

Inquiry into the National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017

Referral

1.1 On 8 February 2018, the Senate, on the recommendation of the Selection of Bills Committee, referred the National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017 (the bill) to the Senate Environment and Communications Legislation Committee (the committee) for inquiry and report by 26 March 2018.¹

Purpose of the bill

1.2 The bill proposes to amend the *Australian Broadcasting Corporation Act 1983* (ABC Act) and the *Special Broadcasting Services Act 1991* (SBS Act). Its stated purpose is to provide more transparency in how government funding for salaries and allowances paid to employees of both the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) is allocated – in particular, payments to employees and on-air talent contractors where the total amounts paid exceed \$200,000 annually.²

1.3 The bill's Explanatory Memorandum stated that a further purpose of the bill is to improve gender pay gaps through increased scrutiny of how employees in national broadcasters are remunerated based on their gender.³

1.4 If passed, the bill would require the ABC and SBS to include the following information in their annual reports:

(a) for employees:

- the combined amount of salaries and allowances paid to employees;
- the name 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; and

(b) for on-air talent:

- the total amount paid to, and the name of each individual, who is a party to one or more on-air talent contracts⁴ if the total amount paid to the

1 *Journals of the Senate*, No. 83, 8 February 2018, p. 2634.

2 Explanatory Memorandum, p. 2.

3 Explanatory Memorandum, p. 3.

4 An on-air talent contract is a contract for performance across all platforms, including online and podcasting services: Explanatory Memorandum, p. 3.

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.⁵

1.5 The proposed applicable reporting threshold for the first period beginning after the commencement of the bill would be \$200,000 AUD. This amount would be indexed for subsequent periods by reference to the Consumer Price Index (CPI) published by the Australian Statistician.⁶

Conduct of the inquiry

1.6 The committee advertised the inquiry on its website and wrote to relevant organisations inviting written submissions by 28 February 2018.

1.7 The committee received three submissions which are listed at Appendix 1 of this report. The public submissions are available on the committee's website at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications.

1.8 The committee thanks all of the individuals and organisations that contributed to the inquiry.

Reports of other committees

1.9 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.10 In its Scrutiny Digest No. 1 of 2018, the Scrutiny of Bills Committee expressed concern that publishing the names and remuneration details of ABC and SBS employees and contractors receiving more than \$200,000 would impact on the right to privacy of such persons and may unduly trespass on personal rights and liberties. The Scrutiny of Bills Committee noted that Commonwealth Government departments and agencies usually publish salaries and allowances of senior public servants by salary bands without disclosing individual names, and state the number of persons employed of each gender under each band. It drew these concerns to the attention of senators and left it to the Senate as a whole to determine the appropriateness of publishing such details.⁷

5 Explanatory Memorandum, p. 3.

6 Explanatory Memorandum, p. 3.

7 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest*, No. 1 of 2018, 15 November 2018, p. 81.

1.11 The Parliamentary Joint Committee on Human Rights also expressed its concern over 'whether the public disclosure of the names and remuneration of employees and on-air talent' was proportionate to the legitimate objectives of the bill. It asked for the minister to provide advice on this issue and to consider whether there are less rights-restrictive methods to achieve the bill's objectives.⁸

Issues raised in submissions

Objectives of the bill

1.12 Submitters to the inquiry raised concerns about whether the proposed amendments would lead to increased transparency and improve the gender pay gap.

Gender equality in remuneration

1.13 The ABC submitted that de-identified reporting of data could meet the objective of improving gender pay gaps, arguing that 'there is no direct correlation between the publication of individual names and salaries and the identification of gender pay gaps'.⁹

1.14 The ABC further asserted that according to analysis undertaken in May 2017, no level at the ABC features a pay gap unfavourable to women, with 49 per cent of its senior executive being female.¹⁰ SBS also contended that SBS had 'a positive record in terms of gender representation', with 57 per cent of its Senior Leadership Group being female.¹¹

1.15 The second reading speech stated that the national broadcasters should be commended for their assertion that their organisations do not feature a pay gap unfavourable to women. It further argued that the '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'.¹²

Greater transparency

1.16 SBS stated that it publishes de-identified information about executive salaries on its website and in its annual reports.¹³ The ABC contended that it already 'meets

8 Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report*, Report 1 of 2018, 6 February 2018, pp. 51, 53. See also Australian Broadcasting Corporation, *Submission 3*, p. 8.

9 Australian Broadcasting Corporation, *Submission 3*, p. 8.

10 Australian Broadcasting Corporation, *Submission 3*, pp. 7–8.

11 Special Broadcasting Service Corporation (SBS), *Submission 2*, p. 4.

12 *Senate Hansard*, 6 December 2017, p. 9917.

