Date Introduced: 4 May 1983
House: House of Representatives
Presented by: Hon. M.J. Duffy, M.P., Minister for Communications

Short Digest of Bill

Purpose

To establish the Australian Broadcasting Corporation as a statutory corporation with a defined charter and appropriate powers, replacing the existing Australian Broadcasting Commission. The provisions of this Bill substantially replace those now contained in Part III of the Broadcasting and Television Act 1942.

Background

The Committee of Review of the Australian Broadcasting Commission (the Dix Committee) was established by the previous Government in November 1979, and reported to the then Minister for Communications on 29 May 1981. The majority of the recommendations of the Dix Report dealt with the philosophy, functioning and internal organization of the ABC, and did not require legislative action. The four major points on which changes to the legislation were recommended were:

(i) that the ABC be restructured into a new statutory corporation, to be known as the National Broadcasting Organisation (NBO). (It is understood that the new organisation was originally also intended to take over the functions of the Special Broadcasting Service, but that this recommendation was excluded from the final version of the Report following an indication that it would not be acceptable to the Government of the day);

(ii) That the ABC retain its present responsibilities to provide both mass-appeal and special-interest programming, and that this responsibility be incorporated into a formal charter set out in the legislation;
(iii) That the ABC's orchestras and concert department be transferred to a new organisation, to be known as Music Australia;

(iv) That the ABC be permitted to accept corporate underwriting (i.e. sponsorship) of television programs as a supplementary source of funds.

The latter two recommendations were not accepted. The Dix recommendations were considered over a period of some 12 months by a task force within the Department of Communications and an inter-departmental committee, and the then Government's detailed response was announced on 4 July 1982. At the time, this response gained bipartisan support within Parliament in all but a few aspects, and it was accepted that this bipartisan support would be extended to the relevant legislation.

In the event, however, this legislation (the Australian Broadcasting Corporation Bill 1982) was altered at the Cabinet stage to create unusually severe coercive powers for the Commissioner for Complaints, an office to be established to investigate complaints of bias against ABC programs. This aspect of the legislation proved unacceptable to the then Opposition and the Australian Democrat Senators, and the Bill was eventually allowed to lapse at the rising of the 32nd Parliament.

The present Bill is in most respects identical with the Australian Broadcasting Corporation Bill 1982, with the major difference that the Commissioner for Complaints has been replaced by Community Affairs Officers in each State and Territory, who have no judicial powers to enforce compliance with their investigations. A number of lesser amendments have been made to accommodate the policies of the present Government and to correct drafting errors; the most significant of these are set out below.

Outline

Clause 6 contains the charter of the Corporation, setting out the basic programming philosophy for both domestic and Radio Australia services. This is reinforced by clause 8, which sets out the responsibilities of the Board of the Corporation.

Clauses 7-10 and 12-24 set out the constitution and powers of the Board, the Chairman and the Managing Director. Clause 11 establishes an Advisory Council and other optional advisory bodies.
Clauses 25-31 set out the powers and duties of the Corporation, and include provisions relating to advertising (clause 31), corporate sponsorship (sub. clause 25(4),(5)), news services (clause 27), orchestras (clause 28) and merchandising activities (clause 29).

Clauses 32-66 set conditions of service for the staff of the Corporation, and include provisions relating to promotion appeals (39, 41-5), redeployment (46-58), voluntary and compulsory retirement (58-61) and disciplinary proceedings (64-66).

Clauses 67-72 set out the financial responsibilities of the Corporation.

Clauses 74-77 make the Minister responsible for providing transmitters and associated technical facilities (including satellite earth stations) for the Corporation. Clause 75 provides for those facilities to be subsequently transferred to the ownership of the Corporation.

Clauses 78 and 80 (in part) preserve the existing right of the Minister to direct the Corporation to broadcast, or not to broadcast, certain matters or classes of matter.

Clause 82 provides for the appointment of Community Affairs Officers in each State or Territory to investigate complaints of unfair treatment or invasion of privacy.

Clause 83 prescribes the categories of regulations which may be made under the Act.

