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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

**AUSTRALIAN BROADCASTING CORPORATION AMENDMENT
(RURAL AND REGIONAL MEASURES) BILL 2019**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications, Cyber
Safety and the Arts
The Honourable Paul Fletcher MP)

AUSTRALIAN BROADCASTING CORPORATION AMENDMENT (RURAL AND REGIONAL MEASURES) BILL 2019

OUTLINE

The Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019 (the Bill) reintroduces measures which were in the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017 (the previous Bill). The previous Bill was introduced in the Senate on 18 October 2017, but subsequently lapsed at the end of that Parliament. No adjustments have been made to the measures reintroduced in the Bill. The previous Bill was referred to the Senate Environment and Communications Legislation Committee on 16 November 2017 and the Committee reported on 16 February 2018.

The Bill implements several measures to facilitate the provision of broadcasting services by the Australian Broadcasting Corporation (ABC) that meet and reflect the needs of rural regional Australia.

The Bill will amend the ABC's Charter, set out in the *Australian Broadcasting Corporation Act 1983* (ABC Act), in relation to the delivery of services. This will ensure that the ABC's broadcasting programs contribute to a sense of regional as well as national identity, and reflects the geographic as well as cultural diversity of the Australian community.

The Bill also amends the ABC Act to ensure that the Board has two members with a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement.

The Bill will also establish a Regional Advisory Council to ensure that the ABC Board takes into account the unique views and needs of regional areas in making any significant changes to its broadcasting services that impact regional audiences.

Finally, the Bill will require the ABC Board to report annually on a range of additional matters, including the total number of individuals employed by the Corporation in regional and metropolitan areas, and the ratio of individuals employed as journalists compared to those employed as support staff.

Background

The ABC is an independent statutory authority established under the ABC Act. The Australian Government provides funding to the ABC, but the ABC has independence in relation to programming and operational matters. 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. The ABC is governed by a Board (up to nine members) whose members, with the exception of the Managing Director and staff-elected Director, are appointed by the Governor-General. The Managing Director is appointed by the Board.

Amendments

The intention of the amendments to the ABC Act is to ensure rural and regional communities are provided for in the functions of the Corporation and through representation on the ABC Board. The ABC Act will be amended in five key areas.

Inclusion of regional and geographic diversity

The Bill will amend the ABC's Charter in relation to the delivery of services to ensure that the ABC's programs contribute to a sense of "regional and" national identity, and inform and entertain, and reflect the cultural "and geographic" diversity of, the Australian community. The intention of this amendment is to reflect the unique purpose of the ABC, which is to have regard to providing broadcasting services which encompass Australia as a whole. The amendment will also ensure that the ABC contributes to and promotes regional Australia, and provides services and information that cater to the needs of audiences in those areas.

Establishment of a Regional Advisory Council

The ABC Board currently has an Advisory Council which provides advice to the Board on all matters. The Regional Advisory Council will be made up of members who have a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement, and who are not a member of another advisory council or committee.

ABC Board to consult with the Regional Advisory Council

The ABC Board will be required to consult with the Regional Advisory Council before making a change to a broadcasting service in a regional area that is likely to have a significant impact on audiences in the regional area. The Regional Advisory Council will also be able to provide advice to the ABC Board on matters relating to the provision of broadcasting services in regional areas. The ABC will also be required to report on all consultations with the Regional Advisory Council through its Annual Report. This requirement will take effect in the annual reporting period after which the Act receives the Royal Assent.

ABC Board connection to regional Australia

The ABC Board is appointed by the Governor-General following a merit-based selection process. The Government will be required to take all reasonable steps to ensure that the ABC Board has at least two appointed non-executive directors who have a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement. This amendment will provide that the perspectives, views and needs of regional areas are appropriately considered by the ABC Board.

Annual reporting obligations

Section 80 of the ABC Act provides for matters to be included in the Corporation's annual report. The additional annual reporting obligations will require the ABC to provide statistics on the number of individuals employed in regional areas and metropolitan areas separately. These statistics will include individuals employed as journalists or support staff. There is also a requirement to report on the total number of hours of local or regional news bulletins broadcast during the reporting period.

