

# Minority Report by Coalition Senators

## On the Senate Environment and Communications Legislation Committee's Report on its Inquiry into the National Broadcasting Legislation Amendment Bill 2010

The Coalition strongly supports our national broadcasters. However the Bill has significant shortcomings.

### Recommendation 1

**2.18 The committee recommends that the ABC Board review whether the partnership between ABC Books and HarperCollins maintains the necessary independence of ABC Books and the ABC as a whole.**

### Recommendation 2

**2.27 In order to protect the independence of Australia's public broadcasters, the committee urges the government and the ABC and SBS boards to ensure that the interventionist approach by government, which has resulted in the politicisation of public broadcasters, does not occur again.**

### Recommendation 3

**2.49 The committee recommends that the bill be amended to provide that a former politician or senior political staff member is eligible for appointment to the ABC and SBS boards provided that they meet the following conditions:**

- **the individual ceased to hold office at least 18 months prior to the appointment;**
- **the individual is nominated by the nomination panel following an independent, merit-based selection process as set out by the bill.**

Mr Donald McDonald told the Committee:

*My experience is that former politicians are frequently more balanced, more understanding of a range of views than people who are party members, and yet they are not going to be excluded from this.<sup>1</sup>*

Former politicians have made a valuable contribution to the Board of the ABC and other Government bodies. For instance, in 1994 Labor appointed former SA Labor Premier, John Bannon, to the ABC Board. Labor's position on the value of former politicians on Government Boards is entirely inconsistent as the current Government has appointed John Kerin to the CSIRO Board, Steve Bracks as an advisor for the car industry and Peter Costello to the Future Fund Board.

It is hypocritical for the Government to claim on the one hand that former politicians provide valuable skills and experience to assist some boards, but not the boards of the national broadcasters.

The intended definitions of 'senior political staff member' are not clear, and are likely to be fraught with difficulty in practical application. Whilst the Chair's proposed 'qualifying period' after which an otherwise-excluded individual might become eligible for board membership is not unhelpful, it is ad hoc and (in the case of a senior political staff member) remains fraught with difficulty in practical application.

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<sup>1</sup> Mr Donald McDonald, Committee Hansard, 1/11/10

#### **Recommendation 4**

#### **2.63 The committee recommends that the government include the Merit Protection Commissioner as a permanent member of the nomination panel for appointments to the ABC and SBS boards.**

**General comments on the nominations process** - Senate Estimates confirmed that the Government spent approximately \$200,000 on the selection process utilised to appoint the four new directors to the boards of the national broadcasters in April 2009. This included payment for the members of the Nominations Panel, engagement of a recruitment firm and the advertisement of the vacancies.

As mentioned in the Bill, there is no guarantee that the nomination process will produce a successful nomination and it is still within the Government's power to make an appointment that is not a recommendation of the Nomination Panel, provided the selection process has been undertaken.

The Government is effectively creating a new bureaucratic process and now a new bureaucratic position to oversee the process.

#### **General comments on the staff elected director**

In 2006, the Coalition amended the *Australian Broadcasting Act 1983* to remove the position of staff-elected director from the legislated composition of the ABC Board to improve corporate governance of the organisation.

The decision to abolish the staff-elected director was announced following the Coalition Government's Review of Corporate Governance of Statutory Authorities and Office Holders (Uhrig Review), and the removal of the staff elected director was consistent with Uhrig's recommendations about representative appointments.

The position of staff elected director was seen as an anomaly amongst Government Agency Boards. The other national broadcaster, the SBS, does not have a staff elected director.

The Coalition was also concerned about the potential conflict of interest of the staff-elected director who is legally required to act in the best interests of the ABC as director, but is appointed as a representative of staff and elected by them.

