

The Parliament of the Commonwealth of Australia

Above Board?

Methods of appointment to the ABC Board

**Report of the Senate Environment, Communications,
Information Technology and the Arts References Committee**

September 2001

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TABLE OF CONTENTS

MEMBERSHIP OF THE COMMITTEE - 39TH PARLIAMENT	iii
TABLE OF CONTENTS	v
CHAPTER 1	1
INTRODUCTION	1
Terms of Reference	1
Conduct of the inquiry.....	1
Background	2
The ABC Board.....	3
Outline of the report	5
CHAPTER 2	7
THE SELECTION CRITERIA: WHO SHOULD BE ON THE BOARD?.....	7
Introduction	7
An independent ABC Board?.....	7
A representative ABC Board.....	20
CHAPTER 3	29
REFORMING THE APPOINTMENT PROCESS	29
Introduction	29
General principles	29
The selection criteria	31
Developing a field of candidates.....	32
Shortlisting and appointments.....	33
Other governance issues.....	39
REPORT BY GOVERNMENT SENATORS	47
Introduction	47
Problems with the board – no case to answer	47
Should the ABC be unique?	49
Comments in relation to recommendations.....	50
Conclusion.....	51

LABOR SENATORS' MINORITY REPORT	53
TABLE OF CONTENTS	53
Introduction	55
Impetus for change	56
Alternatives for appointment of board members	58
Labor Senators' criticisms of Chair's report	61
Conclusions	63
ADDITIONAL COMMENTS BY SENATOR BOB BROWN, AUSTRALIAN GREENS.....	65
APPENDIX 1	67
LIST OF SUBMISSIONS	67
APPENDIX 2	87
LIST OF WITNESSES	87
APPENDIX 3	89
THE METHOD OF APPOINTMENT TO BOARD POSITIONS FOR THE BRITISH BROADCASTING CORPORATION	89
Principles underpinning the Code of Practice	89

CHAPTER 1

INTRODUCTION

The ABC does not exist for the benefit of any single individual, organisation or political party, but for all Australians, including me. The very fact of its independence should be its strength.¹

Terms of Reference

1.1 On 27 June 2001, the Senate referred the following matter to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 25 September 2001:

The development and implementation of options for methods of appointment to the board of the Australian Broadcasting Corporation (ABC) that would enhance public confidence in the independence and representativeness of the ABC as the national broadcaster.

Conduct of the inquiry

Advertising the inquiry

1.2 The Committee advertised the inquiry in *The Sydney Morning Herald* and *The Age* on 7 July and *The Weekend Australian* on 7-8 July 2001, calling for written submissions to be lodged by 9 August 2001. Details of the inquiry were also placed on the Committee's homepage on the Internet. In addition, letters were sent to organisations and individuals with an interest in the inquiry.

Evidence to the inquiry

1.3 The Committee received and published 720 written submissions, which are listed at Appendix 1.

1.4 A public hearing was held in Parliament House, Canberra on Monday 20 August, taking evidence from five individuals and two organisations. Witnesses are listed at Appendix 2. Copies of submissions or the transcripts of evidence are available on request from the secretariat or via the Committee's homepage at:

http://www.aph.gov.au/senate_environment

1.5 The Committee wishes to thank all of the many people who contributed to the inquiry by preparing written submissions and appearing at the public hearing. The

1 Brown, Submission 109.

Committee has endeavoured to reflect all of these views in the report, but with so many submissions direct attribution has not always been possible.

Background

1.6 The Australian Broadcasting Corporation (the ‘ABC’) was established by the *Australian Broadcasting Corporation Act (1983)*, and its functions set out in sections 6 and 6A of the Act. The issue of how appointments are made to the ABC Board is not new, and this inquiry draws on a considerable amount of earlier work including three major inquiries, and a Private Member’s bill.

1.7 First of these was the *Committee of Review of the Australian Broadcasting Commission*,² conducted by Alex Dix and others in 1981, which received 2,259 submissions from individuals and organisations, and resulted in a five volume report.³

1.8 Second was the inquiry in 1997, by Bob Mansfield titled *The Challenge of a Better ABC*. The Mansfield inquiry received 10,615 submissions and produced a two volume report.

1.9 While both inquiries had a broad focus, they included discussion and recommendations covering the issue of the ABC’s independence.

‘Our ABC’ Report

1.10 In March 1995, the Senate Select Committee on ABC Management and Operations, handed down its report *Our ABC*. Although the Committee considered a range of issues in relation to the ABC, chapter 7 of the report focused specifically on the ABC Board, including its composition, duties and methods of appointment. Among other things, the Committee found that:

The current ABC is required to make decisions with long-term implications in a time of overwhelmingly rapid transformation of broadcasting technology. The Board’s task may have been made more difficult by the fact that many of its members have little specialist knowledge of either the broadcasting industry or the new technologies. Without such expertise, it is inevitable that a part-time board will be essentially reactive to senior management suggestions and initiatives, and will have difficulty in setting a vision other than in the most general terms, for the future direction of the organisation. The Committee believes that the Board as a whole lacks the range of depth of skills and experience which would be necessary to provide adequate leadership for the ABC.⁴

2 The ABC changed from a Commission to a Corporation under the *Australian Broadcasting Corporation Act 1983*.

3 Committee of Review of the Australian Broadcasting Commission, *The ABC in review: national broadcasting in the 1980s*, 1981, Volume 2, p 3.

4 Report of the Senate Select Committee on ABC Management and Operations, *Our ABC*, March 1995, p 155.

1.11 Some of the recommendations of these committees will be discussed in detail in the following chapters.

ABC Amendment Bill 1999

1.12 On 25 March 1999, Senator Vicki Bourne of the Australian Democrats introduced the Australian Broadcasting Corporation Amendment Bill 1999. The bill proposes the creation of a Joint Parliamentary Committee on the ABC which would have the power, amongst other things, to accept or reject the Minister for Communications' recommendations for appointment to the ABC Board. The details of the bill are discussed in greater detail in Chapter 3.

The ABC Board

1.13 The Board of the ABC is created by section 7 of the Act, with the membership detailed in section 12. There are three types of Director:⁵

- the Managing Director, who is appointed by the Board for a period of 5 years⁶
- the staff-elected Director;⁷ appointed for a period of 2 years,⁸ and
- not fewer than 5 nor more than 7 other Directors, appointed for a period not exceeding 5 years by the Governor-General on the advice of the Minister for Communications.⁹

1.14 The duties of the Board are set out in section 8:

(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

5 ABC Act, section 12

6 Section 12(1). The office of Managing Director is established under section 9, and the duties are set out in section 10.

7 Section 13A. The Staff appointed director must be an employed member of the ABC, whilst the rules governing the elections are provided in Regulations (section 13A(1))

8 Section 13A(5)

9 Section 12(1) & (2). Basis for 'on the advice of the minister'?

- (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.

1.15 The Board has three further functions. First, it is responsible for appointing the Managing Director.¹⁰ Second, section 31D requires the Board to notify the Minister where the Board considers matters have arisen that may prevent or effect the achievement of the ABC's objectives, strategies and policies, or revenue. Third, the Board may make rules necessary to the administration of the Act.¹¹

1.16 The current board comprises:¹²

- Mr Donald McDonald, AO, Chairman of the Board, who was reappointed for a second five year term on 6 July 2001;
- Mr Jonathan Shier, Managing Director;
- Mr Ian Henschke, staff-elected Director;
- Mr Michael Kroger;
- Professor Judith Sloan;

10 Section 13(1)

11 Section 83

12 ABC Website, (www.abc.net.au) as at 6 July 2001.

- Mr Ross McLean;
- Mr John Gallagher QC;
- Mrs Leith Bouilly; and
- Mr Maurice Newman.

Outline of the report

1.17 The report is structured around answering the two central questions in the Senate Committee's terms of reference: **who** should be selected as a member of the ABC Board, and **how** should they be appointed. Chapter 2 answers the first question by examining both the issue of politicisation of the Board, and that of the skills and representative qualities of appointees. Chapter 3 then answers the second question by examining the process of appointment, broken down into the key stages of defining the selection criteria; gaining nominations; assessing and shortlisting candidates; and making the final decision.

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.¹

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.²

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

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.³

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.⁴

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.⁵

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

2.8 Submissions were also critical of the role of the Managing Director, Mr Jonathan Shier.⁹ 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

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.¹⁰ There was also criticism of the failure to protest at funding cuts; staff losses;¹¹ repeats of programs; increased advertising of ABC programs;¹² and the closure of the ABC archives department.¹³ 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’.¹⁴

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.¹⁵

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

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.²¹

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.²²

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.²³

2.16 And later:

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.²⁴

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.²⁵

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.²⁶ 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 1995.²⁷

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.²⁸

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.²⁹

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’.³⁰

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.³¹

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. ...

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.³²

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.³³

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.³⁴

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.³⁵

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

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.³⁶

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.³⁷

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.³⁸

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

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.³⁹

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,⁴⁰ 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.⁴¹

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.⁴²

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

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.⁴³

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.⁴⁴

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.⁴⁵

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

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.⁴⁶

2.41 This point is also emphasised by the Friends of the ABC,⁴⁷ 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.⁴⁸

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 ...⁴⁹

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

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.⁵⁰

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.⁵¹

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.⁵² 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

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.⁵³ 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.⁵⁴

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.⁵⁵

2.50 In the view of the Chair, the answer to the problem of politicisation is not to remove those with 'political baggage'.⁵⁶ 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.

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.⁵⁷

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.

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.⁵⁸

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.⁵⁹

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:

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

59 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.⁶⁰

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.⁶¹

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.⁶²

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').⁶³ They therefore offer a particular practical insight into issues that is of real assistance to the Board:

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.⁶⁴

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

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.⁶⁶

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.⁶⁷

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.⁶⁸

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.⁶⁹

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

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.⁷⁰

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.⁷¹

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.⁷²

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

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'.⁷⁵ The 12 members meet three

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 Board⁷⁶ following a publicly advertised nomination process. Members reflect a diversity of backgrounds, age and expertise.⁷⁷

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.⁷⁸

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 1981.⁷⁹

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,

76 ABC Act, section 11(5)

77 ABC Advisory Council website at 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.⁸⁰

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.⁸¹

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.

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.

CHAPTER 3

REFORMING THE APPOINTMENT PROCESS

It may be a Utopian view but I would like to see selection to the ABC Board as sought after, cherished and respected in the public mind as winning Olympic gold or the Nobel prize.¹

Introduction

3.1 The previous chapter discussed what sort of people should be on the ABC Board. A key finding was a widespread perception that appointments to the Board are made on the basis of political affiliation and patronage rather than on merit. Whether or not this is actually the case, the consensus of much of the evidence is that the most effective way of correcting this perception is to reform the way in which appointments are made.

3.2 This chapter therefore considers how members should be appointed. To do so, this chapter examines the process in stages: determining the selection criteria; developing a list of potential candidates; and making the final selection decision. This analysis is prefaced by a discussion of the core principles that should underpin whatever system is chosen.

3.3 Frequent mention is made throughout this chapter to the ‘Nolan Rules’, which are considered by many witnesses to represent international best practice. These derive from the UK Committee on Standards in Public Life, chaired by Lord Nolan, which in 1995 developed a model for making senior appointments to public sector agencies. The model revolves around a Code of Practice, seven principles of public life, and a procedural model administered by the Commissioner for Public Appointments. The Principles underpinning the UK Code of Practice is reproduced at Appendix 3.²

3.4 The chapter concludes with a general discussion relating to the governance of the Board that should help increase the degree of public confidence in the ABC Board.

General principles

3.5 Before embarking on any changes to the current system of appointments, there should be agreement on the expected result of any reform or changes to the system of appointing the ABC Board, or any board in general, including the characteristics to underpin that appointment process. The answers to this draw on the conclusions of the last chapter.

1 Forster, Submission 353

2 A copy of the full *Code of Practice for Ministerial Appointments to Public Bodies*, published by the UK Office of The Commissioner for Public Appointments is available from www.ocpa.gov.uk

3.6 The key principles underpinning a system of appointment should be:

- competitive selection based exclusively on merit;
- support for equal opportunity and the diversity of the Australian community;
- openness and transparency; and
- costs and procedures that are practical and proportional to the nature of the position.

3.7 These principles seem relatively self evident, and are a feature of both the Nolan Rules, and the Public Service Act provisions governing appointments to public sector agencies.³

3.8 Application of these principles should ensure that appointees are, in both fact and perception, independent of political influence, and are appropriately qualified for the requirements of the position.

