



ABA wins legal point in Gosford LAP challenge

In November 2000, an application was filed in the Federal Court to review the ABA's decision to make a new commercial radio licence available in the Gosford area.

As part of the proceedings, the question before the Full Federal Court (Wilcox, Branson and Lindgren JJ) was:

Is the decision of the respondent to determine the licence area plan made 31 August 2000 for the Gosford licence area a decision of an administrative character within the meaning of the *Administrative Decisions (Judicial Review) Act 1977* (Cth)?

Decisions which are of an administrative character are reviewable under the *Administrative Decisions (Judicial Review) Act 1977* (Cth). Decisions of a legislative character

are reviewable under the *Judiciary Act 1903* (Cth). The grounds for review are considered broader under the Administrative Decisions (Judicial Review) Act than the Judiciary Act.

On 6 July 2001 the Full Federal Court handed down its decision which said that a licence area plan was *not* a decision of an administrative character. The Court stated in its reasoning that there is no simple rule for determining whether a decision is of an administrative or a legislative character. It stated that not one consideration discussed in the decided cases or raised by counsel is decisive of the issue but rather all considerations must be taken into account.

In deciding that a licence area plan is a decision of a legislative character, the Court found that the considerations most persuasive were:

1. The licence area plan is of a general application as distinct from being a determination which affects only particular individuals or is

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Temporary community broadcasting licences

Allocated in June 2001

Area served	Licensee	Frequency	Period	Date allocated
New South Wales				
Blacktown	Blacktown City Community Radio SWR-FM Association Inc.	99.9	24-6-2001 to 3-10-2001	14-6-2001
Byron Bay	Bay FM Community Radio Inc.	99.9	20-6-2001 to 30-11-2001	7-6-2001
Casino	Casinos Own Wireless Association Inc.	107.9	1-7-2001 to 30-6-2002	22-6-2001
Coraki	Community Radio Coraki Association Inc.	88.9	1-7-2001 to 30-6-2002	20-6-2001
Gosford	Central Coast Broadcasters Ltd	94.1	1-7-2001 to 30-11-2001	22-6-2001
Gosford	Five-O-Plus Public Radio Association Inc.	95.3	1-7-2001 to 30-11-2001	21-6-2001
Gosford	Radio Yesteryear Inc.	104.5	1-7-2001 to 30-11-2001	21-6-2001
Gosford	Wyong-Gosford Progressive Community Radio Inc.	93.3	1-7-2001 to 30-11-2001	21-6-2001
Hornsby	2 HHH FM Ltd	100.1	24-6-2001 to 21-7-2001	8-6-2001
Lithgow	Lithgow Community Broadcasters Inc.	90.5	2-7-2001 to 1-7-2002	22-6-2001
Murwillumbah	Cool FM Community Radio Association Inc.	101.3	1-7-2001 to 30-9-2001	20-6-2001
Nimbin	Nimbin Independent Media Inc.	102.3	1-7-2001 to 30-6-2002	22-6-2001
Victoria				
Colac	Otway FM Community Radio Group Inc.	104.7 & 99.1	1-7-2001 to 31-10-2001	22-6-2001
Camberwell	Swinburne Student Radio Inc.	94.1	11-6-2001 to 31-8-2001	8-6-2001
Camberwell	Whitehorse - Boroondara FM Community Radio Inc.	94.1	1-7-2001 to 31-8-2001	22-6-2001
Melbourne	Melbourne Pulse Radio Inc.	94.9	11-6-2001 to 8-7-2001	7-6-2001
Melbourne	Joy Melbourne Independent Community Broadcasters Inc.	90.7	23-5-2001 to 31-8-2001	19-6-2001
Melbourne	L8htertainment Community Radio Inc.	89.9	11-6-2001 to 8-7-2001	6-6-2001
Melbourne	The Victorian Muslim Community Information Service Inc.	90.7	23-6-2001 to 31-8-2001	19-6-2001
Waverley	Golden Days Radio for Senior Citizens Inc.	95.7	1-7-2001 to 31-7-2001	21-6-2001
Waverley	Monash University Union Radio Inc.	95.7	1-7-2001 to 31-7-2001	22-6-2001
Queensland				
Brisbane	Family Radio Ltd	96.5	1-7-2001 to 31-10-2001	21-6-2001
South Australia				
Adelaide Foothills	Adelaide Independent Radio Inc.	99.9	8-6-2001 to 31-5-2002	6-6-2001





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made with particular individuals in contemplation;

2. Notwithstanding the power of variation give by section 26(2), a licence area plan is expected to have a moderately long term application and to lay down parameters within which decisions affecting individuals will be taken;

3. There is a clear distinction between the planning concerns of Part 3 of the Broadcasting Services Act and the Part 4 provisions regarding allocation of licences which more directly affect the interest of individuals; and

4. Section 204 of the Broadcasting Service Act provides for review by the Administrative Appeals Tribunal of a wide range of decisions which the ABA makes under the Act, including decisions under Part 4 and subsequent Parts of the Act but omits review of the preparation of a licence area plan under section 26(1).

The applicant has lodged an appeal to the High Court.

3AK Melbourne to move to 1116 kHz

The ABA has decided to make the 1116 kHz frequency on the AM band in the Melbourne licence area permanently available to commercial radio service 3AK.

The ABA has also decided to make the frequency 1503 kHz available for a new community radio service in Melbourne.

The decisions are contained in a variation to the Melbourne radio licence area plan.

The completion of the variation to the Melbourne licence area plan means that the ABA can proceed with the allocation of the new community licence with the assigned frequency of 1503 kHz.

A copy of the licence area plan variation is available from the ABA web site at www.aba.gov.au or by calling Freecall 1800 810 241.

Electronic transactions with the ABA

The *Electronic Transactions Act 1999* provides a legal framework for using electronic communications as a means of providing information, documents or a signature to Commonwealth Government agencies. On 29 June 2001 the ABA published its requirements for electronic communications under the Electronic Transactions Act.

Clients who wish to communicate electronically with the ABA must comply with its transmission and format requirements to ensure that all electronic communications are legally valid.

ABA requirements

For most transactions, clients can communicate with the ABA by:

- fax
- email, no larger than 2MB, including attachments, or
- using the ABA's web-based forms.

There are special transmission requirements for a range of specified transactions, for example applications for broadcasting licences, go to: www.aba.gov.au/forms/elecTrans/table.htm.

For information on the requirements that apply to material sent to the ABA via computer go to: www.aba.gov.au/forms/elecTrans/format.htm.

The ABA intends to upgrade its online transaction processing to provide web-based forms for as many transactions as possible.

For the full details on the ABA requirements for electronic communications go to: www.aba.gov.au/forms/elecTrans/index.htm.

For information about the general direction of the Government Online policy and initiatives, see the Government Online web site, www.govonline.gov.au.



C and P programs

Programs granted C and P classification between 30 January and 26 February 2001. Producers interested in submitting programs for classification should contact the ABA's Children's Television section on (02) 9334 7700.

Program title	Origin	Class	New/renewal	Decision dated	Applicant
JUNGLE GIRL AND THE LOST VALLEY OF THE DINOSAURS	Australia	CD	new	19-Jul-01	Burbank Animation Studios
RODDY THE ROOSTER AND FRIENDS	Australia	P	new	12-Jul-01	Animagination Pty Ltd
WISHBONE (Series 1)	USA	C	renewal	12-Jul-01	Southern Star Sales

C – children's program, C Drama – C Australian drama program, P – preschool program, Class. – Classification