The reason was best articulated back in 2006 in the explanatory memorandum to the Australian Broadcasting Corporation Amendment Bill. It stated:

*"The Bill addresses an ongoing tension relating to the position of staff-elected Director. A potential conflict exists between the duties of the staff-elected Director under paragraph 23(1)(a) of the Commonwealth Authorities and Companies Act to act in good faith in the best interests of the ABC, and the appointment of that Director via election by ABC staff. The election method creates a risk that a staff elected Director will be expected by the constituents who elect him or her to place the interests of staff ahead of the interests of the ABC as a whole where they are in conflict."*

More generally and critically, this staff-elected position is at odds with standard practice in Australian corporate governance. We made that position clear at the time and we took action.

Labor announced in June 2007 that their policy was to reinstate the staff elected director to the Board of the ABC. In October 2008, they announced that they would commence a new merit-based selection process and seek to reinstate the staff elected director.

The same concerns that led to the Coalition decision to remove the staff elected director position from the ABC Board remain, and these have not been addressed by the Government.

The Uhrig Review concluded

*“The review does not support representational appointments to governing boards as representational appointments can fail to produce independent and objective views. There is the potential for those appointments to be primarily concerned with the interests of those they represent, rather than the success of the entity they are responsible for governing. While it is possible to manage conflicts of interest, the preferred position is not to create circumstances where they arise.”*

In the ABC submission to the Senate inquiry into the 2006 legislation, the then Acting Managing Director of the ABC, Murray Green, stated in relation to the conflict of interest for the staff-elected director that it is: “Inevitable there has been a tension between the expectations placed by others on their role and their established duties as directors of a corporation.”

The Minister’s second reading speech merely states that the Government does not believe there is any inherent conflict of interest.

However, in evidence provided to this Committee:

- Mr McDonald indicated his view that whilst in his experience, staff-elected board members did a good job on the Board, they were subject to ongoing tension in that role, given expectations of them by staff members;
- Mr Dempster indicated his view that staff members do not need to have a member of the board with a role in representing staff interests; and
- Mr Dempster also conceded that a staff elected board member does face conflicts of interest in that role, but considered that those conflicts could be dealt with by the relevant staff board member declaring those conflicts.

The case from a majority of ABC Staff members has not been made. There is no evidence that the ABC’s performance has suffered from the absence of a staff-elected director. Nor is there evidence that the community is crying out, ‘We think the ABC is doing well, but it would do so much better if we could get back a staff elected director.’

The Coalition notes some of the good work done by the ABC since 2006:

- launched two extra television channels (ABC3 Children’s channel and ABCNews24);
- moved to digital radio;
- launched ABCNews24, Australia’s first free-to-air 24 hours news channel;
- established the number one rated online opinion site The Drum;
- launched the ABC Open project which produces, curates, and publishes local contributions from ABC regional audiences; and
- is planning to expand the ABC’s international presence by consolidating the ABC’s presence in the Asia-Pacific Region and roll out new services in Africa, Latin America and the Middle East.

Also of material interest is the fact that whilst the Director-General of the BBC was formerly appointed by their Board of Governors, he/she is now appointed by the BBC Trust. A Director-General is operationally independent of BBC management and external bodies, and aims to act in the best interests of licence fee payers.

## **Recommendation 5**

**3.19 The committee recommends that the bill be amended to provide that a staff-elected Director may hold office for a maximum of one five-year term.**

The Coalition opposes the reinstatement of staff-elected director and therefore opposes this recommendation.

### **Recommendation 6**

#### **3.24 The committee recommends that the SBS Act be amended to include a staff-elected Director on the SBS Board.**

The Coalition opposes the reinstatement of a staff-elected director and therefore opposes this recommendation. The same deficiencies in the arguments for the ABC extend to the SBS.

It is even more problematic to extend the principle of a staff elected director to the SBS, given SBS relies on paid advertising for a considerable part of its revenue stream. This makes an independent board even more critical for the SBS, so that SBS can focus on governance and management.

### **Recommendation 7**

#### **3.26 Subject to the amendments contained in recommendations 3–6 of this report, the committee recommends that the Senate pass the National Broadcasting Legislation Amendment Bill 2010.**

Given that the Coalition opposes the reinstatement of a staff-elected director, we oppose this recommendation.

**Senator Mary Jo Fisher**