

## CHAPTER 2

### THE SELECTION CRITERIA: WHO SHOULD BE ON THE BOARD?

*We need to ensure that the Board serves as a barrier against the inevitable attempts of the occupants of the corridors of political, bureaucratic and commercial power to muzzle and use and weaken the ABC.<sup>1</sup>*

#### Introduction

2.1 The terms of reference implicitly seek a Board that is independent and representative. This implies to some extent that the current board is neither of these things. Certainly, based on the submissions received by the Committee, there is a strong public perception that the Board has been politicised, and to a lesser extent, that its membership is not suitably representative. The Chair considers that this perception in itself, leads to the inevitable conclusion that the Board is not representative, and therefore this undermines public confidence in the Board and its efforts to uphold its legal obligations. It further raises questions for the way the Executive appoints members to other Boards and the role the Parliament should have in overseeing these appointments.

2.2 This chapter examines these issues: the extent to which the ABC Board is or is not politicised, and what sort of qualifications Board appointees should or should not have. In doing so, it answers the question of who should be appointed to the Board and what qualities they must have to be independent and representative.

#### An independent ABC Board?

2.3 The overwhelming view of submissions received by the inquiry was that the ABC has become politicised, has lost its independence, and accordingly, has lost the confidence of the public. Several submissions give a flavour of this. Mr Neville and Ms Duxbury wrote that:

The ABC ... is under attack in many ways, not the least being political interference in its budgets and running.

... the present system of appointments to the ABC Board is clearly unsatisfactory, in that it allows any government, so intentioned, to stack the board with its allies.<sup>2</sup>

2.4 The Friends of the ABC group in the Hunter region wrote:

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1 Smith, Submission 45, p 1.

2 Neville, Submission 9, p 1.

‘political appointments’ to the Board have been a feature of successive governments from both sides of Australian politics and that this has worked to the detriment of the ABC.<sup>3</sup>

## 2.5 According to Mr Fraser:

Both sides of politics have used the appointment of ABC Board members as a means to intimidate and influence the direction of the ABC. This has directly and indirectly politicised our national broadcaster.<sup>4</sup>

## 2.6 And as Professor Morgan elaborated:

Both sides of politics have been notorious in their abuse of appointments to the boards of public institutions, such as the ABC and the universities. They have used these appointments to bestow political patronage and reward political loyalists, the provisions of section 12 (5) of the ABC Act notwithstanding. This is not to deny the exemplary public service given by most of those appointees. Rather, it is to observe that many of them have had to overcome unfortunate perceptions to do so.

David Hill was known widely in the community as ‘Wran’s revenge’, following his appointment as ABC Chairman by the Hawke Labor Government and his subsequent extraordinary translation to the position of Managing Director. Donald McDonald, whose credentials are otherwise impeccable under s12(5), has been unnecessarily compromised by his personal friendship (and declared political support) for the present Prime Minister.<sup>5</sup>

2.7 Many submissions criticised the political and conservative background of current members of the Board,<sup>6</sup> and in particular, the friendship between the Prime Minister, Mr Howard, and Mr McDonald, the current chair of the ABC Board.<sup>7</sup> In particular, various submissions criticised Mr McDonald for comments viewed as a public endorsement of the Prime Minister.<sup>8</sup>

2.8 Submissions were also critical of the role of the Managing Director, Mr Jonathan Shier.<sup>9</sup> Many submissions expressed considerable concern that the Managing Director may have been appointed on the basis of political affiliation rather than merit. This was particularly highlighted when the Managing Director delayed the

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3 FABC Hunter Region, Submission 18, p 1.

4 Fraser, Submission 2, p 1.

5 Professor Morgan, Submission 3, p 1.

6 For example, Smith, Submission 80; Goodwin, Submission 75, p 1.

7 For example: Keogh, Submission 378; Jones, Submission 408; and Thyer, Submission 411.

8 For example, Beilby, Submission 31, p 2; Nicol, Submission 685, p 2.

9 Beilby, Submission 31, p 1. Also Harding, Submission 48; Vadhat, Submission 55, Marks, Submission 56.

broadcast recently of the investigative current affairs program Four Corners, entitled “Party Ticks”, an expose, in part, of the federal Liberal Party. Even if the delay was for sound editorial reasons, the submissions did not reflect this.

2.9 Many submissions criticised the failure of the ABC Board to secure adequate funding for the ABC as well as additional funding for the introduction of digital broadcasting.<sup>10</sup> There was also criticism of the failure to protest at funding cuts; staff losses;<sup>11</sup> repeats of programs; increased advertising of ABC programs;<sup>12</sup> and the closure of the ABC archives department.<sup>13</sup> These general criticisms were perceived by many as evidence of a Board, comprising government sympathisers, who do not have the best interests of the ABC at heart.

2.10 Many of the management decisions of the Managing Director have been interpreted as being direct attacks by a political appointee with a brief to destroy the ABC. According to one submission:

A very effective way of destroying ‘ABC culture’ ie its intellectual capital, is to appoint somebody, obviously crass and incompetent and stand by and ‘watch him destroy the credibility of the ABC through managerial chaos and plummeting morale’.<sup>14</sup>

2.11 Similar comments were made by the Community and Public Sector Union (CPSU):

Widespread doubts have also arisen about whether members of the Board have acted in the best interests of the national broadcaster or have simply served their political interests.<sup>15</sup>

2.12 As evidence of this, submissions point to the sale of the Cox Peninsula transmitter;<sup>16</sup> decline in the hours of Australian content;<sup>17</sup> removal of programs such as Quantum and Backchat;<sup>18</sup> termination of library and research staff and disbanding of the science unit;<sup>19</sup> cuts to current affairs and news budgets.<sup>20</sup>

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10 McCaughey, Submission 94, Blanch, Submission 103; Oldaker, Submission 106; Steele, Submission 107; McDonald’s lack of reaction and public anger – Hoy, Submission 176.

