found that, as the legislation (section 127(1) of the Social Security Act 1947) contained no discretionary power there was no scope for review of the decision, and that in any case a claim based on negligent advice is a claim at common law and not a claim made under the Social Security Act.

Although the Tribunal did not make reference to this avenue, a complaint regarding this matter could also have been made to the Ombudsman's office.

Witness credibility and conflicting medical opinion

In Matta and Australian Telecommunications Commission (30 November 1988) the applicant requested review of a determination by the Commissioner for Employees Compensation that the respondent was not liable to pay compensation for a repetitive strain injury allegedly incurred at work.

The applicant presented medical evidence of decreased use of her right arm and shoulder due to pain and discomfort, and of inability to perform any substantial tasks over a period of four years. She also claimed a depressive condition arising from the pain and reduced employment prospects arising out of the physical condition. Mrs Matta had received compensation over a period of three and a half years since the incident, but the Compensation Commissioner's determination had halted these payments.

The evidence presented included conflicting medical evidence as to dysfunction, video evidence of the applicant with apparently normal use of her right arm and shoulder, and evidence regarding declarations as to physical fitness and business vehicle usage records made by the applicant for a taxi licence. The Tribunal found that the applicant 'is not a truthful and reliable witness', and that the evidence stood in 'significant contrast to the gross restrictions which the applicant represented she suffered from at this hearing'. It found that the applicant was not incapacitated for work, and affirmed the decision under review.

Freedom of Information

Freedom of Information Act - Annual Report 1987-88

The sixth Annual Report on the Freedom of Information Act, now available from AGPS, indicates 'continued heavy use of the Act and a widespread acceptance of its objectives by politicians, administrators, business and public interest groups...At the same time Government efforts to reduce the overall costs to the Commonwealth of administration of the Act have met with some success.'

The numbers of FOI applications recorded by the AAT during each quarter since March 1983 suggest a considerable decline in the numbers of appeals since mid-1985.

	1983	1984	1985	1986	1987	1988
March	27	40	49	54	34	13
June	31	42	98	71	21	25
September	58	81	100	74	27	n/a
December	60	82	42	42	15	n/a

(Information from FOI Annual Report 1987-88, p.29)

The Report gives several possible factors for this decline in usage, including:

- clearance through the AAT of the initial burst of FOI applications;
- decreasing propensity for litigation following the development of a settled body of FOI jurisprudence;
- the Government's administrative directions in June 1985 (clearance of appeals, charging by the Australian Government Solicitor, etc - see para.5.4.1. of 1986-87 report);and
- the filing fee introduced in March 1987 for AAT appeals on non-income support matters.

Definition of joint Commonwealth-State Board as a prescribed authority

In Cameron and Joint Coal Board (25 November 1988) the respondent authority argued against provision of documents held by the Insurance Division of the Joint Coal Board, a Division administering claims made under the Workers' Compensation Act 1987 (NSW), performing no Commonwealth functions, and licensed under N.S.W. legislation. The Joint Coal Board itself is constituted under the provisions of the Coal Industry Act 1946 of the Commonwealth and the Coal Industry Act 1946 (N.S.W.).

The Tribunal (Deputy President Todd) found that the Insurance Division has no legal identity separate from the Board and that the activities of the Insurance Division are carried out as part of the functions of the Board, notwithstanding the particular administrative and funding arrangements that have been made in relation to the Division. Given this, he found that the documents in question were in the possession of the Board and that the Insurance Division is 'an agency' as defined in section 4(1) of the Freedom of Information Act 1982. Mr Todd rejected the respondent's claim that the application of the FOI Act to this case was beyond the legislative competence of the Commonwealth, and the further claim that the documents in question had been received in confidence from the applicant's employer.

The Tribunal set aside the decision under review, and found strong grounds to recommend under section 66(1) of the FOI Act that the applicant's costs be paid by the Commonwealth.

Freedom of information and the public record

In Fryar and Commissioner of the Australian Federal Police (25 November 1988) the Tribunal considered an application for review of the respondent's decision to exempt material relating to a licence to operate the Christmas Island Casino. The material

formed part of Ministerial briefs provided by the AFP to the then Parliamentary Secretary for Justice, and the basis for answers to Parliamentary questions in December 1987 and February 1988.

