

Dissenting Report by Senator Nick Xenophon

Whose ABC?

1.1 The Federal Government's cuts to the ABC budget, in clear contravention of the election eve commitment made by the Coalition's leader, have provided the cover for ABC management to further centralise the operations of the ABC to its Sydney headquarters. This is shameful.

1.2 The evidence provided to the committee indicates a growing level of centralisation of the ABC in Sydney, and to a lesser degree Melbourne, and that it may be against the spirit of the ABC Charter. It is therefore disappointing that the Chair's report did not find in favour of supporting the Bill.

1.3 The argument in the majority report appears to be that the Bill, by specifying minimum levels of local programming around the country, somehow undermines the independence of the Board and therefore its Charter. However, given the Bill was drafted to reflect the ABC's Charter, to suggest that it somehow prevents the Board from fulfilling the Charter cannot be logically supported.

1.4 The necessity of this Bill stems from concerns that the ABC Board and management are currently not fulfilling the Charter, so any argument that it would unduly damage the Board's independence is really an argument for the Board's right not to fulfil the Charter.

1.5 In any event, suggesting that a modest allocation of resources (2 per cent of the ABC's total budget) to the BAPH states for local television production, without in any way directing editorial content, would compromise the ABC's independence lacks credulity.

1.6 There is nothing to lose and everything to gain – especially for regional and remote Australia – in the Parliament adopting this Bill.

1.7 The ABC Board does not have carte blanche to carry out its plans. Rather, it has a Charter which it is duty-bound to support, specifically under section 8(d) of the ABC Act. The Bill seeks to crystalize the duties of the Board in an amended Charter that is clearer about the Corporation's role in regional Australia, including the so-called 'BAPH' states with capitals of Brisbane, Adelaide, Perth and Hobart.

1.8 For the Managing Director of the ABC to suggest that the Bill, if passed, could compel the Board to make decisions to have local production facilities in Australian territories such as the Cocos Islands, or Christmas Island, or even Antarctica, is not only absurd, it evidences an apparent contempt on the part of Mr Scott for the intent of the Bill.¹ A corollary of the ABC management's argument is that there would be nothing, right now, to prevent an even greater degree of

1 Mr Mark Scott, *Committee Hansard*, 6 March 2015, p. 13.

centralisation of ABC functions to Sydney, with only skeleton resources outside its head office.

1.9 Concerns about ABC management's commitment to the Charter are not new. A Senate Environment and Communications References Committee inquiry into Recent ABC Programming Decisions found in October 2011 that many then believed the ABC wasn't fulfilling its Charter, following the winding-up of some television production in several smaller states, that resulting in the loss of about 50 jobs. I called it a "worrying trend" in my additional comments then, and unfortunately the direction to centralised editorial, creative and program control in Sydney has only gotten worse.

1.10 Nevertheless, despite the Committee's decision not to support the Bill, it's noteworthy that the Chair's majority report agreed that ABC management had recently taken decisions that 'will impact adversely on the provision of local content'. The report says:

The committee acknowledges that the ABC has been subject to efficiency savings. However, it also considers that the ABC has actively sought to concentrate functions and operations in Sydney and Melbourne. The committee supports the view that centralisation has the potential to undermine diversity and the provision of local content.²

1.11 Several submitters agreed that the ABC Charter required amendment so that local content levels can be made more explicit. This is a view widely held in the Australian community after more than a decade of centralisation program production, creative and editorial control in and ordered from Sydney.

1.12 The cuts to the ABC, amounting to 4.6 per cent of its budget or \$254 million over five years, were a broken election promise from the Government.

1.13 However, decisions by ABC management to further centralise the ABC and cut back production in regional states and areas were not an inevitable result of the budget cuts imposed by the Government. Rather, they are a continuation of a long-term strategy driven by the current managing director, Mr Mark Scott, and his executive team, seemingly unconstrained by the ABC Board.

1.14 The Bill will ensure a distinct and discernible local presence for the ABC across Australia – something that Australians broadly expect from their national broadcaster.

1.15 Specifically, it inserts a new paragraph (3A)(a) stating that the Corporation must have a distinct and discernible presence in each State and Territory, and across all platforms on which the Corporation disseminates content. This presence should include, but is not limited to, news programs (including one weekly half-hour current affairs program), investigative reporting and regional reporting. This content must be produced in, of, for and by that State or Territory.