3.9 Evidence to the inquiry has stressed the importance of these qualities:

The CPSU has consistently sought two commitments to address these problems: ... a new system of Board appointments that ensures that appointments are based on merit and minimises claims of real or apprehended bias and of political patronage.⁴

3.10 Mr Dempster argued for a single overarching criterion stressing independence:

Would the appointment be judged by the Australian people as bolstering the ABC's independent role?⁵

3.11 Transparency in particular is considered to be the most important characteristic, with the view that secrecy should be very much the exception rather than the rule.⁶ For the Friends of the ABC, the choice of methods of appointment is secondary to ensuring that the process is transparent.⁷ The Chair also notes that there are growing public expectations of the transparency of public institutions, as explained by Ms Jakubowski:

I think the public has come to expect a degree of accountability from government that is quite onerous. For appointing a board like the ABC I

3 *Public Service Act (Commonwealth) 1999*, Section 10 – APS values.

4 CPSU, Submission 363, p 3.

5 Dempster, Submission 365, p 3.

6 For example: Morgan, *Proof Committee Hansard*, Canberra, 20 August 2001, p 6; Dempster, *Proof Committee Hansard*, Canberra, 20 August 2001, p 44.

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

think those standards should be as high as they possibly can be, because of its ultimately incredibly influential role in Australian society.⁸

3.12 This is reflected also in the UK Code of Practice:

All stages of the process, including relevant conversations, must be documented and the information readily available for audit.⁹

The selection criteria

3.13 The first step in an appointment process is determining the selection criteria: for example, the skills, experience, qualifications or attributes which are most desired for the position. This issue has already been discussed in Chapter 2. This section is concerned with how the selection criteria are developed and by whom.

3.14 There is currently no clear system of developing selection criteria. In a general sense, the qualifications are described by section 12 of the ABC Act, and as noted previously, these are deliberately broad. The exact details of the process remain unclear as neither the Board nor the Minister provided submissions to the inquiry. However, it may be surmised that the process has no formal selection criteria. As one submission noted:

It is perhaps telling that there is little easily found information about the criteria for selection of ABC Board members. The ABC's website section on the Board provides no information about why the current Board members have been appointed – their skills, who (if anyone) they represent, and the link to section 8 of the relevant Act is of little assistance. One positive outcome of the inquiry would be more accessible information about the criteria for selection of Board members.¹⁰

3.15 The Chair considers that formal selection criteria are necessary in order for applicants and the public to know what attributes are required, and they are crucial in providing an objective standard against which to judge applicants. As such they are prerequisites to an open and transparent selection process, and are accepted as basic elements of any best practice system,¹¹ a fact recognised by many.¹²

3.16 As with other stages of the appointment process, there are several possibilities for determining selection criteria. The principal consideration as noted in Chapter 2, is the requirement that the Board is a team with a complementary range of skills but who can each demonstrate a commitment to public sector broadcasting.

8 Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 56.

9 OCPA Code of Practice for Ministerial Appointments to Public Bodies, para 2.12

10 Batchelor Institute of Indigenous Tertiary Education, Submission 379

11 See for example *Public Service Act (Commonwealth) 1999*, Section 10(2). The Committee notes the comment of Mr Cassidy that it is increasingly the practice on a range of boards to set selection criteria and advertise. Cassidy, *Proof Committee Hansard*, Canberra, 20 August 2001, p 38.

12 See for example: Puls, Submission 434, p 1; CPSU, Submission 363; Dempster, Submission 365, p 4.

Recommendation 5

The Chair recommends that formal selection criteria be developed for positions on the ABC Board and reflect the criteria already established under the ABC Act. The selection criteria should be drafted by an independent agency, such as the Public Service Merit Protection Commission.

Developing a field of candidates

3.17 Currently, the process is opaque. As the CPSU explain:

The current closed process ensures that only those applicants who are close to or move in the same circles as the Minister are likely to come to the attention of the Minister. The open advertising of positions is therefore likely to throw up the names of potential candidates who otherwise would not have come to the attention of the Minister.¹³

3.18 Several options have been suggested for a system by which various groups would have the right to nominate, such as: education authorities and universities; environmental, arts, cultural, religious groups;¹⁴ community groups;¹⁵ Parliament;¹⁶ the states;¹⁷ or by the individual themselves.¹⁸

3.19 By far the greatest support is for public advertisements calling for applications to Board positions.¹⁹ This mirrors the procedure for public service vacancies, and is also an element of the Nolan Rules. It is also the most transparent and fair: it enables anyone with an interest in serving on the Board to apply, without limiting the capacity of any group to encourage skilled people to apply as well.

3.20 The Chair endorses this view and recommends accordingly.

3.21 In accordance with the principles of transparency set out earlier in this chapter, those seeking appointment to the Board must put in a written application

13 CPSU, Submission 363, p 12. See also Jakubowski, Submission 643, p 3.

14 For example: Millar, Submission 4; Appleton, Submission 498, p 3.

15 Smith, Submission 45, p 2.

16 Kiers, Submission 269

17 Cahill, Submission 1, p 2.

18 Jakubowski, Submission 643, p 3.

19 Beck, Submission 7; Leisegang & McCaughey, Submission 94, p 2; Colbourne, Submission 123; Waller, Submission 200; Butler, Submission 243; Wood, Submission 260; Dempster, Submission 365, p 4.; Jakubowski, Submission 643, p 3.

addressing the selection criteria. The Chair also considers that the Minister should not be able to appoint someone who has not made formal application.

3.22 It is also important that candidates be obliged to openly declare any political activity or affiliations. However, as discussed in Chapter 2, political affiliation should not be a barrier to appointment. Disclosure of any such affiliation following appointment damages the credibility of both the process and the appointee and has led to the current lack of public faith and the perceptions of bias which underpin the current process. The Chair notes the categories of disclosure required under the Nolan model,²⁰ and supports the adoption of similar rules in Australia.

Recommendation 6

The Chair recommends that vacancies on the ABC Board should be advertised through the national press, and through ABC services, including radio, television and online.

Recommendation 7

The Chair recommends that the Minister cannot approve the appointment of a member to the ABC Board if the person has not made a formal application.

Recommendation 8

The Chair recommends that all applicants, as part of their formal application, make clear their political affiliations.

Shortlisting and appointments

3.23 There have been a variety of suggested models for making a final decision on appointments, both how this should be done and by whom. Suggestions include:

- the Minister assisted by the department;
- an independent body;
- the Parliament; or
- direct election.

Ministerial appointment

3.24 The first possibility is for the Minister, assisted by the department, to shortlist candidates and make the appointment decision. Several submissions suggested that if

20 See Appendix 3.

the key criteria of transparency and due process were adopted, the Minister would be an appropriate decision maker:

[T]he process of ministerial responsibility probably should be preserved – that is, it can and should be the Minister who makes the final call at the end of the day.²¹

3.25 Ms Jakubowski agrees:

As long as the public is satisfied that the government of the day is in fact choosing from the best pool of people and is using the appropriate measures of best practice for getting those people, ultimately it is that government of the day's prerogative to choose that Board.²²

Appointment by an independent body

3.26 A second option is to create a separate body charged with the exclusive task of selecting Board members, or expand the purview of the Public Service Merit Protection Commission. Submissions perceived this as a means of taking the appointment process out of the hands of the Minister and depoliticising it:

New appointments are made by public nomination to an independent body, which subsequently recommends appointments to the Board by the Governor-General. The independent body should be convened annually by State governments on a rotating basis in a fixed order.²³

3.27 There are difficulties in establishing an entirely new structure for the purpose of appointment to the ABC Board alone. Such a body would incur considerable public expense to establish and administer, especially considering its limited workload, given the small number of ABC Board appointees. Secondly, creating an 'independent body' would create the same issues that arise in this inquiry – that of independence. In all likelihood, creating such a body would merely move the political game from one field to another. As Professor Inglis observed, it is probably not possible to depoliticise the appointment process, and at the end of the day the elected government should have the final say.²⁴

3.28 Both of these problems could be remedied if the government were to create a public appointments commission similar to the Office of the Commissioner for Public Appointments (OCPA) in Britain, which would be responsible for all appointments to public boards. In this case, the number of appointments to be made across the Australian public sector, would justify the cost of establishment. At the same time, impartiality of commissioners under the UK system is achieved by ensuring that they

21 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 15.

22 Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 56.

23 Butler, Submission 243. See also FABC Hunter region, Submission 18; Waller, Submission 200, p 3; Wood, Submission 260; Fraser, Submission 2, p 1.

24 Inglis, *Proof Committee Hansard*, Canberra, 20 August 2001, p 29.

are selected by the same transparent and merit based system that they then administer.²⁵

3.29 An alternative is to utilise an independent party within the process. As the CPSU point out, an independent assessor on the assessment panel is a key procedural feature of the UK system.²⁶ An Australian system could utilise the services of the Public Service and Merit Protection Commissioner or use a person agreed to by both the Prime Minister, the Leader of the Opposition,²⁷ and the Leader of other Parliamentary parties. Mr Thomson of the CPSU argues that this would not be difficult in practice:

There are systems like that which operate in some of the industrial mechanisms in the ABC where the union is required to agree on the selection of a third person to conduct particular investigations in the ABC. Those processes usually take five or 10 minutes to work our way through. It is not a particularly difficult task.²⁸

3.30 Under this model, a selection panel could be formed comprising, for example, a nominee of the ABC Board; a nominee of Minister; and an independent assessor as discussed above. As in the UK system, this panel could be responsible for shortlisting of candidates and providing a list of candidates to the Minister who would then be responsible for the final recommendation and appointment.

Appointment by Parliament

3.31 An option that has received considerable attention is transferring some or all responsibility for ABC Board appointments to the Federal Parliament. Several variations of this have been suggested.

3.32 Many envisaged the use of a Parliamentary Joint Select Committee,²⁹ or a Senate Committee.³⁰ A form of this was recommended by the 1995 Senate Select Committee on ABC Management and Operations Report *Our ABC*, which suggested:

that before the appointment of a person to the Board, the proposed nominee should be required to appear before a joint parliamentary committee to enable the Parliament to scrutinise the person's credentials. The Committee

25 OCPA, Code of Practice for Ministerial Appointments to Public Bodies, Annex A.

26 The importance the public attach to this was a finding of a review of the OCPA system: *Public perceptions of the Ministerial Public Appointments process*, July 2000, p 5.

27 CPSU, Submission 363, p 15.

28 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 17.

29 For example: Dynes, Submission 19; Chopra, Submission 37; Leisegang & McCaughey, Submission 94, p 2; Curtis, Submission 143; Birch, Submission 182; Humanist Society of Victoria, Submission 493; Appleton, Submission 498, p 3. Beck, Submission 7; Crowe, Submission 209; Gray, Submission 247; Wingate, Submission 302 Dempster, Submission 365, p 4; Bass, Submission 5, p 4; Morrow, Submission 262; Forster, Submission 353

30 Chambers, Submission 268

would not have a power of veto, but would be able to comment on the suitability of a nominee prior to appointment.³¹

3.33 A similar model was proposed by Senator Vicki Bourne in the ABC Amendment Bill 1999:

The bill establishes a Joint Committee on the ABC who will approve and recommend appointments to the ABC Board. The Committee is established to ensure the Minister no longer has sole discretion in recommending Board appointments to the Governor-General.

The Committee will have 10 members, with five members each from the House of Representatives and the Senate. Appointments will be made in the same manner as for joint select committees, so that minor parties can be involved.³²

3.34 The Committee would approve or reject a nominee within 14 days, but may take up to 44 sitting days in further consideration providing that they advise the Minister accordingly. If the Committee did not accept a nominee, and the Minister does not accept the Committee's report, the Minister would be required to table his or her reasons for not doing so in both houses of Parliament.³³

3.35 An alternative is for candidates to be approved by the Houses of Parliament as a whole, either in a joint sitting, or alone.³⁴ According to one submission:

The Australian Parliament is the most representative body of the Australian people as a whole, with unique state and territory representative ingredients. While it is preferable to curtail direct Board appointments from the Federal Executive Government, it will be appreciated that the government of the day does represent the majority view point expressed by the Australian people.³⁵

3.36 Some submissions cautioned on the use of the Committee process, and Mr Thomson, noted the possible parallels this may have with the US Congressional system of appointments:

a preferred candidate basically having to run the gauntlet of a congressional inquiry, which I think can be quite a destructive affair. I think it probably does focus very much on personal characteristics and can lead to character assassination as a way of killing off a candidate.³⁶

31 The Committee would be established pursuant to the new Part VIIA

32 ABC Amendment Bill 1999, Second Reading Speech, p 6.

33 ABC Amendment Bill 1999, section 77D(11)

34 For example: Davidson, Submission 198; Newell, Submission 246; Dow, Submission 51; Marks, Submission 56

35 Cahill, Submission 1, p 1.

36 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 16.

3.37 However, the Chair is firmly of the view that with the appropriate selection criteria and transparency of process, this need not occur. The Committee should only be able to question the applicant on the selection criteria, and the matters raised in the application. This is the reason the declaration of any political affiliation is recommended in the application.

3.38 The Chair further believes that any best practice system that it recommends for appointments to the ABC Board should be capable of being adopted for appointments to any public sector board.

