

BROADCASTING AND TELEVISION ACT 1942

Extract dealing with the Special Broadcasting Service.

s. 78

broadcasting or televising by the Commission of any matter or prohibited the broadcasting or televising by the Commission of any matter.

Action taken
under section
64 or 77 to
be reported
to the
Parliament

Inserted by
No. 47, 1967,
s. 9, amended by
No. 89, 1976,
s. 17

78A. Where the Minister has given a direction under section 64 or has prohibited the broadcasting or televising of any matter or made any requirement under section 77, he shall, within seven sitting days of giving such direction or notifying such prohibition or requirement, report the same in writing to both Houses of the Parliament and shall give the reasons for such direction, prohibition or requirement, as the case may be.

Commission
to assume
certain
obligations
and
liabilities

79. All rights, property and assets and all obligations and liabilities which, immediately prior to the commencement of this Act, were vested in or imposed on the Australian Broadcasting Commission constituted under the *Australian Broadcasting Commission Act 1932-1940* shall by virtue of this Act be vested in or imposed on the Commission, and in any contract, agreement or other instrument to which the first-mentioned Commission was a party any reference to that Commission shall be read as a reference to the Commission.

Joint
Consultative
Committee
Inserted by
No. 187, 1976,
s. 13

79A. (1) There is hereby established a Joint Consultative Committee comprising representatives of the Commission and of officers and full-time employees of the Commission.

(2) The regulations shall make provision for and in relation to the manner in which the Committee is to be constituted, the functions of the Committee and the manner in which the Committee is to carry out its functions.

Part IIIA inserted
by No. 160,
1977, s. 18
Division I
inserted by
No. 160, 1977,
s. 18

PART IIIA—THE SPECIAL BROADCASTING SERVICE

Division I—Preliminary

Interpret-
ation

Inserted by
No. 160, 1977,
s. 18

79B. In this Part, unless the contrary intention appears—

“Chairman” means the Chairman of the Service;

“Executive Director” means the Executive Director of the Service;

“member” means a member of the Service;

“program” means a broadcasting program or a television program.

Division 2—Establishment, Functions and Powers of Service

Division 2
inserted by
No. 160, 1977,
s. 18

79C. There is established by this Part a body by the name of the Special Broadcasting Service.

Establish-
ment
inserted by
No. 160, 1977,
s. 18

79D. The functions of the Service are—

Functions
inserted by
No. 160, 1977,
s. 18

- (a) to provide multilingual broadcasting services and, if authorized by the regulations, to provide multilingual television services; and
- (b) to provide broadcasting and television services for such special purposes as are prescribed.

79E. (1) The Service may do all things that are necessary or convenient to be done for or in connexion with, or as incidental to, the performance of its functions and, in particular, may—

Powers
inserted by
No. 160, 1977,
s. 18

- (a) produce or present programs or arrange, or provide facilities, for the production or presentation of programs;
- (b) subject to section 73 as applied in accordance with section 79ZJ, transmit programs or provide facilities for the transmission of programs;
- (c) arrange for the transmission of programs;
- (d) acquire, accept or take on hire, or dispose of or let out, personal property (including programs or rights or interests in programs);
- (e) acquire, hold or dispose of land and buildings;
- (f) enter into contracts;
- (g) accept gifts, devises or bequests made to the Service, whether on trust or otherwise, or act as trustee of moneys or other property vested in the Service on trust;
- (h) occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Service; and
- (i) do anything incidental to any of its powers.

(2) The provision under this Part of broadcasting or television services shall be in accordance with such principles as are prescribed.

(3) Notwithstanding anything contained in this Part, any moneys or other property vested in the Service on trust shall be dealt with in accordance with the powers and duties of the Service as trustee.

s. 79F

Responsi-
bility for
programs
Inserted by
No. 160, 1977,
s. 18

79F. Where the Service arranges, or provides facilities, for the production, presentation or transmission of programs by other persons, it is the responsibility of the Service to ensure that those programs comply with the provisions of this Act and the regulations to the extent that those provisions are applicable to those programs, but this sub-section does not limit the application of those provisions to those persons.

