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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**AUSTRALIAN BROADCASTING CORPORATION AMENDMENT (FAIR AND
BALANCED) BILL 2017**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications
Senator the Honourable Mitch Fifield)

AUSTRALIAN BROADCASTING CORPORATION AMENDMENT (FAIR AND BALANCED) BILL 2017

OUTLINE

The Australian Broadcasting Corporation (ABC) is Australia's primary national broadcaster that is publicly funded. It is established by the *Australian Broadcasting Corporation Act 1983* (the ABC Act) and provides broadcast and digital media services that span diverse social, cultural and geographical audiences throughout Australia.

The ABC provides audiences with news and information services of the highest standards, and also delivers international media services thereby offering an Australian perspective to the people of Asia and the Pacific and connecting with Australians living and working overseas.

Section 6 of the ABC Act sets out the functions of the ABC in the form of a Charter. Section 7 of the ABC Act establishes the Board of the ABC, and the duties of the Board are set out in section 8. The amendment to the ABC Act set out in Schedule 1 to the Bill will modify and expand the existing statutory duty of the Board relating to ensuring the gathering and presentation by the ABC of news and information is accurate and impartial according to the recognised standards of objective journalism.

The amendment will extend this existing duty to also require the gathering and presentation of news and information to be 'fair' and 'balanced' according to the recognised standards of objective journalism.

Requiring the ABC to be fair and balanced according to recognised standards of objective journalism is a necessary and legitimate objective. The Australian people expect a publicly funded broadcaster to canvass a broad range of issues, and report on those issues in a fair and balanced manner. There is also a strong public interest in ensuring that Australians have confidence that they can rely on the ABC as a source of information to inform their views on significant issues. A statutory requirement for fair and balanced reporting will promote such confidence, and ensure that the ABC is a source of information which they can draw on to inform their views on significant public issues.

Amendment

The addition of the words 'fair' and 'balanced' will support and strengthen the ABC's reputation for providing trustworthy and dependable reporting. The ABC's own Editorial Policies cover fair treatment, as well as having a balance that follows the weight of evidence. This amendment will cement these requirements in the ABC's Charter and ensure the ABC continues to uphold the standards expected of it by the Australian public.

FINANCIAL IMPACT STATEMENT

The measure in this Bill is expected to have no financial impact.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Australian Broadcasting Corporation (ABC) is Australia's primary national broadcaster that is publicly funded. It is established by the *Australian Broadcasting Corporation Act 1983* (the ABC Act) and provides broadcast and digital media services that span diverse social, cultural and geographical audiences throughout Australia.

The ABC provides audiences with independent news and information services of the highest standards, and also delivers international media services thereby offering an Australian perspective to the people of Asia and the Pacific and connecting with Australians living and working overseas.

Section 6 of the ABC Act sets out the functions of the ABC in the form of a Charter. Section 7 of the ABC Act establishes the Board of the ABC, and the duties of the Board are set out in section 8. The amendment to the ABC Act set out in Schedule 1 to the Bill would modify and expand the existing statutory duty of the Board relating to ensuring the gathering and presentation by the ABC of news and information is accurate and impartial according to the recognised standards of objective journalism.

The amendment would extend this existing duty to also require the gathering and presentation of news and information to be 'fair' and 'balanced' according to the recognised standards of objective journalism.

Human rights implications

The Bill engages the right to freedom of expression as contained in Article 19 of the *International Covenant on Civil and Political Rights* (the ICCPR). Article 19 recognises the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds using any media of choice. Article 19(3) explicitly states that the exercise of the right carries with it special duties and responsibilities. Accordingly, this right may be subject to certain restrictions if the restrictions are provided for by law and are necessary for the respect of the rights and reputations of others.

The Bill engages the right to freedom of expression as it would impose an additional duty on the Board to require the gathering and presentation of news and information by the ABC to be fair and balanced according to the recognised standards of objective journalism. It is important to note that the Bill would not limit or prevent the ABC from canvassing any particular issues when gathering and presenting news and information, rather it would require the Board to ensure that the reporting of those issues be undertaken in a fair and balanced manner. To the extent the Bill limits or restricts the right to freedom of expression, it does so for a legitimate objective, and is reasonable, necessary and proportionate.