Ad-hoc Parliamentary Committee

3.39 The Chair notes a precedent which occurred in 1983, for an ad-hoc committee set up by the then Minister, Mr Duffy, which sought to gain bipartisan agreement to board candidates:

At a meeting of three ministers - Duffy, Button and Senator Susan Ryan - with the Prime Minister, Hawke, a list of nine names was drawn up, and those names were put to an ad hoc consultative committee of those three ministers, Senators Peter Baume (Liberal) and Don Chipp (Democrat) and Bruce Lloyd, MHR (National) which pared the list down to seven. Cabinet endorsed that list.³⁷

3.40 Obviously this system relies entirely on the goodwill of the Minister at the time, who may abandon the consultative arrangement at will or who may reject, outright, the recommendations of the Committee. Senator Bourne's Private Member's bill requires the Minister, in such circumstances, to table his/her reasons for rejecting the Committee's recommendation as a way to ensure transparency and accountability.

Election of board members

3.41 The final option suggested to the Committee is to allow members of the public to elect the board of the ABC. Submissions pointed to the process of electing the NRMA and the ATSIC boards, and propose the creation of an ABC Board electoral roll, using a proportional representation system, with voting by postal and on-line ballots, and administered by the Australian Electoral Commission.³⁸

3.42 Proponents of this system believe it has the advantage of bringing a directly democratic process to Board selection, with the ABC's 'shareholders' – the Australian public – able to register and participate. It also powerfully reinforces the principle that the Board should be accountable to the public and not the government. However, it suffers several drawbacks. First, the costs of running a national election for a such a

37 FABC, Submission 593, p 14. [Professor Inglis] see also Inglis, *Proof Committee Hansard*, Canberra, 20 August 2001, p 29. This idea is supported by Hundley, Submission 490, p 4.

38 Newman, Submission 226; Doust, Submission 500; Socialist Alliance, Submission 514, p 1& 3; Neville, Submission 9, p 1.

small number would be prohibitive.³⁹ Second, there are difficulties with ABC voters receiving appropriate information to make an informed judgement on candidates, without the process becoming absolutely politicised.

Conclusions and recommendations

3.43 Having considered the various models proposed, the Chair concludes that it is appropriate for the Minister to appoint the members of the ABC Board. This is consistent with the established system of Australian and Westminster tradition that a Minister is invested with the authority to make decisions but remains answerable to the Parliament for the exercise of that authority, and for the appropriateness of appointees.

3.44 Whilst each of the other models have their advantages, the Chair is concerned with various limitations, as discussed above. The creation of an independent body to appoint board members is both problematic and expensive if it is only to have the sole task of ABC Board appointments. Parliamentary oversight remains the preferred option, according to submissions, with the Minister retaining the authority to make the final appointment decision. As long as the process for selecting and recommending appropriate applicants is transparent and accountable, the Chair endorses this approach.

3.45 At the same time, the principal advantages of each of these can be incorporated into a mixed system. Thus, the role of an independent body is preserved, by creating a selection panel to shortlist applicants. The principle of parliamentary scrutiny can be maintained by ensuring that candidates recommended to the Minister are not appointed without an opportunity for parliamentary and public comment.

3.46 Thus, while the Minister retains the power to make appointments, the process incorporates significant procedural safeguards, in which other institutional actors, and the public, have a role to play. Accordingly, the Chair recommends an approach by which a selection panel, incorporating an independent assessor, shortlists candidates and forwards a list of at least two names to the Minister, who is responsible for the final appointment decision.

3.47 In order for the qualifications of the applicants to be public, the Minister could only appoint people who had submitted a formal application addressing the selection criteria.⁴⁰ The shortlist of candidates must be made public prior to the Minister's decision, with enough time allowed for public and parliamentary comment.⁴¹

39 As noted by Morgan, *Proof Committee Hansard*, Canberra, 20 August 2001, p 9.

40 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 26.

41 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 16.

Recommendation 9

The Chair recommends that:

- an independent selection panel shortlist applications, and forward a list of at least two candidates to the Minister, together with the candidates' applications and declarations of political affiliation.
- the short list of candidates, together with a summary of their qualifications against the selection criteria and their statement of political affiliation, be public.
- the Minister should not be obliged to select any of the candidates recommended by the selection panel. However, the Minister must not select a candidate who has not first been scrutinised by the independent selection panel.

Other governance issues

3.48 The Committee also received evidence on several matters relating to the Board's composition, and the extent to which the Board operates transparently and responsively to ABC audiences and the public. Specifically, these relate to:

- the manner of appointment of the Chair and Deputy Chair;
- the transparency of Board operations;
- Annual General Meetings; and
- terms of appointment.

Appointment of the Chair and Deputy Chair

3.49 A number of submissions argued in favour of the Board itself electing two of their members to be the Chair and the Deputy Chair, instead of the current system of direct appointment by the Minister.⁴²

3.50 Mr Gordon-Smith, argues that there has been too little emphasis on governance arrangements within the Board:

the attention that has been given to the ABC has focused largely on its management, the appropriate role it should have and so on, without giving a

42 McLaren, Submission 120; McLaren, Submission 121; Waller, Submission 200, p 3; Crawford, Submission 377; Humanist Society of Victoria, Submission 493; Morgan, Submission 3, p 1.

great deal of attention to what might be called the governance framework which has a very substantial effect in driving those other features.⁴³

3.51 A board elected chair is a standard feature of private sector boards, and is important in establishing the collegiality of the Board as a team. It also ensures that the natural leaders are chosen; that internal leadership disputes are resolved, and as a result, ensures that the Chair can confidently speak with the support and authority of the rest of the Board. As Mr Gordon-Smith explains:

Governments may appoint skilled and talented individuals to these positions. They have certainly done so in the past. However, where the board does not appoint the chairman, it will only be by happy accident that the official occupant of the chair is the director who is the natural, actual leader and representative of that particular board.

This structural flaw makes the position of chairman more than usually difficult. The chairman's key roles, of guiding the board to work effectively, and of representing and speaking for the board both depend on it being clear that the chairman has the authority or the confidence of the board.

Without an election, there is no mechanism for confirming or bestowing that authority on the chairman, nor for changing the chairman should that confidence be lost or the strategic circumstances demand a different style of leadership from the board.⁴⁴

3.52 And further that:

If the chair of a board is appointed not by that board but by an external body, then to a very large extent that group of people has not been delegated fully the trust of whoever has put them there to perform the tasks of the sort of trustee role, if you like, that they are charged with.⁴⁵

3.53 Election of the Chair by the Board is also a concrete and visible measure of the Board's independence.

3.54 The Chair agrees with these suggestions and recommends accordingly.

Should the Managing Director be a member of the Board?

3.55 The Committee also heard evidence in relation to whether the Managing Director should be a member of the Board. According to one submission:

43 Gordon-Smith, *Proof Committee Hansard*, Canberra, 20 August 2001, p 51.

44 Gordon-Smith, Submission 608. See also Gordon-Smith, *Proof Committee Hansard*, Canberra, 20 August 2001, p 52.

45 Gordon-Smith, *Proof Committee Hansard*, Canberra, 20 August 2001, p 51.

While it is common business practice for the CEO to be automatically a board member, in the case of the ABC this could be counter productive because:

- (i) A separation of the board from the executive would bring an independence of thought to the two top tiers of ABC management.
- (ii) Past experience has shown that CEOs have tended to dominate board proceedings and, on occasions intimidated board members and chairmen.⁴⁶

3.56 This proposition was rejected by two other witnesses, who argue that there is little evidence of problems under the current arrangements, and that it remains appropriate to have the Managing Director as a full member of the Board.⁴⁷

3.57 The Chair endorses the current practice of the Managing Director being a Board member.

Transparency of Board operations

3.58 The other area of concern is the secrecy of Board operations. As witnesses explain, little information is available on the work of the Board or what decisions it makes on policy and the future directions of the ABC. Several submissions rejected the so-called 'commercial-in-confidence' approach that the Board is seemingly increasingly engaged. As Mr Gordon-Smith explains, the Board has a duty to be responsive and transparent to its 'shareholders' which for a public corporation, means the Australian public:

The terms of the ABC Act relating to the duty of its Board reflect that although they are appointed by the Commonwealth Government, particularly because of the high importance attached to the ABC's independence, the ABC's directors have a fiduciary relationship to all Australians.⁴⁸

3.59 This principle is not complied with:

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, secrecy should be the exception, not the rule. The public as taxpayers should know more about the decision-making processes of the national broadcaster.

46 Bass, Submission 5, p 4. See also Socialist Alliance, Submission 514

47 Dempster, *Proof Committee Hansard*, Canberra 20 August 2001, p 50; Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 59.

48 Gordon-Smith, Submission 608, p 1.

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.⁴⁹

3.60 The practical outcome is that it is difficult for the public to make any informed judgements about the Board:

[I]t is frequently difficult for me and the CPSU generally to make assessments about the performance of the board, given that they never report on what they are doing. I am therefore limited to reporting on only about two or three very high-profile issues that have come to our attention.⁵⁰

3.61 Although not presented in evidence, these sentiments were expressed in the Mansfield inquiry into the role and function of the ABC:

Because of the Board's statutory duties in this areas [ie independence and impartiality] and because of the high level of public interest in the maintenance of ABC independence, it is important the ABC publicly demonstrates that it takes its responsibilities in this area seriously and that it regularly reviews and publicly reports on its performance. To this end I consider that the Board should regularly publish the criteria by which it monitors balance and objectivity and its assessment of ABC performance against these criteria.⁵¹

3.62 An improvement would be the enhancement of the ABC Board website, noting that the staff-elected director already has established a web site for ABC staff.⁵² The Board site could be a forum for publishing:

Minutes or descriptions of key decisions taken by the Board and main committees, especially in regard to the allocation of budgets and personnel, should also be made available for public inspection. This relates to standards of disclosure and accountability that currently are non-existent and shrouded in secrecy.⁵³

3.63 Ms Jakubowski also suggests the use of other forums for developing the exchange of information and ideas with the public, including public consultations, and the equivalent of special 'governors seminars'.⁵⁴ Some of these things may in fact be happening already, but given the limited information available on the Board's

49 Jakubowski, Submission 643, p 8. See http://www.bbc.co.uk/info/bbc/acc_govs_monthly.shtml

50 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 18.

51 Mansfield, *The Challenge of a Better ABC*, vol 1, p 28.

52 Jakubowski, Submission 643, p .

53 CPSU, Submission 363, p 18.

54 Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 60.

activities and the absence of any Board or government submission to the inquiry, the extent of such activities is unclear.

3.64 The Chair also agrees with suggestions to increase the transparency of Board operations. The Chair considers it important that more information is publicly available about the operations of the Board. This is part of the Board's public duty, but it also provides a valuable opportunity for the Board to communicate with ABC audiences and explain its policies and decisions, and would go towards rectifying the perception that the Board is unresponsive to public concerns. In this sense, better communications should be viewed not as a threat but an opportunity.

3.65 The Chair therefore recommends the expansion of the current website and the information available on it to include information on policy issues and directions, and summaries of minutes of Board meetings. The Chair also encourages the use of mechanisms for feedback and comments to Board members via email and interactive on-line discussions. These already operate on the ABC website in relation to current affairs and other programming, and could easily be extended to include discussion on ABC governance and policy.

3.66 The Chair also notes the suggestion of Mr Gordon-Smith who argues that the Board may be more transparent through the convening of an annual general meeting:

At present, Senate Estimates Committees provide almost the only opportunity for the ABC to be held to account. It may be argued that these Committee hearings are addressed chiefly to management rather than board level issues. It would be extremely unusual for all directors of the ABC to be present. There is no other mechanism that provides even symbolically for open accountability of the ABC's Board to all Australians.

An AGM would provide an occasion for all directors to be present to the general public and to report publicly on the activities and plans of the ABC.⁵⁵

3.67 The Chair agrees with this view, and recommends that the ABC Board hold public Annual General Meetings, at which all members of the Board should be present.

Should the Board Members have shorter or longer terms?

3.68 Several submissions have also recommended the alteration of the current five year term of appointment. Professor Mark Armstrong, former Chair of the ABC Board, argues for terms of seven years instead of the current five, on the grounds that it:

would increase the corporate memory and stability of boards, and move the ABC board slightly further away from the political cycle.⁵⁶

55 Gordon-Smith, Submission 608, p 4.

3.69 Conversely, another submission suggests shortening the length of appointment to 12 months only.⁵⁷

3.70 In considering these suggestions, several familiar considerations apply. Terms of appointment should be long enough to enable directors to gain familiarity with the working of the ABC, and remain for sufficient time to carry out a coherent agenda. At the same time, if terms become too long, the personal commitment may become burdensome, and the capacity to remove any under-performing directors limited.

3.71 From the evidence it has heard, the Chair is of the view that with increased levels of transparency and accountability on the appointment process of the ABC Board, current terms are appropriate.

