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The Council's Secretariat is holding discussions with Professor R.D. Eagleson, Special Advisor on Plain English to the Australian Government, concerning the drafting of plain English notifications.

At its meeting in September 1985 the Council also decided to commence work on Stage Two of the Access project. The Access Committee subsequently decided to examine the Social Security, Student Assistance and Isolated Patients Travel and Accommodation Assistance Scheme jurisdictions by a quick process of consultation to identify issues relating to access which might be further considered by the Council. The Council sees 'access' as relating to impediments or barriers in the way of people finding out about, or exercising, their administrative review rights. Persons or organisations wishing to be involved in the preliminary consultation process should contact the Council's Director of Research immediately, as this preliminary stage of the project is to be completed by the end of 1985.

Customs and Excise. Report No. 24, Review of Customs and Excise Decisions, Stage Four: Censorship was transmitted to the Attorney-General on 5 September 1985. Preparation of the draft discussion paper on Stage Three (Anti-dumping) is continuing.

Migration. A revised draft Report will be considered by the Council at its December meeting.

AD(JR) Act. The Council recently advised the Government on a proposal to exclude from the AD(JR) Act decisions taken in the course of extradition proceedings. Preparation of a draft report on the overall review of the AD(JR) Act is continuing.

Damages in Administrative Law. Preparation of a draft discussion paper is continuing.

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Administrative Appeals Tribunal

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NEW JURISDICTION

The following recent legislation confers jurisdiction on the AAT:

- . Air Navigation (Charges) Regulations 1985
- . Bookmakers Ordinance 1985 (ACT)
- . Defence Force Regulations

## KEY DECISIONS

### Jurisdiction

The AAT has held that it has jurisdiction to review a fresh decision which was made by a Delegate of the Secretary to the Department of Social Security (DSS) after review of the matter by a Social Security Appeals Tribunal (SSAT). In Re Vocale and Secretary to the DSS (31 May 1985) the SSAT recommended the dismissal of an appeal against a decision to raise and recover an overpayment of \$1,670. A Delegate had affirmed the decision and the applicant sought review by the AAT. Prior to the hearing, however, a Delegate varied the decision by reducing the amount of the overpayment. The AAT rejected an argument that the fresh decision should be reviewed by the SSAT before the AAT's consideration of the matter.

### Compensation

In Re Bishop and Commonwealth of Australia (14 October 1985) the applicant was sensitive to tobacco smoke and other irritants circulated in air conditioned offices. He and management became involved in a lengthy dispute over the provision of an acceptable work environment. The Tribunal found that the applicant was suffering from a "disease" constituted by the symptoms of a stress-related illness precipitated by the applicant's perception of his treatment by his superiors. He was considered totally incapacitated for work. As the applicant's employment by the Commonwealth was found to be a contributing factor to the contraction, aggravation or occurrence of the disease he was held to be entitled to compensation.

### Import of Prohibited Drugs

In Re Dowling and Secretary to the Department of Health (13 September 1985) the applicant had sought a "licence" to import the prohibited drug methaqualone and the respondent purported to refuse the grant of the "licence". Regulation 5(1) of the Customs (Prohibited Imports) Regulations prohibits the import of certain drugs unless the importer has both a licence to import drugs and permission to import the specific drug in question. The Tribunal only has jurisdiction to review a refusal to grant a licence. In the circumstances, the Tribunal held that it had no jurisdiction to review a

refusal to grant a permission and raised the question whether the respondent had, in law, refused to grant a licence. However, the Tribunal proceeded to consider whether the applicant was entitled to a licence to import drugs as the respondent indicated that if the matter was remitted to the Department, the licence would be refused. Also, the applicant indicated that he wished to proceed with his application for review of the "refusal" to grant a licence. The Tribunal held that the applicant was not a "fit and proper person" to be granted a licence having regard to his knowledge of the properties and characteristics of drugs, and the limitations and restrictions imposed by law on their sale, use and distribution. The Tribunal also had regard to considerations relevant to whether a private applicant is a "fit and proper person" eg dependency on drugs, attitude towards drug use and abuse, the extent of medical supervision etc. The applicant was also found not to meet the other relevant condition in the regulations, that the drugs be kept in secure premises.

#### Fishing Licence

In Re Kennedy and Secretary to the Department of Primary Industry (27 September 1985) the Tribunal reviewed a decision granting the applicant a licence to fish for Southern Bluefin Tuna, but so as not to exceed a catch of a specified amount. On 1 October 1983 the Minister for Primary Industry introduced an interim management program for Southern Bluefin Tuna fishing. A national quota was set and this was to be reduced under a further management plan operating from 1 October 1984. A common formula was devised for determining individual quotas and this took into account the fisherman's highest catch in the 3 years prior to 1983 plus the current market value of his boat and gear. The applicant had been in the industry since August 1980 but did not operate his own boat until March 1984. In the Tribunal's view, therefore, it was appropriate to take account of a notional catch record by reference to boats of similar capacity. Accordingly, the Tribunal remitted the matter to the respondent with a recommendation that the quota be increased in accordance with a method set out in the Tribunal's reasons for decision.

#### Student Assistance

In Re Tree and Secretary to the Department of Education (17 July 1985) the Tribunal considered whether the applicant was a person deemed to be of independent status under the Student Assistance Regulations. The primary decision, which was affirmed by the Student Assistance Review Tribunal, was that the applicant was not a person of independent status

under the Regulations. The applicant managed a goat-breeding and goat-meat and cashmere wool production business of his father. It was argued that as a small number of the animals were owned by the applicant, he was similarly engaged in business. The AAT held that his activities were too miniscule to amount to the carrying on of a business and, moreover, the activities merged with his father's business so as to lose any identity they might otherwise have. The primary decision was affirmed.

### Substantial Dependency

In Re DFRB Authority and Brown (19 August 1985) the Tribunal considered whether the legal wife of a deceased defence force member, who was living separately from him at the time of his death, was "substantially dependent" upon him for the purposes of being eligible for a widow's pension under the Defence Force Retirement and Death Benefits Act 1973. The Tribunal concluded that a spouse is "substantially dependent" if the spouse is either being paid or provided with support or has a maintenance order or a prima facie legal right to support which probably would be effectively enforced, which support is required by the spouse for the supply of necessities of life so long as that support is not trivial, minimal or nominal and is less than total. At the time of his death the deceased was not making any payment or providing any support to his wife and, therefore, the Tribunal held that she was not entitled to the widow's pension.

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### Freedom Of Information

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### Secrecy Provision Exemption

In Re Maher and Attorney-General's Department (17 July 1985) the President of the AAT (Mr Justice Davies) held that reasonable grounds existed for the claim that release of two paragraphs of a letter from the Attorney-General of the United States to the Australian Attorney-General regarding international arrangements on anti-trust proceedings could reasonably be expected to cause damage to the international relations of the Commonwealth and that disclosure would divulge information on a matter which was communicated in confidence between the US and Australian Governments. Therefore, disclosure was considered to be contrary to the public interest and access to the two paragraphs of the letter was denied to the applicant.