



SBS submission to the Senate Environment and Communications Legislation Committee Inquiry into the National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017 February 2018

Key Points

- The *National Broadcasters Legislation Amendment (Enhanced Transparency) Bill* (the **Bill**) proposes to amend the *Special Broadcasting Service Act 1991* (the **SBS Act**) to require SBS to report details of annual salaries and allowances of its employees, and amounts paid to 'on-air talent', in excess of \$200,000.
- The amendments proposed under this Bill are in conflict with the objectives of the *Privacy Act 1988* (the **Privacy Act**).
- SBS already operates under a robust accountability framework, and provides de-identified executive salary information on its website and in its Annual Report.
- There is no public interest in adding names to this existing process.
- Reporting of the type required by this Bill does not occur at the staff level in counterpart public service agencies, any government department, or the private sector.
- The Bill has the potential to seriously undermine the hard work and resources invested in making SBS an employer of choice.
- SBS fully supports gender equality, and has in place mechanisms to ensure that salaries are based on role, performance and experience.
- The amendments proposed by the Bill are:
 - **not reasonable**—in that they amount to the publication of significant personal information of individuals;
 - **not necessary**—in that appropriate transparency and reporting mechanisms already exist; and
 - **not proportionate**—in that the expected benefits of releasing the information do not outweigh the negative consequences.

Introduction

SBS welcomes the opportunity to submit to the Inquiry into the *National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017*.

SBS is unique in the Australian media environment. Its purpose is to provide multilingual, multicultural and Indigenous radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.

SBS reaches almost 100 per cent of the population through its six free-to-air TV channels (SBS, SBS HD, SBS VICELAND, SBS VICELAND HD, Food Network and National Indigenous Television (**NITV**)) and eight radio stations (SBS Radio 1, 2, 3, and 4, SBS Arabic24 including SBS PopDesi, SBS Chill and SBS PopAsia). Engagement is being significantly extended through SBS's digital services, including SBS On Demand and portals which make online audio programming and information available in nearly 70 languages other than English.

SBS has made continued investment in exclusive and distinctive content, as it provides more than 6,000 hours of programming across more than 10 distribution platforms. This includes exclusive premiere titles across key genres of drama, film and documentary, including SBS commissioned content scheduled and distributed across television and digital platforms.

Through content across all our platforms, SBS inspires a richer, more holistic understanding of our world and presents surprising perspectives in entertaining and innovative ways.

Scope of the Bill

This Bill amends the SBS Act to require SBS to report details of annual salaries and allowances of its employees, and amounts paid to 'on-air talent', in excess of \$200,000.

The Explanatory Memorandum to the Bill notes that:

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.¹

Appropriate existing arrangements

The existing arrangements are appropriate to achieve the stated objective.

Department of Prime Minister and Cabinet requirements

In accordance with the expectations of the Department of Prime Minister and Cabinet, and guidelines provided by the Department of Communications and the Arts, SBS already provides de-identified executive salary information on its website and in its Annual Report (see **Appendix A**). These arrangements came into place less than a year ago.

SBS was advised that the increase in reporting obligations were calibrated to meet Parliamentary and public expectations in relation to transparency.

¹ Explanatory Memorandum, *National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017*, page 3.

This existing framework does not breach the right to privacy of SBS employees as the report includes salary bands and the number of executives in each band, rather than individual names. This report provides an appropriate level of public transparency, and is already consistent with the policy intent of what has been proposed.

Other accountability mechanisms

SBS is currently accountable in relation to the broad range of its activities, including as an employer, via numerous mechanisms, including the frameworks set out in the SBS Act and, reporting and audit requirements under the *Public Governance, Performance and Accountability Act 2013* (including the publication of our Annual Report and Corporate Plan), the independent SBS Ombudsman (whose adjudications in relation to content can be referred to the Australian Communications and Media Authority), and regular community and audience engagement activities.

Existing reporting on staffing, including salaries, is appropriately conducted in the context of this accountability framework which balances the need for transparency, while not impeding the efficiency of the organisation, undermining its profile as an employer of choice or imposing undue administrative burden.

Comparative systems of reporting

Reporting of the type required by this Bill does not occur at the staff level in counterpart public service agencies (such as Australia Post, NBN, and CSIRO), any government department, or the private sector.

In the Second Reading Speech for the Bill the Minister for Communications and the Arts noted that,

the British Broadcasting Corporation (BBC) publishes information in its annual report on the names of all senior executives of the BBC paid more than 150,000 pounds from licence fee revenue in that financial year. In addition, the names of all other staff of the BBC paid more than 150,000 pounds from licence fee revenue in that financial year is set out in pay bands.

The position of the BBC is not directly comparable to that of SBS. The Minister notes that the BBC is required to report on payments made from licence fee renewal. Only around 75 per cent of SBS revenue is raised from public funding – a quarter of SBS revenue is raised from commercial activities, and as such, is not representative of the expenditure of public funds. A comparable UK public broadcaster would be Channel 4, which is not required to disclose salaries in the same way as the BBC.

