Commonwealth/State funding programs and assessment of products are in preparation.

Intellectual Property. A discussion paper on review of patents decisions is in preparation.

Informal rule-making. A background/problems paper is being prepared.

Multicultural Australia. The project has commenced operation in Melbourne with the appointment of Mr Dennis Tracey as project leader. In the initial phase the Council is gathering information about the problems people from different cultural backgrounds face in attempting to obtain information about a government decision which affects them or to seek to have it changed. This involves community consultation, examination of earlier studies and discussions with government agencies. Mr Tracey can be contacted on (03) 611 3941.

Review of the AD(JR) Act. The discussion paper on the furnishing of statements of reasons under section 13 of the AD(JR) Act was released for public comment on 19 January 1990.

Specialist tribunals. A conference is proposed for early this year. The conference will provide a forum in which tribunals can identify areas of mutual concern and interest. It will also provide an opportunity to establish a framework for an on-going relationship between tribunals and the Council.

Administrative Appeals Tribunal

NEW JURISDICTION

Since the last issue of Admin Review new jurisdiction has been conferred on the AAT under the following legislation:

- Pasture Seed Levy Collection Act 1989
- Goat Fibre Levy Collection Act 1989

KEY DECISIONS

Fisheries: departure from Management Plan

In Bromley and the Secretary, Department of Primary Industries and Energy (6 December 1989), a three-member AAT reviewed decisions by the Minister's delegate that Mr Bromley's boat 'Echo Star' did not satisfy the criteria for entry into the East Coast Tuna Longline Fishery and that its licence should not be extended.

The regulation of the tuna fishery on the east coast of the Australian Fishing Zone began in 1985, when the Director of the Australian Fisheries Services issued a media release warning against new investment in the tuna industry. The statement indicated that fishermen entering the industry after that time might not be eligible to continue under the new management plan.

The East Coast Tuna Management Advisory Committee (ECTUNAMAC), established in 1986, introduced a register listing expressions of interest, primarily by boat name rather than applicant's

name. Following meetings with interested fishermen in December 1986, the Minister announced interim arrangements under which fishing activity would be restricted to those vessels which had engaged in longline tuna fishing within the previous 3 years, with some allowance for developmental licensing. In June 1987 ECTUNAMAC advised that the register of interest had closed on 26 May. In early 1988 application forms for fishermen seeking access to the East Coast Tuna Longline Fishery were sent to those fishermen on the Register.

In March 1988 Mr Bromley, who was not on the Register, submitted an application. It was rejected on the ground that he had not submitted a registration of interest form and apparently had no historical involvement in the East Coast Tuna Longline Fishery. Mr Bromley claimed that he was not aware of the necessity to register until too late. At that point he needed to show 'special or unique circumstances' to justify departure from the plan.

The AAT noted that the media statements did not advise of the impending closure of the register nor specify that registration was a precondition for a boat endorsement. In addition, the fishery was underdeveloped and competition was not strong. Some 50 persons had deferred their right to take an endorsement. A historical involvement in the industry was not required in the developmental areas. The AAT found that Mr Bromley was entitled to an endorsement for the outer developmental zone. Though it regarded the retrospective closure of the register as unfair, it found no special or unique circumstances entitling him to endorsement for the second area for which he had applied.

Customs: diesel fuel rebate in fishing operations

Tas Island Shipping and Collector of Customs (4 December 1989) involved the refusal by the Collector of Customs of a rebate for diesel oil fuel used by the M.V. 'Victoria Dawn' when operating as a mother ship for the east coast prawn trawling industry. The ship took cargo to the trawlers and transported the trawler catch under refrigeration to Cairns. It also occasionally detoured to nearby Thursday Island to deliver cargo, but the company did not claim a rebate for this.

The Excise Act 1901 provides that rebate is payable for diesel fuel on which duty has been paid, when it is used in primary production. This includes fishing operations. A majority of the 3-member tribunal, after examining the proper interpretation of the term 'fishing operations', agreed with Tas Island Shipping's claim that the legislation was intended to encourage commercial fishing operations and should be given a wide, rather than a narrow, interpretation. It decided that the definition was wide enough to include the operation of the mother ship in carrying supplies, fuel and replacement crews to the trawlers. It set aside the decision under review and allowed the whole of the rebate claimed.

Veterans' affairs: interpretation of 'naval forces'

In Joseph and Repatriation Commission (4 December 1989) the AAT examined a claim by Mr Joseph that his service during World War II in the Merchant Navies of Australia, England and King Olaf of Norway, and in particular in early 1944 on a merchant

aircraft carrier made him eligible for a range of pension benefits and not merely a service pension. The AAT, however, affirmed the decision under review.

