

**GOVERNMENT RESPONSE TO THE
SENATE ENVIRONMENT, COMMUNICATIONS, INFORMATION
TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE**

**ABOVE BOARD?
METHODS OF APPOINTMENT TO THE ABC BOARD**

**MINISTER FOR COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS**

AUGUST 2002

**GOVERNMENT RESPONSE TO THE REPORT OF THE SENATE
ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY
AND THE ARTS REFERENCES COMMITTEE INQUIRY INTO ABC
BOARD APPOINTMENTS**

The final report of the Senate Environment, Communications, Information Technology and the Arts References Committee Inquiry into ABC Board appointments, entitled *Above Board? Methods of Appointment to the ABC Board* was tabled on 25 September 2001.

Report by the Chair

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.

Not agreed.

The process of selecting ABC Board members is in accordance with the requirements of the *Australian Broadcasting Corporation Act 1983*. The Government does not consider there is any compelling reason to alter it.

The ABC Act requires non-executive Directors other than the staff-elected director to be appointed by the Governor-General for a period not exceeding 5 years. Under section 12(5) of the ABC Act, a person may not be appointed to the Board:

“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 organization engaged in the provision of broadcasting services.”

The Chair's report fails to support the statement that there is a “widespread public perception” that ABC Board appointments are made on the basis of political affiliations. The Government notes that the majority of submissions to the inquiry were form letters from members of the Friends of the ABC and may not be representative of the wider community.

Recommendation 2

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

Agreed.

There has been no consideration of the removal of the position of staff-elected director.

Recommendation 3

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

Not agreed.

Under section 12(5) of the ABC Act, a person may not be appointed to the Board:

“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 organization engaged in the provision of broadcasting services.”

It is not clear from the Chair’s recommendation how a “demonstrated commitment to the principles of public broadcasting” would be satisfied. The willingness to serve on the ABC Board is in itself demonstration of a commitment to 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

Not agreed.

Under section 11(9) of the ABC Act, the ABC Board determines the manner in which an Advisory Council is to perform its functions and the procedure relating to meetings of that Advisory Council. Section 11(12) states that the Board must have regard to any advice received from the ABC Advisory Council (ABCAC).

The Government believes that it is appropriate for the ABC Board to determine the functions of the ABCAP as well as the manner in which communications between the Board and the ABCAC occur.

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.

Not agreed.

Section 12(5) of the ABC Act specifies the criteria for appointment as an ABC Board Director. The Government cannot see the benefit in having another agency draft the selection criteria, particularly when, as the recommendation states, they would be based on those already in the ABC Act.

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 affiliation.

Not agreed.

Information on the ABC Board and expiration dates of members is currently available from the ABC website. The Minister receives letters recommending potential Board members on a year-round basis and therefore is aware of a wide field of potential candidates.

The Minister seeks agreement from potential Directors to be nominated for appointment before they are recommended to the Governor-General. Requiring the Minister to approve only those who have put forward formal applications may exclude some excellent candidates.

Requiring Board members to disclose political affiliations presents a privacy issue, especially as section 12(5) of the ABC Act does not make political affiliations a relevant criterion for appointments. It is also not clear how "political affiliations" is defined nor what period of time should be covered by a disclosure. The declaration of political affiliations may have the reverse effect to that predicted by the Chair, by bringing the issue of affiliation to the fore in the consideration of any candidate for the Board and providing a basis to discriminate against candidates.

Advertising ABC Board vacancies and requiring applications would lead to a large number of applications and would require a significant commitment of resources to process and assess. The Government believes this commitment of resources to be unnecessary, considering the processes described above which are currently in place. The Minister has the option of advertising for candidates if he or she feels that there is not a sufficient pool of candidates.

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 shortlist 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.

Not agreed.

The Government believes that this recommendation would create a cumbersome process which, as discussed in the Labor Senators' minority report, undermines the concept of Ministerial accountability to Parliament. A number of issues surrounding this recommendation are not clear, for example the manner in which the "independent selection panel" would be convened or how privacy issues regarding the publication of candidates' applications would be addressed.

This recommendation would implement a selection process significantly different from that for other Government bodies. There is no convincing rationale for this difference in the report.

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, including summaries of Board Minutes. This may be achieved via publication on the ABC Board website.

Not agreed.

The first part of this recommendation develops an unworkable and potentially damaging model for the operation of the ABC Board. The requirement for an annual election of the Chair is potentially divisive and destabilising, with no clear benefits.

The Government has committed to encouraging the ABC to be more responsive to the needs and views of its audiences, particularly in relation to content and programming matters. However, the ABC is already accountable to Parliament through its annual reports and appearances before Senate Committees and the Senate Estimates process. The Government does not consider the introduction of another layer of accountability, as outlined in the second part of the recommendation, through an annual general

meeting, would enhance the transparency and accountability of the ABC beyond its current level.

The publication of ABC Board minutes, even in summary form, as suggested in the third part of the recommendation, has the potential to be damaging to the ABC. Given the ABC operates in a highly competitive broadcasting environment, commercial confidentiality is at times necessary and, in particular, in relation to commercial links with external parties.

Recommendation 11

This recommendation covers the legislative changes required to give effect to a model implementing the previous recommendations.

Not agreed.

As the Government does not support any of the recommendations made by the Chair, it does not believe there is any requirement for legislative change.

Report by Government Senators

The Government supports the views expressed in the Government Senators' report. In particular the Government supports the view that the inquiry has not clearly established that there is a problem with the current approach to Board appointments, nor that there is a strong argument for differentiating the method of appointing ABC Board Directors from the approach taken for other Commonwealth agencies.

The Government also agrees with the doubts expressed by the Government Senators regarding the representative nature of most of the submissions received by the inquiry.

Report by Labor Senators

The Government notes that the Labor Senators have pointed out that it is not clear that any changes to the appointment system would remove the perceived problem of politicisation. The Government does not agree with the Labor Senators' assertion that more investigation of options is required, as no clear case for the need for change is put forward.

The Government agrees with a number of the criticisms of the Chair's report which are advanced by the Labor Senators, although it disagrees with the need for the establishment of selection criteria. The criteria suggested by the Labor Senators, such as "breadth of vision", are vague and subjective and their use would not, in the Government's opinion, enhance the selection process for ABC Board members.

Additional Comments by Senator Bob Brown, Australian Greens

Most of the recommendations in Senator Brown's comments are dealt with above.

With respect to Senator Brown's recommendation that the British model of appointment should be adopted to appoint ABC Board Directors, the Government

notes that there continues to be criticism of the politicisation of the BBC Board. The Government does not consider that the UK model offers particular advantages to the ABC.

The Government also does not see any reason to change the current staff representation on the ABC Board.