The requirement for fair and balanced gathering and presentation of news and information will be provided for by law. An amendment would be made to the ABC Act making it clear to the Board and to the Australian public, that the reporting of news and information by the ABC is to be undertaken in a fair and balanced manner.

The ABC to be fair and balanced according to the recognised standards of objective journalism is a necessary and legitimate objective. The Australian people expect a publicly funded broadcaster to canvass a broad range of issues, and report on those issues in a fair and balanced manner. There is also a strong public interest in ensuring that Australians have confidence that they can rely on the ABC as a source of information to inform their views on significant issues. A statutory requirement for fair and balanced reporting will promote such confidence by the Australian people.

The fair and balanced requirement is also necessary to protect the rights and reputations of those who are the subject of ABC reporting. The Bill will require the ABC Board to ensure that any news or information relating to, for example, a particular person or group, is presented to the public in a fair and balanced manner, thereby ensuring that an impartial view, supported by evidence, is put forward in relation to that person or group. The fair and balanced requirement would not require every perspective of an issue to receive equal time, nor every facet of an argument to be explored. However, it will require openness and impartiality in relation to the pertinent issues.

The requirement for the fair and balanced gathering and presentation of news and information according to the recognised standards of objective journalism is consistent with the principle of impartiality and diversity of perspectives contained in the ABC's Editorial Policies and is considered proportionate. Those Policies provide that the ABC is guided by the following hallmarks of impartiality: a balance that follows the weight of evidence; fair treatment; open-mindedness; and opportunities over time for principal relevant perspectives on matters of contention to be expressed. Enshrining the fair and balanced requirement in legislation would complement these current Editorial Policies.

Ultimately, this Bill promotes transparent journalism, facilitates confidence in the ABC, and provides for a better informed Australian public in regards to issues of public significance, which will contribute to a more robust debate in relation to those issues.

Conclusion

The Bill is compatible with human rights because to the extent that it may limit the right to freedom of expression, such a limitation is reasonable, necessary and proportionate.

NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Australian Broadcasting Corporation Amendment (Fair and Balanced) Act 2017*.

Clause 2 – Commencement

Clause 2 provides for the commencement of the Bill. The Bill would commence on the day after the Bill received the Royal Assent.

Clause 3 – Schedules

Clause 3 provides that legislation that is specified in a Schedule to the Bill is amended or repealed as set out in the applicable items in that, and any other item in a Schedule has effect according to its terms.

There is one Schedule to the Bill.

SCHEDULE 1—DUTIES OF THE BOARD OF THE AUSTRALIAN BROADCASTING CORPORATION

The ABC is a body corporate that is enshrined in legislation by virtue of the ABC Act. Section 6 of the ABC Act sets out the tenets of the ABC, in the form of a Charter.

The amendment to the ABC Act set out in Schedule 1 to the Bill would expand the existing statutory duty of the ABC Board to ensure the gathering and presentation by the ABC of news and information is accurate and impartial according to the recognised standards of objective journalism to include the requirement to be ‘fair’ and ‘balanced’ in relation to such gathering and presentation of news and information.

Item 1 – Paragraph 8(1)(c)

Item 1 would insert the words “fair, balanced” into paragraph 8(1)(c) of the ABC Act, in relation to the gathering and presentation of news and information by the ABC.

The standard by which the expanded duty will be measured is the recognised standards of objective journalism.

The requirement for fair and balanced gathering and presentation of news and information according to recognised standards of objective journalism is consistent with the principle of impartiality and diversity of perspectives contained in the ABC’s Editorial Policies. Those Policies provide that the ABC is guided by the following hallmarks of impartiality:

- a balance that follows the weight of evidence;
- fair treatment;
- open-mindedness; and
- opportunities over time for principal relevant perspectives on matters of contention to be expressed.

Enshrining the fair and balanced requirement in legislation, as proposed by Item 1, would complement these current Editorial Policies.

The fair and balanced requirement would not require every perspective of an issue to receive equal time, nor every facet of an argument to be explored. However, it will require openness and impartiality in relation to the pertinent issues.