Mr. Paul Crowley

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15th July 2009

Mr Paul Crowley
CEO
Institute of Arbitrators and Mediators Australia
PO Box 13064, Law Courts
Melbourne 8010

Dear Sir,

The President of the IAMA, The Hon Michael Kirby, has notified me that he has passed on to you complaints I have lodged with the IAMA regarding my arbitration with Telstra. Mr Kirby has also advised that I should correspond with you in future, in relation to these matters.

I understand if, at first, you would think my complaints fall outside the statute of limitations but, although the problems related to the arbitrator's conduct of my arbitration were first raised with the Institute in 1996, I have continued in my attempts to have them investigated ever since, and the arbitrator (Dr Gordon Hughes, a member of the IAMA) was one of the people who deliberately misled and deceived the Institute when they first contemplated investigating my claims.

The document I forwarded to Dr Hughes on 21st June this year and the letters I have written recently to Mr Kirby (which included a copy of that document), show that I can now prove that Dr Hughes knowingly altered, or allowed alterations to, a legally binding arbitration agreement, after his office had sent the original, unchanged version to the claimants' lawyers for assessment, and after one claimant (Maureen Gillan) had signed the unchanged version but before Graham Schorer and I signed (we were all members of the Casualties of Telstra group of claimants). As I am sure you must know, altering a document like an arbitration agreement without the written approval of both parties is classed as perverting the course of justice, particularly when those changes directly disadvantages one of the parties to the process.

The legal advice that Graham Schorer and I received, based on the original, unchanged version of the agreement, was that we should accept that version because the Commercial Arbitration Act under which our arbitrations were to be administered had limited rights of appeal, and clauses 24, 25 and 26 of the submitted version of the agreement provided both a safety net for us and assurance that the Arbitration Resource Unit and the TIO's Special Counsel would be diligent in their duties in relation to the administration of the arbitration process. These clauses were, however, secretly removed before we signed the contract (but after we had been given legal advice on the unchanged version). This is clearly a deliberate act of deception by those who knew the agreement had been secretly altered.

It is also important that you understand the process that led the Casualties of Telstra (COT) group into arbitration in the first place. Originally, the then regulator AUSTEL facilitated a commercial assessment process called the Fast Track Settlement Proposal (FTSP), and four of the members of COT (Gillan, Garms, Schorer and I) were given until close of business on 23rd November 1993 to add our signatures to the agreement which had been signed by Telstra on the 18th November 1993. At point (4) in the FTSP agreement it notes: "*This proposal constitutes an offer open to all or any of the COT Cases referred to in Clause (1)(a), which will lapse at 5pm on Tuesday 23 November 1993. This offer may be accepted by signature below and sending advice of such signatures to AUSTELL or the Telstra Corporate Secretary before that time*". Telstra advised AUSTEL, that if we did not sign by the required time we would have to enter into the TIO-administered legal arbitration process using Telstra's 'Preferred Rules of Arbitration'.

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