



**media, entertainment & arts alliance**  
the people who inform and entertain

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14 April, 2011

Ms Christine McDonald  
Secretary  
Standing Committee on Finance and Public Administration

By email

**Re: Inquiry into superannuation claims of former and current Commonwealth Public Service Employees**

Dear Ms McDonald,

Thank you for the opportunity to respond to your earlier invitation to make a written submission concerning the above matter.

The Alliance's Submission is attached.

It illustrates the inequity of our member's superannuation outcomes (arising from their employment experiences in connection with the Commonwealth Superannuation Fund) for both current and former employees of the ABC.

The Alliance has been pursuing the "Cornwell" issue for a number of years with the ABC. We are hopeful that the recommendations we propose in our Submission will be adopted to enable a fresh, joint approach to remedy this issue once and for all.

The Alliance would be pleased to offer any further assistance concerning the Committee's deliberations and I would request you contact National Claims Officer Debra Hannan in the first instance on telephone 02) 933 0978.

I can also be contacted on telephone 02) 9333 0944 or by email at [mark.ryan@alliance.org.au](mailto:mark.ryan@alliance.org.au) should you wish to discuss any matter further.

Yours faithfully

**Mark Ryan**  
**Acting Federal Secretary**





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## **Media, Entertainment & Arts Alliance**

### **Submission to the Senate Finance and Public Administration References Committee**

### **Inquiry into Superannuation claims of former and current Commonwealth public service employees**

**14 April 2011**

### **The Media, Entertainment & Arts Alliance**

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, dancers, symphony orchestra musicians, freelance musicians and film, television and performing arts technicians.

## Introduction

The Media, Entertainment and Arts Alliance (the Alliance) welcomes the opportunity to provide the following comments to the Senate Finance and Public Administration References Committee regarding the superannuation claims of former and current Commonwealth public service employees.

## The Alliance seeks that the Committee take the following actions

Based on the clear evidence presented to this Inquiry, the Alliance seeks that this Committee:

1. Make a finding that there exists a number of current and former Commonwealth employees, who have a claim to Commonwealth Superannuation entitlements (arising from the operation of the Commonwealth Superannuation Fund, characterised as “Cornwell type Claims, “the issue”);
2. Recommends that the Government establish, as soon as possible, a Cornwell Superannuation Panel comprised of appropriate persons, including legal, actuarial, employer and employee representatives. This Panel should be empowered to establish fair and equitable principles to guide future claims processes, having regard to the Government’s obligation to ensure consistency and equity in the impact of Government activities. In determining these Principles, the Panel should be further empowered to review the Department of Finance and Deregulation’s “Cornwell type Claims processes” and make recommendations to Government on how these processes would be improved to ensure it meets the Government’s stated obligation;
3. Further recommends the Government actively publicise the issue, including by public media in all states and territories, including identifying that current and former Commonwealth employees may pursue a claim for Commonwealth superannuation entitlements.
4. Further recommends that all claims subsequently made by:
  - \*Commonwealth - Retiree Claimants/or Claimants who have resigned; and
  - Claimants currently employed by the Commonwealth, which may include those who are able to demonstrate they were unaware of an entitlement to Commonwealth superannuation or given incorrect advice about their entitlements, which may also include Claimants who were only able to join the Fund at a later date during their employment,

**will not be barred from seeking a remedy due to the operation of any statute of limitations which may apply.**

\*this includes all Government entities however described

5. Further recommends that a data base should also be established to record the relevant details of any persons who have registered a claim, including those that may have claimed previously through Comcover or through other proceedings; and
6. Further recommends such Panel assess or cause to have assessed, the potential costs impacts of claims received to enable the Government to make provision for the necessary funds to meet such claims.

## **Background – How the Department of Finance and Deregulation treats “Cornwell type Claims”**

To be successful in making a “*Cornwell type claim*” the Department states that a claimant must demonstrate they:

- were eligible to apply to join the relevant Commonwealth superannuation fund in accordance with the superannuation rules applicable at the time of the alleged negligent misstatement;
- received incorrect advice (a negligent misstatement) from a person in authority that the claimant could not join the relevant superannuation scheme;
- relied on that advice and would have applied to join and would have been accepted into the superannuation scheme except for that wrong advice;
- are submitting a claim within 6 years of the date they retired, or from another statutory trigger which allows them access to their superannuation benefits; and can demonstrate that they suffered a quantifiable financial loss.