13 Special Broadcasting Service Corporation (SBS), *Submission 2*, p. 2. See also Save Our SBS Inc, *Submission 1*, p. 2.

the highest levels of transparency...[by] setting disclosure levels beyond those required in law by any other organisation in Australia, taxpayer funded or otherwise'.¹⁴ This includes existing Executive Remuneration Reporting Guidelines for Commonwealth departments, entities and companies, as well as additional remuneration reporting consistent with private sector standards, including total remuneration paid to key management personnel.¹⁵

1.17 The second reading speech emphasised that because high profile employees 'occupy significant positions of public trust...it is reasonable to expect greater transparency of the remuneration arrangements that apply to high-earning individuals at taxpayer-funded broadcasters'. Further, salaries of senior public servants are publicly available.¹⁶

1.18 In response, the ABC asserted that the salaries of senior public servants and military officers, judges and ministers of the Crown 'are applied to the positions, rather than individuals as required under this bill'.¹⁷

1.19 The Minister for Communications, the Hon. Mitch Fifield, previously argued in Senate Estimates that there is 'a greater level of transparency currently about what senior officers of government departments receive than there is of the public broadcasters' because salary classifications are not attached publicly to individuals in public broadcasters.¹⁸

1.20 He also suggested that because of the amount of funding allocated to public broadcasters, the level of transparency expected of their senior staff should be enhanced:

ABC receives over a billion dollars a year. SBS receives a couple of hundred million dollars a year. This is a significant public investment, and the government is of the view that having enhanced transparency for senior staff of these organisations is appropriate, that there is a high level of transparency when it comes to the salaries of people on the public payroll, whether they be judges or members of parliament or senior military officers, and that this level of transparency is appropriate for the public broadcasters.¹⁹

14 Australian Broadcasting Corporation, *Submission 3*, p. 7.

15 Australian Broadcasting Corporation, *Submission 3*, pp. 5–6.

16 *Senate Hansard*, 6 December 2017, p. 9917.

17 Australian Broadcasting Corporation, *Submission 3*, p. 7.

18 Senator the Hon. Mitch Fifield, Minister for Communications, *Senate Environment and Communications Legislation Committee Estimates Hansard*, 24 October 2017, p. 51.

19 Senator the Hon. Mitch Fifield, Minister for Communications, *Senate Environment and Communications Legislation Committee Estimates Hansard*, 27 February 2018, p. 63.

Privacy concerns

1.21 The main issue that submitters emphasised in their concerns raised about the bill was that the amendments would lead to the publication of names of senior executives and talent alongside their salaries. In particular, SBS expressed concerns that the proposed changes, if enacted, would lead to a violation of the *Privacy Act 1988*:

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 information clearly falls under the definition of "employee record" under the Privacy Act.²⁰

1.22 SBS further noted that the requirement that individuals earning above \$200,000 be named is not a feature 'in counterpart public services agencies' or government departments.²¹

1.23 The second reading speech stated that 'The concept of reporting on employee salaries is not a new one'. As outlined above, the salaries of members of Parliament, ministers, judges, senior public servants and military officers are all publicly released, and private companies, including commercial broadcasters, also 'are required to include similar information in annual reports, provided for under the *Corporations Act 2001*'.²²

1.24 The second reading speech further noted that the *Privacy Act 1988* allows for cases where Australian law requires disclosure, and that while privacy issues may be a concern to the individuals affected by the proposed amendments, national broadcasters are expected to 'manage these issues appropriately'.²³

1.25 The Department of Communications and the Arts in its response to questions on notice put to it by the committee emphasised that it had weighed up the question of any issues surrounding privacy:

...the Department attempted to balance issues such as the need to protect privacy against the competing need to improve public visibility over how

20 Special Broadcasting Service Corporation (SBS), *Submission 2*, p. 4. See also Save Our SBS Inc, *Submission 1*, p. 1.

21 Special Broadcasting Service Corporation (SBS), *Submission 2*, p. 3.

22 *Senate Hansard*, 6 December 2017, p. 9917.

