



**Australian Government**

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**Department of Infrastructure, Transport,  
Regional Development, Communications and the Arts**

# **Review of options to support the independence of the national broadcasters**

Public consultation paper

July 2023



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# 1. Introduction

The Australian Government has implemented 5-year funding terms for the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS), commencing on 1 July 2023. As part of this decision, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) is undertaking a review of options to support the independence of the national broadcasters (the review).

The national broadcasters perform a vital function. Under their respective Charters, which are set out in legislation, they are responsible for providing programs and services that inform, educate and entertain, as well as contribute to a sense of national identity and reflect the cultural diversity of the Australian community. Additionally, the legislative Charters of the ABC and SBS require the maintenance of independence and integrity and, among other things, that the gathering and presentation of news and information be accurate and impartial or balanced.

An independent media is a key feature of a healthy democracy. In democratic countries, the media has the important role of reporting on matters which have the potential to affect people's lives. This allows citizens and consumers to better participate in society, the economy and the democratic process, and also holds governments accountable for their actions.

The national broadcasters are a key pillar in the government's approach to addressing the harmful effects of misinformation and disinformation. The [Digital News Report: Australia 2023](#) identified that the ABC and SBS continue to be highly trusted news sources. In addition to providing high quality public interest journalism, they provide other services such as fact checking, media literacy, and during the COVID-19 pandemic, provision of critical health information in over 60 languages.

The review will consider how best to provide certainty for announced funding for the ABC and SBS. Funding certainty supports the stability and independence of the national broadcasters, guards against political interference, as well as promotes innovation and efficiency associated with improved investment horizons for operational and transmission planning.

The review will also consider governance arrangements, such as the appointment process for the ABC and SBS boards, as a guard against political influence. Strong governance supports the national broadcasters in fulfilling their obligations to provide independent national broadcasting programs and services for the benefit of all Australians.

The full terms of reference for the review, including topics which are out of scope, are provided below. The paper seeks views on the in-scope issues outlined in the terms of reference.

The department will report to the Minister for Communications during 2023, to provide findings and recommendations to government.

## 2. Have your say

The department is seeking views from individuals, businesses, peak bodies and other interested parties. Written submissions will be accepted until **31 August 2023** and can be lodged by:

**Website:** [www.infrastructure.gov.au/natbroadcastersreview](http://www.infrastructure.gov.au/natbroadcastersreview)

**Email:** [nationalbroadcasters@communications.gov.au](mailto:nationalbroadcasters@communications.gov.au)

**Post:** Director, National Broadcasters Section  
Department of Infrastructure, Transport, Regional Development, Communications,  
and the Arts  
GPO Box 594  
Canberra ACT 2601

All submissions will be made publicly available by the department unless a respondent specifically requests that its submission, or part of its submission, be kept confidential and acceptable reasons are provided.

The department is subject to the *Freedom of Information Act 1982* and submissions may be required to be disclosed by the department in response to requests made under that Act.

The department reserves the right not to publish any submission, or part of a submission, which in its view contains potentially defamatory material, or for confidentiality reasons.

### 3. Terms of Reference

The review will explore options to support the independence of the national broadcasters by conducting **public consultation** on the following matters:

1. Examining and making recommendations to support stable **funding arrangements** for the national broadcasters by identifying potential mechanisms to implement and maintain 5-year funding terms at the amount announced by the government, while retaining the ability to provide additional funding during these terms.
2. Examining and making recommendations to support effective **governance arrangements** for the national broadcasters by considering:
  - (a) the boards' composition as required under the *Australian Broadcasting Corporation Act 1983* (ABC Act) and the *Special Broadcasting Service Act 1991* (SBS Act)
  - (b) the appointment of members to the independent Nomination Panel established under the ABC Act (the Nomination Panel)
  - (c) the Nomination Panel's functions under the ABC and SBS Acts
  - (d) the role of the Minister, national broadcasters' board Chairs and other parties in the appointments processes under the ABC and SBS Acts
  - (e) other governance approaches which promote the stability and independence of the boards.