11 Gunson, Submission 130

12 Sowards, Submission 142

13 Biddington, Submission 297

14 Waller, Submission 200. See also Birch, Submission 182

15 CPSU, Submission 363, p 5-6.

16 Maver, Submission 114

17 Steele, Submission 107; Engelman, Submission 162

18 Oldaker, Submission 106

19 Simmonds, Submission 117

20 Dingle, Submission 181

2.13 It is a matter of public record that four of the current nine members of the Board have had at least some degree of political involvement with the Liberal Party. Mr Jonathan Shier, the Managing Director, is a former president of the Victorian Young Liberals and a former adviser to a federal Liberal minister. Mr Michael Kroger is a former president of the Victorian Liberal Party. Mr Ross McLean was the federal Liberal member for Perth between 1975-1983, and Mrs Leith Bouilly was a member of the Northern Territory Young Country Liberal Party about 20 years ago.<sup>21</sup>

#### Lack of responsiveness to public concerns

2.14 Another aspect of the politicisation issue is the criticism that the ABC Board is not responsive to the public concerns raised in relation to many of the above issues. According to this view, the ABC is a public institution of which the Australian public are the shareholders who are entitled, if not to a say in the running of the Corporation, then at least to have the Corporation operate in an open and transparent manner, and have Board members operate in this way too. To the extent that these public concerns are ignored, the Board is seen to be loyal to the government, or at least sympathetic to government policy interests, in spite of their responsibility to upholding the public interest. Mr Burnside comments:

the Board of the ABC has been conspicuously silent in the growing public debate about what is widely seen as the destruction of the ABC.

How can that [ the Board's silence] be so? Board members of a company in private enterprise, faced with sustained shareholder dissatisfaction, would swiftly react to address shareholder concerns. The true stakeholders of the ABC are the Australian public.<sup>22</sup>

#### Historical views

2.15 The general view of submissions to the Committee suggests that the habit of appointing political sympathisers to the Board is as old as the ABC itself. Mr Dempster, a former staff-elected Director of the ABC Board, comments:

The need for this inquiry does not follow just on recent negative perceptions arising from the activities of current ABC directors. It arises because of a pattern of behaviour by executive government over almost the entirety of the ABC's existence since 1932. In short, that behaviour can be characterised as the application of the party political 'stack' of the Board from time to time.<sup>23</sup>

2.16 And later:

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21 *The Australian - Media*, August 2 – 8, 2001, Mr Steketee.

22 Burnside, Submission 205; also Hundley, Submission 490, p 2.

23 Dempster, Submission 365, p 1.

The history shows that it is almost impossible for incumbent governments to put the ABC's clear need for non-controversial appointments of directors with a demonstrated commitment to independent public broadcasting ahead of their party political interest to send 'signals of influence' by the appointment of directors with links, connections or associations with their own party. Both the Liberal and Labor parties do not seem to be able to restrain themselves from applying political patronage to the task of selecting ABC directors. To those of us working at the ABC under this pathetic two-party indulgence it has become wearisome, to say the least.<sup>24</sup>

2.17 Professor Ken Inglis, author of a history of the Australian Broadcasting Commission, gave this perspective:

At the end of Labor's 13 years in office Alan Ramsey of *The Sydney Morning Herald* made what seems to me a judicious review of its appointees' politics. Of 26 Board members, including chairmen, '12 came from overt political backgrounds, among them a former Labor premier, a former Liberal senator, a former Liberal Cabinet minister, four trade union activists, four advisers to various State Labor administrations, and Labor's former opinion pollster, Rod Cameron.' In short, 'less than half Labor's ABC appointments over the years have had obvious party political connections, while two of them came from among the ranks of its political opponents'. (12 June 1996).

Most of the directors appointed since the Howard government took office have been formally or informally identifiable as supporters of the coalition.<sup>25</sup>

2.18 Equally, the Chair notes the finding of the *Our ABC* report that in 1995, six of the nine board members had an ALP background.<sup>26</sup> This accords with evidence from the Friends of the ABC and others that all governments, no matter what persuasion, have attempted to influence the operation of the ABC through appointments to the ABC Board.

2.19 Overall though, Professor Inglis concludes that 'political' appointments are generally becoming more common:

[I]n the narrow sense of party political appointments of people known to be close to or sympathetic to the government of the day, I think there is more of that now than there has been at any time between 1983 and 1995.<sup>27</sup>

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24 Dempster, Submission 365, p 2.