Division 3—Constitution and Meetings of Service

Division 3
inserted by
No. 160, 1977,
s. 18

Incorpor-
ation

Inserted by
No. 160, 1977,
s. 18

79G. (1) The Service—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal; and
- (c) may sue or be sued in its corporate name.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Service affixed to a document and shall presume that it was duly affixed.

Membership

Inserted by
No. 160, 1977,
s. 18

79H. (1) The Service shall consist of a Chairman and not less than 2, nor more than 6, other members.

(2) The members shall be appointed by the Governor-General as part-time members.

(3) A member shall be appointed for such period, not exceeding 5 years, as is specified in his instrument of appointment, but is eligible for re-appointment.

(4) A member shall hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

(5) The performance of the functions or the exercise of the powers of the Service is not affected by reason only of—

- (a) there being a vacancy in the office of Chairman; or
- (b) the number of members falling below 3 for a period of not more than 6 months.

Pecuniary
interests

Inserted by
No. 160, 1977,
s. 18

79J. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Service, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Service.

s. 79J

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Service and the member shall not be present during any deliberation of the Service with respect to that matter.

79K. (1) The Minister may appoint a person (who may be a member) to act as Chairman—

Acting
appointments
inserted by
No. 160, 1977,
s. 18

- (a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Where a person is acting as Chairman in accordance with paragraph (b) of sub-section (1) and the office of Chairman becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or the period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(3) The Minister may appoint a person to act as a member—

- (a) during a vacancy in the office of a member (other than the Chairman), whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when a member is acting as Chairman, is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(4) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(5) A person appointed under this section may resign his appointment by writing signed by him and delivered to the Minister.

(6) While a person is acting as Chairman or as a member under this section, he has, and may exercise, all the powers and shall perform all the functions of the Chairman or a member, as the case may be, and, if he is not a member, shall be deemed to be a member for the purposes of sections 79J and 79P.

(7) The validity of anything done by a person purporting to act under this section shall not be called in question by reason of any defect

s. 79K

or irregularity in or in connexion with his appointment or on the ground that the occasion for his so acting had not arisen or had ceased.

Leave of
absence
Inserted by
No. 160, 1977,
s. 18

79L. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation
of member
Inserted by
No. 160, 1977,
s. 18

79M. A member may resign his office by writing signed by him and delivered to the Governor-General.

Termination
of
appointment
Inserted by
No. 160, 1977,
s. 18

79N. (1) The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If a member—

(a) is absent, except on leave granted by the Minister or otherwise with the permission of the Minister, from 3 consecutive meetings of the Service;

(b) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or

(c) fails to comply with his obligations under section 79J, the Governor-General shall terminate his appointment.

Meetings
Inserted by
No. 160, 1977,
s. 18

79P. (1) The Service shall hold such meetings as are necessary for the performance of its functions.

(2) The Chairman may convene a meeting at any time, and shall convene a meeting when requested to do so by the Minister or by a majority of the members for the time being holding office.

(3) At a meeting a quorum is constituted by a majority of the members for the time being holding office.

(4) The Chairman shall preside at all meetings at which he is present.

(5) If the Chairman is not present at a meeting, the members present shall elect one of their number to preside.

(6) Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.

(7) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) The Executive Director shall, as far as practicable, attend all meetings, but, if the Service so directs, he shall temporarily retire from any meeting.

s. 79P

(9) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

Division 4—Administration of Service

Division 4
inserted by
No. 160, 1977,
s. 18

79Q. (1) There shall be an Executive Director of the Service who shall be the chief executive officer of the Service.

Executive
Director

Inserted by
No. 160, 1977,
s. 18

(2) The Executive Director shall be appointed by the Governor-General, and holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

79R. (1) The Executive Director shall be appointed for such period, not exceeding 7 years, as is specified in his instrument of appointment, but is eligible for re-appointment.