Recommendation 10

The Chair recommends that:

- at the first meeting of the ABC Board every year, the Board shall elect a Chair and Deputy Chair.
- the ABC Board shall hold a public Annual General Meeting, at which all Board members shall be present.
- the ABC Board shall publish greater information in relation to their activities and decisions of the Board, including summaries of Board Minutes. This may be achieved via publication on the ABC Board website.

Recommendation 11

The Chair recommends a model which is drawn from the range of submissions wishing for the Parliament to have its own joint parliamentary committee on the ABC. The Chair has also considered the evidence presented to it, drawn from Britain's Nolan Committee – a Committee charged with the responsibility for finding an independent method of appointing members to public sector agencies.

The Chair is of the firm view that the implementation of this model would considerably enhance the public's confidence in the quality, representativeness, independence and integrity of the ABC Board.

Accordingly, the Chair recommends that the *Australian Broadcasting Corporation Act (1983)* be amended to reflect the following system of appointments (and, that where appropriate, this model be used for appointing members to other Boards):

56 FABC, Submission 593, p 21

57 Butler, Submission 243

That when a vacancy exists on the Board

1. An ad hoc Independent Selection Committee ('the Committee'), comprising members from both houses of the Commonwealth Parliament, be brought together for the purposes of selecting a member to fill the vacancy on the ABC Board. This Committee will receive applications and recommend a short list of no less than two applicants for the Minister to consider.
2. Selection criteria and processes for scrutinising applicants for the ABC Board be drafted by the Merit Protection Commissioner.
3. The Merit Protection Commissioner be an ex-officio member of the Committee, to provide expertise and advice to the Committee in its deliberations.
4. The ABC Board vacancy be advertised in the national press and via ABC services, including television, radio and online, inviting applications from interested persons.
5. Those wishing to be considered for appointment to the ABC Board must provide a written application addressing the selection criteria, and a statement disclosing political affiliation. Candidates shall be made aware that their applications will be made public.
6. The Secretariat of the Senate Committee responsible for the Communications portfolio, shall provide the Joint Parliamentary Committee provide secretariat support to the Committee as required.
7. The Minister retains the responsibility for appointments to the ABC Board and is not obliged to choose any of the candidates recommended by the Committee. However, the Minister must not select a candidate who has not first been scrutinised by the Committee.

The ABC Act should also be amended to reflect the following:

1. At the first meeting of the ABC Board every year, the Board shall elect a Chair and Deputy Chair.
2. The ABC Board shall hold a public Annual General Meeting, at which all members shall be present.
3. The ABC Board should appoint a member to be a formal liaison officer to the National Advisory Council.
4. The ABC National Advisory Council shall meet four times per year, at times to coincide with the meetings of the ABC Board.
5. The ABC Board shall publish information about their activities and decisions, including summaries of minutes to Board meetings.

SENATOR LYN ALLISON

CHAIR

REPORT BY GOVERNMENT SENATORS

Introduction

The Government Members of the Committee do not agree with important elements of both the central findings and the recommendations of the Chair's report.

This Dissenting Report addresses several underlying problems with the Chair's report, and then examines the individual recommendations.

Problems with the board – no case to answer

The starting point for any inquiry into the ABC should have been establishing whether there are problems with the ABC, and the primary criterion for this judgement is whether the ABC is meeting its Charter as set out in the ABC Act. Only where there is evidence that the Charter is not being met should the Board be called to account for its performance. If the Board is found to be wanting, then and only then is there a legitimate case to examine whether the method used to select that Board has failed to produce Board members of the required qualities, and accordingly the method should be reformed.

Instead, the Terms of Reference for this inquiry bypass all these stages. It is apparently not even necessary to **assume** that the Board is failing in its duties, to conclude that all such failings are attributable to a lack of independence and representativeness in how the Board members are selected. To this extent, the Terms of Reference are flawed by asking the wrong question. In turn, the Chairs Report is flawed by answering this fundamentally flawed question with blithe partiality.

It is the strong view of the Government Senators that evidence to the inquiry did not demonstrate that the ABC is failing to meet its Charter. Nor is there a cogently argued case that the ABC Board would perform to greater satisfaction if it were selected by an allegedly more representative and independent, but certainly far more convoluted, method.

A significant amount of the evidence received by the inquiry focused on the perceptions of political bias as the basis of criticisms of the ABC Board. In some cases, these criticisms are plainly misinformed and misplaced. A number of submissions, for example, referred to the failure of the Board to argue for increased funding. In fact, in several public forums the Board has argued for the need for increased funding, and has subsequently achieved substantial increases of funds to the ABC of \$71.2m over four years.¹

To take another example, various submissions criticised the reductions in local-content programming. In fact, on ABC television, recent changes will result in almost

1 Media Release, Senator Richard Alston, Minister for Communications, 22 May 2001.

70 percent of programming between the prime viewing times of 6pm and 11pm being Australian.² ABC radio is of course almost 100 per cent local content.

At the same time, the ABC has expanded its regional radio services involving the recruitment of 50 new program makers at 32 stations to broadcast more than 10,000 hours per year of local programming.³

Criticisms of the closure of the ABC archives unit are also misplaced. According to evidence provided to this Committee during the Senate Estimates hearings, the changes are limited to a reduction in staff from 16.5 to 12.⁴

The closure of the Cox Peninsula transmission facility was another case. It is noted that the ABC Chairman, Mr McDonald, has said that he argued against the closure of the Cox Peninsula transmission facility, and that:

As a result of the ABC's advocacy, we have received from the Government an additional \$9m for increased transmission capacity for Radio Australia and a minimum \$75m for an Asia Pacific television service.⁵

It should also be stressed that disagreement with the decisions of the ABC Board does not amount to evidence of political bias on the part of the Board. Indeed, it is to be expected that an independent Board will make, and is entitled to make, decisions that are unpopular with parts of the population.

This point seemed lost on some of the witnesses.

An indication of this relates to the decision by the ABC Board not to make a submission to the inquiry. A number of witnesses found this an indication of political interference or at least the Board's timidity where political interference results. In fact, the Board did write to the Committee declining to make a submission on the ground that it was entirely a matter for the Parliament.⁶ Although the clear intent of the letter was that the Board did not wish to engage in political debate, their position when made known was taken as further proof by several witnesses⁷ that the Board was suffering from political interference!

The Government Senators also note that the majority of the submissions received by this inquiry are based on a form letter prepared by the Friends of the ABC. Most of them accept without discussion the assertion by the Friends of the ABC that the ABC

2 Mr McDonald, *The Australian*, 16 July, p 12.

3 ABC Media release, ABC Radio announces major expansion in regional Australia, 8 August 2001.

4 *Official Hansard*, Senate Environment Communications, Information Technology and the Arts Legislation Committee, Thursday 7 June 2001, p 497.

5 Mr McDonald, *The Australian*, 16 July, p 12.

6 The text of the letter is at *Proof Committee Hansard*, Canberra 20 August 2001, p 50.

7 Mr Dempster, *Proof Committee Hansard*, Canberra 20 August 2001, p 48. See also Mr Cassidy, *Proof Committee Hansard*, Canberra 20 August 2001, p 37.

Board is in fact politicised. Accordingly, there is real doubt as to the representativeness or independence of many of the submissions received. On this basis, the Government Senators do not accept the finding of the Chair's report that there is necessarily a widespread perception that the Board is politicised.

It is further noted that the Chair's report makes the point⁸ that appointees who were 'generally sympathetic to the view of the governing party' have not been 'either incompetent or ineffective in serving the interests of the ABC or the public'. Why then the necessity of a wholesale change to the method of appointment, in favour of a complex and untested method?

Should the ABC be unique?

In this absence of solid evidence of a problem, Government Senators do not see the rationale of creating for the ABC a costly and complex system that would be unique among Australian public sector Boards. Government Senators have been unable to find any other Board of a statutory body that is selected by such an onerous process.

Nor, for the same reasons outlined above, can Government Senators support the implied recommendation of the Chair's Report, that the model suggested be extended to all public sector boards.⁹ That seems to us to be an exercise in creating an end to justify a means.

The Government Senators stress that the Nolan Rules, that inspired much of the recommendations of the Chair's report, were created as a response to the finding of severe problems in the UK system of appointments. As such, they may have been an appropriate solution to those problems. It does not automatically follow that these rules should also be applied here.

Finally, Government Senators note that a key concern of the Chair's Report is to overcome a public **perception** of politicisation in appointments to the ABC. In this respect, it should be noted that the findings of a recent review of the UK Office of the Commissioner for Public Appointments (OCPA), conducted five years after its inception, demonstrate mixed results for the reformed process. Public responses continue to demonstrate a widespread ignorance of the existence and role of the OCPA, and a vague but overwhelmingly negative impression of the process by which appointments are conducted, based on a strong belief in politicised appointments.¹⁰

If the problem is one of public perception, there is room for some doubt that adoption of the UK system would necessarily go far in rectifying this in Australia.

8 At paragraphs 2.44 and 2.48.

9 Recommended Model, paragraph 3.

10 *Public perceptions of the Ministerial public appointments process*, Research study conducted for the Office of the Commissioner for Public Appointments, July 2000, pp 4-5.

Comments in relation to recommendations

Government Senators make the following comments in relation to specific recommendations:

Recommendation 1

- We do not support this recommendation. There is no substantive evidence to suggest that the appointment of the ABC Board has not met the principles of merit and transparency, or that political affiliation has been a basis of appointment.

Recommendation 2

- We do not support this recommendation. There has been no suggestion that the position of the staff-elected director will be abolished.

Recommendation 3

- We do not support this recommendation, as it is clearly an affront to the ABC Board. We accept that current appointees to the ABC Board have demonstrated a commitment to the principles of public broadcasting.

Recommendation 4

- We do not support this recommendation. The relationship between the ABC Board and its Advisory Council is a matter for the ABC Board to determine in accordance with its charter.

Recommendation 5

- We do not support this recommendation. Since, as stated, the desired selection criteria are already established under the ABC Act, the substance of this recommendation is superfluous.

Recommendation 6

- We do not support this recommendation, as its purpose is not clear.

Recommendation 7

- We do not support this recommendation, as its purpose is clearly superfluous. It is difficult to envisage a situation where a person might be appointed to a public office without this person's expressed willingness to apply for and to serve in that appointment.

Recommendation 8

- We do not support this recommendation as the purpose and meaning of this recommendation is ambiguous, and possibly in contravention of anti-discrimination laws.

Recommendation 9

- We do not support this recommendation. The recommended process appears to be unnecessarily laborious, prescriptive and untested.

Recommendation 10

- We do not support the first part of this recommendation, noting that the benefit of this proposal is entirely obscure. We further note that the dominant practice of public sector boards of management is for the presiding officers to be appointed or, in the notable case of capital city councils, to be elected directly.
- We do not support the second part of this recommendation, noting that the ABC Board reports annually to the Parliament.
- We do not support the third part of this recommendation, noting that matters discussed at the meetings of the ABC Board may be in confidence, and should only be made public at the discretion of the Board in accordance with its duties of governance.

Recommendation 11

- We do not support this recommendation for reasons described above.

Conclusion

By basing the inquiry on a flawed terms of reference, the Chair's report finds a solution to a problem before the problem has been demonstrated to exist. It is perhaps inevitable that the solution so offered is superficial and irrelevant.

A significant proportion of the evidence given before the Inquiry was critical of the successive Managing Directors. Much of this criticism was directed at the style of the individuals rather than their competence. Nevertheless, given that the role of this office as chief executive of the ABC and a full member of its Board is pivotal for the performance of organisation, logically it should be the focus of any suggestion of reform. Yet the Chair's report finds no change should be made to the office of the Managing Director, or its functions. This is indeed a telling illustration of the futility of this report.

It needs to be recognised that the ABC is currently in a period of considerable change, caused by rapid developments in both technology and the structure of the telecommunications industry. As Mr Jonathan Shier, the current Managing Director of the ABC, recently pointed out in a speech to the National Press Club, 'to do nothing is not an option for the ABC'.¹¹ This is also occurring in a wider context in which all aspects of government expenditure have been under considerable pressure.

11 Mr Jonathan Shier, *Do not adjust your set*, National Press Club, 7 March 2001.

In these circumstances, it is not surprising that the ABC Board has made some significant changes and that a number of these decisions will be disagreed with by sections of society. This, however, is the reality of an independent Board, and should not be used to justify unnecessary changes to a long established and effective system.

