

13 November 2018

Committee Secretary  
Senate Standing Committees on Environment and Communications  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Committee Secretary

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

I welcome the opportunity to make a submission to the Senate Standing Committees on Environment and Communications (**Committee**) regarding the above inquiry.

I was the Chairperson of the Board of the Australian Broadcasting Corporation (**ABC**) from 1 April 2017 to 27 September 2018. I have held senior leadership roles in Telstra, Microsoft and OzEmail, and presently am a non-executive director of Tabcorp and NBN Co Limited and Chairman of MYOB Group Limited and NetComm Wireless Limited.

It was my honour and an enormous privilege to serve the Australian public as Chairperson of the ABC. It was a role I did not take lightly and one where I used best efforts to ensure that the ABC fulfilled its duties of independence, integrity, impartiality, accuracy and robust editorial standards as required by the *Australian Broadcasting Corporation Act 1983* (Cth) (**ABC Act**).

#### **Executive summary**

The key points of this submission are as follows:

- after very careful consideration by the Board, Ms Guthrie was terminated due to poor leadership skills leading to a loss of confidence and trust in her by the Board of the ABC (**Board**) and many of its employees;
- I have always been aware of my legal, ethical and fiduciary obligations as Chairperson and have never allowed any of my personal views or relationships to interfere with the discharge of my duties. I am also aware of my obligations under the ABC Act. These obligations have always been front of mind while I was Chairperson of the ABC;
- I have never allowed any politician or government body to influence or attempt to influence my role as Chairperson of the ABC and unequivocally reject any and all allegations of political or government influence, attempted or otherwise with the ABC. I have exercised my own judgment in the discharge of my duties as Chairperson of the ABC in the pursuit of the best interests of the ABC, its employees and the Australian public at all times and have acted with the complete support of the Board at all times;
- there may be an opportunity to provide greater funding certainty for the ABC; and
- although the ABC already demonstrates strong editorial independence, there may be scope for legislative change to further strengthen editorial independence.

#### **The termination of ABC Managing Director, Ms Michelle Guthrie**

Ms Guthrie was the Managing Director of the ABC from 4 April 2016 to 23 September 2018 and her employment commenced prior to my appointment as Chairperson of the ABC.

The termination of Ms Guthrie was carefully considered by the Board over the course of approximately three months. At all relevant times, the Board understood the significance of the termination of Ms Guthrie and the impact it would have on the ABC and were of one mind.

The following events and factors were relevant to the Board's decision to terminate Ms Guthrie:

