

**SUBMISSION TO THE SENATE STANDING REFERENCES COMMITTEE
ON THE ENVIRONMENT, COMMUNICATIONS, INFORMATION
TECHNOLOGY AND THE ARTS**

CONTENTS

Introduction	3
An open transparent merit-based selection process.....	3
Application process	3
Independent advice.....	3
Selection criteria	4
Policy and strategic training	4
Continuing education	5
Conflict of interest	5
Role of the Board	5
Appointment of Board members.....	6
Staff elected director	7
Role of the ABC's Advisory Council.....	7
Greater interaction with public	9
ABC Board Website	9

Introduction

This submission canvasses a number of issues relating to board appointments to the Australian Broadcasting Corporation. These include designing a more open selection process and a change in composition of the Board to allow more balanced representation for staff and the community. Amendments to legislation are also proposed to ensure that public confidence is enhanced by greater accountability and transparency from the Board itself, as well as an expanded role for the ABC's Advisory Council, including changes to its selection process.

An open transparent merit-based selection process

If any best practice is to be gleaned from such international benchmarking, a more open, publicly scrutinised process for appointments to the ABC Board is very much in the public interest and would do much to restore public confidence in the independence of the national broadcaster.

The current process doesn't make clear what the selection criteria are for board appointment. It also does not delve into the wider pool of capable Australians, only those known personally to Ministers or who already have a substantial profile in public life. While these people shouldn't be discounted, other worthy potential applicants may be overlooked through such a restricted process.

Overseas appointment processes for public broadcasters in Europe, the UK and Canada generally involve a more rigorous and transparent process for Board appointments than the 'behind closed doors' approach. If any best practice is to be gleaned from such international benchmarking, a more open, publicly scrutinised process for appointments to the ABC Board is very much in the public interest and would do much to restore public confidence in the independence of the national broadcaster.

Application process

Nominations should be widely advertised throughout metropolitan and regional Australia.

The process of Board selection should be threefold:

- (i) by invitation
- (ii) by community or public nomination
- (iii) by self nomination

Nominations for board appointments to the ABC, like other significant Boards or statutory bodies (eg the Administrative Appeals Tribunal, numerous government and quasi-government advisory panels or review committees) should be widely advertised throughout metropolitan and regional Australia.

Independent advice

A selection panel, possibly from an 'arms-length' body, could create a short list of applicants.

The advertisement should clearly specify the selection criteria and a standard form be devised.

A selection panel possibly involving representatives from an arm's length section of the bureaucracy such as the Public Service Merit Protection Commission or some type of Ombudsman's office could create a short list of applicants. All applicants would of course need to be reviewed against the selection criteria and the short list drawn up from those who best addressed it.

Selection criteria

Section 12 of the ABC Act could be considerably strengthened by adding criteria such as those from the UK Nolan Committee on standards in public life. They are the 'seven principles of public life': selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

On any board, it is the mix of skills and relevant experience and the manner in which the Board works together that ultimately determines its success in governance. A good understanding of the Australian media environment and the role of public broadcasting is important. However, candidates from other areas, eg: science, law, the arts & music, economics can also provide valuable perspective.

The crucial criterion here is the commitment of each Board member to acting fully in the public interest and for the common objective of good governance.

The principles established in the UK Code of Practice for Ministerial Appointments by the Lord Nolan's committee on standards in Public Life (1995) provide guidance in this regard. They are the 'seven principles of public life': selflessness, integrity, objectivity, accountability, openness, honesty and leadership - which the Committee saw as desirable qualities for appointment to positions of great public responsibility

Section 12 of the Australian Broadcasting Corporation (ABC) Act 1983 currently does not provide any criteria for selection other than what is loosely nominated under subsection 5, namely

A person shall not be appointed as a Director referred to in paragraph (1)(c) 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.

This section could be considerably strengthened by adding criteria such as those from the Nolan Committee (above) by which to judge potential applicants. Nominees could be asked to demonstrate their commitment to these principles in their formal applications.

Policy and strategic training

Upon appointment, Board members to undertake intensive training sessions on the issues surrounding public broadcasting.

As stated before, it is not essential that Board members have a strong familiarity with the Australian media environment or how a publicly funded taxpayer accountable organisation like the ABC should operate. However, the responsibility of the ABC Board is quite unlike that of any other corporate or Government Board in public life. Its role in ensuring a strong and independent voice in the Australian cultural and media environment places it in a unique category. This role has similarities to the office of a public trustee, for example, or the impartiality requirements associated with judicial office.