23 *Senate Hansard*, 6 December 2017, p. 9918.

the national broadcasters allocate and spend the significant taxpayer funding which they receive each year.²⁴

Comparisons with the BBC

1.26 SBS in its submission referred to the statement in the second reading speech that a similar requirement to report salaries has been made of the British Broadcasting Corporation (BBC), which now publishes the names of all senior executives paid more than £150,000.²⁵ SBS argued that the BBC was not directly comparable to SBS because SBS is not fully funded by public funding, and the BBC minimum reporting threshold is much higher than the \$200,000 proposed by the bill.²⁶

1.27 Similarly, the ABC also highlighted that the ABC 'is a considerably smaller player in the Australian media market than the BBC is in Britain', with the ABC receiving around a third of the BBC's funding on a per capita basis.²⁷

1.28 In their response to questions on notice put to them by the committee, the Department of Communications and the Arts observed that 'the British Broadcasting Corporation is a global leader among national broadcasters. The salary transparency of the BBC is considered to be good practice'.²⁸

Public assessment of value for money

1.29 SBS expressed concern that the bill, if enacted, would place the onus on members of the public to assess whether the remuneration of senior executives and talent equated to value for money. The SBS explained that its board is currently tasked under a statutory framework to consider the question of value for money, and asserted that its existing employment and performance framework was the most appropriate method for determining remuneration of individual employees.²⁹

1.30 The ABC also echoed these concerns, and drew the committee's attention to the ABC Board, which is tasked with ensuring that the ABC's functions provide the maximum benefit to Australians.³⁰

1.31 The second reading speech stated that the way Government funding is spent is of interest to the public, and 'The payment of salaries and allowances in excess of

24 Department of Communications and the Arts, answers to written questions on notice, received 16 March 2018.

25 *Senate Hansard*, 6 December 2017, p. 9918.

26 Special Broadcasting Service Corporation (SBS), *Submission 2*, p. 3.

27 Australian Broadcasting Corporation, *Submission 3*, p. 9.

28 Department of Communications and the Arts, answers to written questions on notice, received 16 March 2018.

29 Special Broadcasting Service Corporation (SBS), *Submission 2*, p. 5.

30 Australian Broadcasting Corporation, *Submission 3*, p. 12.

\$200,000 per annum is a major allocation of Government funding which should be visible to the taxpayer'.³¹

Impact on staff retention and financial implications

1.32 SBS outlined a number of potential negative impacts it considered would arise if the bill was passed. These included staff retention, with staff possibly choosing to leave SBS if they knew their salaries were made public; difficulties attracting new staff in the future; and existing employees negotiating higher salaries which, SBS stated, had happened in the United Kingdom after the BBC had commenced reporting of individuals' salaries.³²

1.33 The ABC also was of the opinion that the proposed measures of the bill had 'significant potential to lead to wages pressure' and could be detrimental to its ability to retain and attract employees.³³

1.34 The Department of Communications and the Arts stated in their response to questions on notice put to them by the committee that the bill was not expected to have any financial impact on national broadcasters, because it would require them 'to publish information available from within existing internal systems'.³⁴

Committee view

1.35 The committee is of the view that the measures proposed by the bill will lead to improvements in gender pay gaps. The ABC and SBS pointed out in evidence to the inquiry that unequal remuneration based on gender is not a feature of their organisations. The increased transparency provided for under the measures would require public broadcasters to set an example for the rest of the broadcasting industry to follow in terms of being transparent about differences, or lack thereof, in remuneration based on gender.

1.36 While the names of senior public servants, military officers, judges and ministers of the Crown may not be attached overtly to salaries, it is clear, based on their seniority, which pay band applies to an individual. This means that members of the public are able to infer salaries based on the individual's level. The proposed changes to requirements for public broadcasters would allow members of the public to access a similar form of information, thereby increasing transparency and public trust that government funds are being used effectively.

31 *Senate Hansard*, 6 December 2017, pp. 9917–9918.

32 Special Broadcasting Service Corporation (SBS), *Submission 2*, p. 6.

33 Australian Broadcasting Corporation, *Submission 3*, pp. 9, 10.

34 Department of Communications and the Arts, answers to written questions on notice, received 16 March 2018.

1.37 Concerns were raised in evidence to this inquiry about whether the provisions of the bill would constitute a violation of privacy for individuals whose names would be reported. However, the committee notes that the *Privacy Act 1988* allows for instances where full disclosure is required by Australian law, and considers that the ABC and SBS will be able to manage any issues related to privacy appropriately.

1.38 The committee considers that the benefits of the bill, such as transparency regarding differences in pay based on gender, outweigh any potential negative impacts that could arise from the proposed amendments.

1.39 Given the importance of increased transparency and ensuring that public trust in the allocation of government funding is maintained, the committee recommends that the bill should be passed.

Recommendation 1

1.40 The committee recommends that the National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017 be passed.

Senator Jonathon Duniam

Chair