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# MEAA submission to the Senate Standing Committee on Environment and Communications inquiry into allegations of political interference in the Australian Broadcasting Corporation (ABC)

November 13 2018

PO Box, 723 Strawberry Hills NSW 2012

Phone

1300 656 513

Web

MEAA.org

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ABN. 84 054 775 598

Committee Secretary  
Senate Standing Committees on  
Environment and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
[ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

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Dear Committee Members,

**Allegations of political interference in the Australian Broadcasting Corporation (ABC)**

The Media, Entertainment & Arts Alliance (MEAA) welcomes the opportunity to make a submission to this important inquiry. We note that the Inquiry will consider:

- (a) the termination of ABC Managing Director, Ms Michelle Guthrie;*
- (b) the conduct of the Chair and the Board;*
- (c) the structure, composition and appointments of the ABC Board;*
- (d) the political influence or attempted influence of the Government over ABC editorial decision-making, including:*
  - (i) outcomes of the Competitive Neutrality of the National Broadcaster Inquiry and Efficiency Review - ABC and SBS, and*
  - (ii) the role of funding uncertainty in facilitating political influence;*
- (e) governance, legislative and funding options to strengthen the editorial independence and strength of the ABC to prosecute its charter obligations; and*
- (f) other related matters.*

MEAA expressed grave concerns with the conduct of the former ABC chair, Mr Milne, at the time his views concerning senior ABC editorial staff were publicly aired - shortly before his and Ms Guthrie's departure from the corporation. MEAA and its members abhor selective and/or politically motivated "interventions" by senior ABC personnel. We are dismayed by members of the political class continually undermining the ABC by sniping, carping and punishing the ABC, by encouraging dissent towards the corporation, ordering meritless inquiries and cutting funds.

For the record, MEAA submits that complaints concerning editorial staff or perceived institutional bias should be aired and considered in an orderly and dispassionate manner where the principles of procedural fairness are observed. There should be no room for senior ABC officers to prosecute complaints outside of such processes.

MEAA does not intend to further canvass the events of September 2018 in this submission. We believe that this Inquiry should turn its attention to the systems that enabled those events to occur and take steps to ensure that Board selection processes are sound and not polluted by political interference.

## MEAA Recommendations

Accordingly, MEAA has concentrated its comments on terms of reference (c), (d) and (e). For the reasons set out in this submission, we urge the Inquiry to support the following reforms:

1. No appointments may be made to the ABC Board without consideration and recommendation of the Independent Nomination Panel (INP);
2. Extend the bar to Board appointment for certain political persons from one to three years;
3. No person who has an official role as a lobbyist or industry lobby group should be eligible for appointment to the ABC Board;
4. Preclude politically-aligned persons from being members of the INP;
5. Disclosure of political affiliations and donations by Board candidates;
6. Create one further staff-elected Board member;
7. At least half the directors should have experience in the media, journalism or broadcasting;
8. All candidates for Board appointment must have a demonstrated commitment to public broadcasting;
9. Selection criteria and ministerial amendments to these criteria should be made public;
10. Fixed term efficiency reviews with consistent criteria;
11. External independent advisors to assist in setting triennial funding; and
12. Review Audience and Consumer Affairs to ensure procedural fairness is observed.

This submission has been informed by MEAA's consultation with MEAA members at the ABC. During these consultations which included a confidential survey of members, MEAA has received information suggesting considerable anxiety within senior editorial ranks about how to present stories in a manner that would not be viewed critically by the government and others.

While complaints about perceived political bias have been put to the ABC by politicians of all persuasions over generations, several MEAA members report that ministers, ministerial staff, lobby groups and prominent commercial media personalities apparently feel no need to exercise restraint in airing concerns. While this may be part and parcel of coverage of public life in Australia, it is troubling that our members often find that these complaints stem from aggrieved individuals and groups directly approaching senior ABC personnel instead of engaging in the established complaints process.

