

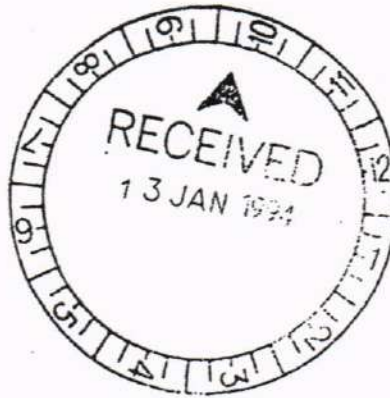
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95/0614  
**Telecom**  
AUSTRALIA

Commercial & Consumer  
Customer Affairs 128

Locked Bag 4960  
Melbourne Vic 8100

Telephone (03) 632 7700  
Facsimile (03) 632 3241



11 January, 1994

Mr Warwick Smith  
Telecommunications Industry Ombudsman  
Ground Floor  
321 Exhibition Street  
MELBOURNE VIC 3000

Dear Warwick,

I have attached for your information a copy of a letter sent to AUSTEL providing the results of two additional studies undertaken by Telecom to test the Rotary Hunting Groups and to provide supplementary inter-exchange network tests and the details of the tests. The additional testing was undertaken to provide further information on the reliability of the telecommunications services provided to those customers complaining of difficult network faults.

As you will see from the attached letter, the documents are rated "Commercial in Confidence" and are provided for the information of the TIO and not for release or disclosure to third parties without the permission of Telecom Australia. I would ask that this rating of the documents be respected.

It is anticipated that the release of these documents to the four customers currently proposed for the fast track arbitration process will be agreed at an appropriate time in consultation with yourself. The timing of the release can be finalised once the assessor has been appointed and the procedures for the arbitration have been agreed.

I also wish to confirm to you my previous advice regarding arrangements made with AUSTEL for the release of documents obtained from Telecom to the four customers currently proposed for the Fast Track arbitration process.

It was agreed at a meeting between Mr. Graeme Ward and Mr. Steve Black of Telecom and Dr Bob Horton and Mr Neil Tuckwell of AUSTEL on 7 January 1994 that:

- Information obtained from Telecom, in the course of AUSTEL's regulatory functions, and relevant to any parties involved in a formal arbitration process with Telecom under the control of the Telecommunications Industry Ombudsman (TIO) will only be released after consultation with the TIO and Telecom.
- The AUSTEL draft report will be expedited to ensure that it is available at an early stage of the arbitration process.
- The AUSTEL draft report will be released to the parties involved in the fast track arbitration process for comment in accordance with a process agreed with the TIO, and only after each party has signed a formal document committing to keeping the contents of the report confidential and giving an undertaking not to comment either privately or publicly on the report until after it has been released publicly by AUSTEL

Yours sincerely,

Steve Black  
GROUP GENERAL MANAGER - CUSTOMER AFFAIRS

2-17

11 July 1994

COMMERCIAL AND CONSUMER  
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET  
MELBOURNE  
VICTORIA 3000  
Australia

Telephone (03) 632 7700  
Facsimile (03) 632 3235

**F A X E D**

.....17.....1994

Mr Warwick Smith  
Telecommunications Industry Ombudsman

Facsimile No. 277 8797

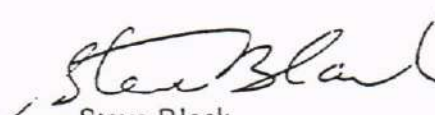
Dear Mr Smith

The purpose of this letter is to confirm our discussion of 7 July 1994 at which Telecom outlined a proposal to provide confidential information to the arbitrator subject to the confidentiality provisions of the Rules of Arbitration governing the claims of the four COT claimants.

As discussed, it is proposed that Telecom will provide to the arbitrator a series of confidential reports which the arbitrator may then make available to the four COT claimants subject to the confidentiality provisions of the Rules of Arbitration. It is understood that, if the arbitrator makes this information available to the COT claimants, they will be required to keep the information confidential and return all copies of such documents and material to Telecom at the end of the arbitration.

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. It is recognised that this information may then be made available to the four COT claimants, subject to the confidentiality provisions of the Rules of Arbitration.

