

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABC/SBS AMALGAMATION BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by the authority of the  
Minister for Communications,  
The Hon. Michael Duffy MP)



## OUTLINE

1. The principal purpose of the Bill is to implement the Government's decision to amalgamate the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS). Amongst other things it makes significant amendments to the Australian Broadcasting Corporation Act 1983 and repeals Part IIIA of the Broadcasting Act 1942 under which the SBS is constituted.

2. The Bill is divided into the following Parts-

- Part I Preliminary
- Part II Amendments of the Australian Broadcasting Corporation Act 1983
- Part III Amendments of Acts
- Part IV Transfer of assets and liabilities and staffing and transitional provisions

3. Most significant amendments are contained in Part II and involve the Charter of the ABC, the constitution of the ABC Advisory Council, co-operation with ethnic public broadcasters and the news services to be provided by the ABC. Another significant amendment is contained in Part IV which provides for the replacement of the existing Board of the ABC.

### The Charter of the ABC

4. A revised ABC Charter is to be inserted into the ABC Act. The new Charter will expand the functions and powers of the ABC to reflect the multicultural and multilingual broadcasting responsibilities which the Corporation will have following the amalgamation with the SBS.

5. The revised Charter makes it a function of the ABC to provide radio and television programs that contribute to the development of a multicultural society based on mutual understanding. It is also to be a function of the ABC to provide multilingual radio and television programs.

6. In providing radio and television services the ABC is to be required under its new Charter to take account of:

- the objective of encouraging and facilitating participation by persons whose first language is not English in the political, social and cultural life of Australia;
- the needs of Aboriginal and Torres Strait Islander communities and persons of diverse cultural backgrounds; and
- the needs of persons from non-English speaking backgrounds, particularly in facilitating the learning of English.

### Advisory Council

7. The Board will be required to have regard to the diverse cultural background of the Australian community and to ensure, as far as is practicable, that membership of the ABC Advisory Council includes a broad representation of the Australian Community including persons from non-English speaking backgrounds.

### Co-operation with ethnic public broadcasters

8. The ABC is to be required in performing its functions to have regard to the services provided by ethnic public broadcasters and is to be empowered to provide such broadcasters with programs and services.

### Multilingual news services

9. The ABC is to be required to provide such radio news services in languages other than English and is to be empowered to provide such news services on television, as the Board considers appropriate.

### Part III

10. Part III provides for the amendment of Acts as set out in the Schedule to the Bill.

### Part IV

11. Part IV provides for the transfer of the assets and liabilities and staff of the SBS to the ABC. It also contains provisions saving contracts and proceedings to which the SBS was a party and preserving various terms and conditions of staff of the SBS upon their transfer to the ABC.

12. Clause 29 provides for the termination of the appointments of the non-Executive Directors of the ABC Board and for the conducting of an election for the offices of staff-elected Director and deputy of the staff-elected Director as soon as is practicable after the amalgamation.

### Financial impact

13. The Government's decision to amalgamate the ABC and the SBS was announced in the Treasurer's Budget speech. The Treasurer estimated that the savings involved in the 1986-87 financial year will be \$2 million. Additional savings are expected in the longer term.

NOTES ON CLAUSES  
PART 1 - PRELIMINARY

Clause 1 - Short title

Formal

Clause 2 - Commencement

The provisions of the Bill are to come into operation on 1 January 1987.

PART II - AMENDMENTS OF THE AUSTRALIAN BROADCASTING CORPORATION  
ACT 1983

Clause 3 - Principal Act

Defines the Australian Broadcasting Corporation Act 1983 as the Principal Act for the purposes of the amendments in Part II.

Clause 4 - Charter of the Corporation

The proposed amendment omits the existing Charter of the ABC and substitutes a revised Charter. The revised Charter makes it a function of the Corporation to provide radio and television programs that, amongst other things, contribute to the development of a multicultural society based on mutual understanding. It is also to be a function of the Corporation to provide multilingual radio and television programs.