Other issues relating to the ABC and SBS are **out of scope** for the review, including:

- The quantum of funding, funding terms or funding models provided to the national broadcasters
- Changes to advertising restrictions or limits on the ABC or SBS
- Changes to the legislative Charters or corporate character of the national broadcasters
- Merging the ABC and SBS
- The Minister's legislated power to direct the national broadcasters in certain circumstances
- The efficiency and performance of the boards
- The Staff-elected Director on the ABC Board
- Operational matters that are the responsibility of the ABC and SBS

Ms Lynelle Briggs AO's Review of Public Sector Board Appointments Processes (Briggs Review), announced by the Government, is distinct from this review. The department, however, expects to engage with the Briggs Review during the course of its review, as both will consider government board appointments processes.

## 4. Funding arrangements

### 4.1. Current funding arrangements

#### Funding terms

The national broadcasters are important cultural and democratic institutions in Australia, with their independence enshrined in legislation, under their respective Charters. The ABC and SBS are publicly funded and consequently subject to funding decisions made by the government of the day.

Since 1989, the national broadcasters have received funding under a 3-year (triennial) arrangement.<sup>1</sup> Triennial periods were requested by the broadcasters (after being advocated for since 1949 in the case of the ABC) and were designed to provide a higher level of certainty than year-to-year budgets, to allow them to better plan and accommodate the long project lead times of the technologically based broadcasting industry.<sup>2</sup> In practice, the triennium funding periods aligned with the federal election cycle.

From 1 July 2023, the ABC and SBS receive funding under a 5-year (quinquennial) arrangement. These funding arrangements replace the most recent triennial funding packages, which commenced on 1 July 2022.

#### Funding processes

Consistent with other government entities, the amount of funding provided to the national broadcasters is a decision of the government of the day in the context of the Commonwealth Budget. Generally, in the final year of a funding period, the government determines the quantum of funding for the next funding period. The government will then announce its decision ahead of the commencement of the next funding period. Over the course of a funding period, funding is appropriated annually to the national broadcasters as part of the annual Budget process.

Government funding for the national broadcasters may consist of ongoing base funding and non-ongoing funding, both of which usually are indexed:<sup>3</sup>

- Ongoing base funding is comprised of 2 components: general operational funding to support delivery of services, and transmission and distribution funding for transmission infrastructure (under contract with BAI Communications).
- Non-ongoing funding may be provided to deliver specific projects. For example, the ABC and SBS each received additional non-ongoing funding as part of the 2022-23 Budget to extend their audio description services to Australians who are vision impaired. While non-ongoing funding arrangements typically align to the funding cycle, the SBS received \$7.6 million over 3 years in the 2020 Budget for enhanced language services – this funding crossed over 2 triennium funding periods.

<sup>1</sup> Prior to this, the ABC was funded via listener licence fees. The SBS was funded entirely through appropriations from Commonwealth consolidated revenue prior to an amendment of the *Special Broadcasting Service Act 1991* (SBS Act) which allowed for the receipt of advertising revenue.

<sup>2</sup> *The ABC: An Overview* (research paper) Part 7: Funding, p. 38

<sup>3</sup> Indexation is a normal Budget process which aims to maintain relative value of government funding over time to reflect changes in prices, costs, or wages. For more information see [Indexation & The Budget – An Introduction](#), prepared by the Parliamentary Budget Office.

- Non-ongoing funding may be rolled into ongoing base funding where appropriate to do so. For example, the 2023-24 Budget extended and rolled 3 non-ongoing (or terminating) measures into ongoing base funding for the ABC and SBS.<sup>4</sup>

The ABC and SBS also generate their own revenue from commercial activities. In 2021-22, the ABC generated \$68.4 million from co-production arrangements, facilities hire, services or content provided, interest and commissions.<sup>5</sup> SBS's enabling legislation provides that it is permitted to have advertising and sponsorship announcements as well as undertake commercial activities. In 2021-22, SBS made \$149.6 million from advertising and the sale of goods and services.<sup>6</sup> Funding from sources other than government represents around 6 per cent of ABC annual revenue and 33 per cent of SBS annual revenue.<sup>7</sup>

## 4.2. Issues for consultation

In the May 2023 Budget, the government implemented 5-year funding terms for the national broadcasters, starting from 1 July 2023.

Under the current funding arrangements for the ABC and SBS, announced funding is not protected by legislation or any other framework. Successive governments have relied on convention to maintain funding at the level announced over the course of the funding period, whether for 3-year terms or 5-year terms.

Suggestions have been put forward of ways to better secure funding certainty for the national broadcasters, particularly where governments have reduced funding ahead of, or during, a funding term.