SENATOR TSEBIN TCHEN

LP (VIC)

LABOR SENATORS' MINORITY REPORT

SENATE ENVIRONMENT, COMMUNICATIONS, IT AND THE ARTS REFERENCES COMMITTEE

ABC Board Appointments

TABLE OF CONTENTS

LABOR SENATORS' MINORITY REPORT	53
TABLE OF CONTENTS	53
Introduction	55
Impetus for change	56
Alternatives for appointment of board members.....	58
The method of appointing board members.....	59
Labor Senators' criticisms of Chair's report	61
Development of the selection criteria.....	61
Shortlisting by a Parliamentary Committee	62
Conclusions	63

LABOR SENATORS' MINORITY REPORT

SENATE ENVIRONMENT, COMMUNICATIONS, IT AND THE ARTS REFERENCES COMMITTEE

ABC Board Appointments

Introduction

1.1 The terms of reference for this inquiry are to inquire into and report on:

The development and implementation of options for methods of appointment to the board of the Australian Broadcasting Corporation (ABC) that would enhance public confidence in the independence and representativeness of the ABC as the national broadcaster.

1.2 At the outset, it is important to note the context of the referral of this matter for the Committee's consideration. The ABC has undergone considerable change over the past eighteen months since the appointment of the new Managing Director by the ABC board. Many of the changes made have elicited considerable community comment on the future and independence of our national broadcaster.

1.3 Australians revere the ABC for its independence and integrity. It fills a unique and critically important role in Australian society as an independent provider of information to the public.

1.4 Labor Senators support the ABC's independence in this important role. The Australian Labor Party's Platform states that:¹

Labor is committed to the provision of an independent, balanced, comprehensive and national public broadcasting service free from political or ideological interference, and free from advertising and sponsorship.

1.5 Some witnesses before the Committee blame the ABC board for inappropriate changes in the ABC by the Managing Director, because the board is ultimately responsible for fulfilling the obligations in the ABC Act and Charter. However witnesses have been unable to provide proof demonstrating that the board has acted in a politically partisan manner.²

1.6 Clearly however, the dubious propriety of some recent events in the ABC raises a perception of political interference. The perception of interference is equally

1 ALP Platform 2000, Chapter 14. Available at http://www.alp.org.au/policy/platform2000/chapter_14.html

2 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.7; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.23; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, pp.36,37; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.56.

damaging as proof of actual interference for an organisation that is characterised by its reputation for independence and impartiality.³

1.7 The vast majority of submissions to the inquiry fail to address the terms of reference, that is, they do not address ‘*options* for methods of appointment to the board of the ABC’. Rather, many submissions express dissatisfaction with the present board, Chairman and/or Managing Director, and call on this Senate inquiry to recommend the introduction of a system of selection of ABC board members which ensures members of the ABC board are appointed on the basis of merit and commitment to independent and comprehensive public broadcasting.

1.8 The issue of whether change in the method of appointment of Board members is warranted is outside the scope of the terms of reference of this inquiry, and so these submissions go to matters outside the Committee’s inquiry. This issue is discussed in the following paragraphs entitled “Impetus for change”.

Impetus for change

1.9 Submissions to this inquiry indicate considerable community concern about the independence of the ABC, the direction of the ABC, and the possible impact of politicisation of the ABC (for example submissions to the Mansfield inquiry indicated the extent of community concern for the integrity and independence of the ABC; the amount of press attention to the ABC is indicative of importance;⁴ recent public rallies have been well attended; and letters to editors regularly express public concern.⁵)

1.10 Some of these concerns relate to the politicisation of appointment of board members, however adequate funding of the national broadcaster would solve many concerns.

1.11 A number of arguments have been put to the Committee for change in the method of appointments to the ABC board. Potentially, however, disadvantages of the models may, in the case of the ABC, defeat the purpose of changing the method of appointment in the first place. This is why it is so important that potential models are properly analysed and attention is paid to their detail prior to selection of one particular model.

1.12 Arguments advanced in support of the change are founded on the premises that changing the method of appointment of board members will depoliticise the board and in turn, depoliticising the board will improve the performance and independence of the board. Those arguments are that:

3 Mr Thompson, CPSU, *Proof Committee Hansard*, 20/8/01, p.14.

4 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.4.

5 Mr Thompson, CPSU, *Proof Committee Hansard*, 20/8/01, p.14.

- By ensuring the ABC is well governed and well managed so that it produces excellent quality programs⁶ and independent, cutting edge news and current affairs, the ABC board will serve the common good of the people, as it should;⁷
- The disposition of the board should not compromise the ABC's independence through commercialisation or privatisation;⁸
- Independence, integrity and autonomy of the ABC is central to Australia's system of media regulation;⁹ and
- Any perception of political interference in appointments to the board, which is charged with maintaining the independence of the organisation, tarnishes the ABC's reputation for independence, and consequently, undermines the ABC's value.¹⁰

1.13 Contradicting the premise that a change in the method of appointment of board members will depoliticise the board is the fact that all methods suggested to the Committee pose some degree of risk of politicisation of the appointment process.

1.14 Several witnesses acknowledged that depoliticising the board would not necessarily improve the performance of the board, and one witness acknowledged that the general performance of appointed board members was at a remarkably good level across the board.¹¹ There do, however, seem to be problems at the ABC that can be correlated to politicisation of the present board.

1.15 Witnesses acknowledged that political involvement of a board member does not necessarily result in politicised decision-making and behaviours. Several witnesses even concluded that political involvement should not necessarily preclude an applicant's appointment if selection criteria are fulfilled.¹²

1.16 Unfortunately the premises on which these arguments are based cannot be taken for granted, and this is one reason why potential appointment processes require in depth examination to ensure that they will achieve their objectives.

6 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.3.

7 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.1.

8 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.1.

9 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.3.

10 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.14; Friends of the ABC, Submission 593, p.3.

11 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.6.

12 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, pp.6-7; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, pp.17, 21; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, p.35; Mr Dempster, Submission 365, p.3.

Alternatives for appointment of board members

1.17 A variety of alternative processes for appointment of board members have been canvassed in the few submissions that address this matter. There is no consensus on the most appropriate method, and a number of submissions concede that each has merits and disadvantages. There has not been detailed analysis of the relative merits of proposed alternatives. A more thorough consideration of the alternatives than this inquiry permits is necessary.

1.18 There are a number of guiding principles that, it has been suggested, are critical elements of an appointment process. These are as follows:

- Appointment process should be public, transparent, open and accountable.¹³
- Applications should be invited in advertisements in the national media – criteria should be stipulated in advertisements.¹⁴
- Assessment of applications should be independent.¹⁵
- Applications should be assessed according to certain defined and publicly available criteria.¹⁶ Suggested criteria include:
 - a. A commitment to public broadcasting.¹⁷
 - b. Breadth of vision.¹⁸
 - c. Regard for community interests.¹⁹
 - d. Regard for the public good.²⁰

13 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.16; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, p.37; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.42; Ms Jakubowski, Submission 643, p.3; Friends of the ABC, Submission 593, p.9.

14 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.44; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.58, Submission 643, p.3; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, p.30, Submission 593, p.9.

15 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, pp.15-16; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.58, Submission 643, p.3.

16 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.42; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.59; Friends of the ABC, Submission 593, p.9.

17 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.20; Friends of the ABC, Submission 593, p.9; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.44, Submission 365, p.4.

18 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.17.

19 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.17.

- e. Nolan's seven principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty, leadership.²¹
- f. Areas of expertise required on the board.²²

1.19 Labor Senators believe that making selection criteria publicly available would be a useful step towards ensuring the competence of applicants. This action would also counteract any public perception of bias in the selection process and the resultant damage to the ABC's reputation.

The method of appointing board members

1.20 Several models have been implemented internationally for the appointment of board members to public institutions. Notable examples brought to the Committee's attention were the systems operating in the UK and the USA.

1.21 The Nolan system in the UK has been implemented for all appointments to public office. In this system, an independent assessment by bureaucracy filters applicants according to criteria, which include Nolan's seven principles of public life, and then hands the Minister a short-list from which the Minister makes his or her selection.²³

1.22 The United States has a congressional hearing system where candidates for public appointments are vetted publicly at public hearings to guarantee their competence and disposition for the appointment.²⁴

1.23 Based on these international examples, submissions to the Inquiry suggested alternatives modelled on those systems.

1.24 One suggestion that received considerable support was that an independent individual be given the task of assessing applications to the ABC board in the same way the UK's Nolan Committee assesses all appointments to public office.²⁵ Difficulties implementing such a system would include practical problems ensuring

20 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5.

21 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.57.

22 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.20; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.57; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, p.28; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.44; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, p.30, Submission 593, p.9.

23 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.3; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15.

24 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.3.

25 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15; Friends of the ABC, Submission 593, p.9.

the assessor was not a political appointment, and because the Minister retains ultimate decision-making authority the risk of politicisation remains.

1.25 It has been argued that the transparency of the process would make sure the government or Minister of the day was accountable for decisions made.²⁶ However all political board appointments to the ABC have been made in the face of public scrutiny, and the political consequences of the decisions have not historically deterred Australian governments and Ministers.²⁷

1.26 Similarly, the suggestion that appointments be made by a joint standing committee of the parliament fails to take account of the fact that such a committee would have a majority of members from the government of the day, who would therefore control the process.²⁸

1.27 Labor Senators conclude that without means of overcoming the problems with the suggested systems, depoliticisation of the board would not be an assured outcome of change to the appointment process.

1.28 A number of witnesses before the Committee indicated that benefits from these systems are primarily the direct result of the transparency in the decision-making processes that is achieved.²⁹ Although it is true that publicity arising from transparency can affect Government decision-making, Labor Senators conclude that experience with ABC board appointments suggests that depoliticisation would not result simply from transparency of the process.

1.29 Another alternative appointment process would be to require bicameral approval of appointees by passage of appointments through a joint sitting of both houses of parliament or alternatively through both houses consecutively.

1.30 This brings the appointment process very close to the political process such that politicisation remains a risk.

1.31 In any event, the detail of all of these processes has not yet been elaborated, and requires further investigation.

26 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, pp.21, 26; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, pp.31, 39.

27 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.13.

28 Senator Schacht, *Proof Committee Hansard*, 20/8/01, p.13.

29 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, pp.21, 26; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, pp.31, 39; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.55; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.44, 46.

Labor Senators' criticisms of Chair's report

1.32 Labor Senators dispute a number of the Chair's conclusions based on their failure to take account of the evidence presented to the Committee, or their direct contradiction of the evidence.

1.33 The Chair's report finds that there is a reality and perception that appointments to the ABC board, by both parties, have been on the basis of political affiliation rather than exclusively merit. However the conclusion that appointments made partly on the basis of political affiliation rather than exclusively on merit have led to any real political bias of the board is a tenuous one. Indeed a number of witnesses have stated that there is no evidence of a link between political affiliation and demonstrable bias as a board member.³⁰

1.34 In response to that finding, the Chair's report recommends a system based on the principles of openness and transparency modelled on the UK Nolan rules. The proposed system calls for the development of selection criteria, public advertising for applications, short listing of candidates by a parliamentary Committee, and final appointment by the Minister.

1.35 The model proposed was not suggested by a single witness. Witnesses and those who have made submissions to the inquiry have not had an opportunity to comment on the merits of this new model envisaged by the Chair. Indeed several witnesses indicated flaws in the models from which this proposal draws which have not been addressed. Additionally, the parliamentary model suggested by the Chair is based on the American system which received some strong criticism as not being adequately transparent and falling well short of world best practice.³¹

1.36 Some specific criticisms of the model recommended by the Chair are detailed below under "Development of the selection criteria" and "Shortlisting by a Parliamentary Committee".

Development of the selection criteria

1.37 The Chair's model suggests the development of selection criteria by the Merit Protection Commissioner. One of the points that emerged in the evidence was that a key consideration is the balance of skills on the Board taken as a whole. Arguably, the Merit Protection Commissioner would not be in a position to set good selection criteria on the grounds that he or she would lack the detailed knowledge of the

30 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.7; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.23; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, pp.36,37; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.56.

31 CPSU, Submission 363, p.17. The CPSU thought the US system can be "quite a destructive affair" which focuses "on personal characteristics and can lead to character assassination as a way of killing off a candidate": *Proof Committee Hansard*, 20/8/01, p.16.

strengths and weaknesses of the existing board, and thus, the sort of skills needed in an appointment round.

1.38 A better solution may be for the selection criteria to be prepared by the Board itself, or the Department, subject to the approval of the Minister. The main consideration is that the appointment be made on the basis of public selection criteria.

Shortlisting by a Parliamentary Committee

1.39 A number of witnesses raised concerns at the suggestion of a parliamentary Committee reviewing applications for board positions.³² The major concern was that the process would subject candidates to a public interrogation by members of the Committee, and unless this was tightly controlled, questioning could become personal and be aimed at destroying the credibility and political sympathies of the candidate rather than exploring their expertise. This would be both unfair and a potential deterrent to worthy applicants.

1.40 A further problem with the use of a Parliamentary Committee to shortlist applicants is that the shortlisting would in practice be done principally by the secretariat of the Committee with only the final stages of the shortlisting actually being performed by the Members and Senators. It is questionable whether the secretariat is suited to this role.