Regardless of their skill level or background, every new Board member would potentially benefit from taking part, upon appointment, in a three or four day intensive training session on the issues surrounding the public broadcaster. This would help inform their decision-making process significantly.

These sessions would focus on how the national broadcaster fits into the mix public/commercial/community model of the Australian media and communications environment, the accountability of the ABC to the Parliament, as well as key internal policy areas such as the ABC's Editorial Policies (which govern the operations of the organisation), complaints handling processes, audience measurement, new technology developments & demographic trends and so on. Additionally, it would be helpful for Board members to be fully briefed on the principles behind certain sections of the ABC Act such as Ss. 6 (the Charter) &

8 (Duties of the Board) such as having a duty to 'maintain the independence and integrity of the Corporation' and ensuring 'maximum benefit to the people of Australia'.

Continuing education

Each year, Board members should undertake to a further training seminars in key strategic areas.

For each year of Board appointment, there should be a requirement for Board members to undertake to a further training seminars in key strategic areas (much like practicing lawyers or other professionals need to continually update their skills, knowledge and understanding of emerging issues through continuing legal education).

Conflict of interest

Section 17 of the ABC Act should be extended from Advisory Council members to Board directors and incorporate principles under S27J of the CAC Act.

Given the duty of the ABC Board to protect the independence and integrity of the Corporation, it is essential that there be no conflict between Board members' economic, personal, political and other interests and their ABC board work.

To ensure the highest degree of probity and guarantee public confidence, the ABC Act (s.17) should be amended to explicitly cover potential areas of conflict of interest which may arise in Board discussions from time to time.

Board members should have a duty to fully disclose any potential conflict of interest (pecuniary or non-pecuniary) which may impact either directly or indirectly on Board deliberations about the operations of the organisation and totally exclude themselves from these discussions. Individual Board members with potential conflicts, however indirect, should not involve themselves at all in these discussions and s.17 of the Act should clearly state this.

I note that s.27(F-J) of the Commonwealth Authorities and Companies Act in relation to appointments to Government bodies in general, deals with directors' duties to disclose personal material and interests and exclude themselves from discussion or voting on relevant matters. However, s.27J also allows other directors to resolve that the director is able to participate. Section 17 of the ABC Act should be extended from Advisory Council members to Board directors and incorporate principles under S27J of the CAC Act.

Role of the Board

Section 8 of the ABC Act should clarify how the Board's duty of independence and impartiality should be discharged. Another alternative is to establish a set of guidelines on how Board members should potentially conduct themselves where delineation is blurred. The Committee may wish to consider whether a Code of Conduct for Board directors could be established to provide them with guidance in this area.

Section 8. of the BC Act sets out the broad duties of the Board, namely

(1) It is the duty of the Board:

- (a) to ensure that the functions of the Corporation are performed efficiently and with the maximum benefit to the people of Australia;
- (b) to maintain the independence and integrity of the Corporation;
- (c) to ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism; and
- d) to ensure that the Corporation does not contravene, or fail to comply with:
 - (i) any of the provisions of this Act or any other Act that are applicable to the Corporation; or
 - (ii) any directions given to, or requirements made in relation to, the Corporation under any of those provisions; and

- (e) to develop codes of practice relating to:
- (i) programming matters; and
- (ii) if the Corporation has the function of providing a datacasting service under section 6A—that service;

and to notify those codes to the Australian Broadcasting Authority.

- (2) If the Minister at any time furnishes to the Board a statement of the policy of the Commonwealth Government on any matter relating to broadcasting, or any matter of administration, that is relevant to the performance of the functions of the Corporation and requests the Board to consider that policy in the performance of its functions, the Board shall ensure that consideration is given to that policy.
- (3) Nothing in subsection (1) or (2) is to be taken to impose on the Board a duty that is enforceable by proceedings in a court.

However, it would be helpful if the ABC Act more clearly defines how these duties should be discharged. For example, while the Board has a broad duty to '*maintain the independence and integrity of the Corporation*', this should not extend to involving itself in the minutiae of editorial and administrative decision making. These should be matters for ABC staff and, if sensitive, their editorial supervisors or managers – *not* the Board.

Independence has to apply all areas of ABC activity, not just in relation to editorial freedom for program-making. *The editorial, creative and administrative independence of ABC divisions is essential to the overall independent operation of the Corporation in the Australian media environment.*

By involving itself in detailed decision-making processes (as opposed to the overriding principle) the Board potentially jeopardises the independence and integrity of the processes they have a duty to protect.

