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27 November 2018

Ms Christine McDonald
Secretary
Environment and Communication References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms McDonald,

Inquiry into the allegations of political interference in the Australian Broadcasting Corporation

Thank you for the invitation to provide a written submission addressing issues that may be of relevance to the Committee's inquiry. I make these submissions in my own right and not on behalf of any other person or organisation.

I have considered the Committee's Terms of Reference. I will address those items in the Terms of Reference about which I have direct or personal knowledge. In these submissions, I will not speculate about the reasons or motives of others.

Opening remarks

I remain devastated by the termination of my appointment as Managing Director.

On 18 December 2015 I was appointed the Managing Director of the ABC pursuant to s 13 of the *Australian Broadcasting Corporation Act 1983* (Cth) (**ABC Act**) and a Deed of Appointment.

Section 13(1) of the ABC fixes the Managing Director's term for 5 years. My term was fixed for a period of 5 years concluding on 4 July 2021. My intention at the time of my appointment and at present is to serve my 5 year term and discharge my responsibilities pursuant to s 9 of the ABC Act and the Charter.

Section 13(3) provides that the Managing Director holds office 'subject to this Part' (being Part III of the ABC Act) on such terms and conditions to be determined by the Board. The Board's functions described in s 8 of the ABC Act do not extend to varying s 13(1) of the ABC Act. Unlike other provisions in the ABC Act with respect to directors (see s 18), the ABC Act does not provide for the removal of the Managing Director appointed under s 13(1) of the ABC Act.

On 24 September 2018, Mr Justin Milne handed me a letter notifying me I was terminated with immediate effect. A copy of the letter is **annexed**.

It was in effect a summary dismissal. I was required to leave immediately. I was not given the option of working out the 12 month notice period provided by the Deed of Appointment.

The Board has not explained its reasons for the termination of my employment. It cites a loss of confidence and trust in my capacity to lead the ABC in the letter but does not explain what or why it has formed this view.

Likewise, there was nothing that required my immediate termination. There was no urgency. The Board has never explained the urgency. Why did it require my immediate and summary termination?

When I reflect on the events of September, I look back at months of growing undue pressure by the then Chair of the ABC to fire journalists in order to “please the Government” and as a quid pro quo for supposed funding of \$500 million for Project Jetstream. When I disagreed with the Chair, the pressure increased.

In those circumstances, I had nowhere to go to raise the appropriateness and the impact of this pressure and intervention by the Chair. When I did raise it with individual Board members, they said they were supportive of me personally but were not prepared to confront the Chair. They viewed my concerns as a personal matter between me and the Chair. They either did not understand or want to understand how the then Chair’s pressure was impacting on my role and more importantly the independence of the ABC.

I understand that the Board believed that I had not provided leadership on editorial matters on the basis that I had not sufficiently addressed poor content or performance with respect to:

- The ‘c’ word on *Tonightly*
- Emma Alberici
- Andrew Probyn
- Jon Faine

I responded to this assertion by the Board in a letter on 21 September 2018. I explained that the ‘concerns’ misunderstood the nature of my role as editor in chief of the ABC and the Board’s role in relation to editorial oversight and governance. I received no response to my letter. Two days later, the Board resolved to terminate my appointment.

The potential for pressure from the Chair remains an issue for any future Managing Director. I was confronted with the situation where I had to protect the editorial independence of the ABC from the actions and express wishes of the ABC Chair.

The ABC’s editorial policies and the Managing Director’s role as editor in chief

One of the key issues arising from the termination of my appointment is the Managing Director’s role as editor in chief.

The Managing Director’s role is set out in ABC’s editorial policies. The policies are published and transparent, and are the most rigorous in the country.

Alan Sunderland is Editorial Director of the ABC. He reported to me as Managing Director and was a key member of the Leadership Team. He was responsible for ensuring the ABC meets its editorial standards.

The ABC's [Editorial Policies](#) set out the guiding principles of the ABC's editorial approach and the enforceable standards ABC staff must follow. These Policies are approved by the Board of the ABC as are any amendments to the Policies. Item 1 provides:

1 INDEPENDENCE, INTEGRITY AND RESPONSIBILITY

The trust and respect of the community depend on the ABC's editorial independence and integrity. Independence and responsibility are inseparable. The Managing Director is the Editor-in-Chief who has ultimate editorial power and responsibility.

