Changes are currently being made to the colour blindness standards to take account of the AAT's decisions.

Taxation: self-education expenses while unemployed

'X' and Commissioner of Taxation (12 May 1989) involved a woman with a family who, as a mature age scholar, took up an academic career. In 1983 she earned a small income from her academic work, but in 1984 she was unemployed while travelling overseas with her husband and family. On her return to Australia she worked towards the degree of Doctor of Philosophy which she obtained in 1987. In 1987 and for the next two years she was again earning income, as a part-time lecturer or tutor.

The question at issue was whether the expenses she incurred in attending two conferences while overseas constituted allowable deductions for the purposes of the Income Tax Assessment Act. The argument basically was that as a scholar pursuing an income-producing career as an academic and teacher she was entitled to claim the expenses incurred in pursuit of that career.

The AAT found that it is not essential for a taxpayer to be employed, at the time an expense is incurred, for that expense to be deductible. However, at the time these expenses were incurred the taxpayer was neither deriving assessable income nor had any prospect for many months to come of deriving any assessable income. The AAT could not conclude that any expenses in maintaining or increasing learning, knowledge, experience or ability in a profession or calling constituted an allowable deduction, whether the person concerned gained income by the exercise of that calling or not and whether the expense was incurred in the course of income producing activities or not. It affirmed the decision under review.

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## Freedom of Information

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'Candour and frankness' at HREOC

In VXF and Human Rights and Equal Opportunity Commission (28 April 1989), involving the first Freedom of Information request that the relatively new Commission had received, the AAT addressed the 'candour and frankness' argument. It noted that a document which had the potential to embarrass the Commission or subject a public servant to criticism was not for that reason exempt. To the contrary, it was in the public interest that the document be released and that potential applicants should be in a position of deciding whether or not to lodge a complaint with the Commission, knowing how it operates. Further, the AAT remarked that 'it could not be seen as a substantial adverse effect, if the disclosure of this document inhibited unqualified people making medical assessments'. The document in question contained an opinion by a member of HREOC staff about the applicant's health and about the steps, if any, which should be taken to assist her.

The AAT also discussed the question whether a recommendation should be made that VXF's costs be paid by the Commission. It decided that, since it was not probable that the applicant would have to pay any costs to Legal Aid, the hardship provisions did not apply. The case had a public interest component, but no commercial benefit for the applicant. Further, while the AAT was critical of the Commission's handling of the case it did not find the decision reviewed unreasonable. It therefore made no recommendation for payment of costs.

New South Wales Freedom of Information Act

The New South Wales Freedom of Information Act, which commenced operation on 1 July 1989, is the first of a NSW administrative review package which is expected to include merits review by an Administrative Appeals Tribunal and judicial review under the equivalent of the Commonwealth AD(JR) Act.

The NSW Freedom of Information Act, based on the Commonwealth and Victorian models, covers all documents relating to personal affairs, and such other documents as were brought into existence after 30 June 1984. Applications must be in the prescribed form, and accompanied by a fee to be determined in accordance with Ministerial guidelines. Time limits apply for dealing with applications. The Act contains provisions for internal review except where the request is for documents held by a Minister, and for amendment of records relating to personal affairs. It also contains provision for external review by the District Court or the Ombudsman.

## The Courts

Broadcasting: 'in accordance with' the guidelines

Australian Capital Television v Minister for Transport and Communications (27 February 1989). This case referred to the Minister's decision to approve implementation of plans submitted under the Broadcasting Act. Any plan was required to be 'in accordance with' any guidelines issued. Justice Gummow found that, in the context of the legislation as a whole, the words 'in accordance with' were more akin to 'pursuant to' than to 'in strict compliance with'. The submissions satisfied this standard and the application was dismissed.

Deportation: basis of second order

In Kurtovic v Minister for Immigration, Local Government and Ethnic Affairs (28 February 1989) Justice Einfeld found that the making and revocation of a deportation order did not exhaust the power under section 12 of the Migration Act to make a second order. Nevertheless, the Minister was prevented or estopped from exercising the power to deport in a way that would break a promise made to Mr Kurtovic. Mr Kurtovic had also been denied natural justice and the Minister's decision had involved an improper exercise of power.