According to the survey responses, a number of MEAA members have witnessed ongoing second-guessing about clearing scripts and airing stories that, notwithstanding the objective soundness of the story - will be perceived by critics as tendentious and one-sided. Some of the survey comments received by MEAA include:

- *ABC staff have "begun to jump at shadows, play safe and self-censor due to the unrelenting pressure of how we do our jobs".*
- *Senior editorial staff "acquiesce" and do not support ABC journalists.*
- *Senior editorial staff "are part of the pre-emptive buckle".*

One MEAA survey respondent advised that "pressure from the government has made our senior executive much more nervous when it comes to investigative stories that touch upon political matters".

Efforts to anticipate and avoid political disquiet are anathema to the ABC's independence and impartiality, as enshrined in section 8 of the *ABC Act: Duties of the Board*.<sup>1</sup>

### Board Appointments

The *Australian Broadcasting Corporation Act 1983* (the Act) requires that a merit-based selection process is used to appoint non-executive directors to the ABC Board, including the Chairperson.

The Independent Nomination Panel (INP), established in 2007-08, advertises vacancies and assesses applications against merit-based selection criteria. It then provides the government with a report nominating at least three people for each vacancy. The government then makes a recommendation to the Governor-General who is responsible for appointing non-executive directors to the ABC and SBS Boards (other than the Managing Directors and the ABC staff-elected director).

Despite these provisions, the past three years has seen two current ABC Board members appointed to the Board without being considered by the INP; a further two were considered and rejected by the Panel, but went on to be appointed by the Minister for Communications.

There is a concern that several Board appointments have been influenced by political patronage, an antithetical disposition towards the corporation, or as a "trophy" appointment to crown an individual's corporate curriculum vitae. None of these qualities have served the ABC or its audience well.

MEAA believes that the ability of the Prime Minister or Minister to opt out of the established appointments process is unjustified; it displays bad faith towards the INP and compromises public trust in the ABC.

MEAA therefore believes that urgent amendments must be made to the Act to achieve three objectives:

- Prevent the appointment of any director that has not been vetted by the INP;
- Require all director candidates to possess a demonstrated commitment to public broadcasting; and
- Amend the selection criteria to require board candidates satisfy at least two of the criterion.

MEAA also note that subsection 5A of the Act prohibits former parliamentarians and senior political staff members from being appointed to the ABC Board. Subsection 5AA limits this prohibition to 12 months from the date which they left those positions.

MEAA is concerned that the 12 month "prohibition" is too short; it should be extended to three years. MEAA also supports the removal of the ability to appoint former parliamentarians and senior staff members where such persons have been nominated to the Board by the INP. No such appointments should be possible unless a three-year cooling-off period is adhered to.

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<sup>1</sup> *Australian Broadcasting Corporation Act 1983* - Sect 8 - Duties of the Board

(1) It is the duty of the Board [inter alia]:

(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 recognized standards of objective journalism; and

Finally, with respect to Board appointments, MEAA calls for the appointment of one further staff representative on the ABC Board. Recent staff engagement surveys have shown a dramatic decline in engagement and morale. An additional staff director position would assist in turning that around - much more so than an internal marketing campaign developed by external consultants.

ABC staff are close to the ground and have operational knowledge exceeding that of the majority of their Board colleagues. Another staff director will build staff confidence in the Board's operations and assist in avoiding future misadventure.

### **Nomination Panel**

MEAA notes section 24C of the Act's invocation that the INP is "not subject to direction by or on behalf of the Government of the Commonwealth".

Membership of the nomination panel is made through the secretary of the Department of Prime Minister and Cabinet. Although this appears to be at arms' length from government, a range of persons with strong political affiliations have been appointed to the panel.

MEAA submits that public confidence in the operations of the board appointment process would be bolstered by a prohibition of persons set out in subsection 5A (as amended) from appointment to the INP.<sup>2</sup>

A more urgent task is amending section 224X to remove the ability of a Minister or Prime Minister to appoint persons not nominated by the panel. MEAA and its members at the ABC believe the Act should not have scope to appoint directors unless they have been assessed against the selection criteria by the independent panel.

### **Ongoing Reviews and Legislative Reform**

The ABC and its employees have been subject to a welter of inquiries, unhelpful legislation and complaints in recent times. MEAA believes that the frequency of inquiries and the tenor of the (current) Government's legislative efforts are components of a strategy to wrong-foot, undermine and criticise the corporation.

