

2016-2017

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**NATIONAL BROADCASTERS LEGISLATION AMENDMENT  
(ENHANCED TRANSPARENCY) BILL 2017**

**EXPLANATORY MEMORANDUM**

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

# NATIONAL BROADCASTERS LEGISLATION AMENDMENT (ENHANCED TRANSPARENCY) BILL 2017

## OUTLINE

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The National Broadcasters Legislation Amendment (Enhanced Transparency) Bill will amend the *Australian Broadcasting Corporation Act 1983* (ABC Act) and the *Special Broadcasting Services Act 1991* (SBS Act) to provide more transparency in how the national broadcasters allocate Government funding in relation to salary and allowances paid to employees, and payments to on-air talent contractors (i.e. a contract for performance on television and/or radio) where the total amounts paid exceed \$200,000 annually.

### Background

#### *Australian Broadcasting Corporation*

The Australian Broadcasting Corporation (ABC) was established as an independent statutory authority under the *Australian Broadcasting Corporation Act 1983* (ABC Act). The role and functions of the ABC are set out in its Charter under section 6 of the ABC Act. The ABC is Australia's national broadcasting service whose principle function (amongst others) is to provide programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of the Australian community

Whilst the ABC has editorial independence, it is accountable to the Parliament through annual reports, corporate plans, financial and performance audits, and appearances before Parliamentary Committees.

#### *Special Broadcasting Service*

The Special Broadcasting Service (SBS) was established as an independent statutory authority on 1 January 1978, under the *Broadcasting Act 1942*. SBS was subsequently reconstituted as a corporation with the passage of the *Special Broadcasting Service Act 1991* (SBS Act).

The role and functions of SBS are set out in its Charter under section 6 of the SBS Act. SBS is Australia's primary multicultural broadcaster whose principal function is to provide multilingual and multicultural services that inform, educate, and entertain all Australians, and, in doing so, reflect and promote Australia's multicultural society.

Whilst SBS has editorial independence, it is accountable to the Parliament through annual reports, corporate plans, financial and performance audits, and appearances before Parliamentary committees.

#### *Funding*

Both the ABC and SBS receive Government funding on a triennium basis. In addition, SBS receives extra revenue through advertising.

## Amendments

Section 80 of the ABC Act provides for matters to be included in the Corporation's annual report. Section 73 of the SBS Act makes similar provision in respect of the SBS's annual report.

The new annual reporting obligations would require the ABC and SBS to each report details of annual salaries and allowances of ABC and SBS employees, and amounts paid to 'on-air talent' in excess of \$200,000. 'On-air talent' is intended to have broad meaning and be platform neutral, in recognition of the changing media landscape. The proposed reporting measures are intended to capture on-air talent (above the specified monetary reporting threshold) across all platforms used by the national broadcasters including online and podcasting services such as ABC iView and SBS On Demand. This reporting threshold amount will be indexed annually in line with the Consumer Price Index (CPI) figures published by the Australian Statistician.

Specifically, the Bill will amend the ABC Act and the SBS Act to require the national broadcasters to include the following information in their annual reports:

(a) for employees:

- combined amount of salaries and allowances paid to the employee,
- the names of the employee where the total amount of salary and allowances paid to the person exceeds the applicable reporting threshold for the reporting period; and
- the positions held by the person during the reporting period; and

(b) for on air talent:

- the total amount paid to the individual, and name of each individual, who is a party to one or more on-air talent contracts (a contract for performance on television and/or radio) if the total amount paid to the individual in the reporting period was more than the applicable reporting threshold for that period,
- the nature of the services performed under each contract.

These amendments are primarily intended to increase the financial reporting transparency of the national broadcasters. The measures will complement the Government's existing policy that public agencies and entities should be transparent in how Commonwealth funding is allocated and spent.

It will also allow for the scrutiny of gender pay gaps within the national broadcasters with an aim to encourage the closure of such gaps.

## **FINANCIAL IMPACT STATEMENT**

The measures in this Bill are 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*

### National Broadcasters Legislation Amendment (Enhanced Transparency) 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 established under the *Australian Broadcasting Corporation Act 1983* (the ABC Act). The Special Broadcasting Service (SBS) is established under the *Special Broadcasting Service Act 1991* (the SBS Act).

The ABC and SBS are Australia's two main publicly funded broadcasters (collectively, the national broadcasters).

The national broadcasters provide broadcast and digital media services that span diverse social, cultural and geographical audiences throughout Australia, including independent news and information services.