Yours faithfully

  
Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

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K54215  
Australia Corporation Limited  
- 011 051 710 333



# FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

BY COURIER

18 April 1995

Mr Warwick Smith  
Telecommunications Industry Ombudsman  
Ground Floor  
321 Exhibition Street  
MELBOURNE VIC 3000

Dear Sir,

RE : Fast Track Arbitration Procedure - Resource Unit  
Arbitrations: Smith, Garms, Gillan/Valkobi

I acknowledge receipt of your letter of 23 March 1995. The matters raised in your letter were discussed at a meeting with Sue Hodgkinson and me on Tuesday, 4 April 1995. I now formally reply to your letter and update you on further developments since our meeting.

I note from the tone of your letter that you are somewhat concerned as to the apparent time frames within which you, as Administrator of the Fast Track Arbitrations, can expect finalisation of the above named arbitrations.

You have requested advice as to when, in terms of weeks, the Resource Unit envisages being in a position to provide its integrated financial and technical assessments to the Arbitrator for the above arbitrations. I now respond accordingly in relation to each:

Smith

The Resource Units role is almost complete, but more work is to be done to tidy our reports (both technical and financial) to a form suitable for submission to the parties by the end of April 1995.

The Resource Unit has completed a preliminary review of the financial material contained in the claim, defence and reply. The interim report has been drafted based on the assumption that technical faults did occur.

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD  
A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK  
LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER

*Pia  
4/14/95  
we to discuss*

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No further questions are anticipated from the Arbitrator. An important meeting took place between the Resource Unit and the Arbitrator on 10 April 1995 over the need to manage the issuance of Resource Unit reports.

Lane Telecommunications have commenced their detailed review in mid March and now have completed their draft interim report (on 6 April 1995). This report is subject to review and amendment by Paul Howell of DMR Inc prior to issuance.

#### Garms

The Resource Unit has commenced its review of the financial issues. A preliminary report is envisaged to be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they estimate that their preliminary review will be completed within one month (mid to late May) for review by Paul Howell of DMR Inc.

#### Gillan/Valkobi

The Resource Unit has commenced its review of the financial issues. We envisage that our preliminary report will be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they likewise expect their preliminary review will be completed within one month for review by Paul Howell of DMR Inc.

#### Resource Unit (including Technical Support)

I note your comment that the Resource Unit reports issued to the Arbitrator must also be provided to the claimant and Telecom for their comment. We agree that this may prolong the process further, but the fact is that this is a requirement of the fast track arbitration. The Smith report will be available imminently and subsequent reports can, with the benefit of experience be expected to proceed more expeditiously.

I also advise that Mr Paul Howell, Director of DMR Inc Canada arrived in Australia on 13 April 1995 and worked over the Easter Holiday period, particularly on the Smith claim. Any technical report prepared in draft by Lanes will be signed off and appear on the letterhead of DMR Inc. Paul Howell anticipates completing the Smith technical report by the end of April. What

Further, I advise that additional resources have been applied to the assignments and work on each has been undertaken contemporaneously. We have technical staff and financial support staff working on Garms and Gillan (in parallel) and visits to Brisbane are anticipated by the end of April 1995.



Arbitration

I understand that Dr Hughes will contact you directly (in your capacity as Administrator of the Fast Track Arbitration Procedures) on any legal procedural issues associated with the progress of the Arbitrations.

Conclusion

In conjunction with Dr Gordon Hughes, we are fast tracking the procedure with the aim of achieving a decision that has regard for due process and investigation.

In closing, I hope that it is possible for you (in your capacity as Administrator for the above referred Fast Track Arbitrations) to continue in that position until we can resolve these claims.

It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work. It is only now, following the review and acceptance of our Resource Unit (including acceptance of Lane Telecommunications by the COT claimants), that we are in a position to analyse the merits (including technical aspects) of each claim.

Do not hesitate to contact the writer directly on (03) 629 8855.

Yours faithfully,  
FERRIER HODGSON CORPORATE ADVISORY

JOHN RUNDELL  
Project Manager - Resource Unit  
Associate Director

Encl.

c.c. Mr Peter Bartlett, Partner, Minter Ellison Morris Fletcher.  
Dr Gordon Hughes, Arbitrator, Managing Partner, Hunt & Hunt.

2-C



↑

**DRAFT**

↓  
28 April 1995

Dr Gordon Hughes  
Hunt & Hunt  
Solicitors  
GPO Box 1533N  
MELBOURNE VIC 3000

By Facsimile: 614 8730

Dear Gordon

Fast Track Arbitration - Smith

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 on these reports. The extent of this period would of course be in your discretion.

