

claim in the courts under the *Trade Practices Act 1974*. In simple terms, Mr Schorer claimed that Telecom had -

- sold him a particular type of customer equipment which was unable to meet his needs (which were known to Telecom)
- made claims for the equipment which the equipment was not able to deliver.

While Telecom defended the action, it did make a *payment into court* with a denial of liability. The effect of the *payment into court* was that Mr Schorer had to decide whether to accept that amount or fight on in the knowledge that even if he was successful in his claim against Telecom, in the event that his claim was assessed at less than the *payment into court* he would have had to bear not only his own costs, but also those incurred by Telecom from the time it made the *payment into court*. On the advice of his solicitors, Mr Schorer concluded that he could not afford to fund continuation of the case and he decided to accept the *payment into court*.

### CONTINUING FAULTS

5.30 Understandably the *original COT Cases*, having reached an initial 'settlement' involving -

- compensation for past losses
- restoration of an adequate telephone service

expected that they might be able to resume their business activities afresh. ↙

5.31 Unfortunately that did not prove to be the case. Soon after his initial 'settlement' Mr Smith reported continuing problems to AUSTEL. Even prior to her settlement, Mrs Garms reported continuing faults to AUSTEL. The decision by Mrs Garms and Mrs Gillan not to report faults to Telecom in order to hasten a financial settlement is noted above. Mr Schorer continued to report faults to AUSTEL throughout the period.

↘ 5.32 The fact that faults continued to impact upon the businesses in the period following the settlement shows a weakness in the procedures employed. That is, a standard of service should have been established and *signed off* by each party. It is a necessary procedure of which all parties are now fully conscious and is dealt with elsewhere in this report. Its omission as far as the initial 'settlement' of the *original COT Cases* were concerned meant that there was continued dissatisfaction with the service provided without any steps being taken to rectify

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27

it. This inevitably led to a dissatisfaction with the initial 'settlement' and to further demands for compensation. To avoid this sort of problem in the future, AUSTEL is, in consultation with Telecom, developing -

- a standard of service against which Telecom's performance may be effectively measured
- a relevant service quality verification test.

### AUSTEL'S ESCALATION OF ITS INVOLVEMENT

5.33 AUSTEL was concerned not only about the continuing complaints from the *original COT Cases* but also over the emergence of additional cases displaying characteristics similar to those of the *original COT Cases*. In the circumstances AUSTEL took the view that it must establish, by collecting *hard information* precisely how the telephone service supplied to the *original COT Cases* was performing. Accordingly, on 30 June 1993 it requested Telecom to institute monitoring and testing to measure the extent and nature of the faults about which the *original COT Cases* complained. AUSTEL also sought from Telecom a range of fault data, details of exchange standards and performance together with exchange maintenance details.

5.34 Telecom was reluctant to comply with AUSTEL's request and to provide the data and detail sought by AUSTEL. It suggested that the monitoring and testing was resource intensive and that it lacked the necessary testing equipment. Some six weeks after AUSTEL's request Telecom had not instituted any monitoring. Moreover, there was no indication that Telecom had or was about to adopt a more co-operative or constructive attitude on the matter and supply the information sought.

### AUSTEL's direction

5.35 Accordingly, on 12 August 1993, AUSTEL issued Telecom with a direction under section 46 of the *Telecommunications Act 1991* relying on its function expressed in section 38 of the Act to protect consumers. The direction required Telecom to institute a range of monitoring and testing procedures in relation to the three *original COT Cases* who were still carrying on business (Mr Schorer, Mr Smith and Mrs Garms) as well as five other businesses whose situation was then being considered by AUSTEL. AUSTEL also exercised its powers under section 400 of the *Telecommunications Act 1991* to require Telecom to supply all relevant documentation relating to the eight businesses and their terminating exchanges as well as details of exchange performance standards, actual performance, maintenance and fault records for 100 numbers adjoining those of each of the businesses.