1.41 Placing so much of the process in the hands of the Parliament potentially violates the principle of Ministerial responsibility, under which the administration of government is the responsibility of the Ministers, who are accountable to the Parliament for that administration.

1.42 Appointments to government agencies, the judiciary, boards of cultural and educational institutions and other similar public appointments are decisions of the government of the day. Arguably the appointment of ABC board members is indistinguishable from these similar high-level public appointments. If the method of appointment of board members of the ABC were to change, consistency would require an overhaul of all appointment methods.³³ The desirability of such a fundamental transfer of responsibility away from government is a relevant issue that requires further consideration.

1.43 Labor has a plan for better public administration which would apply to appointments to the ABC board, although it does not preclude further measures being considered in relation to the ABC:³⁴

32 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.16; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, p.38, Submission 593, p.10.

33 Regarding politicisation of other appointments, see Friends of the ABC, Submission 593, p.8.

34 Senator John Faulkner, Shadow Minister For Public Administration, "Re-invigorating Commonwealth

With statutory office holders, the relevant Minister will, as a first step, consider whether vacancies should be advertised on the basis that this would normally be done well in advance of vacancies falling due. Ministers will ask the Secretaries of their departments to prepare a report on each vacancy. These reports, which will include such details as the current appointee, the timing of the vacancy, the conditions of appointment and the process followed to identify the recommended new appointee, will be made available to Cabinet, to inform its consideration of proposed appointments.

Therefore, in the case of both Secretaries and statutory office holders there will be a more wide-ranging canvassing of possibilities and broader based advice to the Government that will focus on the inherent merit of individuals rather than on their perceived political alignment.

1.44 Parliament might more appropriately scrutinise the selection process, via the normal procedure of questions asked of the Minister in question time, underpinned by transparency in documenting the process.

1.45 Finally, as mentioned previously, under the usual system of establishing joint Committees, the government has the majority membership of the Committee, otherwise both Houses of Parliament will not agree to the Committee. The result would be a Committee that is still closely associated with the government, and is consequently no more independent than the current system.

Conclusions

1.46 Labor believes that the most important means of ensuring the independence of the ABC is through the provision of adequate funding, since the principal way governments have tried to influence the ABC in the past has been through funding reductions. Labor is committed to adequately fund the ABC:

Labor will provide adequate funding on a triennial basis to ensure quality is maintained in both the program and service delivery areas, as well as ensuring that Australian content levels are maintained at an appropriate level to foster the development of our cultural identity. Where appropriate, Labor will ensure that adequate funding is provided to assist the ABC ... with the introduction of digital broadcasting and online technologies.³⁵

1.47 The Committee has not received sufficient detail on alternative selection processes of ABC board members to be able to conclude that a specific process would ensure depoliticisation of board appointments through the appointment of members on

Public Administration”, Presentation to a Seminar Sponsored by the Institute of Public Administration Australia (ACT Division) and the National Institute for Governance, National Convention Centre, 22/3/01.

35 ALP Platform 2000, Chapter 14. Available at http://www.alp.org.au/policy/platform2000/chapter_14.html

the basis of merit and commitment to independent and comprehensive public broadcasting. Nor is there consensus in evidence to the Committee on the appropriate model for appointment of board members.

1.48 No evidence was received from the Board, the Minister, the department, or the media making it difficult to get a comprehensive picture of the existing system and its practical operation, and potential areas for improvement.

1.49 In order to make an informed decision on the most appropriate method for appointment of board members in Australia, further investigation into the relative merits of the various models proposed, and the success of models implemented internationally, is necessary.

1.50 Labor Senators see merit in the establishment of criteria against which applications for board membership can be assessed, and advertising and inviting applications for board positions. This will assist in achieving the important objective of depoliticising the ABC board, and assuring the independence of the ABC into the future. Further investigation into the merits of alternative processes for selecting appointments from the applications received is needed in order to ensure that the options are well considered and analysed. This will guarantee the best outcome for the ABC.

SENATOR MARK BISHOP

A.L.P. (W.A.)

ADDITIONAL COMMENTS BY SENATOR BOB BROWN, AUSTRALIAN GREENS

Inquiry into ABC Board Appointments

The politicisation of the ABC, whichever party is in government, is paralleled by the polyglot of dissenting reports here.

While I support the Chair's recommendation, because it is a real advance on the status quo, the British option of an independent board, seen to be at arm's length from political appointment or influence, is better still.

The recommendation, under the Chair's option, that ultimate responsibility for appointments reside with the minister, and that there be advertising for board positions before the Committee reaches its selection, are important.

In summary I recommend:

- The British model, involving an Office of the Commissioner of Public Appointments, be used to appoint ABC board members.
- The Chair of the board should be elected by the board.
- There should be two staff of the ABC on the board, elected by preferential (Hare-Clarke) voting.
- The guidelines or criteria for selection of board members should be drawn up in consultation with the board.
- The failure of the current board to offer any submission or advice to this inquiry is unacceptable and, of itself, points to the need for change.

Bob Brown

Greens Senator

APPENDIX 1

LIST OF SUBMISSIONS

1	Mr Geoff Cahill	NSW
2	Mr Dallas Fraser	QLD
3, 3(a)	Associate Professor Frank Morgan	NSW
4	Ms Margaret Millar	NSW
5	Mr Walter Bass	NSW
6	Ms Tracy Sorensen	NSW
7	Mr Kevin Beck	ACT
8	Ms Janice Macpherson	QLD
9	Mr Simon Neville and Ms Louise Duxbury	WA
10	Mr Eric and Mrs Judy Walker	QLD
11	Mr Thomas Richman	QLD
12	Ms Emanuele Gelsi	QLD
13	Ms Catherine Baker	NSW
14	Mr Craig Chappelle	WA
15	Ms Karen Rooke	NSW
16	Ms Nichole Murray	QLD
17	Mr John Woodlock	QLD
18	Friends of the ABC (Hunter Region)	NSW
19	Mr David Dynes	NSW
20	Mr Paul Collins	NSW
21	Ms Nicolle Torda	NSW
22	Mr R L McCown	QLD
23	Mr Gary B Smith	USA
24	Mr Barrie Baker	WA
25	Ms Kaye Gorham	NSW
26	Ms Emer Cooper	NSW
27	Ms Joan Hill	QLD
28	Ms Lorelle Clarke	QLD
29	Associate Professor Helen Wilson	NSW
30	Ms Jenny Edwards	NSW
31	Ms Frances Beilby	NSW
32	Kim Greenham	WA
33	Mr John Hill	QLD
34	Ms Monika Gaede	NSW

35	Robin Harvey	QLD
36	Dr Alan Jones and Dr Janet Jones	QLD
37	Ms Audrey Chopra	NSW
38	Ms Sue Kelly-Turner	VIC
39	Dr Graham Harrington	QLD
40	Ms Beverley Pavey	NSW
41	Ms Mary Rizik Hyndman	QLD
42	Ms Noreen Herbert	VIC
43	Kerry Walker	NSW
44	Mr Tony Hedemann	QLD
45	Mr Colin Smith	VIC
46	Ms Rosemary Hill	VIC
47	Mr David Dyer	VIC
48	Mr Tim Harding	VIC
49	Mr Jeff and Mrs Jean Jordan	VIC
50	Mr Michael Gurr	VIC
51	Mr Nicholas Dow	VIC
52	Mr Mark Stewart	VIC
53	Ms Mary Lyden	VIC
54	Dr N Vahdat	VIC
55	Professor Lyn Richards	VIC
56	Mr David Marks	VIC
57	Ms Emily Ellerton, Mr Blake Gunn, Ms Amanda Ellerton, Mr Alastar Ellerton, Ms Claire Ellerton, Ms Lisa Ellerton and Ms Eileen Ellerton	VIC
58	Ms Crina Virgona	VIC
59	Mr Doug Everingham	QLD
60	Ms Susan Rushworth	VIC
61	Mr John Cronin	QLD
62	Ms Deborah Preston	NSW
63	Mr David Moore	VIC
64	Mr John and Mrs Brenda Ray	VIC
65	Ms Susan Jackel	VIC
66	Dr Heather D'Cruz	VIC
67	Mr Noel Matthews	VIC
68	Mr John Mardling	VIC
69	Ms Anna Sande	VIC
70	Mr Ken and Mrs Betty Walters	VIC

71	Mr Bob Anselmi	VIC
72	Ms Jennifer Borrell	VIC
73	Mr Tim Robertson	VIC
74	Mr Martin Thomas	NSW
75	Ms Carole Goodwin	NSW
76	Ms Patricia O'Dwyer	VIC
77	Ms L Mills	VIC
78	Mr Geoff and Mrs Gwenyth Forster	VIC
79	Lindsay Cozens	VIC
80	Mr Martyn Smith	VIC
81	Dr David Morawetz	VIC
82	Mr James Roberts	VIC
83	Lesley Cowie	VIC
84	Mr Peter and Mrs Pat Lawson	VIC
85	Lindsay Walker	VIC
86	Mr Peter Dick	QLD
87	Ms Janice Ford	VIC
88	Ms Maree Hose and Mr John Howes	WA
89	Mr Peter Knight	VIC
90	Ms Julie Lenten	VIC
91	Mr Kenneth Howett Fraser	VIC
92	Mr George Ross	VIC
93	Ms Margaret Donagan	VIC
94	Ms Jill Leisegang and Ms Grace McCaughey	VIC
95	Ms Eleanor Bastow	VIC
96	Mr Gerald Levin	VIC
97	Mr Ian Pittman	VIC
98	Mr Monty and Mrs Frances Maizels	VIC
99	Ms Alfreda Stressac	VIC
100	Ms Sara Isherwood	QLD
101	Ms Joan Burke	VIC
102	Mr Michael and Mrs Glenice Freeman	VIC
103	Ms Suzanne Blanch	VIC
104	Dr David Lancaster	VIC
105	Mr Murray and Mrs Lorraine Sinderberry	VIC
106	Ms Kate Oldaker	VIC
107	Mr David Steele	VIC
108	Mr Maurice Green	VIC

109	Mr P E Brown	VIC
110	Mr Ted Goode	VIC
111	Ms Susan Allen	VIC
112	Ms Edith Green	VIC
113	Ms B McIntyre	VIC
114	Ms Rita Maver	VIC
115	Ms Catherine Andrew	VIC
116	Mr James Mathieson and Ms Margaret Mathieson	VIC
117	Ms Georgina Simmonds	VIC
118	Ms Helen and Mrs Marshal Schaeche	VIC
119	Mrs Frances Friece	VIC
120	Mr D McLaren	VIC
121	Ms Margaret McLaren	VIC
122	Mrs F Flentje	VIC
123	M D Colbourne	VIC
124	Ms Helen Hoyle	VIC
125	G F Sutton	VIC
126	Mr Tim Watts	QLD
127	Jo Lewis	VIC
128	Ms Helen Bryan	NSW
129	J R Duke	VIC
130	Mr John and Mrs Shirley Gunson	VIC
131	Dr L and Mrs J Armour	VIC
132	Mr Ron Muller	VIC
133	Ms Melissa Rogerson and Mr Fraser McHarg	VIC
134	Ms Margaret Watters	VIC
135	Ms Jean Murray	VIC
136	Ms Enid Harris	VIC
137	Ms Margaret Talbot	VIC
138	Mr David Chapman	VIC
139	Mrs Christiane Richert	VIC
140	Ms Flora Dickson	VIC
141	Mr Martin Field	NSW
142	Ms Anna Swards	VIC
143	Mr Gary Curtis	NSW
144	Mr Tim and Mrs Eve Oakley	VIC
145	Mr Arthur McEwan	VIC
146	Mr Peter and Mrs Kathy Strickland	VIC

147	Mr Kendall Wells	QLD
148	Ms Maureen Bond	VIC
149	Ms Jo Thomson	VIC
150	Ms Pamela Ungerer	QLD
151	Dr Yoni Ryan	QLD
152	Mr Allan Ray	VIC
153	Ms Aileen Vening	VIC
154	Mr John Middleton	VIC
155	Mr Tom and Mrs Marge Tierney	VIC
156	Mr Roy Wilson	VIC
157	Ms A Austin	VIC
158	Mr F A Williams	VIC
159	A M Boothman	VIC
160	Ms Shirley Roeszler	VIC
161	Mrs Jean Hampton	VIC
162	N Engelman	VIC
163	Ms Jennifer Lock	VIC
164	Ms Isobel Dowling	VIC
165	Ms Jean Yule	VIC
166	Ms Myra Moore	VIC
167	Ms Margery van Staureren	VIC
168	Mr and Mrs Swift	VIC
169	Mr Albert and Mrs Josephine McMullan	VIC
170	Mrs Lesley Johns	VIC
171	Ms Jean Wedding	VIC
172	J Killingsworth	VIC
173	Mr David Langley	VIC
174	Mr Tony Webber	VIC
175	J C Lacey	VIC
176	Mr Peter Hoy	VIC
177	Mr Peter Larsen	VIC
178	Ms Lyn Schofield	VIC
179	Ms Dorothy Trezise	VIC
180	Mr Bob Sharples	VIC
181	Mr Greg Dingle	VIC
182	Mr Ray Birch	VIC
183	Ms Kristian Lind	VIC
184	Mr Maurice Perry	VIC