New duties are also to be placed on the Corporation in providing radio and television services. The Corporation is to be required to take account of:

- the objective of encouraging and facilitating participation by persons whose first language is not English in the political, social and cultural life of Australia;
- the needs of Aboriginal and Torres Strait Islander communities and persons of diverse cultural backgrounds; and
- in connection with the provision of radio and television programs of an educational nature, the needs of persons from non-English speaking backgrounds, particularly in facilitating the learning of English.

Clause 5 - Advisory Councils and Committees

The proposed amendment omits the existing sub-section 11(6) and substitutes a new sub-section. The proposed new sub-section 11(6) provides that in making appointments to the ABC Advisory Council the Board is to have regard to the diverse cultural background of the Australian community and to ensure, as far as is practicable, that the membership of the Council includes a broad representation of the Australian community including persons from non-English speaking backgrounds.

Clause 6 - Membership of the Board

The proposed amendment of sub-section 12(1) increases the maximum number of Directors of the ABC Board, other than the Managing Director and the staff-elected Director, from 7 to 10.

Clause 7 - Tenure of Managing Director

The proposed amendment of sub-section 13(1) will provide that the Managing Director is to be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment. Currently sub-section 13(1) requires the Managing Director to be appointed initially for a mandatory 5 year term.

The clause also omits sub-section 13(2) as being unnecessary given that 're-appointment' is encompassed by the definition of 'appointment' in the Principal Act and is thus dealt with by the proposed amendments of sub-section 13(1).

Clause 8 - Staff-elected Director

The proposed Clause 8 amends paragraph 13A(2)(a) to provide that all officers of the Corporation and all temporary employees who are required to devote at least 24 hours per week to the duties of their employment are eligible to be candidates for (and also to vote for) the office of staff-elected Director. The existing provision applies the 24 hour criterion to both officers and employees. This is to be removed in the case of officers to make it clear that all officers, whether full-time or part-time, are eligible to vote for and be elected to the office of staff-elected Director.

Clause 9 - Acting Chairman

The proposed amendment of section 19 inserts a new sub-section 2A which will provide for an acting Chairman to be automatically paid the remuneration and allowances payable to the Chairman. Under existing provisions it is necessary to provide for such additional allowances and remuneration by way of regulation.

Clause 10 - Meetings of the Board

The proposed amendments of section 22 amend the provisions concerning the calling of meetings of the Board and quorums to reflect the proposed increase in the number of Directors (see note on clause 6).

Clause 11 - Corporation to have regard to services provided by certain holders of public radio licences or public television licences

The proposed amendment omits the existing section 26 and substitutes a new section. The proposed new section 26 provides that in performing its functions the Corporation is to have regard to the services provided by the holders of public

television and radio licences through the provision of programs in languages other than English. Further, the Corporation is empowered to provide programs and services to ethnic public broadcasters.

Clause 12 - News Services

The proposed amendment of section 27 will insert a new sub-section (2A) requiring the Corporation to provide radio news services in languages other than English and empowering the Corporation to provide such news services on television.

Clause 13 - Limitation on contracts and lease-back arrangements

The proposed amendment of section 70 will increase the monetary limit on contracts which are subject to a requirement of ministerial approval from \$500,000 to \$1,000,000.

Clause 14 - Transfer of assets

The proposed amendment of sub-section 75(3) will remove the current obligation on the Minister to transfer to the Corporation all transmitters that are currently provided to the ABC by the Commonwealth and will replace it with a discretionary power to do so.

Clause 15 - Matters to be included in Annual Report

The proposed amendment of section 80 will add a paragraph (aa) which will require the Board to include in each annual report a separate section dealing with multicultural broadcasting.

PART III - AMENDMENTS OF ACTS

Clause 16 - Amendments of Acts

The proposed clause 16 provides that the Acts specified in the Schedule are amended as set out in the Schedule.

PART IV - TRANSFER OF ASSETS AND LIABILITIES  
AND STAFFING AND TRANSITIONAL PROVISIONS

Clause 17 - Interpretation

Formal.

Clause 18 - Transfer of Assets and Liabilities

Sub-clause (1) provides that on the amalgamation day the assets (other than transmitters) and liabilities of the SBS are transferred to the ABC.

Sub-clause (2) provides that on the amalgamation day transmitters owned by the SBS are transferred to the Commonwealth.