25 FABC, Submission 593, p 16.

26 Our ABC, p 140

27 Inglis, *Proof Committee Hansard*, Canberra 20 August 2001, p 35.

### Disapproval by all major parties

2.20 Submissions to the Committee have stressed that the politicians themselves have been very critical of the system of appointments. According to the Friends of the ABC:

It appears that just about everyone disagrees with the current system, except for the party in power at the time.<sup>28</sup>

2.21 In their submission, the Friends of the ABC quote senior members of both the major parties condemning political appointments. Senator Alston, current Minister for Communications, told the Senate in 1994:

(It will be) a great disappointment to all those who are looking to the Government to ... make appointments to the Board on the basis of merit and to boost the community standing and reputation of the ABC. This blatant board stacking exercise endangers the independence and integrity of the ABC and has the potential to do grave danger to Australia's international reputation.<sup>29</sup>

2.22 Similarly in 1996:

‘In recent years appointments to the Board of the ABC have become little more than Labor’s vehicle for patronage and political game playing’, Senator Alston said. ‘I can give you a solemn promise that there will be no more stacking of the ABC Board under a coalition government’.<sup>30</sup>

2.23 These comments are mirrored by those of Senator Alston’s Labor counterpart, Mr Stephen Smith:

Such has been the sustained financial and political attack on the ABC by the government that, regrettably, a perception is now afoot in the community that the Managing Director of the ABC, Mr Shier, and, to a lesser extent, the board, are now nothing but the advertent or inadvertent agents of the government. This is a fatal perception to be afoot, and this perception has arisen as a direct result of the conduct and the actions of the government.<sup>31</sup>

2.24 The CPSU conclude that:

All major political parties have objected to the practice of the government of the day stacking the ABC Board. ...

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28 FABC, Submission 593, p 7.

29 *Official Senate Hansard*, 30 June 1994, quoted by FABC, Submission 593, p 22.

30 *The Age*, 19 January 1996, quoted by FABC, Submission 593, p 22.

31 *Official House of Representatives Hansard*, 6 December 2000, quoted by FABC, Submission 593, p 24.

The consistent position taken by the two major political parties is that the appointments made by the other side have been political but their own appointments have been merit based.<sup>32</sup>

2.25 Senator Vicki Bourne, in her Second Reading Speech to the Australian Broadcasting Corporation Amendment Bill 1999 details the Democrats' concerns about the practice of using appointments to the ABC Board as political patronage.

### *Arguments for independence*

2.26 Six main arguments have been advanced in support of an independent ABC and Board.

#### 1. Special role of the ABC

2.27 First, submissions have argued that the ABC occupies a special place in Australian society as an impartial forum for reporting and debate:

The ABC is Australia's most important cultural institution. Its national radio and television coverage and its freedom from commercial pressures place it in a unique position compared to other broadcasters. There is abundant evidence that in times of national or local crisis, Australians turn to the ABC for authoritative, reliable and unsensationalised coverage.<sup>33</sup>

2.28 The Council of Australian Postgraduate Associations explain that:

An independent, adequately funded and politically unbiased national broadcaster is one of the most important means by which public debate and discussion can take place in Australia without fear or favour.<sup>34</sup>

2.29 However, a public broadcaster that fulfils its role is bound to periodically incur the displeasure of the political figures who are subject to criticism, or who wish to control the public debate:

Such a powerful tool of mass communication is a temptation for any government wishing to push its agenda, curtail the independence of the national broadcaster or limit public debate.<sup>35</sup>

2.30 According to Professor Richards:

The citizens of Australia cannot expect political appointees to behave in ways inimical to the government that appointed them, nor to prioritise those qualities for which we have an ABC and which we need from it. In this

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32 CPSU, Submission 363, pp 5-6.

33 Appleton, Submission 498, p 1. See also Morgan, Submission 3, p 2-3.

34 CAPA, Submission 592, p 1.

35 Chappelle, Submission 14, p 1.

situation, inevitably political commentary will be suppressed, and budgetary savings and popular ratings will be prioritised.<sup>36</sup>

2.31 This view is supported by the CPSU:

The ABC is required by its enabling legislation to carry out its functions independently and with integrity. On occasions this requires it to report critically on the activities of the government of the day. However, the organisation is dependent on that government for its funding and the Board, a body charged with protecting the independence of the broadcaster, is appointed by the government of the day. It is easy to see why this model creates tension. The organisation's dependence on direct funding means that its independence is potentially threatened by a government angered over the way the national broadcaster reports on its activities. Its independence is also potentially threatened by governments stacking the Board to tame the watchdog charged with protecting the organisation's independence.<sup>37</sup>

2.32 In this context, Professor Mark Armstrong, a former Chair of the ABC Board, argues that:

In Australia, we carefully protect the independence of sporting umpires and referees. But we have not learned how to extend the principle to the real world public life. Any efficient democracy prevents governments (the players, in sporting terms) from appointing the referees to institutions such as the ABC Board, the Australian Broadcasting Authority, the Electoral Commission, the Auditor-General and the Ombudsman. Those office-holders are above politics. They have a duty to ensure that the rules of the game are administered fairly, even when the politicians want to gain an advantage for their own team.<sup>38</sup>

2. Limits to the power of the government of the day

2.33 A second argument centres on the concept that there are limits to the rights of a democratically elected government to see its wishes enforced. Often, governments are elected only on the basis of a bare majority of voters, and this does not of itself entitle it to rule contrary to the public interest. Professor Morgan argues:

I noticed at the weekend an article in *The Australian* speculating on the first few days of a possible Beazley government – just a throwaway line – Mr Beazley having promised to govern for all Australians. That has become something of a mantra, but the 50 per cent plus one victor in an election or in a political issue very often then tyrannises the 50 per cent minus one who failed. The notions that we hear from time to time at all levels of politics in

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36 Richards, Submission 55, p 1.