It concluded that the ships upon which he served did not come within the definition of 'naval forces'. Mr Joseph was entitled to service pension as an Australian mariner or as an allied mariner, but not as a Commonwealth or an allied veteran nor as a veteran under the Veterans' Entitlements Act.

The AAT also considered whether it had jurisdiction given that Mr Joseph had been granted pension and was no longer a claimant for pension but a service pensioner. Prior to the hearing, a Presiding Member had ruled that the AAT had jurisdiction. At the hearing, the 3-member AAT remarked that such a ruling can only safely be made at a hearing, as 'there must be at least a doubt as to whether a ruling made in that fashion is a decision for the purposes of section 44 of the Administrative Appeals Tribunal Act'.

Social security: recovery of overpayments

In Ford and the Secretary, Department of Social Security (19 December 1989) an overpayment of $5453 arose from various criminal offences, including false pretences, fraud and imposition on the Commonwealth, for which Mr Ford was convicted and sentenced in 1977 to imprisonment with hard labour for 2 years. On his release Mr Ford left Australia, but in 1986 he returned and shortly thereafter was again convicted and imprisoned for false pretences. After his release in 1987 he was granted unemployment benefit and, later, an invalid pension. In May 1988 the Department of Social Security sought recovery of the earlier overpayment, as a result of which it withheld money from his fortnightly pension payments. Mr Ford applied to the AAT for review.

Though the AAT rejected Mr Ford's claim of hardship, it expressed the view that 12 to 14 years was an inordinately long time to wait before attempting to recover a debt. Further, it concluded that repayment would mean Mr Ford was punished twice, since the sentence of imprisonment was imposed upon the basis that he could not repay the money. It therefore decided that the right of the Commonwealth to recover any debt from the overpayment still outstanding after 1 January 1990 should be waived.

Taxation: registration as tax agent

In Seymour and Tax Agents' Board (15 December 1989) the Tax Agents' Board had rejected Mr Seymour's application for registration as a tax agent on the ground that Mr Seymour's previous employment did not meet the requirements of the legislation. This prescribes, among other things, relevant employment.

The Tax Agents' Board expressed the view that Mr Seymour had not demonstrated a substantial involvement in income tax matters. The Board assumed from his part-time employment from 1986 to 1988 that he had had limited exposure to the preparation of income tax returns. Mr Seymour, however, gave sufficient evidence of involvement in income tax matters for

the AAT to conclude that he met the requirement for 'substantial' involvement, although his experience did not come within the definition of 'relevant employment'. The question then was whether he had been engaged in such other employment and for such time as the AAT would regard as equivalent to 'relevant employment'. The AAT concluded that he had, but that he had only succeeded because of experience gained since the Board made its decision. It ordered that he be registered as a tax agent from the date of the AAT hearing.

Freedom of Information

Obligations under section 8

Section 8 of the Freedom of Information Act 1982 requires agencies to publish information in their annual reports about their structure and operations, and the categories of documents which they maintain.

Section 8 does not apply to the offices of Ministers, and statements under section 8 are not required for those agencies which are exempt from the operation of the Act. Nor are statements required for bodies such as Qantas which are outside the definition of 'prescribed authority'.

The Act also requires agency annual reports to include a statement of any facilities provided by the agency for enabling members of the public to obtain physical access to documents of the agency. The requirement embraces not only documents that an agency might be required to make available under the FOI Act but also documents which are required to be made available in accordance with another enactment (eg. a public register) and documents which an agency makes available for purchase or free of charge.

Amendment of the record

Cox and Department of Defence (2 February 1990) was a request by a Vietnam veteran for amendment of a number of his service medical records.

Mr Cox originally sought the removal of certain documents from his file. Deputy President Todd expressed doubt about whether the AAT had the power to order removal of a document from a record. He concluded that 'the power is to amend the record, not to amend a document. The record may be amended by altering the record or by adding an appropriate notation to the record....I am not of the opinion that any of the documents should be removed even if a power so to direct should be found to exist...To do so would obscure the history of the matter and would in fact obscure a prima facie case that serious errors occurred in some medical assessments of the applicant'. The AAT ordered that the record be amended by placing on each such record a copy of its decision and reasons, the transcript of evidence given at the AAT hearing, and several reports and other documents referred to in the reasons for the AAT's decision. It also ordered specific notations to be added to particular documents on the file.