Editorial decision-making at the ABC is based on upward referral. Those who create, acquire, commission or oversee ABC content are responsible for ensuring that it complies with the Editorial Policies, but they are also required to upwardly refer any editorial matter where they are in doubt. Editorial content that is controversial or likely to have an extraordinary impact should also be upwardly referred, even if there is no doubt, to allow closer consideration of any editorial policy issues.

Upward referral is made to line managers and to appropriately senior people within Divisions who are designated with responsibility. In addition, editorial advisers are available and should be consulted for advice and guidance.

Where an editorial issue is being upwardly referred to the Managing Director, it must first be referred to the Editorial Director for input and advice.

The ABC also has more detailed [Editorial Guidance](#), which provides staff with practical advice on how to meet the editorial standards. The more detailed Editorial Guidance Notes were approved by the Leadership Team.

The ABC has in place a system and process for managing editorial issues and concerns. It also has in place a process for managing complaints.

ABC Board's role in editorial matters

The ABC Board is required by s 8(1)(e) of the ABC Act to develop a code of practice relating to its television and radio programming, and to notify this code to the Australian Communications and Media Authority (**ACMA**). The [Code of Practice](#) was approved by the Board in 2011 and revised in 2016.

During my time as Managing Director, I discussed editorial governance extensively at Board meetings.

I worked closely with Alan Sunderland, the ABC's Editorial Director, and Mr Milne on board ownership of the editorial policies.

In particular, in the period from June 2018 onwards, these included:

- on 21 June 2018, at the Adelaide Board meeting, I discussed the different categories of errors of our journalists and presenters;
- on 10 August 2018, I followed up with a paper at the Brisbane Board meeting presented by General Counsel Ms Connie Carnabuci and Mr Sunderland which the Board discussed in detail and I understood the Board to be satisfied with the presentation; and
- on 31 August 2018, Mr Milne wrote to the Minister for Communications updating him on steps the ABC Management and Board had taken on Editorial Policies, in particular the establishment of an editorial sub-committee of the Board and the roll out of an FY19 training program for compulsory editorial policies and legal training.

Approach taken by ABC Board Chairs to editorial matters

My observations in my time as Managing Director under two different Chairs – the Hon James Spigelman AC QC and Justin Milne are as follows.

Mr Spigelman AC QC

Mr Spigelman AC QC was scrupulous with governance and oversight. He was incredibly supportive of the transformation to be undertaken, as was the rest of the Board. While his intellect and inquisitiveness could be intimidating, he was a great sounding board with impeccable judgment. We disagreed from time to time but we resolved issues in a respectful manner in the best interests of the ABC.

Mr Spigelman zealously defended the independence of the ABC from government. For example, in the Enterprise Agreement negotiations in late 2016, he accused the government of posing a fundamental challenge to the independence of the ABC by attempting to influence staffing policies. The government was furious about the ABC going direct to employees to vote on a new three year pay deal.¹

When chaired by Mr Spigelman, the Board instigated editorial reviews conducted by third parties, for example on business coverage.

Mr Milne

Mr Milne was appointed on 1 April 2017.

The Board when chaired by Mr Justin Milne was more interventionist on editorial matters and focussed on individuals rather than processes and governance around particular incidents.

The first example of intervention by Chair was the triple j Hottest 100.

On 2 November 2017, I convened a teleconference with the ABC leadership team to discuss the proposal to change the date of triple j's Hottest 100. Triple j management had commissioned extensive independent research showing a majority of triple j listeners favoured moving the date.

This change was not a matter that required Board approval. However, I was aware it would be controversial and I wanted the Board to be aware of the change. I notified the Board about the decision and sought its support of the Leadership team. Mr Milne thought we were front running the issue and told us we were making a huge mistake as he thought a majority of Australians were in favour of Australia Day. I pointed out the difference between the triple j audience and the broader ABC audience and that the reason for the move was to depoliticise the Hottest 100 rather than be caught up in the debate. He was very unhappy with the decision but the rest of the Board supported the Leadership Team decision.