In issuing this advice the Department has not advised if it may be possible to lodge a claim in other circumstances. For example, where a claimant advises they were never aware of their option to join the Commonwealth Superannuation Fund.

On the Department’s website, it states “*At present the Commonwealth owes no statutory or general duty to advise in relation to a temporary employee’s eligibility to contribute to Commonwealth superannuation in the absence of a request for advice from the employee.*”

In other words, the Government (and presumably this would include Agency management) had no “positive obligation” to advise temporary employees of their superannuation options and entitlements.

This approach would appear to be contrary to the advice issued in 1949 by the Treasury Department. That advice was issued to all Agencies (including the ABC as part of the then Postmasters General Department) identifying, among other matters, how temporary employees may become a member of the fund and specifically requesting that Departments take the necessary action concerning their “Temporary” employees. *This Advice is attached.*

This approach is also contrary to the Government’s obligation to ensure consistency and equity in the impact of Government activities. The Department acknowledges this obligation when it refers to Act of Grace payments on their own website.

A number of Alliance members state in their case histories they were not aware that Commonwealth superannuation was available. Hence it would be difficult to make enquiries about such matters if employees were unaware of the fund’s existence.

To the best of our knowledge, the Alliance is not aware that Commonwealth Agencies have been pro-active in providing advice to staff about the impacts of the Cornwell Decision.

It is therefore unlikely that all current and former Commonwealth employees would be aware of the Department of Finance's website, which advises on the Cornwell Decision and the role of Comcover in processing these claims.

In any event, given the number of Agencies listed as part of the Inquiry's Terms of Reference, it is concerning to learn the Department advises there are approximately 21 cases currently listed with the courts. Of the hundreds of claims subject to the Comcover process, 4% are reported settled as successful claims.

Therefore, for the vast majority of Cornwell claimants pursuing a claim this is an exercise, for one reason or another, in futility.

An Alliance member [REDACTED] now retired from the ABC, advises that Comcover received notice of his claim on 26 May, 2007 and advised on 12 August 2008 that his claim was "statute barred".

*The letter advised: "As you accessed your superannuation on 20 August 2000 you had until 20 August 2006 to bring a claim. Under the statute of limitations legislation any claim you may have had is now statute barred, and has been so for two years. As any potential claim you may have had against the Commonwealth is statute barred, Finance proposes to take no further action with respect to your enquiry. If you wish to make any additional comments that you think Finance should take into account, please do so within 28 days from the date of this letter to:*

*Comcover*

*Superannuation Claims Management*

*Department of Finance and Deregulation*

*John Gorton Building*

*King Edward Terrace*

*PARKES ACT 2600*

*If Finance has heard nothing further from you within that time, we will consider the matter closed. You should of course feel free to seek independent legal advice including about any potential to commence legal proceedings and to apply to the court for an extension of time."*



**This letter is attached.**

## **What current and former ABC journalists have to say about their experience with Commonwealth Superannuation**

The following case histories identify the circumstances of Alliance members who are journalists, currently or formerly employed by the Australian Broadcasting Corporation (ABC).

These case histories demonstrate inconsistencies in the approach taken by the Australian Broadcasting Corporation (ABC) regarding staff's ability to access the Commonwealth Superannuation Fund.

A number of common themes emerge from these case histories.

Firstly, a number of Commonwealth employees were told directly by a responsible management person that as they were temporary employees (although full-time) they were not entitled to join the Commonwealth Superannuation Fund. This is despite the matter being brought up with management a number of times over a period of time.

Secondly, other employees state they were never advised of their ability to join the Commonwealth Superannuation Fund.

Some were not aware of the Commonwealth Superannuation Fund when they first commenced with the ABC, but later became informed and then joined it. In these circumstances, the affected employees rightly claim their superannuation entitlements should be backdated.

One or other of these experiences is repeated in the following case histories.

These case histories also demonstrate that journalists share common experiences concerning the advice or lack of advice given about the Commonwealth Superannuation Fund, regardless of their geographical location or the Department they worked in.

As indicated, the Alliance has also been pursuing the “Cornwell” issue for a number of years with the ABC.

In October 2010 the ABC agreed to issue a letter to staff advising of the Cornwell Decision and the potential implications this may have for certain ABC staff. As a result of that advice, around 100 staff from a range of occupations within the ABC made contact advising of their circumstances. **This does not include the many retired ABC staff that may simply not be aware of this issue.**

### **Next Steps**

In all of the circumstances, the establishment of a Cornwell Superannuation Panel is clearly needed to ensure a fair and equitable retirement outcome for those current and former employees who pursue an entitlement for Commonwealth superannuation.