- 1 during March 2018 and April 2018, a 360 review (**360**) regarding Ms Guthrie's performance as Managing Director was undertaken. A 360, is a survey which is completed by the relevant person's supervisors and their subordinates. In the case of Ms Guthrie, the survey was completed by Board members and those employees of the ABC that reported to Ms Guthrie;
- 2 the results of Ms Guthrie's 360 were extremely poor and unexpected and this was of very significant concern to the Board. Ms Guthrie scored below the tenth percentile in many categories assessed by the 360, whereas the average score for Chief Executive Officers globally is above the 66<sup>th</sup> percentile. Of particular note was the fact that Ms Guthrie's score for integrity was in the 4<sup>th</sup> percentile (meaning only four percent of people scored below her and 96% scored above) whilst her score for parameters such as autocracy, arrogance, criticism and distance was in the 90<sup>th</sup> percentile;
- 3 Ms Guthrie was asked to complete 360 surveys for several of her subordinates, however she only completed two surveys despite numerous requests by the consultant conducting the survey process;
- 4 on or about 22 May 2018, Dr Kirstin Ferguson, a Board member and Chair of the People and Remuneration Committee met with Ms Guthrie, the 360 consultant and I to discuss Ms Guthrie's results. Ms Guthrie failed to provide her 360 results to us prior to the meeting. Further, Ms Guthrie failed to address the 360 results in the meeting and chose instead to discuss the poor workplace culture of the ABC;
- 5 on or about 21 June 2018 in Adelaide, the Board held an in camera meeting to discuss Ms Guthrie's 360 results. Donny Walford, a board member, HR consultant and an expert in the 360 tool carefully explained the results to the Board. The Board was very concerned and asked Ms Walford to coach Ms Guthrie on the areas of concern;
- 6 in about mid-July, a further meeting between Dr Ferguson, Ms Guthrie and I was held to discuss the 360 results. During this meeting, Ms Guthrie made it clear that she was unwilling to change her leadership style. Ms Guthrie also expressed the view that she was not liked by her team as a result of her being a "change agent". It is my view that whilst people are sometimes resistant to change, this is not an excuse to be a poor leader with an inability to engage with her staff;
- 7 on or about 10 August 2018, a Board meeting was held to allow Ms Guthrie an opportunity to address her unsatisfactory leadership skills and her plans for the ABC over the next two years. Ms Guthrie's proposal for the ABC was concerning and in particular, the fact that she wished to replace virtually of all her senior management team;
- 8 on or about 19 August 2018, the Board held an in camera meeting to discuss Ms Guthrie's future at the ABC. All Board members were extremely concerned about Ms Guthrie's performance as Managing Director;
- 9 on or about 22 August 2018, a meeting with Ms Donny Walford, Ms Guthrie and myself (**22 August Meeting**) was held to inform Ms Guthrie that the Board had lost confidence in her as Managing Director of the ABC and specific concerns including her engagement with staff, the 360 results and a lack of unity within her team;
- 10 on or about 30 August 2018, during a conversation between Ms Guthrie and Ms Walford, Ms Guthrie raised allegations of inappropriate conduct by me for the first time but declined to lodge a formal complaint. These allegations will be addressed in greater detail below;
- 11 between 7 September 2018 and 21 September 2018, the board held a further six in camera meetings to discuss the future of Ms Guthrie whilst a sub-committee of the Board and the Board's external lawyers attempted to negotiate a dignified and mutually agreed separation with Ms Guthrie and her lawyers; and
- 12 on or about 23 September 2018, after failed negotiations with Ms Guthrie for a mutually agreed separation, the Board decided to terminate Ms Guthrie's employment with the ABC. The Board was unanimous in its view that Ms Guthrie's departure was in the best interests of the ABC. It is important to note that I **abstained** from voting on the resolution to terminate Ms Guthrie's employment.

As can be seen from the series of events set out above, the Board and I have always taken a very considered and careful approach to the decision to terminate the employment of Ms Guthrie. For the

avoidance of doubt, I **did not** vote on the resolution to terminate Ms Guthrie. This decision was not made hastily or in a retaliatory manner. It was made over the course of approximately three months based on the following:

- Ms Guthrie's demonstrated lack of leadership skills;
- failure to satisfactorily address the Board's concerns about her performance;
- the Board's loss of confidence and trust in Ms Guthrie; and
- the best interests of the ABC and the Australian public.

### **The conduct of the Chair and the Board**

I note that Ms Guthrie has made allegations of inappropriate conduct by me including the following:

- that I have inappropriately touched her back during a dinner with ABC staff and Board members;
  - that I have referred to her as "*the Missus*"; and
  - that I have referred to women as "*chicks*" and "*babes*";
- (collectively, the **Misconduct Allegations**).

I emphatically and unequivocally deny that I have inappropriately touched Ms Guthrie. I have never had any inappropriate contact with Ms Guthrie and note that she has not provided any evidence or identified any witnesses that are able to corroborate her allegation. Nor, at a specially convened meeting between Mr Joe Gersh, a member of the Board and lawyer, did Ms Guthrie elaborate or lodge a formal complaint.

I have never referred to Ms Guthrie as "*the Missus*". I acknowledge that I have used the terms "*chicks*" but never as a pejorative or in a denigrating manner. I have an impeccable record of employing, promoting and working with women and am currently coach to a number of Australia's female business leaders in both the public and private sector.

On or about 23 September 2018, in response to the Misconduct Allegations, I proposed that the Board commence a confidential, independent and external investigation into the matter. As the subject of the investigation, I had nothing to gain by effectively asking for my conduct to be comprehensively reviewed and scrutinised. The Board, including myself voted unanimously in support of this investigation

Based on the fact that Ms Guthrie only raised the Misconduct Allegations after the 22 August Meeting when it was made clear to her that the Board had lost confidence in her leadership, it can be inferred that the Misconduct Allegations were made:

- strategically in an effort to secure an advantageous bargaining position regarding her exit from the ABC and any related litigation. Following the events leading up to Ms Guthrie's termination, a reasonable person in Ms Guthrie's position would have considered that there was a real possibility of termination;
- with the intent to cause damage to my personal and professional reputation; and
- to cause embarrassment.

