



News Update

(d) The ABA must have regard to wide policy considerations in preparing LAPs.

(e) The power of the ABA to vary a LAP is analogous to the legislature's power to amend legislation.

(f) A LAP once made is not subject to executive variation or control.

(g) A decision to promulgate a LAP is not reviewable by the Administrative Appeals Tribunal.

(h) A LAP has binding legal effect once prepared, in the sense that various other provisions are only enlivened following its preparation, ie determination of licence area and licence area populations.

The effect of the decision is that a LAP is no longer reviewable by the Federal Court under the provisions of the AD(JR) Act and accordingly the ABA is no longer required to provide statement of reasons for its LAP decision under section 13 of the AD(JR) Act. However, the ABA will continue to publish its reasoning for each LAP decision.

Golden West Network v ABA

Golden West Network Pty Ltd (GWN) has challenged the ABA's decision to plan a second commercial television broadcasting licence for the remote and regional Western Australian licence area. The ABA made this decision on 23 February 1997, pursuant to section 26 of the Broadcasting Services Act. The decision is contained in the ABA's licence area plan: *Remote and Regional Western Australia. Television Decisions*, released in February 1997.

GWN is the incumbent licensee of four commercial television licences in regional and remote Western Australia. The combined licence areas of these services are proposed as the licence area for the planned second commercial television service.

GWN filed its application for an order of review in the Federal Court of Australia on 15 May 1997. The next directions hearing is listed for 29 August 1997.

Foxtel Cable Television Pty Ltd v Nine Network Australia Pty Ltd and the ABA — Sport anti-siphoning case

The Nine network ('Nine') complained to the ABA on 30 January 1997 about an ABA decision which was notified to Nine in a letter dated 16 January 1997. The ABA had found that Foxtel's acquisition of live rights to the Australian cricket tour of South Africa did not breach the licence condition imposed by Clause 10(1)(e) of Schedule 2 of the *Broadcasting Services Act 1992*.

Nine sought a review of the ABA's decision in the Federal Court and Foxtel joined as a party to the litigation. Justice Lockhart's judgment was handed down on 25 February 1997.

The Court decided the ABA had erred in law and ordered the ABA's decision be set aside and remitted to the ABA to decide the matter again according to law.

On 28 February 1997, Foxtel filed a notice of appeal against Justice Lockhart's decision. The Full Federal Court hearing was held in Perth on 17 March 1997. On 26 March 1997 the court decided that the appeal should be dismissed. Foxtel made an application for special leave to appeal to the High Court of Australia from the judgment of the Full Federal Court. On 4 August 1997, the High Court refused to grant special leave.



Licence area planning

CANBERRA: Final LAPs have now been released for all priority group 1 areas and the majority of areas in group 2. In addition, discussion papers and draft LAPs have been published for some group 3 areas. Meetings with existing and aspirant broadcasters in group 4 metropolitan markets are expected to commence early next year.

In summary, the ABA has planned for:

- 4 commercial television services;
- 55 commercial radio services;
- 56 community radio services; and
- 112 medium and high power open narrowcasting radio and television services.

The above data do not include new radio and television services planned for the national (ABC, SBS and PNN) broadcasters.



ABS to survey motion picture, radio and television service organisations

SYDNEY: As part of the Australian Bureau of Statistics (ABS) ongoing program of service industries surveys, questionnaires were despatched in mid August to organisations in the motion picture, radio and television services sector. These include film and video production, film and video distribution, motion picture exhibition, radio services and television services.

The questionnaires will gather information for