1.16 Further, the Bill inserts a new paragraph (3A)(b) requiring that the Corporation fund internal television production units in at least four States and/or

2 *Committee Chair's Report*, p. 16.

Territories outside New South Wales and Victoria, and including the existing facilities in South Australia. Further, the units must be funded to the extent that they can produce content beyond news and current affairs, with the Corporation required to commit 0.5 per cent of its annual budget to each unit.

Recommendation 1

1.17 That the Bill be passed.

The ABC Charter and regional production

1.18 The ABC Charter is contained in the ABC Act, and states, at section (1)(a)(i) that:

(1) The functions of the Corporation are:

(a) to provide within Australia innovative and comprehensive broadcasting services of a high standard as part of the Australian broadcasting system consisting of national, commercial and community sectors and, without limiting the generality of the foregoing, to provide:

(i) broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and...

1.19 These sections have in the past been widely interpreted as envisaging an ABC that produces content by and for all parts of the country. That is, which is 'comprehensive' and 'consists of national, commercial and community sectors' and that also 'contribute to a sense of national identity...and reflect the cultural diversity of the Australian community'.

1.20 Due to the decisions of ABC management to reduce, and in some cases axe, local production across radio, television and news and current affairs, this Bill seeks to amend the Charter to make clear minimum levels of local content, rather than leaving it up to the interpretation of the existing Charter. This broad objective was supported by the submission from experienced media governance consultant and former ABC foreign correspondent and senior executive, Geoff Heriot, among others:

To introduce such an amendment would be consistent with the accepted duties of national public broadcasters internationally. A World Bank publication on public interest broadcasting¹, for example, described one typical responsibility of a national public broadcaster in these terms: "contribute to national identity while also reflecting cultural and regional diversity".³

1.21 While Mr Heriot did not agree with the specific wording of amendment to the Charter in the Bill, he agreed the Charter should be changed to support local content and provided his own suggested amendment.

3 Heriot Media and Governance Pty Ltd, *Submission 2*, p. 2.

1.22 Similarly, the Communications Law Centre (CLC) at the University of Technology Sydney (UTS) also acknowledged the continuing centralisation of ABC functions and concluded that 'there is a case for introducing a less specific amendment proposed by the Bill to provide a minimum safeguard for the local production of content by the ABC outside major metropolitan areas'.⁴ The CLC also suggested its own amendment, broadly consistent with the aim of the Bill.

1.23 While the Community and Public Sector Union (CPSU) did not back a change to the ABC Charter, it agreed in its submission that funding cuts 'jeopardise the ABC's capacity to meet its current Charter obligations'.⁵

1.24 It's noteworthy that these submitters, as well as the Friends of the ABC and many other voices in the wider community, agree that there were difficulties with and failures to meet the ABC Charter. Scope remains in the future to engage with community stakeholders and arrive at a widely supported amendment to the ABC Charter that addressed local content concerns.

Recommendation 2

1.25 In the event that the Bill is not passed, that the Government launch an independent review, including a broad stakeholder engagement process, leading to the drafting of an ABC Charter amendment in which the concerns of increasing centralisation of the ABC and the adequate representation in programming of the BAPH states be considered.

The ABC's mixed model of television production

1.26 ABC Managing Director Mark Scott sought to portray the ABC's strategy of outsourcing television programs to private sector TV production houses as good for regional states because of the flow-on employment opportunities in those states.

1.27 Mr Scott told the Committee that, overall, the ABC's mixed model 'created jobs in the states:

Our model is one that keeps internal production capability at the ABC whilst backing local production firms, creating jobs and encouraging creative industries.⁶

1.28 However, the Committee heard evidence that this has not been the case in Tasmania since the ABC closed its TV production unit in that state.⁷

1.29 In the wake of management closing down the Adelaide television production unit, with the loss of approximately 19 jobs, Mr Scott did not tell the Committee that

4 Communications Law Centre, UTS, *Submission 1*, p. 3.

5 CPSU, *Submission 5*, p. 8.

6 Mr Mark Scott, *Committee Hansard*, 6 March 2015, p. 2.

7 Heriot Media and Governance Pty Ltd, *Submission 2*, pp 8–9.

the ABC would generate more jobs in the South Australian television production sector.