185	Ms Val McLean	VIC
186	Mrs Margaret Williams	VIC
187	Mr Chris Cope	VIC
188	Ms Glyn France	VIC
189	Ms Judith Rutheford	VIC
190	G Hackett	VIC
191	Ms Kay Demmler	VIC
192	Ms Barbara Morison	VIC
193	Ms Marjorie Harmsworth	VIC
194	Ms Pat Grainger	VIC
195	Mr Paul Savage and Ms Clara Mandaletti	VIC
196	Ms Lynette Payne	VIC
197	Mr John Card	VIC
198	Miss Joyce Davidson	NSW
199	Mr Phillip McCrory	VIC
200	Ms Edith Waller	NSW
201	Mr Martin Zakharov	VIC
202	Dr Neil Goodman	VIC
203	Mr Stephen Kadar	VIC
204	Ms Kate Durham	VIC
205	Mr Julian Burnside	VIC
206	Chelsea Branch of ALP	VIC
207	Mr Victor Issell	VIC
208	Mr Jeff and Mrs Elspeth McCracken-Hewson	VIC
209	Ms Moya Crowe	NSW
210	Ms Anne Fortune	VIC
211	Dr N A Pylotis	VIC
212	Ms Marie Shaw	VIC
213	Ms Libby Smith	VIC
214	Ms Donalda Crofts	VIC
215	Ms Margaret Smith	VIC
216	Mrs Pat Albon	VIC
217	S Morrissey	VIC
218	Ms Elaine Archer	VIC
219	Ms Wendy Foran	VIC
220	Mr Bruce Seakam	VIC
221	Mr and Mrs Wickramasinghe	VIC
222	Ms Jane Barnes	QLD

223	Mrs I Lathlean	VIC
224	Ms Jill Missing	VIC
225	Miss R O Jenkins	VIC
226	Mr Ian and Mrs Morag Newman	VIC
227	Ms Mary Florrimell	VIC
228	Mrs L M Richards	VIC
229	Mrs Voni Wilson	VIC
230	Mr Maurice Poulton	VIC
231	Ms Elaine Collert	VIC
232	Mr Tony Sullivan	VIC
233	Ms Roslyn Gibson	VIC
234	Ms Jocelyn Scarr	VIC
235	Mr and Mrs Sangeta	VIC
236	Mr Robert Allingham	VIC
237	Mrs H J Aitkin	NSW
238	Dr Gammon	VIC
239	Ms Joan Boyd	VIC
240	Mr Donald Reid	VIC
241	Mr Geoff Podger	VIC
242	Mrs Gwen Lee	VIC
243	Mr Brendon Butler	VIC
244	Dr Joseph Toscano	VIC
245	Mr Andrew and Mrs Beverley Robinson	VIC
246	Mr Brian Newell	VIC
247	Ms Marguerite Gray	VIC
248	Mr Charles and Mrs Pauline Perry	VIC
249	Mr Richard Smith	VIC
250	Dr Malcolm Ronan	VIC
251	M J Northover	WA
252	Ms Kate Ritchie and Mr Charles Qin	VIC
253	Mrs Janice Cook	VIC
254	Mr Leonard and Mrs Margaret Krohn	VIC
255	Ms Prudence Brown	VIC
256	Dr Elaine Barry	VIC
257	Ms Pam Baker	VIC
258	Ms Anne Mancini	VIC
259	Ms Marie Anderson	VIC
260	Reverend Dr D'Arcy Wood	VIC

261	Ms Susan Bray	VIC
262	Mr Bob Morrow	VIC
263	Miss Enid Burston	VIC
264	Mrs Diane Redman-Heath and Mr Peter Heath	VIC
265	Ms Louise O'Bryan	VIC
266	Ms Patricia Heather	VIC
267	Ms Val McIntyre	VIC
268	Mr Anthony Chambers	VIC
269	Ms Dorothy Kiers	VIC
270	Mr Barry Parsons	VIC
271	W McLinden	VIC
272	Ms Anne Hearn	VIC
273	J Hart	VIC
274	Ms Bev Beattie	VIC
275	Mr Bruce and Mrs Beatrice Hamilton	VIC
276	A Isaacs	VIC
277	Ms Jane Davison	VIC
278	Ms J Beavis	VIC
279	Ms Rowena Archer	VIC
280	R E Palmer	VIC
281	Ms Lois Loftus-Hills	VIC
282	Ms Betty Connolly	VIC
283	Mr Frank Rouch	VIC
284	Mrs Annetta Kelleher	VIC
285	Ms Diane Jones	VIC
286	Mrs P Buckley	QLD
287	Kerry O'Meara	VIC
288	Mrs Elva Whitley	VIC
289	Ms Gwendda McKay	VIC
290	Ms Helen Tippet and S G Tippet	VIC
291	Ms Hilary Harland	VIC
292	Ms Lesley Walker	VIC
293	Ms Pamela MacKenzie	QLD
294	Mrs Maureen Calwell	VIC
295	Ms Peggy Owen	VIC
296	Mr Anthony Taylor	VIC
297	Dr Judith Biddington	VIC
298	Mrs Janet King	VIC

299	Mrs Elizabeth Foxcroft	TAS
300	Ms Amy Weaich	VIC
301	Mrs Elizabeth Macgregor	VIC
302	Mr James Davidson Wingate	VIC
303	Ms Lois Roberts	VIC
304	Ms Anne Sutterby	VIC
305	Ms Ruth Boschen	VIC
306	Mrs M Browning	TAS
307	Ms Merle Hathaway	VIC
308	Mrs A Bailey	VIC
309	Mr Keith Williams	VIC
310	Miss F Arnott	VIC
311	C Ketels	VIC
312	G Wadelton	VIC
313	Mr Bryan Donnelly	VIC
314	Ms Rhonda Florrimell	VIC
315	Mr Christopher Billington	VIC
316	Ms Patricia Anderson	VIC
317	Mr Donald Barrett	VIC
318	Ms Gwen Crawford	VIC
319	Ms Angela Fitzpatrick	VIC
320	Ms Julie Conway	QLD
321	Ms Audrey Garth and Ms Dot Jones	VIC
322	G and J Hildebrand	VIC
323	Mr Clive Hodges	QLD
324	Mr Keiran Ryan	VIC
325	Ms Anna McCormack	QLD
326	Ms Meg Ryan	VIC
327	Ms Angela Munro	VIC
328	Ms Felicity Say	VIC
329	Ms Olwen Steel	NSW
330	Mr David Whitehead	QLD
331	Mr Bill Wiglesworth	VIC
332	Mr Stephen Chenery	VIC
333	Mr Phillip and Mrs Cynthia Morand	VIC
334	Mr Richard Markowski	VIC
335	Ms Rhonda Sutton and Family	VIC
336	Ms Marna Sandford	VIC

337	Robyn Ryan	NSW
338	Ms Jill Redwood	VIC
339	Ms Mary and Mr John Murray	VIC
340	Ms Margaret Shaw	ACT
341	Ms Margaret Rand	VIC
342	Ms Marianne Gemperle	VIC
343	Ms Nola Firth	VIC
344	Ms Janet Mackenzie	VIC
345	Ms Anne Kotzman	VIC
346	Mr Paul Dempsey	ACT
347	Ms Clare Kinnane	VIC
348	Mr Brian Blanchard	TAS
349	Ms Megan Ballinger	VIC
350	Ms Margaret Brown	ACT
351	Ms Anna Clabburn	VIC
352	Mr Leonard Derrick and Family	VIC
353	Ms Jenny Forster	NSW
354	Mr Brian and Mrs Barbara Hardiman	VIC
355	Mr Ralph Humphries and Ms Joan Lynn	VIC
356	Dr Patrick Kavanagh	VIC
357	Mr Michael Kinnane	VIC
358	Ms Judith Quilter and Ms Janet Quilter	VIC
359	Mr Harry and Mrs Marie Stripp	VIC
360	Mr Greg Tanner	ACT
361	Ms Lynne Webber	VIC
362	Mr Maurice Alexander	VIC
363	Community and Public Sector Union	NSW
364	Mr Patrick Coleman	QLD
365	Mr Quentin Dempster	NSW
366	Ms Oonagh Sherrad	NSW
367	Ms Jacqueline Love	VIC
368	Mr Stephen Hodge	ACT
369	Reverend Katharine Davies	VIC
370	Mr Richard Strzelczyk	VIC
371	Ms Christine Fabel	VIC
372	Mr Bill Condon	NSW
373	Ms Shirley Bold	VIC
374	Mr Tony Kiers	VIC

375	Ms Yvonne Taylor	QLD
376	Ms Helen Polley	TAS
377	Ms Gwenyth Crawford	NSW
378	Ms Jill Keogh	NSW
379	Batchelor Institute of Indigenous Tertiary Education	NT
380	Ms Julia Taylor	VIC
381	Ms Joan Brindle	VIC
382	Laurie Coles	VIC
383	Mrs J Murphy	VIC
384	Mrs Doune Gerber	VIC
385	J R Downie	VIC
386	Mrs Dorothy Sutherland	VIC
387	Ms Maree Oswald	VIC
388	Mr Ellis Barber	VIC
389	Mrs P Shaw	VIC
390	W J Nevein	VIC
391	Ms Jan Peutland	VIC
392	Ms Joan Airey	VIC
393	Ms Christine Hynd	VIC
394	Ms Jean Anderson	VIC
395	Ms Barbara Schäfer	VIC
396	Mrs Gwennyth St John	VIC
397	Mr Edward Nieman	WA
398	Mrs Shirley Simmonds	VIC
399	Mrs Patricia Duxbury	VIC
400	Mr David Cox	VIC
401	Dr Margaret Beavis	VIC
402	Mr Ian Ballinger	VIC
403	Ms Jeannie Ballinger	VIC
404	Mrs Margaret Crickson	VIC
405	J Meadows	VIC
406	K Connors	VIC
407	Mrs E Young	VIC
408	Mr Peter Jones	VIC
409	Ms Denise Macfarlane	VIC
410	A D Brown	NSW
411	Mr Ronald and Mrs Dorothy Thyer	Vic
412	Mrs M McDonald	VIC

413	Ms Roselyn Gorie	VIC
414	K A Robinson	VIC
415	Ms Betty Coats	VIC
416	Ms Robin Harvey	VIC
417	M Pearse	VIC
418	Ms Cathy Sullivan	VIC
419	Ms Olive Cockrill	VIC
420	Mrs Dorothy Pottage	VIC
421	Ms Christine Robinson	VIC
422	Mrs Jennifer Hansen	NSW
423	Mrs E Grey	TAS
424	Mrs A Mutton	VIC
425	Mr Stephen Morey	VIC
426	Mr Frank South	VIC
427	Ms Janet South	VIC
428	Ms Barbara Cameron	VIC
429	D Cameron	VIC
430	Mrs Patricia Morton	VIC
431	P Young	VIC
432	Ms Jill Keith	VIC
433	Mr Richard Buchhorn	QLD
434	Mr William Puls	VIC
435	Mr Ross Phillips	VIC
436	Ms Christine Pearse	VIC
437	Mr Richard Opie	VIC
438	Mrs Josephine Johnson	VIC
439	Mr Maurice Edwards	VIC
440	Mr Arthur and Mrs Peggy Marsh	VIC
441	Ms Leni May	VIC
442	Ms Cynthia O'Keefe	VIC
443	Ms Anna Sublet	VIC
444	Ms Beth Robieson	VIC
445	Mr Barry Selwood	VIC
446	M Bradshaw	VIC
447	Union of Australian Women (Victorian Sector)	VIC
448	Ms Mary Kirkwood	VIC
449	Mrs Margaret Brown	VIC
450	Ms Louise Rynia	VIC

451	Mr F Kelly	QLD
452	Mrs Kaye Jones and Family	VIC
453	Ms Hazel Symmons	VIC
454	Mr Greg Thompson	VIC
455	Mr William Mackenzie	VIC
456	Mrs Vair Barbeta	VIC
457	Ms Joan Amos	VIC
458	Ms Maree Daly	VIC
459	Mr George Sutherland	VIC
460	Mr William Amis	VIC
461	Pat Williams	VIC
462	Mr Ronald and Mrs Joan Jones	VIC
463	Ms Frances Mackieson	VIC
464	Ms Joan Maxwell	VIC
465	Mrs Susan Barnard	VIC
466	Mr Peter Shepard	VIC
467	M S and B H Oag	VIC
468	Ms Marian Farrall	VIC
469	Ms Helen Campbell	VIC
470	Ms Joan Eltham	VIC
471	Mr Robert and Mrs Enid Finney	VIC
472	Ms Margaret Borden	VIC
473	Ms Jean Cunningham	VIC
474	Mr D and Mrs L Munro	VIC
475	Mr Ken Schroder	VIC
476	V Cusiter	NSW
477	Ms Megan Booker	NSW
478	Mr John Oldfield	NSW
479	Ms Annette Boyle	VIC
480	Mr John Faye	VIC
481	Mrs Lynette Chambers	VIC
482	Mr Alan Bull	VIC
483	Ms Lenore Bull	VIC
484	St Andrews and District Branch of The Greens	VIC
485	L G Norris	VIC
486	Ms Marsha Colbran	NSW
487	G Coats	VIC
488	Ms Alexandra Coleman	NSW