Deputy President Todd considered the applicant's submission that disclosure of the information was in the public interest in order to judge the probity of the answers given by Senator Tate. He concluded that, given consideration of the issue by Parliament through debate of a censure motion, the question of the Minister's answer itself was not relevant to the matter before him.

Mr Todd went on to consider whether the material was provided to the AFP on a confidential basis, whether the material was already on the public record, and whether disclosure would prove damaging to the international reputation of the AFP. He rejected the applicant's submission that prior disclosure of material through a 'summary' tabled in the Senate, documents released pursuant to an initial FOI request, an AFP statement and a confidential briefing provided to the then Shadow Attorney-General meant that the complete material should be made publicly available, since any prior disclosure 'would not permit the Commonwealth to breach its trust by making its own disclosure. It should keep the faith which has been reposed in it by the foreign government'. Further, he found that confidential disclosure made to the Shadow Attorney-General was legitimately available under section 14 of the FOI Act and had no impact on the case.

Mr Todd emphasised that, in general terms, the Tribunal must take account of the fact that the AFP must maintain the confidence of other police forces that details of information or sources provided to the AFP will be treated confidentially.

The Tribunal affirmed the decision under review.

Exemptions for draft Cabinet Documents

In Reith and the Minister for Aboriginal Affairs and Anor (21 December 1988) the Tribunal heard an application for review of exemptions claimed for 15 documents relating to the establishment of the Aboriginal and Torres Strait Islander Commission. Exemption had been claimed by conclusive certificates under section 34(2) of the FOI Act (Cabinet documents) regarding 11 of the documents, and a further or alternative exemption was claimed under section 36(1) (Internal working documents) regarding 13 of the 15 documents. The applicant conceded that section 34 applied to all the documents save one, and the Tribunal went on to consider whether this single document should be considered exempt.

Justice Hartigan referred to discussion of the effect of a section 34 certificate by Deputy President Todd in Porter and the Department of Community Services and Health (Admin Review 16:30) and by Deputy President Hall in Reith and the Attorney-General's Department (11 ALD 345), particularly with reference to draft Cabinet submissions. His Honour concluded that, as the document in question was a draft and therefore not intended for submission to Cabinet, and despite the fact that it

contained identical parts to a Cabinet submission, it was not exempt under section 34. The Tribunal made reference to the conclusions in Porter and Reith that draft documents are not intended for submission to Cabinet per se, and therefore exemption could not be claimed for those documents under section 34 of the FOI Act.

His Honour then considered the argument that the document was an internal working document exempt under section 36. He concluded that release of the document would be contrary to the public interest by breaching the principle of Cabinet confidentiality, and would also mislead the public, being 'a single document in a series of documents which were part of the process of developing the Government's policy on Aboriginal Affairs.' The Tribunal affirmed the decision under review.

The Courts

Equal Employment Opportunity programs in Federal Departments

A case with important ramifications for public service personnel practices was Styles v The Secretary to the Department of Foreign Affairs and Anor (18 October 1988). The applicant sought an order for review under the Administrative Decisions (Judicial Review) Act 1977 regarding the Department's decision to transfer the second respondent, a member of its staff, to a position in the Australian High Commission in London. The applicant, a female, also on the Department's staff, had applied for promotion to the position. She sought review on the grounds of failure to take into account a relevant consideration, namely the comparative efficiency of the applicants for the position; that procedures required by the Department of its staff were not observed; and that the Department had, in making the decision, breached the Sex Discrimination Act 1984 by limiting the range of applicants it considered for the position.

Justice Wilcox rejected the applicant's first submission. Since the second respondent was transferred rather than promoted to the position, there was no obligation on the Department under section 50A of the Public Service Act 1922 to consider the comparative efficiency of the applicants. His Honour pointed out that 'this conclusion makes a mockery of the insistence of the Administrative Circular of 2 September 1987 on selecting "the most suitable and efficient officer available to do a particular job"; but I have reached the conclusion that it correctly reflects the law'.

He also rejected the applicant's second submission. Section 22B(5) of the Public Service Act 1922 obliged the Secretary and persons exercising powers in relation to employment matters to give effect to an adopted equal opportunity program; but not to an objective or to a draft program. The Department had produced both of these, but considerable work was yet to be done on its equal opportunity program. There was therefore no legally binding obligation upon the Department to adopt the procedures outlined.