The Board already has a representative in this role through that of the Managing Director, as Editor-in-Chief. Other major public broadcasters like the BBC, treat this delineation very seriously.

A possible alternative to amending the Act is to establish a set of guidelines on how Board members should potentially conduct themselves where delineation is blurred. It may be therefore useful for this Committee to consider whether a *Code of Conduct* for Board directors could be established to provide them with guidance in this sensitive, sometimes unclear area. This code could conveniently be appended to the already established *ABC Editorial Policies* 'bible' which all ABC staff must observe. This would also have the added advantage of providing transparency to the staff and general public by displaying the guidelines for ABC Board members, and further support the Corporation's accountability to the Parliament and general public.

Appointment of Board members

It is proposed that the Committee review the current Board composition and consider a selection process which could broaden representation of the community interests.

Section 12 of the ABC Act currently provides that

- (1) The Board shall consist of:
 - (a) the Managing Director
- (2) (b) the staff-elected Director; and
- (3) not fewer than 5 nor more than 7 other Directors.

Another possible way to generate more public confidence in the independence and representation of the Board is to review the actual composition of the Board. For example, the current *number* of directors (no fewer than 5 and no more than 7) does not suit appointment if it is to be based on geographical criteria (a spread of Board members across Australian states has been one of the criteria for appointment over the last decade). Rather than tie the Board appointments to geographical criteria, however, it may be useful to explore a different method

of selecting members - particularly if a broader cross-section of representation can be achieved.

For example, the ABC already has a consultative group, which attracts representatives from communities around Australia. In this regard, the ABC's *Advisory Council* could potentially provide the geographical representatives on an alternating basis, particularly if the selection process for the *Advisory Council* was determined by a joint parliamentary committee.

It is proposed that an alternative Board composition and selection process is considered. This could consist of the MD, five formally appointed Board Directors and two Advisory Council members (chosen by the Council itself with the ABC Board representatives changing every 12 months) and two staff elected directors.

Staff elected director

Increase staff-elected director positions on Board to two members

The staff-elected director position should be increased to two members. The 4000 plus Australia wide ABC staff are geographically spread and extremely varied in terms of skills, work-environment, responsibilities and engagement with the public. The position of the staff-elected director is just too much for one person to carry. Unlike other ABC Board directors, the staff-elected director usually already has a full-time job within the organisation. Additionally, he or she is expect to consult with, debrief and represent staff on all sorts of issues as well as provide a conduit between Board and staff. The staff-elected director position should therefore be increased to two. Ideally the directors appointed should have different roles in the organisation (ie television, radio or new media) as well as represent different geographic parts.

Role of the ABC's Advisory Council

The current role of the Advisory Council, particularly in relation to direct Board representation, needs to be reviewed.

Section 11 of the Act governs the establishment of the Advisory Council:

The Board shall establish an Advisory Council under the name Australian Broadcasting Corporation Advisory Council.

(2) The Board may also establish:

- (a) an Advisory Council in relation to any State;
- (b) an Advisory Council in relation to any Territory; and
- (c) an Advisory Council in relation to any region of Australia.

(3) The function of the Australian Broadcasting Corporation Advisory Council is, either on its own initiative or at the request of the Board, to advise the Board on matters relating to the Corporation's broadcasting programs.

(4) The function of an Advisory Council established under subsection (2) in relation to a State, Territory or region is, either on its own initiative or at the request of the Australian Broadcasting Corporation Advisory Council, to advise the Australian Broadcasting Corporation Advisory Council on matters relating to the Corporation's broadcasting programs in that State, Territory or region.

(5) An Advisory Council shall consist of such persons as the Board from time to time appoints.

(6) In making appointments to the Australian Broadcasting Corporation Advisory Council, the Board shall have regard to the desirability of including in the membership of that Advisory Council a broad representation of the Australian community.

(7) In the case of each Advisory Council, the Board shall appoint one of the members of the Advisory Council to be the Chairperson of the Advisory Council and another of the members of the Advisory Council to be the Deputy Chairperson of the Advisory Council.

(8) In addition to Advisory Councils, the Board may establish advisory committees, consisting of such persons as the Board appoints, to furnish advice to the Board on particular matters or classes of matters relating to the functions of the Corporation.