What I did not know at the time was Mr Milne had intervened with triple j staff directly and without prior consultation to me. He did not disclose this to me or, as far as I am aware, to other members of the Board. It was not until about August 2018 that I learned of this intervention when I had a conversation with Mr Michael Mason, ABC Director for Regional and Local. During that conversation, he told me Mr Milne spoke with triple j staff in or around November 2017 directly

¹ <https://www.smh.com.au/public-service/its-on-government-says-abc-offered-staff-a-soft-pay-deal-20161028-gscpso.html> and <https://www.smh.com.au/public-service/abc-management-snubs-government-with-new-enterprise-agreement-20161027-gsbq3a.html>;

about the proposed change of date to triple j's Hottest 100, telling staff that they should not change the date because "*Malcolm will go ballistic*".

I had not experienced the former Chair engaging directly with staff in this way, particularly with concerns about what the Government would think about particular decisions or proposals. In my view, it was wholly inappropriate for Mr Milne to engage with triple j staff in that manner and totally undermined the role of those with particular responsibility for these matters.

When Mr Milne assumed the Chair, there was definitely a change in Board dynamics. It was clear Mr Milne did not feel a need to include the entire Board in discussions of strategy or technology. He treated it as something he was working on with me (and the Leadership Team).

Specific editorial issues

Tonightly

On 3 May 2018, I received an email from Mr Milne about a sketch on the *Tonightly* programme about the Batman by-election. In that email, Mr Milne complained about the language used on the programme and stated "*Not one person I have spoken to thinks this is ok – including Labor politicians who think we are crazy.*"

I forwarded Mr Milne's email to Dr Kirstin Ferguson, a board member. I said in that email to Dr Ferguson "*I can't do this anymore*". Dr Ferguson and I had a subsequent phone call where I expressed significant frustration that Mr Milne did not understand the harm and offence standards and that the reasonable person test had to be in the context of the audience for the particular programme and the context for that programme. Dr Ferguson expressed her concern for me during the phone call. Dr Ferguson told me I had the support of the Board.

On 16 June 2018, Mr Milne sent me an email directing me to ensure staff on the *Tonightly* show use better judgment when it comes to profanity. In his email, Mr Milne said, "*we can't afford to make more mistakes with this sort of stuff. It's not Ok to call someone a c... [expletive] on an ABC comedy show.*"

On 26 July 2018, the Australian Communications and Media Authority finalised their investigation into the Batman sketch on the *Tonightly* programme and found no breach of the ABC Code of Practice regarding the sketch.

I discussed this issue extensively at Board meetings. I formed the view that the real issue appeared to be that Mr Milne could not be convinced that the "reasonable person" test did not mean everyone he knew. I stressed the context in which the language was used was important.

The issue with the Chair's complaints about the *Tonightly* sketch was that he failed to recognise there were established processes to deal with complaints about such editorial content.

Emma Alberici

Emma Alberici's online stories on corporate tax in February 2018 were found by the ABC to contain nine errors in fact as well as omissions of fact that required editing and a number of elements in the story (including the headline) were misleading.

As I said in Senate Estimates in February 2018, the ABC had "clearly failed" by publishing a news story and analysis article by Ms Alberici. In particular, the analysis article showed a lack of impartiality. The ABC amended the news article and removed the analysis article on 15 February. It was extensively rewritten and republished a week later.

The ABC Director of News Gaven Morris emailed deputy news director Craig McMurtrie at 7.07am on 14 February 2018, very soon after the articles were uploaded and published, raising concerns about the articles. The email read: *"Are we sure about this? Did we give the companies listed a chance to respond? It's a great story if true. My worry is it sounds too sensational to be true – and it'd be good to know we had a rock solid process of checking and vetting the facts."* This was almost 12 hours before the then Prime Minister's office emailed a complaint to the ABC.

I handled this issue with Mr Morris and Mr Sunderland in February 2018. I kept Mr Milne apprised but he did not at that time give me any directions about the articles or Ms Alberici. I also recall that after corrections were made and the articles reposted that Mr Milne emailed me, Mr Morris and Mr Sunderland (copying in the Board) congratulating us on the professional way in which we dealt with complaints and our actions in a highly visible and controversial period. I also received letters of complaint from the CEO of Qantas and the Business Council of Australia, to which I responded.

There were definite consequences around the February articles. These included restructuring the team to make sure there was more accountability, especially around digital. There was also a conversation with Ms Alberici that included a reprimand, and a conversation with her editors.

Following on from that, in the period from approximately April to May 2018, Mr Milne told me that Emma Alberici, ABC Chief Economics Correspondent, should be "*fired*". This was repeated to me by Mr Milne on multiple occasions, including in email, WhatsApp messages, on the phone and in person.