However, I understand you are to present a paper in Greece in mid-May.

I would expect the Award would be delivered prior to your departure.

It would be unacceptable to contemplate the delivery of the Award being delayed until after your return.

Could you please contact me to discuss.

Yours sincerely

Warwick L Smith  
Ombudsman

**DRAFT**

2D

SENT BY: HUNT & HUNT

12-5-95 : 2:41PM : MELBOURNE OFFICE

61 3 277 8797: # 2



# Hunt & Hunt

LAWYERS

12 May 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FAX: 277 8797

Mr Warwick Smith  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
Melbourne VIC 3000

**Partners**  
David M. Scarlett  
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James C.F. Harrowell  
Christine A. Galley  
Gordon L. Hughes  
Mark T. Knapman  
Ian S. Craig  
Peter J. Ewin  
Wayne B. Cahill  
Neville C.H. Debnay  
Grant D. Sifton  
Charles Veever  
Andrew Leslie-Smith  
William P. O'Shea

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Richard J. Kellaway  
Andrew Jenkins

**Associates**  
Shane G. Hind  
John S. Molnar  
Melissa A. Henderson  
Francis V. Gallichio  
John D.F. Morris

Dear Warwick

### FAST-TRACK ARBITRATION PROCEDURE

You have asked me for my comments on the arbitration process, now I have delivered my first ruling.

Upon my return from leave in 2 weeks, I would be happy to discuss this matter with you in detail.

In simple terms, my observations are as follows:

- as far as I could observe, both Telecom and Smith co-operated in the Smith arbitration;
- 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;
- there have been allegations by Smith and other claimants that Telecom deliberately slowed the process by delaying the production of documents under FOI - certainly the FOI claims have caused delays but I am unable to comment as to whether there has been a deliberate delaying tactic;
- request for further particulars are, I think, unavoidable - although the emphasis in the arbitration process is upon a quick resolution of the dispute, a party (in this case Telecom) faced with a significant claim

melbourne

sydney

sydney west

brisbane

canberra

newcastle

perth

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ENT. BY: HUNT & HUNT

: 12- 5-95 ; 2:41PM ;

MELBOURNE OFFICE-

61 3 277 8797;# 3

2

against it is entitled to be presented with particularised complaints, not generalised and unsubstantiated allegations;

- the preparation of technical reports by the claimants is always going to be a problem - in simple terms, Telecom has all the information and the claimant has to pay a technical expert to examine and interpret it.

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.

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. These centre principally upon the fact that claimants, who are often seeking large sums, are generally unable to specify the legal basis for their claim (eg negligence, breach of contract, Trade Practices Act), yet it is necessary for me to base my rulings upon a breach of legal duty. This means that I have to in part rely upon Telecom to identify the legal basis of the claim made against it (which is somewhat perverse and which was in any event handled by Telecom in a less than satisfactory manner), and/or I have to search myself for a legal basis without assistance from the parties (which inevitably contributes to the time and expense associated with the proceedings).

I wonder whether some pro forma document could be developed which could point claimants in the right direction.

I apologise for the brevity of these comments. I am happy to provide you with a more detailed written report when I return from leave in 2 weeks. Ultimately, I think we should have a conference involving you, me and Peter Bartlett to consider these and related issues.

Yours sincerely

  
GORDON HUGHES

2-E

file



24 May 1995

Private & Confidential

Telecommunications  
Industry  
Ombudsman

Mr Steve Black  
Group General Manager  
Customer Affairs  
Telecom  
37/242 Exhibition Street  
MELBOURNE VIC 3000

Warwick L Smith U.S.  
Ombudsman

Black  
Benjamin  
Geary  
Evert  
Armstrong  
Phillips  
Champeon

Haar  
Chisholm  
Gamble  
Levy  
Deloitte  
~~Sutton~~  
Kearney

Freehills  
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By facsimile: 9632 3235

File..... Smith / T10

Dear Steve,

RE: ALAN SMITH

Under the terms of the Fast-Track Arbitration Procedure, Cl.14 provides that payment is due within 3 weeks of the despatch of the award, unless appeals in accord with Cl.12 of the Arbitration agreement proceed.