37 CPSU, Submission 363, p 3. See also Professor Armstrong, FABC, Submission 593, p 19. [Appendix 2]

38 FABC, Submission 593, p 20.

this country, ‘We won the election, we know best’, is not appropriate to the operation of a public service broadcaster.<sup>39</sup>

2.34 There is consequently an expectation that the ABC will operate in the public interest in accordance with the democratic wishes of the wider public. This point is reinforced by the fact that the ABC itself is a creation of the Australian Parliament, to which it is obliged to report annually in relation to a range of matters,<sup>40</sup> and also to the Senate during the Senate Estimates hearings.

### 3. Public expectation of independence

2.35 It is also clear that the public has a strong expectation that the ABC will be independent and will act in the public interest as required of it under the ABC Act. This was evident in the findings of the 1981 Dix report:

Our investigations confirm the view that Australians feel strongly about the independence of the ABC. They want the organisation to be independent, and to be seen to be independent from outside interference, political and otherwise. ...

Many people see the system of selection of Commissioners by the government of the day as leaving the ABC open to political pressure.<sup>41</sup>

2.36 The same expectation surfaced in the Mansfield review of 1997:

It is clear that the Australian community as a whole expects the ABC to be fair, unbiased and balanced in its reporting and presentation of news, current affairs and information.<sup>42</sup>

2.37 It was also a sentiment reiterated in the majority of the more than 700 submissions received by this inquiry. According to one representative example of these submissions:

Fundamental to this confidence is the perceived independence of the broadcaster from the government of the day. And fundamental to this perceived independence is that the board of directors should comprise people, who as well as possessing collectively the attributes set out in the ABC Act, are recognised by the public as free from narrow political allegiances or considerations, and able to put the best interests of the organisation and its audiences first. In a phrase sometimes used to refer to those at the helm of the BBC, they should ideally be drawn from ‘the great

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39 Morgan, *Proof Committee Hansard*, Canberra 20 August 2001, p 5.

40 Set out in the ABC Act, Section 80.

41 Committee of Review of the Australian Broadcasting Commission, *The ABC in Review*, 1981, Volume 1, p 7.

42 Mansfield, *The challenge of a better ABC*, 1997, Vol 1, p 28.

and the good' of our society, and should be firmly committed to the concept of public, non-commercial broadcasting.<sup>43</sup>

#### 4. Actual or perceived politicisation makes the Board's job harder

2.38 A further argument is that where there is a perception that members of the Board are not politically impartial, it makes it very difficult for them to carry out their responsibilities, even where they are acting in good faith. As Professor Morgan explained:

At the moment you have the system where the chair is at least perceived – if not in fact, then in perception – as the appointee of the prime minister of the day. There is evidence that Mr McDonald has argued various ABC cases to government, probably against the will or the preference of the executive, but again he pushes it uphill because he is perceived to be the Prime Minister's appointee.<sup>44</sup>

2.39 A practical example of this problem is given by Mr Dempster, who notes the case of the Managing Director's decision to delay the screening of the Four Corners program 'Party Tricks'. Given the perception of the Liberal party affiliation of both Mr McDonald and Mr Shier, it was inevitable that however justifiable the decision may have been, it could only be seen as an attempt to protect Liberal party friends from political attack. As Mr Dempster notes:

Editorial management advised by internal and external lawyers approved the program for broadcast. The MD [Managing Director], informed of its sensitivity, bounced it from the television schedule while further external legal advice was sought. The Chairman, already laden with political baggage ... found it difficult to be believed in his public protestations that the MD's actions were motivated solely by his instinct to protect the ABC from costly defamation action. Instead of sober internal discussion about how best to protect the ABC there was intense distrust. Again the ABC was unnecessarily controversialised.<sup>45</sup>

#### 5. Perceptions and damage to the public trust in the ABC

2.40 A closely related point is that if the ABC is to be effective, it must have the trust of the public. To gain that trust, the ABC must be seen to be independent and at arms length from the government of the day, or any political party. A key point that emerges is the importance of public perception in achieving this credibility. No matter how independent the ABC may **actually** be, it may still be **perceived** as a creature of the government with a leadership appointed by the government from

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43 Appleton, Submission 498, p 1. See also Curtis, Submission 143

44 Morgan, *Proof Committee Hansard*, Canberra 20 August 2001, p 9. See also Thomson, *Proof Committee Hansard*, Canberra 20 August 2001, p 21.

45 Dempster, Submission 365, p 3.

among the ranks of its friends and supporters. As the Council of Australian Postgraduate Associations argue:

Like the dispensation of justice, though, independence must not only be maintained, but must be *seen* to be maintained, if credibility is to be preserved. Even the best appointment, made under legitimate but opaque circumstances, becomes subject to public suspicion, and must result in the erosion of public confidence in the operation of the ABC.<sup>46</sup>

2.41 This point is also emphasised by the Friends of the ABC,<sup>47</sup> and the CPSU:

The first thing I would like to say is that the most valuable asset of the ABC is its reputation. It is the thing that it trades on and probably makes sure that it is held in such high regard in the community.

The starting point, I think, for our discussion is that the reputation of the ABC can be tarnished in a number of ways. It can be tarnished by bad news gathering, biased reporting, but it can equally be tarnished when there is a perception, real or otherwise, that the people charged with maintaining the independence of the organisation are basically there because they are political hacks. To the extent that is either true or not true does not really matter beyond a point; it is the perception of political interference in appointments to the Board that does the ABC, the Board and its audiences a disservice.<sup>48</sup>

## 6. Damages ABC funding

2.42 Finally, the Friends of the ABC argue that that politicisation of the Board is damaging because it threatens funding:

Board appointees who act in the interest of a government which appointed them may be less assertive in seeking government funds. Governments who take office with a board in place which the government perceives to be comprised principally of supporters of another party are less likely to grant the level of funds required ...<sup>49</sup>

### *Conclusions and recommendation*

2.43 Three conclusions can be drawn from this evidence.

2.44 First, it is clear that since the inception of the ABC, in its incarnations as both Commission and Corporation, the party in government has made appointments to the Board that are generally sympathetic to the views of the governing party. The extent to which party affiliation has been a dominant selection criterion seems to have varied

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46 CAPA, Submission 592, p 2.