We urge the Committee to adopt all the Recommendations we propose.

██████████ – Journalist, ABC Retiree

Not aware he was entitled to join the Commonwealth Superannuation Fund

-I joined the ABC as an experienced journalist

-I commenced work with ABC News at East Sydney as a full-time “temporary” employee in October 1976. I ceased employment with the ABC in 1985.

-I am 74 years of age

-I did not know when I started employment with the ABC that Commonwealth superannuation was available.

-I worked side-by-side with a ██████████ who joined the ABC as a cadet journalist in the late 60s.

-I subsequently learnt that ██████████ was in the Commonwealth Superannuation Fund.

-As ██████████ was allowed to be in the Commonwealth Superannuation Fund he enjoys the benefit of that fund in retirement, today.

-I did the same work, shared the same table (at times) and did the same type of assignments as ██████████

-Some of our stories were used on PM, AM, Double Jay and Triple Jay, and Drive.

-I’m also aware that some of the journalists on these programs at that time were described as ‘permanent’ and therefore entitled to superannuation.

██████████ and I were colleagues at ABC News, William Street Kings Cross, for a decade.

-My friend ██████████ receives a regular payment, whilst I receive nothing.

-Such an outcome is grossly unfair and needs to be rectified.

-In the circumstances I don’t believe its right for this unfairness to be compounded by any statute of limitations that might apply.

-Given my age, I would hope that action to rectify this will be taken sooner, rather than later.

██████████ – Journalist, ABC Retiree

Told he was entitled to join the Commonwealth Superannuation Fund – when he joined the ABC as a Cadet Journalist ██████████ still receives a Fund Pension.

-I commenced work around 1967 with ABC News at William Street Kings Cross, East Sydney as a full-time employee in the capacity of Cadet Journalist.

-As my career progressed I held the position as head of ABC News in Darwin and also worked as a Foreign Correspondent.

-I was also the staff-elected representative on the ABC Board for many years until this position was abolished in 1993.

-I retired from the ABC in 1996.

-I am 66 years of age.

-When I commenced employment I was informed by the Chief of Staff Secretary, ██████████ that I was entitled to join the Commonwealth Superannuation Fund.

-I was advised that the Fund was based on employer and employee contributions.

-I joined the fund and my contributions were deducted from my salary which commenced at 12 pounds and 10 shillings.

-As I was allowed to be in the Commonwealth Superannuation Fund I now continue to receive a pension from that fund in retirement which is \$800 a fortnight.

-During my time at ABC News East Sydney I formed a close and long working relationship with ██████████

-I did similar work and the same type of assignments as ██████████ and also shared workstations with him.

-I am aware other ABC Journalists may be in a similar situation to ██████████.

-Adequate superannuation is a must to ensure that retirement is able to be lived with dignity.

-I believe that the Government has a clear responsibility to fix up the inequitable treatment my former colleague ██████████ has endured (and others like him), now.

██████████ – ABC Retiree

Told he was NOT entitled to join the Commonwealth Superannuation Fund – when he joined the ABC as a journalist

-I joined ABC News in Newcastle, NSW in about 1969.

-I enquired about superannuation at the time and I was informed by the payroll/personnel staff I was not entitled to join the Commonwealth Superannuation Fund because I was a “temporary” employee. I may have been “temporary” but I was a full-time employee with the ABC from the outset.

-I knew about superannuation because my wife was a Teacher at that time with the NSW Government Teaching Service and was receiving superannuation benefits.

-I subsequently found out that journalists who had joined as cadets or as graded journalists recruited to current affairs, were provided superannuation straight away.

-When I was promoted in around 1973 and moved to Canberra, I enquired once again about joining the Commonwealth Superannuation scheme. Once again I was denied. I was given the same explanation as to why I could not access the scheme; because I was Temporary!

-I left the ABC briefly in 1977 and re-joined in 1979 and worked in Canberra as a full-time journalist till 1987. During that period I had risen to the top grade then available, the Super A, with a margin. I also became the Australian Journalists Association (AJA) Branch Secretary in Canberra.

-We (other ABC journalists in the same position) continued to raise the issue of being barred from accessing superannuation with the ABC but got nowhere.