The Bill would amend the ABC Act and the SBS Act to require the national broadcasters to include in their annual reports:

- (a) for employees:
  - combined amount of salaries and allowances paid to employees,
  - the names of employees where the total amount of salary and allowances paid to those persons exceeds the applicable reporting threshold for that period; and
  - the positions held by the person; and
- (b) for on air talent:
  - the total amount paid to, and name of each individual, who is a party to one or more on-air talent contracts (a contract for performance on television and/or radio) if the total amount paid to the individual in the reporting period was more than the applicable reporting threshold for that period; and
  - the nature of the services performed for each contract.

The applicable reporting threshold for the first period beginning after commencement of the Bill is \$200,000 Australian dollars. This amount is indexed for subsequent periods by reference to the Consumer Price Index figures published by the Australian Statistician. The indexed amount for subsequent periods is worked out in accordance with a specified formulae.

The amendments proposed by the Bill will apply to an annual report for a period beginning after the commencement of the Bill.

## **Human rights implications**

This Bill engages the right to privacy as contained in Article 17 of the *International Covenant on Civil and Political Rights* (the ICCPR). Article 17 recognises the right that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence. Article 17 does not set out the reasons for which the guarantees in it may be limited, however, limitations contained in other articles, for example, those which are necessary in a democratic society in the interests of national security, public order, the protection of the rights or freedoms of others, might be legitimate objectives in appropriate circumstances. In any event, limitations on privacy must be authorised by law and must not be arbitrary.

The Bill engages the right to privacy as it would require the publication, in the national broadcasters' annual reports, of the name and total salary/allowance or remuneration details of employees, and on-air talent, if the amount paid is above a particular threshold. To the extent that the Bill restricts or limits the right to privacy, it does so for a legitimate objective, and is reasonable, necessary and proportionate.

The proposed reporting requirement is a necessary and a legitimate objective. There is a strong public interest in ensuring the Australian people can scrutinise the spending by publicly funded national broadcasters for the engagement of on-air talent contactors and employees. The amendments that would be made by the Bill will allow the public to hold the national broadcasters to account regarding the spending of public monies, and achieving appropriate value for money, in relation to remuneration for employees and on-air talent. The amendments would provide a lawful basis for disclosure of this information, which will allow for this public scrutiny on these high-earners. The publication of the names, positions and combined amount of salary and allowances paid to employees, and equivalent information for on air talent, is consistent with the prohibition on arbitrary or unlawful interference with a person's privacy, insofar as it is reasonable, necessary and proportionate to achieving the legitimate end sought.

The publication of de-identified and potentially aggregate information about these employees' and salaries and allowances, and the payments made to contractors in key on-air roles, is considered inadequate because it would not provide the transparency required to not only allow the public to see how its money is being spent, but also in identifying if there is a gender salary gap across similar roles or level of talent. This reporting obligation will allow the public to have visibility of how proactive the national broadcasters are in closing any identified gender salary gaps.

The proposed reporting requirement is targeting the highest paid employees and on-air talent. In the case of the ABC, together these employees represented just over three per cent of total staff as at 30 June 2017. By definition, this cohort consumes a disproportionately higher slice of overall employee expenditure than lower tiers of employee. This Bill will provide for more detailed scrutiny of this area of high expenditure and for better assessments as to whether the ABC and SBS are efficiently using taxpayers' money.

The details that are required to be published are limited to the names of the employee or individual, the position(s) held during the reporting period (or nature of services performed, on the case of contractors) and the total amount of the salary/allowance or remuneration paid during the reporting period. No further details in relation to these persons are required to be published under the Bill. Publication of the employee or individual's name will allow the Australian public to identify the person and the role they perform, and assess whether the

national broadcasters have achieved appropriate value for money in relation to the spending of public monies. Accordingly, the amendments are considered reasonable and proportionate to the objective of promoting public transparency and scrutiny and reducing the gender salary gap.

Ultimately, the Bill will make the employment and specific contractual decisions of the national broadcasters in relation to employees and on-air talent more transparent, and ensure that those broadcasters are more accountable to the Australian public. These principles of transparency and scrutiny are important principles of a healthy democratic society.

### **Conclusion**

The Bill is compatible with human rights because to the extent that it may limit or restrict the right to privacy, those limitations are reasonable, necessary and proportionate.

## NOTES ON CLAUSES

### **Clause 1 – Short title**

Clause 1 provides that the Bill, when enacted, may be cited as the *National Broadcasters Legislation Amendment (Enhanced Transparency) Act 2017*.

### **Clause 2 – Commencement**

Clause 2 provides for the commencement of the Bill. The Bill would commence on the day after it 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 are two Schedules to the Bill, each comprising two parts.