47 FABC, Submission 593, p 3.

48 Thomson, *Proof Committee Hansard*, Canberra 20 August 2001, p 14.

49 FABC, Submission 593, p 3.

over time, as noted by Professor Inglis, but it certainly seems to have been a consistent theme. This is not to say though, that appointees to the Board have been either incompetent or ineffective in serving the interests of the ABC or the public. As Professor Inglis told the inquiry, there are examples of the Board developing its own allegiances:

Commissioners and Board members with evident political preferences have not always behaved as instruments of the party to which they owed their appointment. They might well develop around the table an allegiance to the ABC itself, a sense of trusteeship, stronger than any commitment to the government responsible for putting them there. In 1967 a Commission full of Menzies and Holt appointees resisted a minister who cut the budget, which he was entitled to do, and ordered that half the cut was to be applied to the always troublesome area of current affairs television, which he was not. The chairman, Sir Robert Madgwick, flew with a team to Canberra to tell him so. The government, not the Commission and management, buckled.<sup>50</sup>

2.45 And elsewhere:

I only have hearsay evidence about what goes on now. I mention in the paper that more than one Board member has told me that, at Board meetings, the differences between people who are nominally on the same side of politics sometimes seem at least as substantial as those of a party political character.<sup>51</sup>

2.46 Second, from the large number of submissions and the complaints they contain, it is also abundantly clear that there is a strong public perception that the Board is not independent.

2.47 Third, it is vital to the credibility of the ABC as the national public broadcaster, that both the Board and the Corporation be independent in fact and perception. The ABC functions as a key element in the working of effective democracy in Australia, and in its role of independent commentator, every effort must be made to strengthen its independence. Although the government has a legitimate role in allocating budgets (subject to Parliamentary approval) and determining media policy overall, Australians have consistently resisted any government attempt to control or influence the ABC.<sup>52</sup> The ABC is a statutory authority, and its independence, from the Minister and the government of the day, is proscribed in the ABC Act. Regulation governing the ABC is to be found in the ABC Act, (which includes the ABC Charter), rather than in other pieces of legislation. The ABC is required to report against its requirements to meet these regulations, in both its Annual Report and through Estimates and other Senate Committees. Further, the ABC Act

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50 FABC, Submission 593, p 16. [Prof Inglis]

51 Inglis, *Proof Committee Hansard*, Canberra 20 August 2001, p 36.

52 Morgan, Submission 3A, p 2.

makes specific the role of the ABC Board and management in determining the degree to which ABC programs and services will take other regulatory requirements into consideration.

2.48 This does not necessarily mean that those who have had an active political past should be excluded from appointment to the ABC Board. A number of submissions supported this proposition.<sup>53</sup> However, the Chair agrees with the view of Mr Thomson representing the CPSU:

I have a strongly held view that people who have a vision about where Australian society should go are quite likely to be drawn into political life and are probably the very kind of people who are needed on boards like the ABC.<sup>54</sup>

2.49 The Friends of the ABC support this view stating:

In a well-balanced ABC Board, there is certainly room for two or three directors with close political affiliations. There is a problem only when the affiliation is with only one political party, or when a large number of the directors are affiliated.<sup>55</sup>

2.50 In the view of the Chair, the answer to the problem of politicisation is not to remove those with 'political baggage'.<sup>56</sup> Rather, the focus should be on how appointments are made, so that appointees are seen to be chosen on the basis of their skills rather than their political affiliations. This implies a method of appointment that is characterised by the principles of merit and transparency, which are the subject of chapter 3.

### **Recommendation 1**

The Chair recommends that the method of Board appointments be altered to embrace a system characterised by the principles of merit and transparency, in order to deal with the widespread public perception that appointments to the ABC Board are made on the basis of political affiliation rather than on merit alone.

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53 For example: Butler, Submission 243; Northover, Submission 252; Central Coast, FOABC, Submission 627

54 Thomson, *Proof Committee Hansard*, Canberra 20 August 2001, p 17. A similar view is expressed by CAPA, Submission 592, p 2.

55 FABC, Submission 593, p 21.

56 The problem of politicisation is not new. The CPSU discuss the findings of the Dix Review at Submission 363, p 4.

## **A representative ABC Board**

2.51 The question ‘who should be appointed to the Board’, implies that members of the Board are appropriately representative of the broader Australian community.

2.52 It should be noted that ‘representativeness’ is not currently a criterion for appointment under the ABC Act, which specifies that a person shall not be appointed as a Director unless:

he or she appears to the Governor-General to be suitable for appointment because of having had experience in connection with the provision of broadcasting services or in communications or management, because of having expertise in financial or technical matters, or because of having cultural or other interests relevant to the oversight of a public organisation engaged in the provision of broadcasting services.<sup>57</sup>

2.53 The criteria are therefore quite general. Appointees must meet one of more of three broad criteria, emphasising: experience in broadcasting and communications; managerial expertise; or cultural background.

2.54 The concept of ‘representativeness’ is also complex. Submissions argued for representation on the Board from a wide range of groups, as discussed in more detail below.