489	Mr Ray Walford	VIC
490	Mr Ian Hundley	VIC
491	Mr Ian Johnston	VIC
492	Mr Keith Burrows	VIC
493	Humanist Society of Victoria	VIC
494	Mr Peter Lublin	NSW
495	Kerry Brady	QLD
496	Mr John McDonald and Ms Robyn Sloan	VIC
497	Dr George Blair-West	QLD
498	Ms Gillian Appleton	NSW
499	Ms Mary Rimmington	VIC
500	Ms Adele Doust	ACT
501	Mr Michael Wardle	VIC
502	Dr Bradford Sherman	ACT
503	Mr Maurice and Mrs Margaret Todd	TAS
504	Ms Kris Reichl	VIC
505	Mr Paul Llewellyn	WA
506	Mr Laurence Pole	VIC
507	Dr Keith Osborne	NSW
508	Mr John O'Callaghan, Ms Roma O'Callaghan and Mr Bryan Cox	VIC
509	Mr David and Mrs Roberta Littlewood	VIC
510	Ms Dallas Kinnear and Mr Murray Winter	VIC
511	Ms Penny Lewisohn	VIC
512	Ms June Hornby	ACT
513	Mr Ian Gray	QLD
514	Socialist Alliance	NSW
515	Mr Peter and Mrs Margaret Fitchett	VIC
516	Mr Bob Bunnnett	QLD
517	Mrs M Charles-Jones	VIC
518	Ms Christine Fensham	VIC
519	Ms Gillian Hall	ACT
520	Ms Janina Craig and Mr Gary Files	VIC
521	Ms Marielle Jansen	QLD
522	Ms Jane Tindale	VIC
523	K J Cathro	VIC
524	Dr Claerwen Jones	VIC
525	Mrs Dora Ryan	VIC
526	Mrs Gwenyth Godecke	VIC

527	Ms Anne Bolton	VIC
528	Ms Peg Lambert	VIC
529	Mr John and Mrs Elise Holmes	ACT
530	Mr Geoff Linnell	VIC
531	Mr Murray Winter	VIC
532	Ms Heather Murray Tobias	VIC
533	Mr Paul Varna	SA
534	Kim Choan Woo	ACT
535	Mr Robert Bruce	VIC
536	Mrs M Dando	VIC
537	Mr Peter and Mrs Helen Curtis	VIC
538	Dr Yvonne Aitken	VIC
539	Ms Rose Allaway	VIC
540	Mr John Armstrong	VIC
541	Ms Bronwyn Bell	QLD
542	Mr Andrew Blanckensee	ACT
543	Dr G Chesher	NSW
544	Mr Ralph and Mrs Wilga Clarke	VIC
545	Ms Patrice Glancy	QLD
546	Mr Joe Glaysher	NSW
547	Ms Sylvia Gray	TAS
548	Mr David Horwood	VIC
549	Mr Trevor and Mrs Joan Lipscombe	ACT
550	Mr Damian McCrohan	VIC
551	Mr Patrick McNamara	ACT
552	Mr Daniel Moss	VIC
553	Mr Michael Rayner	VIC
554	Mr Mark Taylor	NSW
555	Mr Chris Nicholson	WA
556	Ms Irene Parker	VIC
557	Ms Robyn Prent	VIC
558	Ms Ruth Paterson	VIC
559	Ms Patricia Rayner	VIC
560	Ms Leah Reid	ACT
561	Ms Irene Rennie	NSW
562	Ms Maria Rizzo	VIC
563	Mr Mike and Mrs Elizabeth Russell	QLD
564	Ms Hilary Sawyer	VIC

565	Mr Gordon Twigg	NSW
566	Ms Dindy Vaughan	VIC
567	Ms Elizabeth Weir	ACT
568	Mr Jimmy Sharp	NSW
569	Ms Marjorie McMillan	VIC
570	Mr Edward and Mrs Jan Lindsay	VIC
571	Mrs May Arbuckle	VIC
572	Ms Marion Sinclair	VIC
573	Ms Elizabeth Jones	VIC
574	Mr Des McLucas	QLD
575	Ms Jaga Allan	VIC
576	Ms Dianne Douglas	VIC
577	Ms Jayne Lysk	VIC
578	Dr John Arrowsmith	QLD
579	Mr Rod Oaten	VIC
580	Ms Deborah Graham	NSW
581	Mr Robin Taylor	VIC
582	Ms Ann Robb	VIC
583	Mr and Mrs Wilkinson	TAS
584	Ms Pamela Tan	ACT
585	Ms Marian Veney	VIC
586	Mr William and Mrs Elizabeth Meredith	VIC
587	Mr Erik and Mrs Helen Bachmann	NSW
588	Mr Philip Bouchier	VIC
589	Ms Margaret Bradford	NSW
590	Ms Frances Cooke	QLD
591	Ms Michele Davis	QLD
592	Council of Australian Postgraduate Associations	VIC
593	Friends of the ABC	SA
594	Mr John McKeon	QLD
595	Ms Alison Green	QLD
596	Mr David Hall	VIC
597	Ms Joan Laing	SA
598	Ms Elizabeth Lawrence	TAS
599	Ms Romola Martin	NSW
600	Mr Lucian McGuinness	ACT
601	Mr Derek Wrigley	ACT
602	Mr Carl Pannuzzo	VIC

603	Dr Jamie McKew	VIC
604	Ms Margaret Alexander	NSW
605	Ms Geire Kami	VIC
606	Ms Charmian Eckersley	NSW
607	Ms Meredith Wright	WA
608	Mr Michael Gordon-Smith	NSW
609	Mrs Win London	QLD
610	Mr Peter Bagley	QLD
611	Ms Suzanne Reimer	NSW
612	Ms Carol Anderson	ACT
613	Mr George Winston	NSW
614	J Grevillea	NSW
615	Ms Madonna Botting	QLD
616	Ms Dorothy Davies	VIC
617	Ms Rene Sutherland	NSW
618	Ms Margaret Smart	NSW
619	Ms June Moorhouse	WA
620	Ms Kirsty Veron	QLD
621	Ms Gael Barrett	VIC
622	Mr Patrick Barrett	VIC
623	Ms Wilma McWilliam	VIC
624	Mr Brendan O'Reilly	VIC
625	Ms Norah Taylor	NSW
626	Ms Carolyn Baddeley	NSW
627	Central Coast Group, Friends of the ABC	NSW
628	Mr Joe Spano	VIC
629	Mr Alan Simpson	QLD
630	Ms Annette McDowell	QLD
631	Ms Marjory Langridge	ACT
632	Mr Ben Wrigley and Ms Sarah Houseman	VIC
633	Ms Joy Russell	VIC
634	Mr Graham Openshaw	VIC
635	Dr William Harvey	NSW
636	Mr Maurice Squirrell	VIC
637	Mr Michael Sabada	VIC
638	Ms Monica Walsh	VIC
639	Ms Kay Smith	QLD
640	Dr Frances Dyson	NSW

641	Ms Suzanne Marks and Mr Bill Johnstone	NSW
642	Ms Helen Currell	NSW
643	Ms Liz Jakubowski	NSW
644	Ms Kate Maxwell	VIC
645	Ms Janelle Hoban	VIC
646	Ms Maggie Tighe	VIC
647	Ms Angela Drury, Ms Enid Bunch and Ms Joan Carey	NSW
648	Mrs S E Parkes	VIC
649	Ms Rita Reitano	SA
650	Ms Susan Russell and Mr Greg Hall	NSW
651	Ms Margaret Craig	QLD
652	Ms Lillian Duren	NSW
653	Ms Des Crock	WA
654	Ms Naida Faulkner	VIC
655	Ms Karin Geiselhart	VIC
656	Ms Lester Irving	QLD
657	Mr Tony Marx	ACT
658	Mr Stephen Schültze	VIC
659	Ms Cheryl Thompson	QLD
660	Dr Ian Macindoe	NSW
661	Ms Christine Rosenkotter	VIC
662	Ms Colleen Cunningham and 33 others	VIC
663	Ms Jenny Meyers and 11 others	VIC
664	Ms Helen Cass	NSW
665	Ms June Pronk	NSW
666	B M Barrett	VIC
667	Mr Michael Barrett	VIC
668	The Australian Pensioners' and Superannuants' League Qld Inc	QLD
669	Mr Phillip Sivyer	QLD
670	Mr Harry Kiekebosch	VIC
671	Ms Gayle Davies	NSW
672	Ms Catherine Baker	NSW
673	Ms Adrienne Barrett	VIC
674	Mr Dennis Murphy	NSW
675	Ms Miriel Lenore	SA
676	Dr Andrew Watkins	VIC
677	Mr Neville and Mrs Pam Robinson	NSW

678	Mr Matthew Moline	QLD
679	Ms Joan Taylor	NSW
680	Mr Richard Hart	VIC
681	Mrs Frances McKeown	VIC
682	Mr Ross McKeown	VIC
683	Ms Gudrun Schell	VIC
684	Mrs Dorothy Sutton	NSW
685	Mr Ivan and Mrs Mary Nicol	VIC
686	Mr William and Mrs Betty Fly	VIC
687	Ms Jill Loh	VIC
688	Ms Jan Kent	NSW
689	Ms Judith Iltis	ACT
690	Dr Gregory Connor	QLD
691	Mr Warwick Budd	ACT
692	Bathurst Friends of the ABC	NSW
693	Mr Daniel Spolies	VIC
694	L L Worth	VIC
695	Ms Juliette Kent	VIC
696	Ms Elfie Crystal	VIC
697	Mr Mike Flattery	VIC
698	Mr Thomas Bowery	VIC
699	Ms Jill Corgnelle	VIC
700	Ms Helen Burnet	TAS
701	Dr Keith Tognetti	NSW
702	Ms Valda Hanson	VIC
703	Ms Karin Moses	VIC
704	Ms Rae Spear	VIC
705	Ms Caroline Barraket	NSW
706	Ms Bronwyn Bowery-Ireland	VIC
707	Mrs Naida Smith	NSW
708	Ms Kathryn Shaw	QLD
709	Mr Michael Richards	QLD
710	Mr David and Mrs Begliot Dallas	VIC
711	Ms Helen Sherriff	QLD
712	Ms Natalie Corke	VIC
713	Mr Steve Rhodes	QLD
714	Mr Graham Harrington	QLD
715	Ms Miffy Edwards	VIC

716	Eastern Suburbs Greens	NSW
717	Queensland Teachers Union	QLD
718	Param Berg	NSW
719	Mr and Mrs Stanford	NSW
720	M J Holmes	NSW

APPENDIX 2

LIST OF WITNESSES

Canberra - Monday, 20 August 2001

Associate Professor Frank Morgan (private capacity)

Community and Public Sector Union

- Mr Graeme Thomson, ABC Section Secretary

Friends of the ABC

- Mr Darce Cassidy, National Spokesperson
- Professor Ken Inglis (private capacity)

Mr Quentin Dempster (private capacity)

Mr Michael Gordon-Smith (private capacity)

Ms Liz Jakubowski (private capacity)

APPENDIX 3

THE METHOD OF APPOINTMENT TO BOARD POSITIONS FOR THE BRITISH BROADCASTING CORPORATION¹

Principles underpinning the Code of Practice

Ministerial responsibility

The ultimate responsibility for appointments is with ministers.

Merit

All public appointments should be governed by the overriding principle of selection based on merit, by the well-informed choice of individuals who through their abilities, experience and qualities match the need of the public body in question.

Independent scrutiny

No appointment will take place without first being scrutinised by an independent panel or by a group including membership independent of the department filling the post.

Equal opportunities

Departments should sustain programs to deliver equal opportunities principles.

Probity

Board members of public bodies must be committed to the principles and values of public service and perform their duties with integrity.

Openness and transparency

The principles of open government must be applied to the appointments process, its working must be transparent and information provided about the appointments made.

Proportionality

The appointments procedures need to be subject to the principle of proportionality, that is they should be appropriate for the nature of the post and the size and weight of its responsibilities.

¹ Taken from the *Code of Practice for Ministerial Appointments to Public Bodies*, published by the UK Office of The Commissioner for Public Appointments, www.ocpa.gov.uk

