



The Federal Court has ruled that the Australian Content Standard for commercial television is to include New Zealand programs. The current standard will remain in place while the ABA develops a new standard which is consistent with the Protocol on Trade in Services (the Protocol) of the Australia New Zealand Closer Economic Relations - Trade Agreement.

Australian content standard still in place

Justice Davies of the Federal Court has ruled that the ABA has until 31 December 1996 to vary the Australian Content Standard for commercial television to include New Zealand programs.

On 2 August Justice Davies ruled that it was open to the ABA to determine a standard which is consistent with the Protocol of the Australia New Zealand Closer Economic Relations - Trade (CER) Agreement. The orders clarify that the standard is invalid only so far as it fails to be consistent with the Protocol.

The ruling means the Australian Content Standard for commercial television will remain in place while the ABA develops a new standard which is consistent with the Protocol on Trade in Services (the Protocol) of the CER Agreement.

The Australian Content Standard for commercial television, which was implemented in January this year, requires the transmission of Australian made programs and minimum levels of Australian pre-school programs, children's drama, adult drama, and documentaries. Television licensees will continue to have to meet these obligations.

The ruling also means that

until there is a standard which positively incorporates New Zealand programs any claims by licensees for recognition of New Zealand programs will be considered on a case by case basis by the ABA.

Project Blue Sky, representing the New Zealand film and television production industry, challenged the validity of the standard on the basis that it was not determined in a manner consistent with Australia's obligations under the CER Agreement.

The ABA has until 21 days from 26 August, in which to exercise its right of appeal.

The review

In September 1995, the ABA concluded a wide-ranging public review of the Australian content requirements for commercial television. The new Australian Content Standard and variations to the Children's Television Standards, which came into effect on 1 January 1996, are the result of this extensive consultation by the ABA.

The ABA has, as part of its functions, a role to regulate the level of Australian content of programs broadcast by commercial television licensees. The ABA is required under

the *Broadcasting Services Act 1992* to determine a standard for commercial television that relates to the Australian content of programs.

The ABA inherited an Australian Content Standard for commercial television that had been determined by the Australian Broadcasting Tribunal in 1989. This standard remained in force from the time the ABA came into existence in October 1992 until the determination of the Australian Content Standard in December 1995.

The ABA had a duty to review that standard and announced early in its existence that Australian content was an issue that it would be examining. The ABA commenced its formal review of the standard applying to commercial television in July 1994. During the review the ABA released a number of papers and draft standards for comment and received both written and oral submissions from members of the broadcasting and production industries, representatives from New Zealand and the public.

Review conclusion

In its review, the ABA came to the conclusion that there

was a real legal impediment to the recognition of New Zealand persons and programs in the standard. The ABA took the view that it would be outside its legal power to include New Zealand programs in the Australian Content Standard. The definition of 'Australian program', for the purposes of the Australian Content Standard, does not include programming produced by New Zealanders.

Project Blue Sky Inc., representing the New Zealand film and television production industry, took the view that the ABA's standard contravened Australia's treaty obligations under the CER Agreement by not according national treatment to New Zealand programs.

Court proceedings

Project Blue Sky and five New Zealand film production companies commenced proceedings in the Federal Court of Australia on 26 October 1995 under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to review the ABA's decision to determine an Australian content standard. The Federal Court heard the matter on 19 July 1996. 