Sub-clause (3) provides that the liabilities of the SBS which are to be transferred to the ABC on the amalgamation day include those arising under the Compensation (Commonwealth Government Employees) Act 1971. The ABC is to be deemed to be a 'prescribed authority of the Commonwealth' under that Act in relation to those liabilities.

Sub-clause (4) provides that bank accounts maintained by the SBS immediately before the amalgamation day are to be deemed to have been opened by the ABC.

Sub-clause (5) provides that sub-clause (1) extends, so far as the powers of the Parliament permit, to assets situated outside Australia and to rights existing and liabilities arising under the laws of foreign countries.

#### Clause 19 - Contracts, etc.

Clause 19 provides that contracts, agreements and arrangements (including contracts for service entered into pursuant to sub-section 79Y(2) of the Broadcasting Act 1942) to which the SBS was a party and which were in force immediately before the amalgamation day continue in force as if the ABC were substituted for the SBS as a party and references (except in relation to matters that occurred before the amalgamation day) to the SBS were references to the ABC.

#### Clause 20 - Proceedings

Clause 20 saves proceedings in any court or tribunal which were pending on the amalgamation day and to which the SBS was a party, substituting the ABC as a party.

#### Clause 21 - Exemption from stamp duty

Clause 21 provides that the transfer of assets and steps taken and documents and instruments executed for the purpose of giving effect to the operation of the proposed Part IV of the Bill are exempt from stamp duty or any other tax under a law of the Commonwealth or of a State or Territory.

#### Clause 22 - Service to continue in existence for certain purposes

Sub-clause (1) provides that the SBS is to continue in existence for the purpose of discharging its obligations under clause 22 until the Minister by notice published in the Gazette certifies that the SBS has discharged those obligations.

Sub-clause (2) provides that the SBS is to execute any documents or instruments which are necessary to ensure that shares or units in unit trusts held by it become held by the ABC.

Sub-clause (3) provides that the auditing and annual reporting provisions contained in sections 79ZG and 79ZH of the Broadcasting Act 1942 continue to apply to the Service after the amalgamation day in respect of the year ending 30 June 1986 (in the event that the SBS has not furnished a report covering that year by the amalgamation day) and in respect of the period commencing on 1 July 1986 and ending on 31 December 1986.

Sub-clause (4) provides that the SBS is to take such steps as it is able to take to ensure that assets situated outside Australia and rights and liabilities existing under the law of foreign countries become the assets, rights and liabilities of the ABC.

Sub-clause (5) provides that during the period during which the Service continues in existence under clause 22 the SBS is to hold assets and rights which have not yet become vested in the ABC on trust for the ABC. Further, the SBS is to pay or discharge such of its foreign liabilities as have not become liabilities of the ABC when they become due to be paid or discharged.

Sub-clause (6) provides that the SBS is to take such steps as it is able to take to ensure that the ABC becomes a party to contracts, agreements and arrangements which the SBS had entered into and which are in force and governed by the laws of foreign countries.

Sub-clause (7) provides for the ABC to provide the SBS with staff and funds so that it may perform its functions under clause 22.

Sub-clause (8) provides for the members of the SBS to be paid by the ABC such remuneration and allowances as the Minister directs during the period in which the Service is kept on foot under clause 22.

Sub-clause (9) provides that the SBS, as continued in existence under clause 22, may delegate to the staff of the ABC made available to it under sub-clause (7), any of its powers other than this power of delegation.

Sub-clause (10) provides that a power delegated pursuant to sub-clause (9), when exercised by the delegate, is to be deemed to have been exercised by the SBS.

Sub-clause (11) provides that a delegation under sub-clause (9) does not prevent the exercise of a power by the SBS.

#### Clause 23 - Corporation to employ members of staff of Service

Sub-clause (1) provides that persons who were, immediately before the amalgamation day -

- (a) Executive Directors of the Service; or
- (b) members of staff of the Service under sub-section 79Y(1) of the Broadcasting Act 1942 (being officers within the meaning of the Public Service Act 1922);

become unattached officers of the ABC on the amalgamation day.