Significant changes from the 1982 Bill:

(References followed by an asterisk refer to clauses in the Australian Broadcasting Corporation Bill 1982.)

1. Subclause 6(2)(a)(iv) introduces a new provision in the charter for the Corporation to take account of the multicultural character of the Australian community. Note, however, that clause 26 requires the Corporation to "have regard to" the services of the Special Broadcasting Service, i.e. to avoid duplicating its functions.

2. Subclause 25(4) dilutes the earlier prohibition on the acceptance of sponsorship to the extent that the Corporation is prohibited from receiving gifts or services only in those cases where such acceptance would affect the independence or integrity of the Corporation.
3. Subclause 27(3) now specifies that the right of the Corporation to make use of news agencies does not affect its responsibility to maintain an adequate news staff.

4. Subclause 42(2) reverses the earlier provision prohibiting a Promotions Appeal Board from disclosing to a party to an appeal any adverse information received from other parties. The earlier provision of 42(4)*, preventing a party to an appeal from being represented or assisted at a hearing, is also removed.

5. The earlier "No work as directed - no pay" provisions of 46* and 47* are excluded from the present Bill.

6. Subclauses 49(1) and (2) and 53(2) make it obligatory for the Managing Director to publish the administrative procedures and criteria relating to the redeployment of staff. (Under the earlier 51(1)* and 54(2)*, this matter was left to the discretion of the Managing Director).

7. Clause 51 introduces a new provision for an employee to elect to seek redeployment. Under subclause 56(1)(b), an employee is entitled to appeal against a refusal by the Managing Director to consider such a request.

8. Subclause 57(10) reverses an earlier provision (58(10)*) under which a Tenure Appeal Board would have been entitled to determine an appeal in the absence of a representative of the appellant's union.

9. Clause 63 reverses an earlier provision whereby the redeployment and retirement provisions of the Bill would have taken precedence over the terms of any industrial award.

10. Subclause 66(2)(c) inserts a new provision that a Disciplinary Appeal Board shall include a representative of the appropriate union.

11. Subclause 66(11) reverses an earlier provision (67(11)*) whereby a Disciplinary Appeal Board would have been entitled to determine an appeal in the absence of the union representative.

12. Subclause 78(3) introduces a safeguard to prevent the Minister from using his power to direct the
Clause 82 introduces new provisions for the investigation of complaints against the Corporation. This clause replaces the earlier 79*-102*, creating positions of Community Affairs Officers in place of the earlier Commissioner for Complaints. In comparison with the provisions of the 1982 Bill, the grounds for complaint are much narrower, the procedures for investigations are not specified, and the Community Affairs Officers lack the powers of enforcement which were to be available to the Commissioner. Whereas the Commissioner was to be an independent party appointed by the Governor-General, the Community Affairs Officers are to be appointed by the Managing Director, and it is specified that the Principal Community Affairs Officer shall be an officer of the Corporation.

Remarks

1. The Minister has indicated in his Second Reading Speech that certain matters of Government policy, namely the appointment of a staff-elected Director and consultation of non-Government parties on the appointment of Directors, will be implemented by administrative action rather than incorporated in the legislation.

2. Under subclause 25(5), the general prohibition on the Corporation accepting program sponsorship or gifts or services which would compromise its independence or integrity does not extend to services, moneys or facilities provided by Commonwealth or State government or their instrumentalities.

3. The provisions of clauses 46-61 are broadly parallel to those of the Commonwealth Employees (Redeployment and Retirement) Act 1979. This is in line with the original Dix recommendation (22.111, R.217). It should be noted, however, that the redeployment provisions in the Bill are less harsh than those currently provided for under s.52 of the Broadcasting and Television Act 1942.

4. In accordance with the original Dix recommendation, the ABC will be granted ownership of its
transmitters. However, the Minister will retain responsibility for planning (i.e. determining siting and coverage), funding and constructing ABC transmitters, while Telecom staff will remain responsible for their operation and maintenance. (The latter is implicit in the deletion of the relevant clause of the Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Bill 1982.)

For further information, if required, contact:

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10 May 1983
References