1.30 The fact is that the ABC has retrenched 19 highly qualified and productive staff members from its television production unit and provided no guarantees that the same number or more jobs will be generated elsewhere in the state, as a result.

1.31 Evidence provided by Mr Scott during Senate Estimates revealed that the savings from decimating the Adelaide television production unit would not go to making up for funding cuts, but would go to expanding online content based interstate. This further appears to confirm the disingenuous manner in which management used the budget cuts as cover for a strategy of further centralisation of the ABC.

1.32 Further, a CPSU proposal that the highly trained and productive Adelaide television production staff be reassigned into a new online content production unit in Adelaide was rejected out of hand by ABC management.

1.33 The axing of local television production units in the ABC means the loss of production, direction and writing talent from these states, and it appears there is no commitment to engage equivalent levels of programming in the private sector in South Australia as part of the ABC's mixed model strategy.

Recommendation 3

1.34 That the ABC make an ongoing commitment for an equivalent number of television production positions are engaged each year in the private sector in South Australia as were dispensed with when it axed the Adelaide television production unit. And that the equivalent commitment is made in other states that have seen television units closed, in particular Queensland, Western Australia and Tasmania.

The ABC's centralisation and disproportionate cuts on South Australia

1.35 Mr Scott acknowledged to the Committee that South Australia was hit harder than other states in the cuts announced last November, confirming what he told the Senate Environment and Communications Estimates Committee in February:

I know that in this last round of cuts South Australia was disproportionately hit harder because of the closure of that (television) production unit.⁸

1.36 Mr Scott confirmed with the Committee, and to previous Estimates Committees, that savings from closing television production in Adelaide would go to a range of online activities across the ABC.

The closing of the studio—but we decided to take that money and allocate it to programming and content, including digital content.⁹

8 Senate Environment and Communications Estimates Committee, *Committee Hansard*, February 24 2015, p. 71.

9 Mr Mark Scott, *Committee Hansard*, 6 March 2015, p. 19.

1.37 These jobs are in the process of being lost and they will not be replaced. Online content production is based on the east coast (including Brisbane) and, while some online journalists have been appointed in Adelaide, the net effect of management decisions in South Australia has been overwhelmingly negative for some years.

1.38 The loss of 19 television production jobs, closing the ABC Port August radio office, the job losses at the Adelaide-based ABC Classic FM, and the axing of the state-based 7.30 programs on Friday (replaced by the national 7.30 based in Sydney) will add to the long term trend of centralisation of jobs away from South Australia towards Sydney.

1.39 The centralising trend is national and well established.

1.40 Mr Scott accepted that the figures I quoted during questioning in the public hearing, from ABC Annual Reports, were correct.

1.41 In the past ten years, according to ABC figures, the proportion of total ABC jobs in South Australia has fallen the most of any state or territory – from 8 per cent to 6.9 per cent, while it grew the most in New South Wales, from 47 per cent to 51 per cent.

1.42 All states and territories, except NSW and Queensland, saw a deteriorating staffing position, as a proportion of total staff numbers. And Queensland only saw a marginal increase, according to ABC figures.

1.43 Submitters including the Friends of the ABC¹⁰, the CLC¹¹, and Heriot Media¹² said that ABC management, through this centralisation, were failing to reflect national diversity as stated in the Charter.

1.44 While not supporting the wording of the Bill, the CLC said that 'there is a case for introducing a less specific amendment proposed by the Bill to provide a minimum safeguard for the local production of content by the ABC outside major metropolitan areas'.¹³

1.45 Geoff Heriot, a former senior executive in the ABC and since leaving the Corporation a consultant in media governance, made a salient point in support of the objectives of the Bill and against the centralisation trend:

Local content is important to media diversity and share of voice in the democratic system. It is especially important in smaller State and Territory markets where there are fewer locally domiciled enterprises and highly concentrated patterns of media ownership. A more diverse media sector will have a greater capacity, collectively, to fulfil the role of public sentinel and witness to issues of public interest. It is not just in states like NSW