I understand from Mr Paul Rizzo last evening that the matter of payment will be settled forthwith. Other matters relating to Liability will be dealt with separately. Dr Hughes is in his office from 30 May 1995.

Can we please now discuss finalisation.

I have to hand your letter of 19 May 1995 to AUSTEL's Carrier Monitoring Unit which refers to the Smith decision and the reconciliation of the Arbitrator's comments on Telstra's legal liability. I am happy to discuss this matter. AUSTEL has sought my views.

Yours sincerely

  
Warwick L. Smith  
Ombudsman

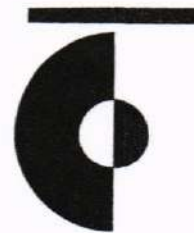
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"... providing independent, just, informal, speedy resolution of complaints."

2-F

CONFIRMATION  
OF FAX

10 January 1996



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

Mr Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Rd  
RMB 4408  
CAPE BRIDGEWATER VIC 3306

Dear Mr Smith

I refer to your letter of 31 December 1996 in which you seek to access to various correspondence held by the TIO concerning the Fast Track Arbitration Procedure.

The arbitration of your claim was completed when an award was made in your favour more than eighteen months ago and my role as Administrator is over.

I do not propose to provide you with copies of any documents held by this office.

Yours sincerely

JOHN PINNOCK  
OMBUDSMAN

2-G

*"... providing independent, just, informal, speedy resolution of complaints."*

23 January 1996

Our Ref: GLH  
Matter No:

Mr J Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
MELBOURNE Vic 3000

Partner  
Peter J. Smith  
Peter D. Francis  
James M. Lightowler  
Wayne B. Cahill  
Neville G.H. Debn  
Grant D. Selton  
Charles Vennart  
William P. O'Shea  
David C. Watts

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Andrew Jenkins

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Shane G. Hird  
John S. Molnar  
Melissa A. Hendic  
Francis V. Gallichi  
John D.F. Morris  
Michael S. Casick

Incorporating  
Francis Abnerick

Dear Mr Pinnock

**INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH**

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:

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

Yours sincerely

  
GORDON HUGHES

Encl.  
cc P Bartlett

Melb  
Sydney  
Sydney  
Brisbe  
Canber  
Newca  
Adela  
Darwi

2-H



# Hunt & Hunt LAWYERS

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 Francis V. Galichio  
 John D.F. Morris  
 Michael S. Carrick

**Incorporating**  
 Francis Abourizk Lij

15 February 1996

Our Ref: GLH

Matter No: 5122795

Mr John Pinnock  
 Telecommunications Industry Ombudsman  
 321 Exhibition Street  
 MELBOURNE Vic 3000

Dear Mr Pinnock

**ALAN SMITH**

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.

|| You may consider it appropriate for you to provide an independent letter of support. This is of course a matter for your discretion.

I await your response.

Yours sincerely

  
**GORDON HUGHES**

Encl.

*See covered with Lia  
 To speak to Gordon re 3 matters X  
 letter in support to be prepared.  
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canberra  
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adelaide  
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OFFICE OF HON MICHAEL LEE MP

Rep by Min  Information   
 Rep by SA  Advice   
 Rep by Dept  Copy held for min to see   
 Final with.....

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Parliament House  
Canberra ACT 2600

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discuss.

Circumstances and past actions of senior staff within Telecom have made it necessary to bring to your attention some very concerning activity that my colleagues and I feel can no longer be ignored or dismissed.

We hesitate to bring the following instances to your attention but decided it was necessary as this situation is far too serious to be allowed to continue, and attempts we have made within the organisation to bring our concerns to light have fallen unheard. In bringing this matter to your attention we do not wish to paint the picture that all staff are involved in certain activities, we strenuously would like to make the point here, there are staff within the whole framework of the staff of Mr Steven Black who have and are continuing to work towards the recommendations of the Cooper and Librand and Austel report toward addressing customer issues fairly and ethically.

Concerns and Issues.

Mr Steven Black Group General Manager of Customer Affairs who has the charter to work to address and compensate Telecom's "COT" customers as well as the management of other customer issues related to Telecom is involved in and initiates conduct and work practices that are totally unethical and he has managed to achieve certain results in relation to major cases due to the assistance of key senior executives past colleague and friends with whom key strategic activities have been assigned. These individuals have not the skills or expertise required for the job and has jeopardised Telecom's position in attaining positive beneficial results for customers as the following instances will highlight.