Term of
office of
Executive
Director

Inserted by
No. 160, 1977,
s. 18

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Executive Director and a person shall not be appointed or re-appointed as the Executive Director for a period that extends beyond the date on which he will attain the age of 65 years.

79S. Where, on the date on which a person becomes the Executive Director, the person has a direct or indirect pecuniary interest in a business carried on in Australia, or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as the Executive Director, he shall dispose of the interest within 14 days after that date.

Pecuniary
interests of
Executive
Director

Inserted by
No. 160, 1977,
s. 18

79T. (1) The Minister may appoint a person to act as Executive Director—

Acting
Executive
Director

Inserted by
No. 160, 1977,
s. 18

(a) during a vacancy in the office of Executive Director, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Executive Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Where a person is acting as Executive Director in accordance with paragraph (b) of sub-section (1) and the office of Executive Director becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

s. 79T

(3) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of an acting Executive Director; and
- (b) at any time terminate such an appointment.

(4) A person appointed under this section may resign his appointment by writing signed by him and delivered to the Minister.

(5) While a person is acting as Executive Director under this section, he has, and may exercise, all the powers and shall perform all the functions of the Executive Director, including powers and functions delegated to the Executive Director under this Part.

(6) The validity of anything done by a person purporting to act under this section shall not be called in question by reason of any defect or irregularity in or in connexion with his appointment or on the ground that the occasion for his so acting had not arisen or had ceased.

Leave of
absence of
Executive
Director

Inserted by
No. 160, 1977,
s. 18

79U. The Minister may grant leave of absence to the Executive Director on such terms and conditions as to remuneration and otherwise as the Minister directs.

Resignation
of Executive
Director

Inserted by
No. 160, 1977,
s. 18

79V. The Executive Director may resign his office by writing signed by him and delivered to the Governor-General.

Termination
of office of
Executive
Director

Inserted by
No. 160, 1977,
s. 18

79W. (1) The Governor-General may terminate the appointment of the Executive Director for misbehaviour or physical or mental incapacity.

(2) If the Executive Director—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) is absent from duty, except on leave granted by the Minister, for 14 consecutive days, or for 28 days in any 12 months;
- (c) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (d) fails to comply with his obligations under section 79S; or
- (e) acquires a direct or indirect pecuniary interest in a business carried on in Australia, or in a body corporate carrying on such a business, being an interest that could be in conflict with his duties as the Executive Director,

the Governor-General shall terminate his appointment.

s. 79x

79X. (1) The Service may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member, to the Executive Director or to an officer of the staff referred to in sub-section (1) of section 79Y any of its powers under this Part, other than this power of delegation.

Delegations
by Service
Inserted by
No. 160, 1977,
s. 18

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Service.

(3) A delegation under this section does not prevent the exercise of a power by the Service.

79Y. (1) The staff of the Service shall be persons appointed or employed under the *Public Service Act 1922*.

Staff
Inserted by
No. 160, 1977,
s. 18

(2) The Service may, with the approval of the Public Service Board, engage persons to perform services for the Service otherwise than as members of the staff referred to in sub-section (1).

(3) The terms and conditions of engagement of persons under sub-section (2) shall be such as are, with the approval of the Public Service Board, determined by the Service.

(4) The Executive Director has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Australian Public Service.

(5) For the purposes of sub-sections (5) and (6) of section 25 of the *Public Service Act 1922*, the Executive Director shall be deemed to be a Permanent Head.

Division 5—Finance

Division 5
inserted by
No. 160, 1977,
s. 18

79Z. (1) There are payable to the Service such moneys as are appropriated by the Parliament for the purposes of the Service.

Moneys to
be
appropriated
Inserted by
No. 160, 1977,
s. 18

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Service.