Sub-clause (2) provides that persons who were, immediately before the amalgamation day, members of staff of the SBS under sub-section 79Y(1) of the Broadcasting Act 1942 (being employees within the meaning of the Public Service Act 1922) become, on the amalgamation day, temporary employees of the ABC.

Sub-clause (3) provides that on the amalgamation day a person to whom sub-clause (1) applies ceases to be an officer within the meaning of the Public Service Act 1922 and becomes a person to whom the "second tier" mobility provisions in Division 3 of Part IV of that Act applies.

Sub-clause (4) provides that fixed-term employees of the SBS are to be deemed to have been engaged by the ABC on the amalgamation day for the unexpired remainder of their fixed-terms.

Clause 24 - Terms and conditions of service of persons who become officers or employees of the Corporation

Sub-clause (1) provides that on the amalgamation day the Managing Director of the ABC is to be deemed to have determined terms and conditions of employment for former members of staff of the SBS employed by the ABC that are the same as the terms and conditions that were applicable to those persons at the SBS immediately before the amalgamation day.

Sub-clause (2) provides that the Managing Director of the ABC is not to make a determination under sub-section 33(10) of the ABC Act in relation to a person to whom sub-clause (1) of clause 24 applies that would have the effect of modifying the operation of clause 25 (retention of recreation and sick leave credits) in relation to the person.

Clause 25 - Certain persons to retain recreation and sick leave credits

Clause 25 provides that where a person becomes, pursuant to clause 23, an unattached officer or temporary employee of the ABC the person retains recreation and sick leave entitlements that had accrued at the SBS and that periods of service with the SBS count as periods of service with the ABC for the purpose of determining such entitlements.

Clause 26 - Probation

Clause 26 maintains the probation status of staff of the SBS who are transferred to the ABC on the amalgamation day. Those who had completed their probation at the SBS become employed at the ABC without a period of probation. Those who had not completed their period of probation at the SBS complete that period at the ABC. Decisions made under the Public Service Act 1922 to extend a person's period of probation are to be regarded as applying to the person's employment with the ABC.

Clause 27 - Leave of absence deemed to have been granted

Clause 27 provides that where, pursuant to clause 23, a person becomes an unattached officer or temporary employee of the ABC and that person had been granted leave for a period ending on or after the amalgamation day the person is to be deemed to have been granted that period of leave (from the amalgamation day) by the ABC. Further, any salary or allowances paid to the person in relation to the period of leave beginning on or after the amalgamation day are to be deemed to have been paid by the ABC.

Clause 28 - Discipline

Clause 28 provides for disciplinary action against staff of the SBS commenced before the amalgamation day (or relating to events before that day) to be conducted under the ABC Act. It also provides for discipline appeals commenced by SBS staff before the amalgamation day to be finalised under the ABC Act and for suspensions made under the Public Service Act 1922 to continue after the amalgamation day as though they been effected under the ABC Act.

Clause 29 - Members of the Board

Sub-clause (1) provides that, subject to sub-clause (2), each person who, immediately before the amalgamation day, held office as non-executive Directors of the ABC Board ceases to hold office on that day.

Sub-clause (2) provides that the staff-elected Director and the deputy of the staff-elected Director are to continue to hold office after the amalgamation day until the ABC Board causes an election to be held for those offices and persons are elected.

Sub-clause (3) provides that the Board of the ABC is to cause fresh elections to be conducted for the offices of staff-elected Director and deputy of the staff-elected Director as soon as practicable after the amalgamation day.

Clause 30 - Effect of Appropriation Acts

Clause 30 modifies the effect of the Appropriation Act (No.1) 1986-87 and the Appropriation Act (No.2) 1986-87 so that so much of the amount appropriated under those Acts as has not, before the amalgamation day, been issued and applied for payment to the SBS for multicultural broadcasting may, on and after that day be applied for payment to the ABC.

Schedule

The Schedule amends the provisions of the following Acts which refer to the Special Broadcasting Service - Archives Act 1983, Broadcasting Act 1942, Commonwealth Electoral Act 1918, Freedom of Information Act 1982, Referendum (Machinery Provisions) Act 1984, Trade Practices Act 1974.