## **SCHEDULE 1—AMENDMENT OF THE *AUSTRALIAN BROADCASTING CORPORATION ACT 1983***

The Australian Broadcasting Corporation (ABC) is a body corporate that is enshrined in legislation by virtue of the *Australian Broadcasting Act 1983* (ABC Act). Section 6 of the ABC Act sets out the tenets of the ABC, in the form of a Charter.

Section 7 of the ABC Act establishes the ABC Board of Directors (the Board). Section 8 of the ABC Act sets out the duties of the Board. The Board consists of the Managing Director, the Chairperson, the staff-elected Director and four to six other Directors (section 12 of the ABC Act).

Section 80 of the ABC Act requires the Board to include a number of pieces of information in its annual report on the ABC that is given to the Minister for the purposes of section 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

The amendments to the ABC Act set out in Schedule 1 would require the ABC Board to report on a broader range of matters in its annual report given to the Minister, including the combined salaries and allowances of ABC employees, and payments to on-air talent contractors where the total annual amounts exceed the specified monetary threshold.

### **Part 1 — Amendments**

#### **Item 1 – Subsection 3(1)**

Item 1 would insert three new definitions into subsection 3(1) of the ABC Act.

The term, *indexation factor*, has the meaning given by proposed section 80B (refer item 3).

The term, *index number*, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

The term, *reporting period*, means the ABC's reporting for the purposes of the PGPA Act. Currently, that reporting period is the annual period commencing on 1 July and ending on 30 June.

#### **Item 2 – Section 80 (heading)**

Item 2 would adjust the heading of section 80 to accommodate a new section that details more specific matters that are required to be included in the ABC's annual report (see item 3 below).

#### **Item 3 – After section 80**

Item 3 would insert two new sections.

Proposed section 80A would require the Directors of the ABC Board to include individual salaries and allowances of employees and individuals, who are party to one or more on-air talent contracts, in the annual report, where the total amount paid is in excess of the applicable reporting threshold, as determined by proposed subsection 80A(6). The ABC is required to publish in the annual report, in the case of employees, the names of relevant employees and

individuals, the total amount of salary and allowances paid during the reporting period and the position or positions held by the individuals during the reporting period.

For on air talent, the ABC would be required to report the names of relevant persons, the total amount paid during the reporting period and for each contract, the nature of the services performed for the Corporation by the individual under the contract.

The publication of the names, positions and combined amount of salary and allowances paid to employees, and equivalent information for on-air talent, is necessary to achieve the legitimate Government objective of enhanced transparency and reducing the gender salary gap.

Proposed subsection 80A(2) would exclude lump sum amounts paid in respect of an ABC employee's unused leave entitlements where the employee is terminated, for the purposes of calculating the employee's total remuneration.

Proposed subsection 80A(3) would define an 'on-air talent contract'. An on-air talent contract is not a contract of employment. It is a contract that is entered into between the ABC and an individual. The contract engages the individual to perform services for the ABC, including appearing on a television program, or speaking or performing on a radio program. These typically are people in key on-air roles, but who are not employees.

Proposed subsection 80A(4) would provide that, for the purposes of determining the applicable reporting threshold amount, an amount in a foreign currency will be converted into Australian currency.

Proposed subsection 80A(5) would clarify that the conversion of foreign currency into Australian currency would be done at the exchange rate applicable at the time of payment.

Proposed subsection 80A(6) would set the value of the applicable reporting threshold. For the first reporting period after the commencement of the subsection, the amount prescribed would be \$200,000 Australian dollars. For future reporting periods, the amount prescribed is to be calculated using the formula set out in proposed subsection 80A(7), which accommodates indexation.

Proposed section 80B sets out the formula for calculating the indexation factor. The indexation factor for a financial year is the number calculated, to 3 decimal places (rounding up if the fourth decimal place is 5 or more), using the stated formula.

Proposed subsections 80B(2) and (3) outline the correct index number to be used and the index reference period for the purposes of the indexation factor calculation.

Subsection 80B(3) provides that if the Australian Statistician changes the index reference period for the Consumer Price Index (CPI), then only the index number published in terms of the new index reference period must be used. However, subsection 80B(2) provides that any later publication of an index number by the Australian Statistician must be disregarded for the purposes of the section.

## **Part 2 — Application provisions**

### **Item 4 – Application of amendments — annual report**

Item 4 would provide that the amendments made by the Bill would apply to annual reports that relate to a period that begins after the commencement of the Bill. For example, if the Bill passes in the midst of the 2017-18 reporting period, the amendments would only take effect for the purposes of ABC's annual report for the following full reporting year of 2018-19.