The Minister also noted that BBC reporting is on amounts paid of over 150,000 pounds. As at 21 February 2018, this was equivalent to 267,000AUD.² The BBC minimum reporting threshold is over 60,000AUD more than the minimum reporting threshold required by the Bill in its current form. Under the BBC's reporting standards, at least 61 per cent (35 of 57 as at 30 June 2017) of SBS employees currently captured by the Bill would not be required to have their personal information published.³

² Xe.com Currency Converter, accessed 21 February 2018.

³ Based on SBS executive remuneration reporting 2016-17 set out at Attachment A.

Gender equity

In the Minister's Second Reading Speech, he also noted that,

[e]nhanced transparency will also enable scrutiny of the extent to which the national broadcasters are meeting public expectations in relation to gender pay parity. The national broadcasters assert that no pay gap unfavourable to women exists within their organisations. That is to be commended. The additional transparency measures proposed by this Bill will ensure ongoing scrutiny and visibility to the Australian public of the performance of the national broadcasters in this regard.

SBS pay levels are reviewed systematically and routinely and amendments are made where discrepancies are found. The SBS Board Remuneration Committee also routinely reviews senior executive salaries.

SBS has achieved a positive record in terms of gender representation with 51 per cent of our total employee population being female, and 57 per cent of our Senior Leadership Group being female.⁴

It is also worth noting that some of our most respected and recognisable on-air talent are women, with Jennie Brockie, the host of *Insight*, Janice Peterson, *SBS World News* anchor, Jeanette Francis, co-host of *The Feed*, Karla Grant, Executive Producer and host of *Living Black*, and Lee Lin Chin, all contributing to increasing the representation of women in key on-screen roles within the Australian media sector.

SBS continues to be an industry leader in driving an inclusive and open workplace to deliver higher levels of employee wellbeing and employee engagement. A healthier and happier workforce is a more productive workforce, delivering value for money for tax payers.

SBS has also taken active steps to support gender equality in the workplace with the formation earlier this year of 'The Network'. This is an employee advocacy group exploring issues of gender equality and the broader ongoing support of women at SBS.

Conflict with the objectives of the Privacy Act

Individuals, including employees of public broadcasters, are protected by a range of mechanisms, including the Privacy Act. The Explanatory Memorandum to the Privacy Act notes that '[t]he Bill treats a breach of the [Information Privacy Principles⁵] as an interference with privacy. Commonwealth agencies are required to avoid doing things that amount to interferences with privacy'.⁶ This Bill amounts to an interference with privacy.

The Privacy Act protects personal information relating to the employment of agency employees. The definition of 'employee record' in the Privacy Act includes terms and conditions of employment, and the employee's salary or wages, as examples of personal information relating to the employment of the employee.

The Bill would amend Section 73 of the SBS Act to report details of annual salaries and allowances of SBS employees, and amounts paid to 'on-air talent' in excess of \$200,000. This would include 'the name of the employee; the total amount [of salary and allowances]; and the position or positions held by the employee during the period'. This information clearly falls under the definition of 'employee record' under the Privacy Act.

⁴ *SBS Annual Report 2017*, page 78.

⁵ Now referred to as the 'Australian Privacy Principles'.

⁶ Explanatory Memorandum, *Privacy Act 1988*, page 3.

The Explanatory Memorandum to the Bill states that '[t]o 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 stated objectives, to provide increased transparency and identify gender pay gaps, are addressed through existing measures, and as such, SBS does not agree that the restriction to the right of privacy proposed through this Bill is reasonable, necessary and proportionate. The reasons for this are outlined below.

Overriding employee rights to privacy is not reasonable, necessary or proportionate

Reasonable, necessary or proportionate

The new arrangements are not reasonable, in that they amount to the release of significant private information of individuals; they are not necessary, in that appropriate transparency and reporting mechanisms already exist; and, they are not proportionate, in that the expected benefits of releasing the information do not outweigh the negative consequences (see section on 'Unintended consequences' below).

Public scrutiny of value-for-money

The Explanatory Memorandum to the Bill notes that,

[t]here 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 [sic] 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.⁷

Section 9 of the SBS Act outlines the role of the Board, which includes a provision for the Board 'to ensure that the SBS performs its functions in a proper, efficient and economical manner and with maximum benefit to the people of Australia'. Section 10 of the SBS Act, listing the duties of the Board, also states that the duty of the Board is to 'ensure the efficient and cost effective functioning of the SBS'.

As such, this level of scrutiny of the spending of SBS falls within the duties of the Board. It is not appropriate for the public to be asked to assess value for money in relation to remuneration of SBS employees and on-air talent where a Board operating within a statutory framework already undertakes this role.

SBS has a robust employment and performance framework. All employees have regularly reviewed performance plans which set out objectives for the year in line with team, divisional and organisation objectives, as well as personal career goals. Managers are required to hold regular 1:1 conversations with their teams, which combined with more formal check-ins, form the basis for SBS's annual performance cycle. This process ensures that we have open dialogue and ongoing feedback to drive performance and employee engagement. This is the appropriate mechanism for assessment of remuneration and 'value for money' of SBS employees, including on-air talent, rather than in a public forum prosecuted by tabloid media.