One approach is the potential to legislate future funding amounts for the national broadcasters. While possible, this would be an unusual funding arrangement for a government agency. In instances when agency funding has been outlined in legislation, it is generally for a one-off purpose or to support the agency to enter into agreements. For example, section 46 of the *Clean Energy Finance Corporation Act 2012* allocated \$2 billion annually in credits to the Clean Energy Finance Corporation's (CEFC's) Special Account<sup>8</sup> from 1 July 2013 to 1 July 2017. This funding amount was legislated to provide the CEFC with certainty in undertaking its investment functions, which is distinct from the general operational funding context of the national broadcasters. In the case of the CEFC, it was also required to seek ministerial approval to access the funding.

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<sup>4</sup> These measures provided funding for ABC regional news gathering, SBS news, content, subtitling and English learning resources to Australians who speak languages other than English, and audio description services for both the ABC and SBS.

<sup>5</sup> Portfolio Budget Statements October 2022–23: Infrastructure, Transport, Regional Development and Communications Portfolio, p. 140.

<sup>6</sup> Portfolio Budget Statements October 2022–23: Infrastructure, Transport, Regional Development and Communications Portfolio, p. 538

<sup>7</sup> Sections 45 & 57 of the SBS Act allow the SBS to supplement its government funding with commercial activities. The SBS's charter limits how it can raise funds.

<sup>8</sup> Subsection 45(2) of the *Clean Energy Finance Corporation Act 2012* provides that this account is a Special Account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.



An alternative approach to legislating the quantum of funding for the national broadcasters could be to legislate a mechanism to protect announced funding. The [2019 Senate Environment and Communications References Committee report on the allegations of political interference in the Australian Broadcasting Corporation](#) (the 2019 Senate report) explored the funding arrangements for the ABC, and the degree to which these impacted the ABC's independence. The Committee acknowledged that submitters and witnesses to that inquiry were 'overwhelmingly' supportive of reform of the ABC's funding model. The Committee's view was that *'governments must be able to retain control of budgets but this control does create a risk of political interference in the ABC'*.<sup>9</sup> The Committee recommended a commitment to stable funding over each budget cycle,<sup>10</sup> and flagged quinquennial (5-year) terms as an option. However, the Committee did not provide any commentary or recommendations as to how funding terms could be "locked in" to prevent cuts over the period of a single funding term.

Another approach is to incentivise governments to treat the ABC budget convention with respect, by increasing transparency and civic engagement, and by opening the funding process to public input. The 2016 The Australia Institute paper, [No Politics at Aunty's Table](#), states that the *'government of the day must retain the ability to adjust the Federal budget year by year, according to their policies and in light of prevailing economic conditions'*. It recommends that the department call for public submissions regarding ABC funding when the end of each funding cycle approaches, hold forums to examine submissions and publish a report summarising the debate.<sup>11</sup>

The department is seeking views on options to protect agreed and announced 5-year funding levels for the ABC and SBS including:

#### Funding mechanisms

1. What potential mechanisms could provide greater certainty to 5-year funding terms? These could include legislative or non-legislative mechanisms, such as:
  - Amending the ABC and SBS Acts to state that base funding must be provided on a 5-year basis.
  - Amending the ABC and SBS Acts to allow the Minister to set national broadcaster funding for the next 5 years via a legislative instrument (e.g. a Determination).
  - 5-year funding amounts set by another body, such as a new statutory authority or Parliamentary committee.
  - A public review prior to the end of each 5-year funding period, with submissions considered by government to help inform the next 5-year funding arrangements.
2. What ability should the government of the day have to revise announced funding, for example, to provide additional funding during a 5-year funding term to meet the changing needs of audiences?
3. Are there other arrangements that could be put in place to provide greater stability to national broadcaster funding?

<sup>9</sup> 2019 Senate report p. 51.

<sup>10</sup> Ibid Recommendation 6.

<sup>11</sup> Fergus Pitt, *No Politics at Aunty's Table: Depoliticising the Governance of the ABC*, March 2016, The Australia Institute Discussion Paper, p. v.

**Funding considerations**

4. What issues should the government of the day consider in deciding whether and how to provide or extend non-ongoing funding?
  - In what circumstances is the provision of non-ongoing funding most suitable?
  - In what circumstances is the provision of non-ongoing funding least suitable?