## **SCHEDULE 2—AMENDMENT OF THE *SPECIAL BROADCASTING SERVICE ACT 1991***

The Special Broadcasting Service Corporation (SBS) is a body corporate that is enshrined in legislation by virtue of the *Special Broadcasting Service Act 1991* (SBS Act). Section 6 of the SBS Act sets out the tenets of SBS, in the form of a Charter.

Section 7 of the SBS Act establishes the SBS Board of Directors (the Board). Section 9 of the SBS Act sets out the role of the Board, while section 10 sets out the duties of the Board. The Board consists of the Managing Director, the Chairperson and three to seven other non-executive Directors (section 8 of the SBS Act).

The affairs of SBS are to be managed by the Managing Director (sections 14 and 15 of the SBS Act), in accordance with any policies determined, and directions given, by the Board.

Section 73 of the SBS Act requires the Board to include a number of pieces of information in its annual report on SBS that is given to the Minister for the purposes of section 46 of the PGPA Act.

The amendments to the SBS Act set out in Schedule 2 to the Bill would require the Board to report on a broader range of matters in its annual report given to the Minister, including the combined salaries and allowances of SBS employees, and payments on-air talent contractors whose total annual earnings exceed the reportable thresholds.

### **Part 1 — Amendments**

#### **Item 1 – Section 3**

Item 1 would insert three new definitions into section 3 of the SBS Act.

The term, *indexation factor*, has the meaning given by proposed section 73B (refer item 3).

The term, *index number*, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of the particular quarter.

The term, *reporting period*, means SBS's reporting for the purposes of the PGPA Act. Currently, that reporting period is the annual period commencing on 1 July and ending on 30 June.

#### **Item 2 – Section 73 (heading)**

Item 2 would adjust the heading of proposed section 73 to accommodate a new section that details more specific matters that are required to be included in SBS's annual report (refer item 3).

#### **Item 3 – After section 73**

Item 3 would insert sections 73A and 73B.

Proposed section 73A would require the Directors of the Board to include individual salaries and allowances of employees and individuals, who are party to one or more on-air talent

contracts, in the annual report, where the total amount paid is in excess of the applicable reporting thresholds, as determined by proposed subsection 73A(6).

SBS will be required to publish in the annual report, in the case of employees, the names of relevant employees and individuals, the total amount of salary and allowances paid during the reporting period and the position or positions held by the individuals.

For on air talent, SBS will be required to report the names of relevant persons, the total amount paid during the reporting period and for each contract, the nature of the services performed for SBS by the individual under the contract.

The publication of the names, positions and combined amount of salary and allowances paid to employees, and equivalent information for on-air talent, is necessary to achieve the legitimate Government objective of enhanced transparency and reducing the gender salary gap.

Proposed subsection 73A(2) would exclude lump sum amounts paid in respect of an employee's unused leave entitlements where the employee is terminated, for the purposes of calculating SBS employee's total remuneration.

Proposed subsection 73A(3) would define an on-air talent contract. An on-air talent contract is not a contract of employment. It is an on-air talent contract that is entered into between SBS and an individual. The contract engages the individual to perform services for SBS, including appearing on a television program, or speaking or performing on a radio program.

Proposed subsection 73A(4) would provide that, for the purposes of determining the applicable reporting threshold amount, an amount in a foreign currency will be converted into Australian currency. Proposed subsection 73A(5) would clarify that the conversion of a foreign currency into Australian currency would be done at the exchange rate applicable at the time of payment. This provision is included in recognition of the possibility that SBS may enter into contracts with on air talent that require payment in foreign currency.

Proposed subsection 73A(6) would set the value of the applicable reporting threshold. For the first reporting period after the commencement of the subsection, the amount prescribed is \$200,000 Australian dollars. For future reporting periods, the amount prescribed is to be calculated using the formula set out in proposed subsection 73A(7), which accommodates indexation.

Proposed section 73B sets out the formula for calculating the indexation factor. The indexation factor for a financial year is the number calculated, to 3 decimal places (rounding up if the fourth decimal place is 5 or more), using the stated formula.

Proposed subsections 73B(2) and (3) outline the correct index number to be used and the index reference period for the purposes of the indexation factor calculation.

Proposed subsection 73B(3) would provide that if the Australian Statistician changes the index reference period for the CPI, then only the index number published in terms of the new index reference period must be used. However, subsection 73B(2) would provide that any later publication of an index number by the Australian Statistician must be disregarded for the purposes of the new section.

## **Part 2 — Application provisions**

### **Item 4 – Application of amendments—annual report**

Item 4 would provide that the amendments made by the Bill, would apply to annual reports that relate to a period that begins after the commencement of the Bill. For example, if the Bill passes in the midst of the 2017-18 reporting period, the amendments would only take effect for the purposes of SBS's annual report for the following full reporting year of 2018-19.