(9) The Board may determine:

(a) the manner in which an Advisory Council or advisory committee is to perform its functions; and

(b) the procedure to be followed at or in relation to meetings of an Advisory Council advisory committee, including matters with respect to:

(i) the convening of meetings of the Advisory Council or advisory committee;

(ii) the number of members of the Advisory Council or advisory committee who are to constitute a quorum;

(iii) the selection of a member of the Advisory Council or advisory committee to preside at meetings of the Advisory Council or advisory committee at which the Chairperson and the Deputy Chairperson of the Advisory Council or advisory committee are not present; and

(iv) the manner in which questions arising at a meeting of the Advisory Council or advisory committee are to be decided;

and the Managing Director shall notify each Advisory Council or advisory committee in writing of any determination by the Board under this subsection in relation to that Advisory Council or advisory committee.

(10) If the Board decides that the members of the Australian Broadcasting Corporation Advisory Council should be remunerated, those members shall be paid by the Corporation such remuneration as is determined by the Remuneration Tribunal.

(11) Subject to the *Remuneration Tribunal Act 1973*, members of an Advisory Council or advisory committee shall be paid by the Corporation such allowances as are prescribed by the regulations.

(12) Where the Board receives any advice from the Australian Broadcasting Corporation Advisory Council or from an advisory committee, the Board shall have regard to the advice.

The ABC Advisory Council can provide a more effective role on behalf of the Australian community by having direct representation on the Board. The Council currently makes a list of annual recommendations to the Board. These recommendations are republished each year in the ABC's annual report, and the Board provides a formal response to these on a yearly basis. 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. The Advisory Council could have two members elected to the ABC Board for a period of one year. This would ensure the feedback it receives from grass-roots communities around Australia is directly advocated, and information from the Board communicated back.

Appointments to the Advisory Council, under the current legislation, are made by the ABC Board. To ensure genuine community representation it is proposed that these appointments are overseen by a parliamentary committee with multi-party representation. Section 11 of the Act should therefore be amended to enable appointments to be made with Parliament's involvement. This would hopefully also add a further component to ensure a balance of representation amongst Board members across community as well as skills and experience. Selection criteria for Advisory Council members could also include geographical factors to ensure representation for each State.

Accountability and Board minutes

The ABC Board should make more information about its decisions available to the general public.

Currently all ABC Board papers and minutes of meetings are kept totally confidential and with rare exception, not released to the public unless special requests are lodged through formal FOI processes. In a small number of cases, confidentiality needs to be maintained because breach may reflect adversely on an individual or area, or thwart strategic negotiations with third parties. As a general principle, however, should be the exception, not the rule. The public

as taxpayers should know more about the decision-making processes of the national broadcaster.

In the same way that most other publicly appointed boards or committees provide minutes, or a judge provides reasons for judgement, the ABC Board should provide information about its decisions to the general public. By comparison, the BBC provides minutes of all of its meetings to the general public on its website. See

http://www.bbc.co.uk/info/bbc/acc_govs_monthly.shtml

With commercial-in-confidence matters, unless the matter is not deemed to be in the public interest, or involves personal or sensitive issues concerning individuals, these minutes should also be considered for release after a short period of time (eg after 12 months).

Greater interaction with public

Greater involvement of the ABC Board members with both staff and public would positively contribute to accountability and public confidence.

Another useful practical feature that would enhance public confidence would be greater Board interaction with the public. Again, to borrow a good idea from elsewhere, the BBC Board regularly holds public consultations and special 'Governors' seminars' focused on issues as diverse as science coverage, factual programming, public funding and so on.

http://www.bbc.co.uk/info/bbc/acc_seminars.shtml

Greater involvement of the ABC Board members with both staff and public would positively contribute to accountability and better communication.

ABC Board Website

The ABC Board should develop its own website to increase communication with the public.

The BBC's Board of Governors has its own website, with detailed information about Governors, accounts of Board meetings, policy issues, public seminars and consultative processes and much more. While the current ABC staff-elected director has established a web-site presence for ABC staff in order to communicate with them, there are very few mechanisms for staff or the general public to learn more about the ABC Board members and how they make their decisions. A dedicated website for the ABC Board, which includes features such as information about Board members, accounts of meetings and decision-making processes as well as enabling direct feedback from the general public would enhance public confidence and accountability, and create better communication between the Board, staff and the broader community.

Liz Jakubowski
Producer, The Public Record
Manager, Public Affairs Online
Australian Broadcasting Corporation
GPO Box 9994 Sydney 2001
em: [REDACTED]
ph: [REDACTED]