2.55 A good starting point is to examine the membership of the current Board, and the extent to which it might be considered ‘representative’.

### *Background and skills of the current Board*

2.56 The current Board comprises:

- Mr Donald McDonald, Chairman of the Board, who lives in Sydney and has worked in arts administration including involvement with Sydney Theatre Company, Musica Viva, and the Australian Opera.
- Mr Jonathan Shier, Managing Director, comes from a background principally in commercial broadcast and pay television, and lives in Sydney.
- Mr Ian Henschke, staff-elected Director, has worked in radio and television as a reporter, producer and presenter and lives in Adelaide.
- Mr Michael Kroger has a principally commercial background in management, banking and finance, as well as considerable political involvement with the Liberal Party and is from Melbourne.
- Professor Judith Sloan has worked in academia and is a director of a number of corporations and is from South Australia.

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57 ABC Act, section 12(5)

- Mr Ross McLean has experience in politics, and is involved with the WA Chamber of Commerce and Industry, and several companies. Mr McLean is from Western Australia.
- Mr John Gallagher QC has a practice in civil, criminal and commercial law, particularly in planning, heritage and the environment.
- Mrs Leith Bouilly has a background in business management and government and community advisory bodies especially in relation to environmental management. She is from regional Queensland.
- Mr Maurice Newman has worked mainly in stockbroking and investment banking and also lives in Sydney.

2.57 How then does this Board compare with the expectations of representativeness expressed to the Committee?

#### *Separate state and territory representation*

2.58 A popular view was that membership of the Board should be structured around members chosen to represent the states and territories in addition to varying numbers of Commonwealth appointees. The 1995 'Our ABC' Report recommended:

The Committee recommends that, given the paramount importance of ensuring that the ABC remains a truly national broadcaster, the ABC Act should be amended to provide that it is highly desirable that a majority of the states are represented on the ABC Board at all times.<sup>58</sup>

2.59 This model does not require a member from each Australian state or territory, and cannot given that the (currently) fixed number of Board members precludes this. However, it has been convention that the government of the day has chosen members from a majority of states or territories. The Chair also notes that this model has also been adopted to some extent by the BBC, which has National Governors representing Wales, Scotland, and Northern Island, within an overall membership of 12 governors.<sup>59</sup>

2.60 This practice is reflected in the current Board, which includes members from NSW, Queensland, Victoria, South Australian and Western Australia, although none from the Northern Territory, the ACT, or Tasmania.

#### *Community representation*

2.61 Another view is that the Board membership is dominated by business and corporate interests and should have greater representation of other categories:

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58 Report of the Senate Select Committee on ABC Management and Operations, *Our ABC*, 1995, pp 141 & Recommendation 20.

59 [www.bbc.co.uk](http://www.bbc.co.uk). See also Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 58.

Why is there a need for so many people associated with the stockmarket, business, finance, banking, insurance, and several members with commerce degrees? Surely only one person with these education and business experiences is required. Where are the representatives of user groups (IT IS OUR ABC), the education sector, science research, academia, rural organisations, Aborigines and so on?

And what about women? Two out of eight is not good enough.<sup>60</sup>

2.62 The Council of Australian Postgraduate Associations expressed a similar view:

[C]onsiderable efforts should be made to ensure that the typical over-representation of rich, connected white blokes in suits is diminished somewhat, and that other significant groups in the life of the nation are afforded representation. Groups such as Aboriginal and Torres Strait Islander peoples, recent immigrants, gay and lesbian people, youth, retirees, the unemployed, people from rural Australia, and those from the outer suburbs are hardly conspicuous in their participation in the management of public institutions, yet their experiences of life are profoundly affected by them. ...

The majority ownership of a telecommunications company, the possession of board seats on a handful of prominent companies, and the inheritance of a significant family fortune are hardly guarantors of the sort of public-mindedness that the stewardship of the national broadcaster requires.<sup>61</sup>

### *Staff representation*

2.63 Another aspect of representativeness is that of the staff-elected director. The current position was created by a 1985 amendment, but has a longer history, tracing its origins to a staff-elected commissioner introduced by the Whitlam government without legislation in 1975, but subsequently abolished by the Fraser government.<sup>62</sup>

2.64 The Committee heard evidence supporting the important function of this position. According to Mr Cassidy, representing the Friends of the ABC, staff-elected positions are important because they are the only way in which people with actual broadcasting experience have got onto the Board (with the sole exception of Robert Redmond, the founder of 'Four Corners').<sup>63</sup> They therefore offer a particular practical insight into issues that is of real assistance to the Board:

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60 McCaughey, Submission 94, p 2. See also Forster, Submission 353

61 CAPA, Submission 592, p 2. Similar views are expressed by BIITE, Submission 379; Leisegang & McCaughey, Submission 94, p 2; Central Coast, FOABC, Submission 627; Hoy, Submission 176; Burnside, Submission 205

62 FABC, Submission 593, p 14. (Inglis)

63 Cassidy, *Proof Committee Hansard*, Canberra 20 August 2001, p 30.

the ABC Board generally meet once a month, maybe 11 times a year, for one day at a time. They receive briefing papers from the management, but they are pretty rushed and hurried meetings. It was the slogan of the very first staff-elected member of the Board, Marius Webb, that, ‘The Board only knows what it’s told. Make sure that the right person tells it’. One of the problems that the ABC Board has in governance is that it relies very much on being informed by the chief executive. ... One of the values, however, of the staff elected member is that all of those staff-elected members have been program makers and all of them have been distinguished program makers, and they have brought something to the Board – I think an insight – which many of those other Board members have not had. That is the value of it. It is not there to privilege the ABC staff, it is there to aid the good management of the ABC.<sup>64</sup>

