

DMO

Defence Materiel Organisation

Under Secretary
R2-5-C131
Russell Offices
CANBERRA ACT 2600

USDM 150/2001

Mr Don Ditchburn
61 Church Road
BLACK RIVER QLD 4814

Dear Mr Ditchburn,

DEFENCE IMPLICATIONS OF SINGTEL'S ACQUISITION OF CABLE & WIRELESS OPTUS

Thank you for your letter of 25 April 2001 drawing attention to section 70 of the Commonwealth Constitution in relation to the consideration by the Department of Defence of the proposed sale of Cable & Wireless Optus to SingTel. I appreciate your taking the time to contact me regarding this issue.

You have suggested that the effect of section 70 of the Constitution may be to prohibit a non-Commonwealth entity from operating defence communication satellites. You have drawn our attention to the High Court decisions of *Joseph v Colonial Treasurer of NSW* and *Carter v Egg and Egg Pulp Marketing Board*.

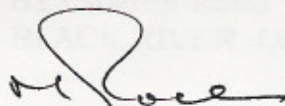
The security of Australia is of course paramount to the Commonwealth whenever the Commonwealth considers entering into any transaction. The Commonwealth Constitution enables the Commonwealth to exercise that power in accordance with its authority under the Constitution.

Section 70 of the Constitution, in conjunction with sections 64 and 69, allowed for the transfer of executive powers from the governments of the colonies to the Commonwealth Government, even though the colonial departments which administered those powers may not have been transferred. As you have pointed out, one of the transferred departments of the public service in each State was the department responsible for naval and military defence. The powers and duties of the Commonwealth in

relation to defence are, however, derived from several areas in the Constitution including the executive power and section 51. The operation and maintenance of defence communications and related technology remains a primary responsibility of the Commonwealth and comes within the scope of the Commonwealth's constitutional powers.

The Department has been attentive to constitutional issues in relation to the proposed sale.

Thank you for your letter.

A handwritten signature in black ink, appearing to read 'M J Roche'. The signature is fluid and cursive, with a large initial 'M' and 'J'.

(M J Roche)

16 August 2001