



HIGH COURT OF AUSTRALIA

Public Information Officer

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BROADCAST AUSTRALIA PTY LTD v MINISTER ASSISTING THE MINISTER FOR NATURAL RESOURCES (LANDS)

A piece of land that the New South Wales government allowed the Commonwealth to use to build a television transmitter could validly be handed over to a company after the Commonwealth privatised its transmission network, the High Court of Australia held today.

In 1961 the Minister granted a permissive occupancy to the Commonwealth over land at Mt Sugarloaf, near Newcastle, to build a transmission station. In 1998 the Minister gave notice of a redetermination of the rent. The Commonwealth objected but rent was set at \$74,000 a year and in April 1999 the Commonwealth appealed to the NSW Land and Environment Court. Later that month, pursuant to the National Transmission Network Sale Act 1998, the Commonwealth Minister for Finance and Administration made a declaration vesting the Commonwealth's entitlement to certain sites, including Mt Sugarloaf, in the company now known as Broadcast Australia. The company was then substituted for the Commonwealth in the Land and Environment Court proceedings.

The Minister claimed the 1961 permissive occupancy was revoked by the Commonwealth ministerial declaration. This claim was rejected by the Land and Environment Court but upheld by a majority of the NSW Court of Appeal which held that without the Minister consenting to the transfer, the permissive occupancy would be terminated. In the High Court the Minister argued that while the permissive occupancy was in a sense a Commonwealth asset, it was a creation under NSW law and not an asset capable of being vested by Commonwealth statute in another body.

The High Court unanimously held that for the Minister's argument to be correct there had to be some provision of State law preventing the Commonwealth Act from taking effect and insulating the permissive occupancy from Commonwealth law. If there was such a State law it would have altered, impaired or detracted from the operation of the Commonwealth Act and would thus be invalid under section 109 of the Constitution to the extent of the inconsistency. Therefore, both the Commonwealth Act and the Commonwealth ministerial declaration took effect. The Court also held that the ministerial declaration did not revoke the permissive occupancy. It allowed Broadcast Australia's appeal.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*