FINANCIAL IMPACT STATEMENT

It is anticipated that the establishment and ongoing costs for the Regional Advisory Council will result in an outlay for the ABC of \$0.1 million per annum ongoing. This cost will be absorbed by the ABC. The other 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

Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019

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 Amendment (Rural and Regional Measures) Bill 2019 (the Bill) reintroduces measures which were in the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017 (the previous Bill). The previous Bill was introduced in the Senate on 18 October 2017, but subsequently lapsed at the end of that Parliament. No adjustments have been made to the measures reintroduced in this Bill.

The Australian Broadcasting Corporation (ABC) is a publicly funded broadcaster established by the *Australian Broadcasting Corporation Act 1983* (the ABC Act). The ABC provides broadcast and digital media services that cater to Australia's diverse social, cultural and geographical audiences, including independent news and information services of the highest standards.

The Bill would implement several measures promoting rural and regional broadcasting, and the interests of rural and regional Australia, in relation to the operations of the ABC. In particular, the Bill would amend the ABC's Charter in relation to the delivery of services to ensure that the ABC's programs contribute to a sense of regional and national identity and inform and entertain, and reflect the cultural and geographic diversity of, the Australian community.

The Bill would also require the Prime Minister and the Minister to take all reasonable steps when making recommendations to the Governor-General about the appointment of particular Board members, to ensure that at least two of the members have a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement. The Bill would also provide for a Nomination Panel, used to conduct a selection process and prepare a selection report, to take into account this consideration.

The Bill would also establish a Regional Advisory Council (the Council) to help ensure that the ABC represents and reflects the needs and interests of the regions it services. The Board is required to consult with the Council before making a decision that will result in a change to a broadcasting service provided in a regional area if that change would result in a substantial impact on audiences in the regional area. The Council is to advise the Board on matters relating to the provision by the ABC of broadcasting services in regional areas, either on its own initiative or at the request of the Board.

The Bill would also require the ABC's annual report to include:

- the particulars of any advice received by the Board during the period from the Council;
- the number of individuals employed by the ABC in regional and metropolitan areas;

- the ratio of individuals employed by ABC in regional areas as journalists compared to the total number of individuals employed in regional areas as support staff;
- the ratio of individuals employed by the ABC in metropolitan areas as journalists compared to the total number of individuals employed as support staff; and
- the number of hours of local or regional news bulletins broadcast during the period.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

The Bill is compatible with human rights as it does not raise any human rights issues.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

ABC Act	<i>Australian Broadcasting Corporation Act 1983</i>
ABC	Australian Broadcasting Corporation
Bill	Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2019
Board	ABC Board of Directors

NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Act 2019*.

Clause 2 – Commencement

Clause 2 provides for the commencement of provisions in the Bill when enacted.

Item 1 of the table at subclause 2(1) provides that the whole of the Bill would commence on the day after the Bill receives 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 Schedule, and any other item in a Schedule has effect according to its terms.

There is one Schedule to the Bill, 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 ABC Act. Subsection 6(1) of the ABC Act sets out the Charter of the ABC. 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 and ABC operations are to be overseen by the Managing Director (sections 9 and 10 of the ABC Act).

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).

Part 1 – Amendments

Item 1 – Subsection 3(1) (after paragraph (a) of the definition of *Advisory Council*)

Item 1 would insert a new paragraph (aa) into the definition of *Advisory Council* at subsection 3(1) of the ABC Act, broadening the definition to encompass the Australian Broadcasting Corporation Regional Advisory Council, which would be required to be established under new subsection 11(1A) (refer item 5 below).

Item 2 – Subsection 3(1)

Item 2 would insert three new definitions into subsection 3(1) of the ABC Act. The two new terms *metropolitan area* and *regional area* are central to various new transparency measures proposed by the Bill.

The term *metropolitan area* means an area that is a Greater Capital City Statistical Area within the meaning of the most recent published edition of the Australian Statistical Geography Standard, as produced by the Australian Bureau of Statistics.

The term *regional area* means an area in Australia that is not a metropolitan area. However, the definition does not apply to paragraph (b) of the proposed definition of *Advisory Council* or existing subsections 11(2) and (4) of the ABC Act.

The term *Regional Advisory Council* means the Australian Broadcasting Corporation Regional Advisory Council. The new Council will be established under proposed subsection 11(1A) (refer item 5).