## 5. Appointments to the ABC and SBS boards

### 5.1. Current governance arrangements

#### The ABC and SBS boards

The ABC and SBS boards are established under the *Australian Broadcasting Corporation Act 1983* (ABC Act) and *Special Broadcasting Service Act 1991* (SBS Act), respectively. The Acts provide that the boards are responsible for maintaining the national broadcasters' independence and integrity, and ensuring the proper and efficient performance of the national broadcasters' functions.<sup>12</sup>

The composition of the boards is as follows:

**Table 1: Membership of the boards**

ABC Board <sup>13</sup>	SBS Board <sup>14</sup>
<ul style="list-style-type: none"> <li>• Chair</li> <li>• Deputy Chair (appointed from one of the non-executive Directors)</li> <li>• Managing Director</li> <li>• Staff-elected Director</li> <li>• Not fewer than 4 nor more than 6 other non-executive Directors</li> </ul>	<ul style="list-style-type: none"> <li>• Chair</li> <li>• Deputy Chair (appointed from one of the non-executive Directors)</li> <li>• Managing Director</li> <li>• Not fewer than 3 nor more than 7 other non-executive Directors</li> </ul>

The ABC and SBS Acts also set out the process for making appointments to the boards,<sup>15</sup> which are outlined below:

**Table 2: Types of appointments to the boards**

Position	Appointed by
<b>ABC Chair</b>	<p>The Governor-General, following recommendations made by the Prime Minister after a Nomination Panel merit-based selection process.</p> <p>Before recommending a candidate for appointment, the Prime Minister is also required to consult with the Leader of the Opposition.</p>
<b>SBS Chair</b>	<p>The Governor-General, following recommendations made by the Minister after a Nomination Panel merit-based selection process.</p>
<b>ABC and SBS Managing Directors</b>	The respective boards.

<sup>12</sup> Section 8 of the ABC Act; section 10 of the SBS Act.

<sup>13</sup> Subsection 12(1) of the ABC Act.

<sup>14</sup> Section 8 of the SBS Act.

<sup>15</sup> Part IIIA of the ABC Act; Part 3A of the SBS Act.

Position	Appointed by
<b>ABC and SBS non-executive Directors</b>	The Governor-General, following recommendations made by the Minister after a Nomination Panel merit-based selection process.
<b>ABC staff-elected Director</b>	Elected in accordance with the procedures in the <i>Australian Broadcasting Corporation (Staff-elected Director) Regulation 2012</i> which involves a vote by eligible ABC staff. <sup>16</sup>

### Role of the Nomination Panel

The ABC Act establishes the independent Nomination Panel for ABC and SBS Board Appointments (the Nomination Panel),<sup>17</sup> which is responsible for running merit-based selection processes for Chair and non-executive Director vacancies on both the ABC and SBS Boards. The Secretary of the Department of the Prime Minister and Cabinet is responsible for making appointments to the Nomination Panel. There are currently no selection criteria or eligibility requirements for appointments to the Nomination Panel.

The Nomination Panel assesses candidates on the basis of merit, and against selection criteria determined under legislative instrument by the Minister (Ministerial Determinations).<sup>18</sup> These Ministerial Determinations provide that candidates must demonstrate their experience or knowledge in fields such as the media industry, business or financial management, corporate governance, or cultural industries and policies. Additionally, candidates must possess high level leadership and judgement, a commitment to high standards of governance, the highest standards of professional and personal integrity, and an understanding of the ABC and SBS's roles in the Australian media environment.<sup>19</sup>

Following a selection process, the Nomination Panel then provides the Prime Minister (in the case of the ABC Chair) or Minister with a shortlist of at least 3 candidates per vacancy. The Prime Minister and Minister are not required to recommend to the Governor-General the appointment of a candidate put forward to them by the Nomination Panel. If a person not recommended by the Nomination Panel is appointed, the Prime Minister or Minister is required to table a statement of reasons that includes an assessment of the appointee against the selection criteria in both Houses of Parliament.<sup>20</sup>

Since the Nomination Panel was established in 2012, there have been 6 statements of reasons tabled for appointments to the ABC Board, and 3 for the SBS Board.

<sup>16</sup> Subsection 13A(1) of the ABC Act.

<sup>17</sup> Sections 24A and 24E of the ABC Act.

<sup>18</sup> Section 24W of the ABC Act enables the *Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013*; section 43A of the SBS Act enables the *Special Broadcasting Service Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013*. These Ministerial Determinations are due to sunset on 1 April 2024.