10 ABC Friends, *Submission 10*, p. 4.

11 Communications Law Centre, UTS, *Submission 1*, p. 3.

12 Heriot Media and Governance Pty Ltd, *Submission 2*, p. 4.

13 Communications Law Centre, UTS, *Submission 1*, p. 3.

where the need is apparent. The Chief Commissioner of Tasmania's Integrity Commission, former Victorian Supreme Court judge Murray Kellam, told a Parliamentary inquiry in November 2014 that the Commission had "plenty of evidence of misconduct and serious misconduct within the state".¹⁴

1.46 Submitters Professor McNair and Dr Goldsmith also supported the necessity of local news and current affairs production:

Where national news organisations rarely report on the routine affairs of state, regional and city governments, local media must ensure that citizens are aware of and understand the issues on which their locally elected representatives make policy and take decisions. Such scrutiny, a manifestation of the Fourth Estate and watchdog roles deemed to be core functions of the media in a democracy, is just as important at the local level as the national.¹⁵

1.47 I support these eminent submitters' view that Australians require local television, radio and news and current affairs production where they live, not content decided upon and largely made in New South Wales, and to a lesser degree, Victoria and Queensland.

1.48 In a recent interview on Adelaide radio 891, with Matthew Abraham and David Bevan, Mr Scott admitted that, had this Bill been passed he would not have been able to undertake the radical cuts in Adelaide that are the subject of widespread concerns in this and the majority report.

Misleading statements by Mark Scott in relation to ratings figures for state-based Friday 7.30 programs in 2014

1.49 Mr Scott has made two arguably misleading statements at Senate Committee hearings since late last year about the ratings of the state-based 7.30 programs in 2014, which were broadcast every Friday until Mr Scott axed them last December as part of the ABC's centralisation strategy. I am not suggesting this was deliberate. Mr Scott replaced the programs with a fifth, Friday, edition of the national 7.30 program, which is made in Sydney but can draw on correspondents in each state and territory.

1.50 Firstly, Mr Scott told the Senate Environment and Communications Legislation Estimates Committee on December 1 last year:

At I can tell you that, across the country, if you look at that Friday 7.30 timeslot, the ratings on average across the country are significantly lower than they are for the rest of the week.¹⁶

14 Heriot Media and Governance Pty Ltd, *Submission 2*, p. 4.

15 Professor Brian McNair and Dr Ben Goldsmith, *Submission 4*, p. 2.

16 Environment and Communications Legislation Estimates Committee, *Committee Hansard*, 1 December 2014, p. 15.

1.51 This statement echoed several to Senate committees in which Mr Scott sought to portray the state and territory 7.30 programs as being ratings failures.

1.52 However, by grouping all the different programs together and comparing to a national program, Mr Scott ignores their distinct content and audiences. The comparison Mr Scott makes is nonsensical and arguably misleading.

1.53 Mr Scott's comments also ignored several important facts in relation to television ratings across the country.

1.54 The Friday night time slot is widely known to be a ratings 'black hole' in which the total number of television viewers falls, due to people being engaged in social, sporting or other activities at that time. So the realistic measure of the success of a program on a Friday, when comparing to during the week, is to look at the 'share of total audience' ratings figure.

1.55 Also, AFL matches screened live on Fridays during the football season reduce the audience for all other programs on Friday night.

1.56 For these reasons, I requested ratings figures from ABC Corporate (which it sourced from OzTAM) for share of audience for October and November 2014, the two months following the end of the 2014 AFL season, for each of the five mainland capitals.¹⁷

1.57 During this two month period, 7.30 programs made in Western Australia and South Australia and broadcast on Fridays in fact out-rated the national program in those states, on average as a share of audience.

1.58 It's fair to say that Mr Scott's comment, lumping together five separate state programs into one average ratings figure, ignoring the distorting factors of the AFL season, the Friday 'black hole' and using gross ratings rather than share of audience ratings, lacked any insight or meaning as a comparison.

1.59 The ratings success of the state 7.30 programs in WA and South Australia showed that viewers in those states valued the state current affairs coverage provided. This was perhaps due to the lack of coverage of those states afforded on the national program during 2014. In the same way, the lower ratings figures for state-based 7.30 programs in Victoria, New South Wales and Queensland in October–November 2014 could be explained by the larger media markets in those states, with more sources of local news and current affairs, not least from the national 7.30 program broadcast from Monday to Thursday.

1.60 It can be argued that Mr Scott's statement was misleading (I'm not suggesting it was intentional), as was reported by *The Australian* this month¹⁸, at least as far as Western Australia and South Australia are concerned.