Item 3 – Subparagraph 6(1)(a)(i)

Item 4 – Subparagraph 6(1)(a)(i)

Item 3 would insert the words “regional and” into subparagraph 6(1)(a)(i) to reflect the establishment of the Regional Advisory Council by item 5. Similarly, item 4 would insert the words “geographic and” into that subparagraph to reflect the establishment of the Regional Advisory Council. The combined effect of items 3 and 4 is that the Charter will require the ABC to broadcast programs that contribute to a sense of regional and national identity, and inform and entertain, and reflect the geographic and cultural diversity of, the Australian community.

Item 5 – After subsection 11(1)

Section 11 of the ABC Act requires the Board to establish an Advisory Council, and empowers the Board to establish other Advisory Councils. These Councils are to provide the Board with advice on matters relating to the ABC's broadcasting programs.

Item 5 would insert subsection 11(1A), requiring the Board to establish the Australian Broadcasting Corporation Regional Advisory Council, which would report to the Board in a similar way to the existing ABC Advisory Council. The new Regional Advisory Council must be established by the Board within 3 months of the commencement of the Bill.

Item 6 – After subsection 11(3)

Item 6 would insert subsection 11(3A), which articulates the function of the ABC Regional Advisory Council to advise the Board (either on its own initiative or if requested by the Board) on matters relating to the provision by the ABC of broadcasting services in regional areas.

Item 7 – After subsection 11(6)

Item 7 would insert subsections 11(6A) and (6B) pertaining to the appointments to the proposed ABC Regional Advisory Council.

Proposed subsection 11(6A) would restrict appointments to the ABC Regional Advisory Council, such that only a person who has a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement, is able to be appointed to the Council.

Proposed subsection 11(6B) would further restrict appointments to the ABC Regional Advisory Council, such that a person must not be appointed to the Council if they are a member of another ABC Advisory Council or committee.

Item 8 – After subsection 11(10)

Item 8 would insert subsection 11(10A). This new provision provides that if the Board decides that the members of the ABC Regional Advisory Council should be remunerated, those members are to be provided such remuneration as determined by the Remuneration Tribunal.

Item 9 – Subsection 11(12)

Item 9 would make a consequential change to subsection 11(12) to reflect the establishment of the ABC Regional Advisory Council by item 5 of Schedule 1 to the Bill.

Item 10 – At the end of section 11

Item 10 would insert new subsections 11(13) and (14).

Proposed subsection 11(13) sets out that the ABC Board must consult the ABC Regional Advisory Council before making a decision that would result in a change to a broadcasting service provided by the ABC in a regional area, where that change is likely to have a significant impact on audiences in that particular regional area. In recognition that it may take up to three months from commencement of the Bill for the ABC Regional Advisory Council

to be established, the new consultation obligation proposed by subsection 11(13) will not apply to a decision made during the period from the commencement of this subsection up until the establishment of the Council (proposed subsection 11(14)).

Item 11 – After subsection 12(5D)

Board membership requirements are provided under section 12 of the ABC Act. Item 11 would insert three new subsections into section 12 setting out additional requirements that must be met before a new appointment is made to the ABC Board.

Proposed subsection 12(5E) would provide that when making recommendations to the Governor-General about the appointment of Directors referred to in paragraph 12(1)(b) or 12(1)(c) of the ABC Act, the Prime Minister and the Minister must take all reasonable steps to ensure that at least two of the Directors are persons with a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement.

Proposed subsection 12(5F) would set out that if the Governor-General appoints a Chair with a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement, the Prime Minister must prepare a statement outlining the person's particular connection or experience in this regard.

Proposed subsection 12(5G) is substantially the same as subsection 15(5F). However, this subsection pertains to appointments by the Governor-General of a Director with a substantial connection to, or substantial experience in, regional area through business, industry or community involvement, and requires the Minister to prepare a statement.

As a further transparency measure, the Prime Minister or Minister will be required to table copies of the statement in each House of Parliament within 15 sitting days after the instrument of appointment was signed by the Governor-General (refer proposed paragraphs 12(5F)(d) and 12(5G)(d)).