<sup>19</sup> The Ministerial Determination for appointments to the SBS Board also requires candidates to demonstrate their experience or knowledge of industrial relations, including an understanding of interests in employees. Additionally, it provides that candidates must possess an understanding of, or the ability to credibly represent, the communication needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities.

<sup>20</sup> Section 24X of the ABC Act; Section 43B of the SBS Act.

Current and former members of Parliament and senior political staff members<sup>21</sup> are not eligible for appointment while engaged in such positions, or for a period of 12 months beginning on the day the person ceased to hold such a position.<sup>22</sup>

Further information on the process for making appointments to the ABC and SBS Boards can be found on the [department's website](#).

## 5.2. Issues for consultation

Public concern regarding the potential for political influence on the ABC and SBS has always been prevalent, particularly in the board appointments process. It was concern about the scope for political interference in appointments to the ABC and SBS boards that led to the establishment of the Nomination Panel and the merit-based selection process in 2012.<sup>23</sup>

The 2019 Senate report examined – among other issues – the governance arrangements of the ABC and the extent to which they had been effective in safeguarding against political interference, and made several recommendations to strengthen the ABC's governance arrangements. These included amending relevant legislation to provide greater transparency and accountability in the appointments process. The then government did not support those recommendations.

More recently, the Grattan Institute has considered political influence in public appointments, including those made to the boards of the national broadcasters. In the 2022 report on [A better process for public appointments](#), the Grattan Institute argued that the appointments processes for the boards of the national broadcasters are more transparent and allow for greater independence in comparison to many other public appointments across the whole of government.

The government is currently considering public board appointments more broadly. On 5 February 2023, the government announced that Ms Lynelle Briggs AO would lead the Review of Public Sector Board Appointments Processes (Briggs Review). The Briggs Review will consider and propose appropriate standards for the processes by which board members are appointed to government boards. This will include a focus on:

- clarifying the role of public sector boards and how needed skills and standards are set;
- options for transparent processes to identify and recruit board members;
- how ministers are advised on selection of board members; and
- improving the diversity of board membership (including in terms of gender, CALD, First Nations and geographic representation on public sector boards).

Advice to government on the outcomes of the national broadcaster review will take into account any recommendations from the Briggs Review.

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<sup>21</sup> The definition of a 'senior political staff member' is set out in the *Australian Broadcasting Corporation (Definition of senior political staff member) Instrument 2014*.

<sup>22</sup> Subsection 12(5A) of the ABC Act and subsection 17(2A) of the SBS Act. Current and former members of Parliament include members of the Commonwealth and State Parliaments, as well as members of the Legislative Assemblies of the Australian Capital Territory and the Northern Territory

<sup>23</sup> Second reading speech for the *National Broadcasting Legislation Amendment Bill 2010*.

The department is seeking views on these and other issues relating to the governance arrangements of the national broadcasters, including:

#### **Appointments to the ABC and SBS boards**

5. Section 24X of the ABC Act requires the Prime Minister to consult with the Leader of the Opposition before recommending a candidate for the appointment to the position of the ABC Chair. Do you think the requirement under section 24X allows for effective consultation to occur? If not, what changes could be made to improve this consultation process?
6. The ABC and SBS Acts, including the Ministerial Determinations, require the respective boards to be made up of members with certain skills, backgrounds, and experiences.
  - Are the eligibility and selection criteria requirements too narrow or too broad?
  - What knowledge and experiences should be included in the selection criteria for appointments to the ABC and SBS boards?
7. Should individuals and organisations be formally consulted as part of the appointment process? Which ones, and why?

#### **Role of the boards' Chairs in the appointments process**

8. Should the ABC and SBS Chairs have a formal role in the appointments process, such as developing the selection criteria, advising on desired skills and experience of board appointments, or be consulted on potential appointments?

#### **Appointments to the Nomination Panel**

9. Should selection criteria be established for appointments to the Nomination Panel?
10. What could be included in the selection criteria? And why?

#### **Functions of the Nomination Panel**

11. Is the Nomination Panel an effective method for identifying potential candidates for appointment to the ABC and SBS boards? If not, why not?
12. Should the functions of the Nomination Panel be expanded or narrowed? If so, how?

#### **Other governance matters supporting stability, independence and accountability**

13. Are there other options for strengthening the governance arrangements of the national broadcasters that have not been contemplated in this paper? What are they? How would they support stability, independence and accountability?