On or around 8 May 2018, a complaint was made by the then Prime Minister Malcolm Turnbull's office to Mr Gaven Morris, ABC Director of News, in relation to a story by Ms Alberici on innovation. I received an email with this complaint and forwarded it to Mr Milne.

On 8 May 2018, I received an email from Mr Milne which states *"After two glasses of red – of course there's an agenda. They fricken hate her. She keeps sticking it to them with a clear bias against them. We clear her as ok. We r [sic] tarred with her brush. I just think its's [sic] simple. Get rid of her. My view is we need to save the corporation not Emma. There is no g'tee [sic] they will not win the next election..."*

I was shocked to receive this email. I considered that it was extremely inappropriate as it was a clear attempt to compromise editorial independence. The key message I took from that email was that it is a quid pro quo – that we had to *sacrifice Emma* for the greater ABC. This is where Mr Milne and I had a fundamental disagreement.

Based on my conversation with Mr Morris about the innovation article, there didn't seem to be a serious problem with accuracy. Following an investigation, one minor error was found – Dr Green was referred to incorrectly – and this was changed.

On or about August 2018, Mr Morris had a conversation with me and said words to the effect of: *"Justin [Milne] WhatsApped me with comments and complaints from Malcolm [Turnbull] about editorial issues but I told him this was inappropriate and that he needed to stop contacting me in this way."*

Andrew Probyn

On 15 June 2018, Mr Milne sent me a text message saying: “*Would you have time for a download of the meeting [that morning Mr Milne met with Mr Mitch Fifield, Federal Minister for Communications, and Mr Turnbull, the Prime Minister] by phone at about 4 today?*”

On or around 4.00pm on 15 June 2018, Mr Milne telephoned me. During this telephone conversation, which lasted for approximately 30 minutes, words to the following effect were spoken:

- Mr Milne: *“Malcolm hates Probyn [Mr Andrew Probyn, ABC Political Editor] and you have to shoot him.”*
- Me: *“I can’t do that. The Audience and Consumer Affairs Investigation is still continuing. In any event, I can’t fire a journalist for making a mistake, I probably make ten mistakes a day, and that can’t be the test for firing someone.”*
- Mr Milne: *“Your mistakes don’t upset the Prime Minister.”*
- Me: *“That can’t be the test for termination of an employee. The ABC can’t be responding or be seen to be responding to pressure from the Government.”*
- Mr Milne: *“Andrew is a problem, we need to deal with this and get rid of him. You are putting the future of the ABC at risk as we are asking the Government for half a billion dollars for Jetstream [a technology platform to host all ABC digital content]. We won’t get it by annoying the Government.”*
- Me: *“You can never make the Government happy”*
- Mr Milne: *[Yelling] Don’t you get it?”*
- Me: *“There is no sense that the Government will give us that funding.”*
- Mr Milne: *[Yelling] Are you are calling me a liar?”*
- Me: *“No, of course not. But we need to let our processes work.”*

(the 15 June Telephone Discussion).

During the 15 June Telephone Discussion, Mr Milne was loud and aggressive. He berated me, kept interrupting me and not letting me finish my sentences. I was distressed by my conversation with Mr Milne, shaking and close to tears.

Jon Faine

In mid-June 2018, Jon Faine a presenter on radio ABC Melbourne was publicly critical of me and the Chair for not standing up to ABC critics and defending the broadcaster.

One member of the Board, Dr Vanessa Guthrie, was critical of me that I did not reprimand Mr Faine for his criticisms of me. Dr Guthrie also expressed concern, as did Ms Georgie Somerset, another member of the Board, that Jon Faine did not uphold the values of the ABC in his interviews, including with a disability campaigner, Carly Findlay in April 2018. Mr Faine apologised on air for that interview and he had been spoken to by radio management.

I did not agree with Dr Guthrie and Ms Somerset. I did not consider it appropriate to reprimand or sanction Mr Faine because he was critical of my role as Managing Director.

ABC Funding and influence

In mid April 2018, I was told by the Secretary of the Department of Communications and the Arts, Mr Mike Mrdak that the Government was eliminating indexation from the ABC's funding from financial year 19/20. This cut amounted to about \$83m over three years. We also understood we were losing enhanced news funding from 1 July 2019 of \$13m a year and there would be an efficiency review undertaken into the ABC and SBS.