I have always treated Ms Guthrie with the utmost respect and professional courtesy despite our differing views on certain issues concerning the ABC. I acknowledge that Ms Guthrie and I have had two spirited debates about areas of professional disagreement, however I have never denigrated her nor have I treated her in an abusive manner. Those debates were between equals. I characterise those debates as spirited, professional and well-intentioned on both parts.

The conduct of the Board in relation to the termination of Ms Guthrie is set out in detail above. I repeat that it is my view that the Board has always effectively managed conflict of interests (ie I abstained from voting on the termination of Ms Guthrie after she raised the Misconduct Allegations) and considered such a significant decision with all due care and responsibility.

### **The structure, composition and appointments of the ABC Board**

Non-executive directors of the Board are appointed based on the recommendations of an independent nomination panel of three to four members (**Nomination Panel**). The Nomination Panel is appointed by the Secretary of the Prime Minister's Department under section 24F of the ABC Act.

The Nomination Panel is responsible for conducting a merit based selection process in accordance with criteria set by the Minister for Communications, currently as set out in the *Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013 (Determination)*. The Nomination Panel is required to invite written applications and then provide a short list of three candidates to the Minister for Communications if the appointment is not for Chairperson, and to the Minister for Communications and the Prime Minister if the appointment is for the role of Chairperson.

The Determination includes, amongst others, criteria regarding professional experience, leadership skills, governance experience and an understanding of the media environment and the ABC.

The Minister for Communications or Prime Minister are not bound by the recommendations of the Nomination Panel under section 24X of the ABC Act.

Unlike virtually all other boards of public companies, government business enterprises, charities and sporting bodies the ABC Board has no input on the appointment of non-executive directors. This prevents careful succession planning and may impact attempts at achieving governance best practice due to insufficient attention being paid to the skills of incumbent and prospective Board members.

I am of the view that the current Board should be able to contribute significantly to the appointment of non-executive directors to allow for effective succession planning and good governance. The Board is likely to have the most knowledge concerning the skills and experience needed to complement the skills and experience of other Board members.

### **The political influence or attempted influence of the Government over ABC editorial decision-making**

I note that the Committee has been asked to consider two issues in relation to this matter:

- (a) outcomes of the Competitive Neutrality of the National Broadcaster Inquiry and Efficiency Review – ABC and SBS (**Efficiency Review**); and
- (b) the role of funding uncertainty in facilitating political influence.

At this time, I have no submissions regarding the Efficiency Review.

I emphatically and unequivocally reject any allegations or suggestions that the decisions I made during my time as Chairperson of the ABC have been influenced by the government.

Of relevance to this issue is the charter of the ABC and the duties of its Board, both set out in the ABC Act. The duties of the Board include, amongst others:

- maintaining the independence and integrity of the Corporation;
- ensuring that the gathering and presentation by the ABC of news and information is accurate and impartial according to the recognised standards of objective journalism; and
- developing codes of practice relating to programming matters, which includes the development of editorial policies.

On or about 14 February 2018, Emma Alberici published an article entitled "Tax-free billions: Australia's largest companies haven't paid corporate tax in 10 years" (**Tax Article**). It is relevant that the Tax Article was published as news rather than opinion.

Complaints about the Tax Article were received from various stakeholders including companies named in the Tax Article and the Business Council of Australia. These complaints were made through the usual process and were received by ABC management.

ABC management informed me and commenced an investigation (**Review**) into the Tax Article in an effort to determine how a flawed piece of journalism came to be published. This was in an effort to fulfil the Board's duty to ensure accurate and impartial journalism within recognised standards. The Review found that the Tax Article was factually flawed, contained numerous errors and fell short of recognised standards of objective journalism.

Following publication of the Tax Article, ABC management including Ms Guthrie initiated discussions about Emma Alberici's future at the ABC. Various options were considered including termination, change of role, additional training or disciplinary action. Emma Alberici was certainly aware of the ABC's response to her Tax Article and the possibility of her termination. This was demonstrated by the fact that

she hired lawyers to represent her interests as confirmed to me by Ms Guthrie in an email on 8 May 2018.

On or about 8 May 2018, Emma Alberici published an article about innovation (*Innovation Article*), which similarly to the Tax Article, attracted complaints about its inaccuracy. Ms Guthrie then recommenced email discussions with senior management and the Board about Emma Alberici's future at the ABC.