2.65 The importance of this role has led to calls by some submissions to increase the number of staff-elected directors to two.<sup>65</sup>

2.66 Conversely, the Committee has heard evidence from Mr Gordon-Smith that having a staff-elected director is inappropriate as it creates a conflict of interest between the role of representing staff members **to** the Board, and being **part** of the Board. Accordingly, he recommends the abolition of the position:

one of those submissions talks about ... the burden of being able to communicate back to the staff more generally and to play an almost representative role in communicating the decisions of the Board and in canvassing issues that might come up at board level with staff more broadly. That imposes an almost insuperable conflict of interest on the person in that role and makes it really difficult for them to participate in that group in a way that really one wishes a director to do that; namely, as part of that team with the interests of the corporation as a whole at the top of their mind.<sup>66</sup>

## **Recommendation 2**

The Chair strongly recommends the retention of the staff-elected director.

64 Cassidy, *Proof Committee Hansard*, Canberra 20 August 2001, p 33.

65 Jakubowski, Submission 643, p 7; Socialist Alliance, Submission 514; Humanist Society of Victoria, Submission 493; McLaren, Submission 120; McLaren, Submission 121; Birch, Submission 182. There is implicit support for additional staff directors is in Watts, Submission 126.

66 Gordon-Smith, *Proof Committee Hansard*, Canberra, 20 August 2001, p 54. See also Gordon-Smith, Submission 608

*Balancing representation with other attributes*

2.67 It is also important to balance ‘representativeness’ with the need to ensure that appointees to the Board have appropriate skills and attributes. The ABC is a large and complex organisation that must navigate a path during a period of great change in the telecommunications and broadcasting sector. To do this successfully, members of the Board must have considerable technical and business skills.

2.68 At the same time, submissions emphasised the importance of selecting members who have a strong commitment to the concept and values of public broadcasting including independence and a public interest ethos. As Forster argues:

Success in areas of life like banking law, commerce, economics and an allegiance to a major political party do not equip people to be guardians of the public broadcaster.

An understanding of and belief in public broadcasting must be the overriding criteria for appointment to the ABC Board.<sup>67</sup>

2.69 This does not imply that an appointee must have experience of public broadcasting. Rather:

they need to be able to demonstrate that they abide by the principles of public broadcasting, that they are there to defend the national broadcaster, and that that’s something they believe in.<sup>68</sup>

2.70 The CPSU also recommended the adoption of general criteria addressing personal attributes, such as those developed in the UK by the Nolan Committee on Standards in Public Life. Appointees are required to demonstrate their commitment to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.<sup>69</sup>

2.71 The Chair is mindful that the Board must try to find a balance between three not necessarily complementing skill sets: community representativeness, business skills, and public broadcasting expertise. As Professor Armstrong explained:

the Board wrestles with a dual role. It must do the hard planning, financial and monitoring work of a typical board in the public or private sector, as well as dealing with the creative, community and programming issues of a unique cultural institution. Cabinets often select people who would be well

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67 Forster, Submission 353. See also FABC Hunter Region, Submission 18, p 1; Walters, Submission 70; Colbourne, Submission 123; Waller, Submission 200; Levin, Submission 96; Dempster, Submission 365, p 4.

68 Thomson, *Proof Committee Hansard*, Canberra 20 August 2001, p 20. See also Dempster, *Proof Committee Hansard*, Canberra 20 August 2001, p 45.

69 CPSU, Submission 363, p 10.

suited to the Council role, but are not ideal directors for the board of a major public enterprise.<sup>70</sup>

2.72 There are inevitable dilemmas. As Ms Appleton argues in relation to seeking a high level of community representation:

Any such approach can be no better than tokenistic and is likely to result in an unwieldy group with wildly differing capabilities, as historical experience with the ABC's former Commission, when 'representativeness' was an objective, proved.<sup>71</sup>

2.73 Finding the balance has previously led to criticism of the composition of the Board. Professor Inglis described the attempt by the then Minister, Mr Duffy, to appoint a more representative Board in accordance with the recommendations of the Dix Review:

*The Age* had welcomed the new Board as a group which 'had the chance to rejuvenate Aunty'. Three years later, the paper judged the first Board differently. 'The Government's mistake', it declared, 'was to appoint people who were representative of community interests, when they should have been chosen primarily for their knowledge of broadcasting and for their managerial experience'. The paper was not alone in thinking that the first group of Directors had not displayed conspicuous expertise.<sup>72</sup>

2.74 The overall view of submissions received by this inquiry is that the current mix of skills is inadequate,<sup>73</sup> which was also the view reached by the Senate Select Committee in the 'Our ABC' Report.<sup>74</sup>

#### *Role of the National Advisory Council*

2.75 The Chair notes that several submissions discussed the independence of the National Advisory Council in the same manner as the Board.

