mendations of the Gruen Report and specifically that it intended to establish an anti-dumping tribunal whose function it would be to make recommendations to the Minister as to whether or not the requisite grounds existed to exercise the power to impose dumping or countervailing duties.

Following that announcement the Committee prepared the further submission to which reference has been made and which was subsequently lodged by the Law Council. In that submission the Committee welcomed the Government's decision to establish an anti-dumping tribunal but urged the Government to ensure that through its composition the tribunal was seen to be truly independent of the Government. The Committee also emphasised the need to ensure that the tribunal possessed the requisite relevant skills and expertise to remove the increasing tension and allegations of bias which were being made by many of Australia's trading partners to which Professor Gruen had made reference in his Report. In September 1987 the Government made a further announcement that the proposed anti-dumping tribunal would be known as the Anti-Dumping Authority and that legislation would be drawn to establish it. That has not yet occurred but is believed to be imminent.

In its submission on the Administrative Decisions (Judicial Review) Bill 1986 the Committee made the following points:

1. There was no evidence of abuse of the ADJR Act in relation to interlocutory customs decisions which would warrant such measures applying in this field.

2. It was wrong and inappropriate to impose a show cause onus on an applicant to establish an entitlement to the review of an interlocutory decision.

3. The provisions in the Bill relating to the availability of alternative avenues of review required clarification particularly in the context of the anti-dumping laws and the right to a reference to the Industries Assistance Commission, given that it could make recommendations only to the Minister who was not obliged to accept them.

The Bill is currently still before the Senate Standing Committee and has not yet been passed.

Finally in relation to the substantive submission on the Customs and Excise Legislation Amendment Bill (No. 2) 1987 the Committee's submissions, which have been adopted by the BLS Executive and lodged on behalf of the Law Council, contain a comprehensive analysis and review of the proposed legislation and point out numerous areas of difficulty and potential injustice posed by the Bill in its present form. Although the Committee clearly acknowledged and accepted the legitimate objective of the Government to stamp out what it perceives to be widespread customs fraud, the Committee has expressed very real concern about both the substantive and formal structure of the Bill. The Committee has expressed opposition to the very complex recasting of the valuation provisions, particularly when the Bill seeks to introduce a self assessment system with exposure to administratively imposed penalties. The difficulties of comprehending the new valuation provisions are further exacerbated by its timing coinciding with Australia's adoption of the new harmonised tariff and the initial classification uncertainties which are likely to arise from that. The Committee has also expressed concern about the width of the powers proposed to be given by the Bill to Customs to enter and search for documents to verify data and has submitted that the proposed warrant divisions do not provide sufficient safeguards if they are to be issued by Justices of the Peace.

The Committee has had the benefit of discussions with one of the senior legal advisors to the Minister on the Bill and at the time of writing its future passage through the Parliament is uncertain. Although it has passed through the House of Representatives, opposition, including an interim submission by the Law Council through the Committee, resulted in the deferral of its introduction to the Senate with a view to its subsequent introduction in the current autumn session. This has been done to enable the weight of the opposition and the substance of the arguments against the Bill to be assessed.

In addition to the specific submissions which have been noted, the work of the Committee is currently looking at the current operation of the search and seizure provisions and the need for their reform. The Committee has been invited to make contributions to the Australian Law Reform Commission in relation to the reference recently sent to it by the Government concerning the need for reform of the Customs Act.

The Committee has been essentially Sydney based to date. However, the workload which the Committee is required to undertake, together with the growing involvement of practitioners in other States in the customs law area, combine to require a strengthening of the Committee, both in terms of its numbers, and its need to be represented by practitioners across Australia and not just those practising in Sydney. Representations are being made to the Business Law Section Executive with a view to achieving these objectives. Inquiries from members of the Law Council who are practising in the customs law area and who have an interest in contributing to the work of the Committee would be welcome.

H. K. C. Steele
Chairman
Customs Law Committee

Trade Practices Committee

The Committee has under review at present the operation of section 46 of the Trade Practices Act, in relation to abuse of market power, in particular the question as to whether the existence of certain conduct should give rise to an inference of taking advantage of market power.

The Committee will shortly be considering, in the context of Phase II of the Closer Economic Relations Agreement with New Zealand, the ways in which competition laws and their administration might be harmonised, with the overall objective of advancer CER.

I. A. Tonking
Chairman
Trade Practices Committee

Intellectual Property Committee

The following is the text of a recent submission by the Committee to the Commonwealth Attorney-General

1. Transitional Provisions of Patents Act relating to Abolition of Extensions of Term
2. Extension of Term for Pharmaceutical Patents

The Intellectual Property Committee of the Business Law Section of the Law Council ("IPC") has drawn the Council's attention to a serious issue relating to the inability of lawyers to give proper advice which has arisen in relation to these matters.

A joint statment by Senator Button and Dr Blewett on 13th September, 1987, announced that the holder of a pharmaceutical patent will generally be able to apply to the Commissioner of Patents for an extension of four years of the term, rather than having to go through the courts.

The government had previously announced its intention to abolish extension of term.

Patentees of both pharmaceutical and other patents are seeking legal advice in relation to action they should take to preserve their rights under the existing legislation and to obtain rights under what they imagine the transitional provisions which the government may intend, will be. The status of those patentees may be greatly affected by the transitional arrangements. There is a wide range of options to give effect to the policy. Lawyers are currently unable to advise clients what to do with any certainty because policy for the transitional arrangements has not been stated.

Our immediate concern is that consultation with the government is only informal and that the government is not going to disclose its policy on transitional provisions until the leglisation is introduced. That seems to be a fair inference from the joint statement by the Ministers:

> "Full details of the new patent scheme will become available when legislation amending the Patents Act is introduced."

Our more basic concern is, however, that the transitional provisions could affect, change, or even abolish, the long-standing rights of persons under the existing law and make provision for future rights in ways which are not fair and equitable. In the view of IPC, it would be entirely inappropriate and grossly unfair to amend the law in any way which would have a retrospective effect.

The proposed changes to abolish extensions have very serious implications not only for the pharmaceutical industry but for patentees generally. The Committee is concerned that the pharmaceutical industry may be the only one which has been consulted on transitional provisions and even in that case, the consultation has only been informal.

We strongly urge the government after consulting with industry, including the pharmaceutical industry, and patent attorneys and patent lawyers, to publish the range of options and the government policy in relation to those options for comment before any amendments to the Patents Act abolishing extensions and providing for extensions for pharmaceutical inventions (for use in human beings) are introduced into the parliament.

As presently instructed, we (like all others) can only speculate about what changes may occur. There is widespread speculation on what the government policy on transitional provisions may be and this is causing uncertainty, anxiety, and expense.

In order to demonstrate the wide range of issues raised by the possible transitional provisions, we refer to the following points.

1. In view of IPC, there are strong arguments for preservation of the rights of current applicants for patents and patentees. They made their applications under the current Act which provided for extensions. Their side of the bargain was to disclose what would otherwise have not been published. The other side of the bargain was that they would get a sixteen year term and have rights to apply for and obtain an extension through the courts for up to ten years in appropriate circumstances. There is a strong question over the equity and justice of on the one hand accepting their publication of their technology and on the other hand taking away access to the rights upon which publication of that data was invited. It would therefore be just and equitable to abolish extensions for patents only where the applications for the grant of letter patent are made *after* a certain date following enactment of the legislation.

2. A possible option is total abolition of rights to petition for extension of term immediately. That would