1. Implementation of a complaint handling procedure throughout Telecom though outwardly giving the appearance of acceptance and uniformity of work practices, ~~is nothing more than outward~~ deception to external regulating parties. Mr David Fickling in association with Mr Steven Monro have deceived AUSTEL as to the implementation of core initiatives.

Existing within Telecom nationally is different Regional offices operating in various ways to address customer complaints. This situation is attributable to a lack of:

- comprehensive documentation to staff at time of training
- comprehensive training by competent individuals to all manner of staff
- an incomplete database unable to capture and store required criteria for most purposes specifically reporting
- continued failed deadlines to major initiatives resulting in blatant short cuts being needed.

To meet certain commitments to AUSTEL made by Mr Black and Mr Fickling a incomplete complaints handling process has been enforced down staffs throas, resulting in much resentment and confusion whereby key initiatives are not in place.

2. The management of COT customers by Mr Rod Pollock is nothing more than a unprofessional, adversarial approach towards customers. Mr Pollocks approach to these customers has been one of manipulation and deception as in his dealings with the top four COT customers and subsequent eleven customers Mr Pollock has lied and deceived these customers.

Damaging evidence against Telecom has been conveniently removed or altered to suit the case. Junior staff or temporary agency staff have been requested not to place pertinent information on customer files so as no to weaken Telecom's case further. COT customers that may prove to be a threat to Telecom have been expertly manipulated and paid settlements. // evidence?

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Wamide Smith has been critical of Pollock a some issues.

Union's copy  
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according to Fickling  
to Brisbane office  
Fickling report that they initially provided too much documentation in training - delibately downsized

evidence  
// evidence?

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3. Unfortunately the Legal advice and expertise that Telecom has sought from its internal legal group has also been sadly lacking in ethical direction. In the management of major customer disputes the legal area has sought to hide and skirt around the truth. Telecom's legal advisors have responded to external statutory authorities with only half of the information required, fully aware of not providing all information. Their general position has been to sit behind the legal word and its many interpretations in so doing avoiding full disclosure of information. ~~There have been instances where the legal group have directed and advised staff to limit the disclosure of information to external authorities, in so doing slowing down or redirecting the wheels of natural justice.~~

Not sure of context of this could be true if talking about A's COT investigation of 12 months

4. There are three main areas which Steve Black and his senior executives have sought to influence and manipulate:

1. Remove or change clear information on the position of liability. ?
2. Diminish the level of compensation payable to COT customers.
3. Dismissive of breaches in relation to matters regarding customer Privacy.

In relation to the Robert Bray case Steve Black has sought to cover up the true facts of disclosure of customer information. Particularly he has sought to cover up "broadcasting" of the customers private information.

(Glenrich Smith has been associated with this issue)

As you can see from what I have mentioned to you something needs to be done. As you can appreciate we are not in a position to go any deeper than what has already been outlined. As to where next that lies in your hands. We have done what is unfortunately our only form of address to the situation.

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Severin allegation

WTL

Holmes, Jim

---

From: Vonwiller, Chris  
To: Campbell, Ian; Parker, Harvey; Holmes, Jim  
Cc: Stanton, John; Blount, Frank; Rizzo, Paul  
Subject: Warwick Smith - COT Cases  
Date: Wednesday, 10 November, 1993 6:58PM

CONFIDENTIAL

Gentlemen:

Warwick Smith contacted me in confidence to brief me on discussions he has had in the last two days with a senior member of the parliamentary National Party in relation to Senator Boswell's call for a Senate Inquiry into COT Cases.

Advice from Warwick is:

- > Boswell has not yet taken the trouble to raise the COT Cases issue in the Party Room.
- > Any proposal to call for a Senate Inquiry would require, firstly, endorsement in the Party Room and, secondly, approval by the Shadow Cabinet.
- > This would appear highly unlikely at this stage, given Boswell's apparent lack of interest of raising it within the Party Room.
- > The intermediary will raise the matter with Boswell, and suggest that Boswell discuss the issue with Warwick Smith. Warwick sees no merit in a Senate Inquiry.

He has undertaken to keep me informed, and confirmed his view that Senator Alston will not be pressing a Senate Inquiry, at least until after the AUSTEL report is tabled.

Could you please protect this information as confidential.

Chris Vonwiller