



The ABA believes that to make a frequency available for the 3HOT service at Ouyen is likely to promote the objects of the Act which refer to the economic and efficient use of the spectrum.

The licence area of 3HOT will be extended to include the township of Ouyen, and will be defined against 1991 Census boundaries.

The variation to the LAP for Mildura/Sunraysia was proposed in the LAP determined for Mildura/Sunraysia in July 1995. As Ouyen lies within the area of planning zone R16 (Central Victoria and Central Murray), the question of the extension of 3HOT's service to Ouyen was deferred for consideration until planning for R16 was underway.

Details of the variation of the licence area plan for Mildura/Sunraysia is available for viewing at the Mildura Public Library, or can be obtained from the ABA by calling freecall 1800 810 241.

## **New community radio broadcasting licence for Broome**

**BROOME:** The ABA has allocated a community radio broadcasting licence for Broome, Western Australia to Broome Aboriginal Media Association.

The service will target the Aboriginal community in Broome, and will broadcast on FM 99.7 MHz. The licensee has 12 months to get the new service up and running.

'The proposed Broome service will, to a great extent, meet the community radio broadcasting needs of the Aboriginal community within the Broome region,' said Mr Peter Webb, ABA Chairman. 'Presently, no other service in the region satisfies those needs.'

The ABA has allocated this licence after consulting with the local community to seek its views on additional broadcasting services in the region. The new community radio licence was advertised in the local media, and the application received was made available to the public for comment, particularly in regard to whether the proposed service would meet existing and future community needs.

Broome Aboriginal Media Association has been channel sharing with the ABC since 1991.

This is the sixth community licence to be allocated under the *Broadcasting Services Act 1992*. As licence area plans are completed for regions around Australia, additional

community radio broadcasting licences will be determined and then advertised for allocation. Any new community broadcasting licences detailed in these licence area plans will be allocated using a merit based process.

The ABA has previously allocated new community licences in Mildura, Vic., Ceduna and Kangaroo Island SA, and York and Fitzroy Crossing, WA.

## **Current ABA litigation**

### **Project Blue Sky v ABA — the Australian Content Standard**

The Australian Content Standard, determined by the ABA, came into force on 1 January 1996. Project Blue Sky Inc. and five New Zealand production companies challenged the validity of the standard.

On 2 August 1996, Justice Davies of the Federal Court ruled that it was open to the ABA to determine a standard which is consistent with the Protocol to the CER Agreement. The ABA's appeal to the Full Federal Court from the decision of Justice Davies was successful.

On 11 April 1997, the High Court granted Project Blue Sky leave to appeal from the judgment of the Full Federal Court.

This matter is now set down for hearing by the High Court on 29 September 1997.

### **SAT FM Pty Ltd v ABA**

Justice Sundberg of the Federal Court has found that the ABA's determination of the licence area plan (LAP) for Kalgoorli, WA was not a decision of an administrative but rather one of a legislative character. It follows that it is not a decision to which the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) applies. The action commenced by SAT FM Pty Ltd was accordingly struck out by the Court.

The Court said that the trichotomy of administrative, legislative and judicial acts is maintained by the AD(JR) Act, and decisions of a legislative or judicial character are excluded from review under the Act.

The Court relied on the following indications:

- (a) A LAP creates rules of general application rather than applying such rules to a particular broadcaster.
- (b) The making of a LAP must be notified in the *Gazette*.
- (c) The ABA is required to make provision for wide public consultation in preparing LAPs