#### **Where to from here?**

-The efforts of ABC journalists and others to obtain the benefits available from their employer when the Commonwealth Superannuation Fund was in operation have been futile.

-Those that have braved the rigours of the Comcover process (see ██████████’s story) have been further disappointed.

-Employees in these circumstances have been clearly discriminated against. Some may still not know of their lost entitlements. The circumstances of Retirees (many of whom would at least be approaching their seventies or could be older) need to be responded to as a priority.

-I seek that this Committee adopts the recommendations made in this Submission without alteration to ensure this pitiful situation is remedied, in all its aspects.

[REDACTED] – Resigned from the ABC

[REDACTED] Told he was NOT entitled to Join the Commonwealth Superannuation Fund – when he joined the ABC as a Journalist

[REDACTED] Case has already been provided to the Committee.

[REDACTED] would also like to add the following comments.

-I spent 27 years of continuous employment at the National Broadcaster which gave superannuation to some but not to others.

-I have been pursuing my case for over 4 years. Comcover has denied my claim. In the absence of the Government taking further action regarding this matter, I would need to pursue the matter legally. I believe I may need to do this by the end of this year, otherwise I might be prevented by the Statute of Limitations. Obviously such an undertaking would prove expensive in many respects and I don't believe this would be viable for me and my family members.

-Clearly this would be an unjust outcome and needs to be rectified by what ever means necessary.

- Consequently a very practical approach is needed to arrive at a solution which provides a fair outcome for all concerned. I wholeheartedly support what the Alliance proposes the Committee should do in this regard.

-I trust the Government will take the necessary action to ensure that my family and I, and others like me, will finally get some justice on this issue.

[REDACTED] Resigned from the ABC

[REDACTED] Told he was NOT entitled to Join the Commonwealth Superannuation Fund – when he joined the ABC as a Journalist.

[REDACTED] **Case has already been provided to the Committee.**

[REDACTED] **R [REDACTED] would also like to add the following comments.**

- [REDACTED]
- I spent 14 years of continuous employment at the National Broadcaster which gave superannuation to some but not to others.
  - Based on the submission I have provided to the Committee I believe I should have been included in the Commonwealth Super scheme.
  - The Cornwell case in principle would support my claim. However it is my understanding because of the time lapse involved since my resignation from the ABC, my claim and those of many others fall outside the parameters of the ruling.
  - In any event, I have since learnt that few claims have succeeded as a result of the claimants following the Comcover route and/or pursuing other legal remedies.
  - I therefore support the recommendations the Alliance proposes the Committee should issue.
  - I sincerely hope that at this late juncture, it will.

██████████ – Current Journalist ABC News

- I joined ABC's news room at Collinswood in South Australia on April 20 1985.
- I have continued to be a full-time employee since that time.
- I was wrongly advised when I asked about joining the Superannuation Fund that Journalists were temporary and could not join.
- This advice came from the SA News Editor's office and I was informed that I should make other arrangements.
- I therefore became a member of a private superannuation scheme, Scottish Amicable and paid personal contributions to that fund for several years.
- During the 1990's, I was advised I should retrospectively have been in the PSS fund as it was compulsory for ABC staff.
- As a result I had to back pay several years of contributions which was a heavy burden with a young family.
- I believe that for ABC journalists who fell into the "temporary" category, our experience overall with employer sponsored superannuation has been unsatisfactory.
- I would hope that for myself and my family and for other affected journalists that equity to superannuation entitlements can now be achieved.
- I trust that although this matter, regrettably, has such a protracted history, it will not deter the decision makers from doing the right thing.



Current ABC employee

- I commenced employment as a casual in the 2JJJ newsroom in February 1985.
- From 27th January 1986 I was on staff at 2JJJ as a producer/presenter and the ABC acknowledged me as a "temporary indefinite employee" from that date.
- I was told I was ineligible for superannuation.
- In February 1988 I moved from 2JJJ to Radio National and worked as a Broadcast Officer (Radio) in the Social History Unit, Science and the Talks Unit.
- It was during this period that I was advised by Human Resources that I was not eligible to join the superannuation scheme because I was not a permanent employee of the ABC – although my employment was full time and ongoing and I did attract redundancy rights. I was advised of my ineligibility by the ABC's Human Resources Department.

[REDACTED] – Current employee Sydney Symphony Orchestra (SSO)

NB: SSO was formerly part of the ABC

-I began full-time employment permanently by the Sydney Symphony Orchestra as associate principal French Horn on 01/03/1980.