⁷ Explanatory Memorandum, page 6.

Unintended consequences

Impact on wellbeing of SBS staff

A number of potentially affected staff have already expressed serious concerns about the prospect of their names and salaries being published. Regular and ongoing public updates would create the potential for recurring embarrassment, and raises concerns regarding the wellbeing and safety of these staff.

Impact on SBS as an employer

This Bill has the potential to seriously undermine the hard work and resources invested in making SBS an employer of choice. Adding names to the reporting of salaries would:

- **affect employee retention and programming**—and our ability to attract advertising to it—through the loss of key talent. Individuals may, as a result of the disclosure, exit SBS to move to other organisations which can offer higher remuneration;
- **drive up costs**—both replacement costs (where employees exit SBS as a result of disclosure) and existing salary budgets (where disclosure leads to negotiation of higher salaries for remaining employees—an issue faced in the United Kingdom when BBC salaries were disclosed);
- **affect SBS's ability to attract new employees**—as SBS would be placed in a unique set of circumstances regarding requirements on disclosure of private matters for employees; and
- **affect SBS efficiency** —the addition of this reporting requirement to SBS's current reporting framework would impact on SBS efficiency. SBS would, as a matter of good practice, be required to undertake a consultation process with all employees whose personal information was to be published. SBS would also be required to develop policies and procedures to support these employees as the information is made public.

Conclusion

The amendments proposed to the SBS Act by this Bill are unnecessary, and will have significant negative consequences on SBS, its employees, and the wider industry. SBS reports salaries under a robust system, and the provision of further detail would not be in the public interest.

It is not appropriate for the public to be asked to assess value for money in relation to remuneration of SBS employees and on-air talent where a Board operating within a statutory framework already undertakes this role.

SBS fully supports gender equality, and has in place mechanisms to ensure that salaries are based on role, performance and experience.

SBS has already declined to voluntarily provide identifiable personal information on salaries, and as such, does not support this Bill.

Attachment A – Existing SBS executive remuneration reporting 2016-17⁸**Table A**

Average annual reportable remuneration paid to substantive executives during the reporting period

Average annual reportable remuneration paid to substantive executives in 2016-17

Total Remuneration	Substantive Executives Number	Average Reportable Salary \$	Average Contributed Superannuation \$	Average Allowances \$	Average \$ bonus paid	Average Total remuneration \$
\$200,000 and less	1	\$ 140,887	\$ 13,331	\$ -	\$ -	\$ 154,218
\$200,001 to \$225,000	1	\$ 160,984	\$ 15,293	\$ 781	\$ 37,766	\$ 214,824
\$325,001 to \$350,000	1	\$ 255,383	\$ 29,540	\$ -	\$ 55,626	\$ 340,549
\$400,001 to \$425,000	3	\$ 304,847	\$ 34,079	\$ -	\$ 67,459	\$ 406,385
\$450,001 to \$475,000	2	\$ 353,882	\$ 27,460	\$ 191	\$ 89,333	\$ 470,866
\$500,001 to \$525,000	1	\$ 390,895	\$ 71,017	\$ 1,980	\$ 52,334	\$ 516,226
\$700,001 to \$725,000	1	\$ 561,729	\$ 30,000	\$ 730	\$ 112,335	\$ 704,794
Total Number of Substantive Executives	10					

Table B

Average annual reportable remuneration paid to other executives >\$200,000 during the reporting period

Average annual reportable remuneration paid to other executives >\$200,000 in 2016-17

Total Remuneration	Other Executives Number	Average Reportable Salary \$	Average Contributed Superannuation \$	Average Allowances \$	Average \$ bonus paid	Average Total remuneration \$
\$200,001 to \$225,000	15	\$ 181,318	\$ 20,579	\$ -	\$ 7,840	\$ 209,737
\$225,001 to \$250,000	18	\$ 202,231	\$ 24,600	\$ 30	\$ 11,788	\$ 238,648
\$250,001 to \$275,000	1	\$ 211,501	\$ 21,992	\$ -	\$ 20,000	\$ 253,493
\$275,001 to \$300,000	5	\$ 244,229	\$ 33,010	\$ -	\$ 13,198	\$ 290,437
\$300,001 to \$325,000	3	\$ 244,438	\$ 26,528	\$ -	\$ 35,898	\$ 306,865
\$325,001 to \$350,000	3	\$ 281,194	\$ 40,139	\$ 149	\$ 12,500	\$ 333,981
\$400,001 to \$425,000	1	\$ 274,753	\$ 35,156	\$ 640	\$ 95,758	\$ 406,307
\$450,001 to \$475,000	1	\$ 396,009	\$ 63,920	\$ -	\$ -	\$ 459,929
Total Number of Other Executives >\$200,000	47					

The Average Reportable Salary noted in the tables above is inclusive of reportable fringe benefits

⁸ Published at <https://www.sbs.com.au/aboutus/corporate/index/id/229/h/SBS-Executive-Remuneration-2016-17>.