At all relevant times, the responsibility for Emma Alberici's future was in the hands of ABC management and not the Board nor myself.

The email the subject of recent sensational media coverage was leaked, presumably by Ms Guthrie or one of her advisers. I acknowledge that I wrote "Get rid of [Emma Alberici]". This was expressed in the email to be my own view and not the view of any other person. However, the purpose of this email was to express my opinion to Ms Guthrie about ongoing issues with Emma Alberici's reporting. It was not a direction to Ms Guthrie to terminate Emma Alberici and it certainly was not the result of any influence or attempted influence by any politician or government body.

Rather, the email was a result of my belief that Emma Alberici's journalism was flawed and not in conformity with editorial policies and guidelines and possibly in breach of the ABC Act and that it therefore reduced the trust that Australian's have in the ABC.

This email was one email in a long chain of discussions over approximately three months regarding Emma Alberici's future. The small portion of the email chain that was leaked was taken entirely out of context and has led to many incorrect assumptions about the fallout from the Tax Article and the Innovation Article.

At no time did any politician or government body influence or attempt to influence my opinions and actions concerning Emma Alberici. My primary concern at all times was the duty of the ABC to provide impartial and accurate journalism that adhered to sound journalism practices for the benefit of the Australian public whilst maintaining the ABC's independence and impartiality as required by the ABC Act.

At all times, my views about Emma Alberici were expressed with regard to my duties as a director and my duties under the ABC Act. I was never influenced by the government or any politician, nor would I have felt inclined to follow any direction allegedly issued by such person (which direction has never been given or received).

#### *The role of funding uncertainty in facilitating political influence*

It is important to acknowledge the extremely complex relationship between the ABC and the federal government as a whole and not individual ministers, politicians or government bodies. In relation to the ABC, the role of the federal government includes but is not limited to:

- 1 shareholder;
- 2 financier;
- 3 legislator, as it has the ability to amend the ABC Act and any other legislation relevant to the ABC's operations;
- 4 oversight body, in the sense that it can conduct inquiries into the functions and conduct of the ABC;
- 5 being the subject of much of the ABC's independent and impartial programming material; and
- 6 consumer.

It is impossible for any person to operate completely isolated from the actions of government, considering the complex and nuanced relationship it has with the ABC. However, this does not mean that the government has ever interfered, influenced or attempted to influence the editorial independence of the ABC.

I acknowledge that funding uncertainty could influence decisions of the ABC, although it has never affected my decision-making in a manner where I attempted to appease the government or its members to secure funding. The availability of funding may have an effect on the quality and quantity of programming but for me personally, it never affected my decisions as Chairperson.

The government does not dictate the content produced by the ABC. Like any other interested party, they are welcome to raise complaints with the ABC regarding any particular issues they may have with specific content. Such complaints will be investigated in the ordinary manner by ABC management and not the Board, and treated like any other complaint, that is to say, the government is not provided with any special consideration nor are their grievances given any additional weight compared to other parties.

I can categorically state that all of my decisions as Chairperson of the ABC were free from any influence or attempted influence by the government and at all times, I was exercising my own independent and professional judgment.

### **Governance, legislative and funding options to strengthen the editorial independence and strength of the ABC to prosecute its charter obligations**

The complex and multi-faceted relationship between the federal government and the ABC is set out above.

The ABC is currently funded on a triennial basis. It may be preferable to fund the ABC on a longer term basis (eg 10 years) to increase certainty and strengthen editorial independence. The ABC should not be funded on an annual basis as this would result in significant uncertainty. As is the case with commercial organisations, the ABC would stand to benefit from certainty in funding to allow for strategic long-term decision making which would provide the greatest possible benefit to the Australian public.

I am of the view, that the ABC has demonstrated its commitment to editorial independence and has never allowed itself to be unduly influenced by politicians or government bodies.

Unfortunately, the termination of Ms Guthrie and her subsequent actions have called the work of the ABC and its approximately 4,000 employees into question. Such questioning is without foundation or merit. The actions of someone who had lost the confidence and trust of her Board should not be allowed to negatively impact the ABC, its employees and the Australian public. At all times the Board and Chairperson acted carefully, responsibly, in accordance with the Act and in the best interests of the ABC, its employees and the Australian public.

### **Other related matters**

At this time, I do not have any submissions regarding other related matters.

Please contact the writer with any queries.

Yours faithfully

**Justin Milne**