1.61 Mr Scott responded to the Committee that he had 'certainly not been misleading', in relation to his December 1 statement about state-based 7.30 ratings.¹⁹

17 See attached spreadsheets provided by ABC Corporate.

18 'Scott used "misleading" 7.30 ratings: Xenophon', *The Australian*, 2 March 2015.

1.62 A local television current affairs program was valued more highly in WA and South Australia in late 2014 than the national current affairs program. From the many statements of Mr Scott to various committees since November last year, Mr Scott does not appear to have been taken into account when he axed the state programs in favour of the national one.

1.63 Mr Scott again arguably confused matters when he told a Senate committee in February:

Senator, that on Friday night we have been running a national 7.30 and this year, year on year, the audience figures for that national program in the five capital cities have about 80,000 more viewers than there were last year.²⁰

1.64 On checking the year-on-year ratings figures²¹, this statement again appears to be a gross simplification, and arguably misleading. As later reported in *The Australian*²², Mr Scott's figures were not as extensive as one might think. Of the four weeks that the national program had been screened as at the time of the public hearing on February 24, only two of those weeks had led to a five-city aggregate figure, due to two 30-minute specials broadcast in Brisbane and Adelaide. To arrive at his figure Mr Scott has not compared the first two weeks of 2015 with the first two weeks of 2014, but rather compared the first two weeks of 2015 with the second and third weeks of 2014, which gives a significantly more favourable result for the 2015 programs.

1.65 Mr Scott has again relied on aggregating the ratings of five separate Friday 7.30 programs from 2014 with a single program in 2015, which is not a meaningful comparison.

1.66 By looking at the individual state-based program ratings from 2014, a very different story emerges. It shows that, after five weeks of the ratings season, the Queensland and New South Wales Friday 7.30 programs in 2014 in fact out-rated the national Friday programs in those states this year.

1.67 However, this year's national Friday program has out-rated the South Australian and WA state programs from 2014. There was very little difference in Melbourne between 2014 and 2015.

1.68 Therefore, the real picture of the ratings performance of the state-based 7.30s, when examined on an individual state basis, is very different to Mr Scott's broad-based statements portraying the entire stable of state-based programs as a ratings failure.

1.69 Clearly, the performance of the state-based programs rose and fell depending on the news and issues of the day during 2014.

19 Mr Mark Scott, *Committee Hansard*, 6 March 2015, p. 11.

20 Environment and Communications Legislation Committee, *Committee Hansard*, 24 February 2015, p. 73.

21 <http://www.tvtonight.com.au/category/ratings>

22 'Ratings fight sees ABC's new 7.30 lose to the old', *The Australian*, 9 March 2015, p. 3.

1.70 Based on OzTAM ratings, it is clear that state audiences valued their local programs so highly that, for lengthy periods they out-rated the national program in the same state (as a share of audience in 2014) and also on gross figures when comparing the same cities in 2014 and 2015.

1.71 But the ratings success of the state-based programs compared to the national program, and their evidently loyal local audiences, appears not to have figured in the decision of ABC management to axe the programs.

1.72 It's regrettable that Mr Scott, the Editor-in-Chief of ABC News and Current Affairs, has not given the full story of the performance of these valued state-based programs.

1.73 In any event, the ABC is not meant to be ratings-driven when it comes to its key Charter obligations. The fact is, there is now a chasm in the broadcasting of local issues in the states by having a Monday–Friday national 7.30 program.

1.74 A number of questions were put to Mr Scott and ABC management in respect of internal production costs. For instance, the ABC was queried as to the internal production costs of the Countdown and Beatles specials. At the time of writing this report the ABC has not provided answers to Questions on Notice to this. There is a concern that such costs have been inflated to give an impression that internal production is much more costly than it actually is. I look forward to the ABC's response to those questions and foreshadow that this is a matter that needs to be forensically examined by the Committee once those answers are provided.

Recommendation 3

1.75 That the ABC reinstates state and territory television current affairs programming, the Adelaide television production unit and other program production, creative and editorial positions cut by ABC management from South Australia, Queensland, Western Australia and Tasmania, the ACT and Northern Territory, as a matter of urgency.



Senator Nick Xenophon
Senator for South Australia