In my view, it was clear that there was no chance the ABC would receive any more funding from this Government in tri-funding negotiations, which had not yet even started. However, Mr Milne wanted me to "put this behind us and stick to our current plan" [ie Project Jetstream]. I formed the view Mr Milne's priorities were misplaced, and that the ABC needed to consider the implications of the budget cut that would take effect on 1 July 2019.

With that background, during Budget week, from 7 to 10 May 2018, I travelled with Dr Guthrie to Western Australia to visit the ABC offices in Kalgoorlie, Albany, Bunbury and Perth. During this trip, I explained to Dr Guthrie that Mr Milne was putting me under significant pressure in relation to my role as Managing Director and Editor in Chief and that I felt alone in protecting the ABC's independence from the Government.

On 8 May 2018, whilst I was with Dr Guthrie, I received a text from Mr Milne saying: "*I reckon we put this behind us and stick to our current plan. It's the big prize we want not the little one.*" I understood Mr Milne to be referring to the half a billion dollars for Jetstream as the 'big prize'. I formed the view Mr Milne's priorities were misplaced, and that the ABC needed to consider the implications of the budget cut that would take effect on 1 July 2019.

I asked Dr Guthrie for advice on how to respond to the pressure that Mr Milne was placing on me. Dr Guthrie told me that I would have to find a way to work on my working relationship with Mr Milne. She had no specific suggestions on how I might do that but she continued to say that she was highly supportive of me. I subsequently raised the same issues with other Board members, Donny Walford and Joe Gersh, who also took no actions in response to my complaints.

Concluding comments

The issues I have raised cannot be dismissed as personal differences between me and Mr Milne. That is not the issue. It is apparent that my employment was terminated for an unlawful reason, namely that I made complaints about Mr Milne's conduct towards me, including his attempts at political interference.

I observed Mr Milne's perception of his role as Chair as being a "conduit" to Government. I certainly felt that Mr Milne amplified (rather than resisted) any actual or perceived concerns of the Government when he dealt with me, particularly from April through to September 2018.

The ABC Act provides for a fixed 5 year term for the Managing Director. The fixed term provides certainty and stability for that period. It also provides a means of ensuring independence in the sense that the Managing Director's tenure is not at the whim of government or the Board. I was appointed to lead the ABC through a period of significant planned change, so security of my tenure was important for me to get the job done. If the Managing Director's fixed 5 year term is to be terminated early, there should be clear, transparent, compelling and lawful reasons to justify early termination. In my case, there were no clear, transparent, compelling nor lawful reasons.

Further, I believe that my resistance of Mr Milne's attempts at editorial interference soured our professional relationship and was a significant cause of what I later learned was his frustration with me in the job as Managing Director. Despite raising Mr Milne's interference with various Board members, none gave me any concrete advice or intervened in any way to help stop the Chair's behaviour.

It is for this reason, I have had no option but to challenge the decision to terminate my appointment. For me personally, this is painful. My character, reputation and life are now on public display and the subject public commentary. The absence of any clearly stated reasons has resulted in speculation about my professionalism, skills and capacity. I take pride in my professionalism and my achievements at the ABC during the two and a half years I was in the role.



24 September 2018

Ms Michelle Guthrie
Managing Director
Australian Broadcasting Corporation

By Hand

Dear Michelle

RE: Termination of your appointment to the role of Managing Director

I regret to inform you that the Board has authorised me to provide you with written notice that it has resolved that your appointment to the role of Managing Director of the ABC be terminated pursuant to clause 16.2 of your Deed of Appointment dated 18 December 2015.

The termination takes effect immediately upon delivery of this notice to you.

As you know, this decision follows a number of discussions. The Board has also considered the open letter provided by you on Friday evening 21 September. The Board remains collectively of the view that it no longer has confidence and trust in your capacity to lead the organisation. As such it has determined that it is in the best interests of the ABC to terminate your appointment immediately.

In due course, you will receive a payment of a sum calculated pursuant to the formula set out in clause 16.2, as well as any accrued but untaken leave entitlements which are payable upon termination of appointment.

I remind you of your obligations under clause 16.10 to return all ABC property and under clause 13 regarding confidentiality and non-disclosure.

Yours sincerely,

Justin Milne
Chairman