

### AUSTEL's powers

1.16 There are constitutional barriers to AUSTEL exercising court like powers to decide issues between, say, Telecom and a customer and making Telecom pay damages to the customer.

1.17 AUSTEL's powers, properly exercised in consultation with other relevant agencies such as the Telecommunications Industry Ombudsman and the Trade Practices Commission, are adequate to deal with *COT* type complaints, particularly as one result of AUSTEL's investigation has been a commitment by Telecom to an independent arbitration procedure to resolve such complaints. AUSTEL's powers also enable it to specify a standards of service against which Telecom's performance may be effectively measured and a relevant test for that purpose which can be applied to any cases that are subject to settlement.

### Initial settlements

1.18 When the initial *settlements* were reached with the *original COT Cases*, the standard of service then applicable was not objectively established and there is reason to believe that difficult network faults may have continued to affect their services.

### Need for an agreed standard of service

1.19 An agreed standard of service against which Telecom's performance may be effectively measured is being developed by Telecom in consultation with AUSTEL. Such a standard together with a service quality verification test which can be applied to any case subject to settlement are essential.

### Proposed arbitration procedure

1.20 There is merit in Telecom's proposed arbitration procedure which complements the Telecommunications Industry Ombudsman scheme.

1.21 Telecom needs to specify how its proposed arbitration procedures will operate in relation to losses attributable to periods in which it had an immunity from suit or in which it contractually limits its liability.

1.22 On the information presently available to it, AUSTEL sees no reason why the upper limit to tort liability to be determined by AUSTEL under section 121 of the *Telecommunications Act 1991* should coincide with the ceiling proposed by Telecom in its proposed arbitration procedure.

Industry Ombudsman and that the procedure when finalised may involve something along the following lines -

- claims up to \$10,000 being handled by the Ombudsman in accordance with his charter
- claims up to \$500,000 being subject to an arbitration process where both the complainant and the carrier are agreeable. Within this framework there would be three categories
  - claims of \$10,000 - \$50,000
  - claims of \$50,000 - \$200,000
  - claims of \$200,000 - \$500,000.

Procedures applying within these categories would vary and be progressively more demanding in terms of the burden of proof upon the claimant.

#### Settlement and agreement on standard of service

5.77 As part of the general approach to settlement, Telecom sought AUSTEL's agreement to, and assistance in, the development of a defined status for a telephone service. The intention is to obtain an agreement on the operational performance of the service against which the parties might *sign off* once a financial settlement has been finalised.

#### FINDINGS

5.78 AUSTEL's findings are that -



- when the initial *settlements* were reached with the *original COT Cases*, the standard of service then applicable was not objectively established and there is reason to believe that difficult network faults continued to affect their services
- an agreed standard of service, being developed in consultation with AUSTEL, to be applied to any case subject to settlement is essential
- there is merit in Telecom's proposed arbitration procedure which complements the Telecommunications Industry Ombudsman scheme
- Telecom needs to specify how its proposed arbitration procedures are to operate in relation to losses attributable to periods in which it

had an immunity from suit or in which it contractually limited its liability

- on the information presently available to it, AUSTEL sees no reason why the upper limit to tort liability to be determined by AUSTEL under section 121 of the *Telecommunications Act 1991* should coincide with the ceiling proposed by Telecom in its proposed arbitration procedure

## RECOMMENDATIONS

5.79 AUSTEL recommends that -

- Telecom implement a proposed arbitration procedure along the lines outlined in paragraph 5.64 ff as soon as possible 
- Telecom specify how it will, under its proposed arbitration procedure, treat losses arising in periods during which Telecom had a statutory immunity from suit or contractually limited its liability
- Telecom treat the *COT* type cases referred to it by AUSTEL in conformity with Telecom's original proposed arbitration procedure and that where appropriate the upper limit of that procedure should be waived in favour of the claimants in those cases
- Telecom, in consultation with AUSTEL, develop by 1 May 1994 -
  - a standard of service against which Telecom's performance may be effectively measured 
  - a relevant service quality verification test. 