2.76 The Council is created by the Act to 'either on its own initiative or at the request of the Board, to furnish advice to the Board on matters relating to broadcasting programs and television programs of the Corporation'.<sup>75</sup> The 12 members meet three

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70 FABC, Submission 593, p 20. [Prof Armstrong]

71 Appleton, Submission 498, p 2.

72 FABC, Submission 593, p 15. [Prof Inglis]

73 For example: Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 19.

74 Report of the Senate Select Committee on ABC Management and Operations, *Our ABC*, 1995, p 143.

75 ABC Act, section 11.

times a year, and are appointed by the Board<sup>76</sup> following a publicly advertised nomination process. Members reflect a diversity of backgrounds, age and expertise.<sup>77</sup>

2.77 Various submissions suggested that greater use could be made of the Council:

The ABC Advisory Council can provide a more effective role on behalf of the Australian community by having direct representation on the Board. ... The Advisory Council already plays a consultative and communicative role with the Australian public. The effectiveness of this role would be enhanced by providing the Council to have its members relaying community feedback to the Board.<sup>78</sup>

2.78 This is supported by Professor Armstrong, a former Chairman of the ABC Board:

[T]he ABC Act envisages a much more powerful National Advisory Council (NAC), to address program and community issues. But the ABC itself has downgraded the Council over 15 years; and this has undermined a pillar of accountability planned by the Dix Report in 1981.<sup>79</sup>

2.79 The Chair upholds the current role and function of the National Advisory Council, as proscribed in the ABC Act. The National Advisory Council provides advice to the Board on issues of community standards, programming and content, but should not be used as a vehicle to correct the flaws of the Board, or be used to respond to issues if the Board fails to do so. Under the ABC Act, the statutory function of the NAC is clear, and Board members should be aware of their obligations to consult with the NAC on a regular and ongoing basis.

### *Conclusions*

2.80 In considering the extent to which the ABC Board is representative, the Chair concludes that the current Board membership is generally geographically representative. However, it is less so in relation to other criteria such as gender, ethnicity, age or community background, and rather reflects a focus on skills relating to management and technical expertise. The Chair notes the high level of community concern, as reflected in the submissions, that the Board members have largely been chosen on the basis of their perceived political affiliation rather than on the basis of merit and a lack of a demonstrated commitment to public sector broadcasting.

2.81 In selecting board members, the Chair recommends there must be a balance between various possible criteria such as community or cultural background,

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76 ABC Act, section 11(5)

77 ABC Advisory Council website at [www.abc.net.au](http://www.abc.net.au).

78 Jakubowski, Submission 643, p 8.

79 FABC, Submission 593, p 20; see also Everingham, Submission 59, p 2; Socialist Alliance, Submission 514; Appleton, Submission 498, p 3.

managerial expertise and most importantly, knowledge of and commitment to public broadcasting.

2.82 The Chair recommends that three principles should influence the final judgement of Board membership.

- Firstly, the need to ensure members are drawn from a variety of social, economic or cultural backgrounds, and have a demonstrated commitment to public sector broadcasting.
- Secondly, members must be competent in the governance task of a large and complex organisation, with particular reference to public sector, or independent or other statutory authorities.
- Thirdly, the critical factor is the mix of skills and talent on the Board as a whole, and how it forms a unified 'team' rather than a focus on individual skills.<sup>80</sup>

2.83 On these principles, the current criteria set out in section 12 of the Act are appropriate in that they provide for a wide range of appointments. Again, according to these principles, the Chair does not favour creating categories of membership or representation on the Board, along state lines, or membership of particular groups. This point was made in the Government Response to the Our ABC Report:

The Act sets out general abilities which nominees must possess to be appointed by the Governor-General. ...

The Government considers that any attempt to further codify specific skills or background could allow insufficient flexibility for appointments to the Board that ensure the Board operates effectively in the rapidly changing broadcasting, communications and corporate environment.<sup>81</sup>

2.84 The Chair agrees that amending the ABC Act to prescribe particular requirements would unduly restrict the flexibility of the system of appointments, and in relation to state representation, the current informal system is delivering a satisfactory result.

2.85 Although noting the comments of Mr Gordon-Smith in relation to the staff-elected Director, the Chair considers that this position offers substantial advantages for the Board itself that outweigh the potential conflict of interest. Accordingly, the position of staff-elected Director should remain, although the Chair does not accept the need for a second such representative.

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80 Jakubowski, Submission 643, p 4.

81 Government Response to the Senate Select Committee on ABC Management and Operations, *Our ABC*, 20 November 1995.

2.86 To the extent that the current Board reflects a bias towards expertise in governance and more technical matters, the Chair considers that this is appropriate given the nature of the task.

2.87 The Chair does however, consider that any appointees should have a fundamental commitment to the principle of public broadcasting. The Chair firmly believes that every effort should be made to address the concept during the selection process.

2.88 The Chair also considers that improvements could be made in the way ideas and information flows to and from the Board. The Chair agrees that the National Advisory Council should be encouraged by the Board to provide it with more regular advice than currently seems to be practiced.

2.89 In order for this to occur, the Chair recommends that the Board appoint one of its members to be a formal National Advisory Council liaison officer. Further, the Board may invite the Chair of the National Advisory Council to report directly to it at any of its Board meetings as required or necessary. The National Advisory Council may also invite any members of the Board to any of its consultative forums, or meetings, as required or necessary.

2.90 The meetings or consultative forums of the National Advisory Council should coincide with that of the Board to ensure that its discussions and findings were relevant to current Board deliberations. The Chair recommends that the Council should meet four times each year, prior to each Board meeting.

### **Recommendation 3**

The Chair recommends that appointees to the ABC Board should have a demonstrated commitment to the principles of public broadcasting.

### **Recommendation 4**

The Chair recommends, in relation to the ABC National Advisory Council:

- that the Board appoint a member to perform a National Advisory Council liaison function.
- that the ABC Advisory Council shall meet four times per year, at times which reflect the schedule of the ABC Board.