Amended by
No. 36, 1978, s. 3

s. 79ZA

Moneys of Service

Inserted by
No. 160, 1977,
s. 18

79ZA. The moneys of the Service shall consist of—

- (a) moneys paid to the Service under section 79Z;
- (b) moneys received by the Service in respect of the provision of services and facilities;
- (c) the proceeds of the sale or other disposition of any property of the Service (including programs and rights or interests in programs);
- (d) moneys received by the Service in respect of program sponsorship of a kind approved by the Minister;
- (e) any other moneys derived by the Service in the performance of its functions; and
- (f) any moneys received by the Service by way of, or as a result of, a gift, devise or bequest.

Application of moneys

Inserted by
No. 160, 1977,
s. 18

79ZB. The moneys of the Service shall be applied only—

- (a) in payment or discharge of expenses, obligations and liabilities of the Service arising under this Act; and
- (b) in payment of remuneration, allowances and fees payable to members, acting members, the Executive Director, an acting Executive Director and persons referred to in section 79Y.

Bank accounts

Inserted by
No. 160, 1977,
s. 18

79ZC. (1) The Service may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2) The Service shall pay all moneys received by it into an account referred to in this section.

Estimates

Inserted by
No. 160, 1977,
s. 18

79ZD. (1) The Service shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Service shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

(2) The moneys of the Service shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

Accounts and records

Inserted by
No. 160, 1977,
s. 18

79ZE. The Service shall cause to be kept proper accounts and records of the transactions and affairs of the Service and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Service and over the incurring of liabilities by the Service.

s. 79ZF

79ZF. The Service shall not, without the approval of the Minister, enter into a contract involving the payment or receipt of an amount exceeding \$100,000.

Limitation
on contracts
inserted by
No. 160, 1977,
s. 18

79ZG. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Service and the records relating to assets of, or in the custody of, the Service, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

Audit
inserted by
No. 160, 1977,
s. 18

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Service relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Service.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or a person authorized by him may require a person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Part, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence and is punishable, upon conviction, by a fine not exceeding \$200.

Division 6—Miscellaneous

Division 6
inserted by
No. 160, 1977,
s. 18

79ZH. (1) The Service shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister for Finance approves.

Annual
report
inserted by
No. 160, 1977,
s. 18
Sub-section (1)
amended by
No. 36, 1978, s. 3

s. 79ZH

(2) Before furnishing financial statements to the Minister, the Service shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt and expenditure of moneys, and the acquisition and disposal of assets, by the Service during the year have been in accordance with this Part; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Service shall furnish to the Minister such additional reports, with or without financial statements, as the Minister from time to time requires.

(4) The Minister shall cause—

- (a) copies of the report and financial statements of the Service furnished to him under sub-section (1), together with a copy of the report of the Auditor-General; and
- (b) copies of any report and financial statements furnished to him under sub-section (3),

to be laid before each House of the Parliament within 15 sitting days of that House after having been received by the Minister.

Application
of Act
Inserted by
No. 160, 1977,
s. 18

79ZJ. (1) Sections 60, 63, 64, 72 to 77 (inclusive), 78A, 112, 113, 113A, 115, 116 (other than sub-section (1)), 117, 117A, 118, 124A and 131 apply, with such exceptions and subject to such modifications and adaptations as are prescribed, in relation to the Service, to programs broadcast or televised under Part IIIA and to stations used by the Service as they apply in relation to the Commission, to programs broadcast or televised by the Commission and to stations used by the Commission.

(2) In sub-section (1), "station" means a broadcasting station, television station, broadcasting translator station, television translator station or television repeater station.

Part IIIB inserted
by No. 160,
1977, s. 18

Interpretation

Substituted by
No. 160, 1977,
ss. 19 and 18

Sub-section (1)
amended by
No. 210, 1978,
s. 3

PART IIIB—LICENCES

80. (1) In this Part, except where the contrary intention appears—

"applicant", in relation to a licence, means a person who has lodged an application for the grant of the licence in accordance with section 82;

"licence" means—

- (a) a licence for a commercial broadcasting station;