Item 12 - After subsection 24B(2)

Item 12 would insert a new subsection 24B(2A), which is a further transparency measure regarding the ABC Director selection process.

Nomination Panels, established by section 24A of the ABC Act, have various functions and responsibilities relating to the selection and assessment of applicants for appointment to the ABC Board.

In addition to its existing obligations, proposed subsection 24(2A) would require a Nomination Panel to undertake the following three additional steps when it has conducted a selection process for an appointment of a Director or Chairperson to the ABC Board:

- assess whether each applicant for the appointment is a person with a substantial connection to, or substantial experience in, a regional area through business, industry or community involvement;
- prepare a report of the assessment; and
- incorporate that report in the report that relates to the selection process.

Item 13 – Section 80

Item 13 would insert a paragraph number (1) into section 80 of the Act. This is a minor change that is consequential to the insertion of a second paragraph by item 16.

Item 14 – After paragraph 80(g)

Item 15 – At the end of section 80

Section 80 of the ABC Act sets out the matters to be included in the annual report that the ABC is required to give to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013*. Items 14 and 15 would add new matters to be included in ABC's future annual reports.

Item 14 would insert new paragraph 80(1)(h), which requires the Directors of the Board to report on the particulars of any advice that the Board has received from the ABC Regional Advisory Council during the reporting period.

Item 15 would insert five new paragraphs into section 80 which requires the Directors of the Board to include in their annual report:

- the total number of individuals employed by the ABC in regional areas at the end of the period (proposed paragraph 80(1)(m));
- the total number of employees employed by the ABC in metropolitan areas at the end of the period (proposed paragraph 80(1)(n));
- the ratio of employees employed by the ABC as journalists to support staff, in regional areas (proposed paragraph 80(1)(o));
- the ratio of employees employed by the ABC as journalists to support staff, in metropolitan areas (proposed paragraph 80(1)(p)); and
- the total number of hours of local or regional news bulletins broadcast on each broadcasting service provided by the ABC in a regional area for the period (proposed paragraph 80(1)(q)).

For the reporting items at proposed paragraphs 80(1)(m), (n), (o) and (p), it is expected that the ABC would use the ordinary employment locality by reference to the definitions regional area. Further, for the purposes of the above proposed reporting, the location of each broadcasting service is a factual matter that should be able to be ascertained by the ABC by reference to the definitions of regional area.

Item 15 would also insert a new subsection 80(2) that defines two key terms used in proposed paragraphs 80(1)(o) and (p). The term “journalist” would mean an individual engaged in the profession or practice of reporting for, photographing, videoing, editing, recording or making any of the following forms of a news, current affairs, information or documentary character:

- (a) television or radio programs; or
- (b) datacasting content; or
- (c) internet content;

The second term, “support staff”, would mean any ABC staff that are not journalists.

Part 2 – Application and transitional provisions

Item 16 – Application of amendments—annual report

Item 16 would provide that the amendments made by the Bill to section 80 of the ABC Act relating to annual reporting, relating to metropolitan and regional matters (refer item 15) and advice to the Board (item 14) would apply to annual reports that relate to a period that begins after the commencement of this Bill. For example, if this Bill passes during the 2019-2020 reporting period, the amendments would only take effect for the purposes of the annual report for the following full reporting year, which would be 2020-21.

Item 17 – Transitional – tabling of statements

Subitem 17(1) sets out a transitional provision, applying immediately after the commencement of the item, that if a person held office as a Chairperson and the Prime Minister is satisfied that the person has substantial connection to, or substantial experience in, a rural or regional area through business, industry or community involvement, the Prime Minister must prepare a statement that outlines the person's particular connection or experience.

Subitem 17(1) sets out a similar transitional provision for ABC Directors. This requires that if immediately after the commencement of the item, a person held office as a Director (other than Chairperson), and the Minister is satisfied that the person has substantial connection to, or substantial experience in, a regional area through business, industry or community involvement, the Minister must prepare a statement that outlines the person's particular connection or experience.

Under both subitems the statement must be tabled in each House of Parliament within 15 sitting days of the commencement of item 17.

These two transitional provisions are intended to provide that, in the event that less than two of the members of the Board meet the requirements for regional representation, the next scheduled process to appoint a new member will take into account the new regional connection and experience requirement.