-The then management of our orchestra never once explained to me anything about the Commonwealth Superannuation Scheme or my rights with respect to access to this scheme. On the contrary, the existence of this scheme was virtually kept a secret by that management and selected members of the orchestra at the time. Having just arrived from overseas, I did not even know what the meaning of the word "superannuation" was, since this is known in the US as an "individual retirement account", or IRA.

-I have remained employed in the same position, later (2001) with utility duties added to my job description.

- Our organisation was divested from the ABC on the 31st of December 2006, meaning that as of 01/01/2007 the members of the Sydney Symphony Orchestra were no longer able to contribute to their superannuation accounts with either the CSS or the PSS.

- As a result, out of the 32 years of my tenure with the Sydney Symphony Orchestra so far, I worked for more than a decade and a half as an employee of the ABC without a retirement scheme to which I was entitled, until such time as superannuation was made compulsory by the Federal Government.

- I would therefore like to be considered in any claim process being carried out in order to recover these entitlements, which would apply to my full-time work as Associate Principal Horn with the Sydney Symphony Orchestra from February 1980, until I compulsorily joined the PSS on 10/06/1996.

**██████████ – Resigned From the ABC, Former Journalist**

I joined the ABC in early 1986 as a journalist in the Albury office working full time. My access to Human Resources services was limited due to the Geography and my contact for all matters relating to my employment was through the Journalist in Charge ██████████

Upon starting work in Albury I requested information about superannuation, given that other PSU staff were covered by the Commonwealth Super scheme.

The journalaist in charge told me that 'new' journalists were only employed under the 'temporary industrial employee' category. My pay slips clearly indicated that I was employed in a full time capacity.

Twelce months into my employment at the urging of PSU employee ██████████ ██████████ I contacted the ABC HR department in Melbourne to seek admission to the CSS. I was again told verbally I was ineligible to apply because of my employment status as a 'temporary' employee.

I again inquired about my elibility when i was upgraded and moved to Melbourne in mid 1988. I was again told that 'journalists' did not qualify for CSS as they were 'part-time employees.

I was made redundant in early 1997 and what super I did have in other default scehmes (including JUST) was rolled over into a private fund.

I believe I was wrongly denied the opportunity to participate in the super scheme, which has had a large bearing on not only my preserved super earnings, but indeed also decisions related to my ongoing employment at the abc.

I would like to receive further advice and correspondence as it relates to this case going forward.



[REDACTED] – Retired ABC Journalist

-I was employed by ABC News from 03/03/75 till 06/11/85 when I transferred to the Australian Government Department of Agriculture.

-However I did not join the Commonwealth Superannuation Scheme until 31/03/82, when I learnt that I had been incorrectly advised that I was ineligible to join. I continued as a CSS member until my retirement from the Dept of Agriculture on 10/09/09.

-As I'm sure you can imagine my family and I have a fairly big interest in any suggestion that my super might be backdated by seven years after 27 years of contributions.

- I therefore support the Recommendations proposed by the Alliance. I hope for all concerned the Committee adopts them.

██████████ – Former ABC Journalist

- I joined the ABC Newsroom as a journalist in Perth in September 1968. At that time journalists were classed as temporary employees. In 1972 I was promoted (from a C Grade to a B Grade) with the start of TV in Darwin. I was never advised that I was eligible to join the Super Scheme after three years service with the ABC.
- None of my fellow journalists were told they were eligible to join the ABC Super Scheme.
- I worked for the ABC until July the first 1978 (Self Government Day) when I left to join the new NT Electricity Commission as Public Relations Officer.
- In 1981 I left Darwin for overseas, returning in about August 1982 to a B Grade journalist's position back in the ABC Newsroom. As far as I was aware no journalist in Darwin was contributing to the ABC Super Scheme.
- In October 1983 I left the ABC for the National Media Liaison Service which I held until the Keating Government fell in 1996. Soon after that I was invited to rejoin the ABC (again) where I did work in Radio News, Stateline and as a producer on the Australia Television News before joining ABC Archives where I remained until 2001. Some time during this particular period I went from a casual to a full-time employee and (following the compulsory Super rules introduced by Keating) began contributing to the PSS -- the CSS having been closed off by that time.
- In short I believe I was entitled to participate in the ABC Super scheme from at least September 1971 until July 1978, and possibly for the 1982/3 year that I worked there.