### **Efficiency Reviews (2014 and 2018)**

There have been no fewer than 16 efficiency reviews at the ABC in the past 20 years. Many of these were instigated by the ABC, but the major (and most pointed) efficiency reviews have been conducted following changes of federal government.

Immediately after being elected in 1996, the Howard government cut the ABC's budget by \$11 million per year (2% of its budget allocation). The Government then appointed a telecommunications executive, Bob Mansfield, to conduct an efficiency review. Mr Mansfield recommended the abolition of Radio Australia and the sale of ABC properties, including studios. Ultimately, the ABC's budget was cut by a further \$55 million (10%) in 1997/98.

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<sup>2</sup> Noting that MEAA favour a three-year prohibition rather than the existing 12 month restriction

MEAA notes that section 8 of the *ABC Act* requires the Board, *inter alia*, to ensure that the functions of the Corporation are performed efficiently and with the maximum benefit to the people of Australia. MEAA is not aware of any evidence indicating a failure by the ABC to uphold this requirement. In this respect, we note the ABC's evidence to a Senate Estimates Committee in 2017 included the fact that that 1012 ABC jobs had been cut since 2014 and that comparing the ABC of today to the organisation of 30 years ago revealed that:

*'Thirty years ago, the ABC had five platforms and 6,000 employees. Today, by contrast, we have six times the platforms but just two-thirds the staff and half the funding per capita'.<sup>3</sup>*

Some efficiency reviews have affirmed the ABC's efficient practices. A review conducted by KPMG in 2006 (which followed separate investigations by Macquarie Bank in 2002 and the National Audit Office in 2002 and 2004), concluded that the ABC was operating efficiently, but suffered from a "structural funding deficiency". KPMG further found that the ABC faced cost pressures that were industry-driven, and ABC Television in particular could not sustain the range, quantity and mix of outputs without additional funding.<sup>4</sup>

Although KPMG's report was not publicly released, it is known that its consultants recommended that funding be increased by about \$126 million over three years.<sup>5</sup>

The change of national government in 2013 saw a further efficiency review ordered in 2014. This review was conducted by former Seven West executive, Peter Lewis. Mr Lewis recommended:

- The ABC and SBS share premises in Sydney and Melbourne;
- Removing ABC state and territory directors in every capital city;
- Introduction of user fees for *iview*;
- Shared services reforms such as common payroll systems;
- The two broadcasters stop paying for their services to be rebroadcast on Foxtel;
- Sell off outside broadcast vans and its Melbourne news helicopter; and
- The sale of property in Sydney.

The 2014 efficiency review dovetailed with the government's MYEFO<sup>6</sup> statement, which outlined the decision to cut \$254 million from the ABC's budget, with the then Minister for Communications stating that "All of the savings can be found within operational efficiencies of the kind canvassed in the Lewis efficiency study".<sup>7</sup>

Shortly thereafter, ABC managing director Mark Scott announced:

- The loss of 400 jobs;
- Closing the Adelaide television production studio and winding back remaining production activities in the smaller states (outside news and current affairs);
- Closing five regional radio posts in Wagin, Morwell, Gladstone, Port Augusta and Nowra;
- Ceasing state-based local sports coverage;

<sup>3</sup> *ABC has shed 1,012 jobs since 2014, Senate estimates told*, Amanda Meade, The Guardian, 24 May 2018

<sup>4</sup> *The Public Interest in Public Broadcasting*, Geoff Heriot, Inside Story, 6 March 2014.

<sup>5</sup> See: *The Public Interest in Public Broadcasting*, Geoff Heriot, Inside Story, 6 March 2014.

<sup>6</sup> Mid-year Economic and Fiscal Outlook

<sup>7</sup> ABC funding to be cut by \$254 million over five years, Communications Minister Malcolm Turnbull says, ABC Online, 20 Nov 2014.

- Rationalising television outside broadcast vans; and
- Programming changes to *Lateline* and cost reductions at *Classic FM*.

MEAA note that a further efficiency review, said to “build on the Lewis Review”<sup>8</sup>, was due to report to the Minister for Communications by October 2018. MEAA is not aware of any report being provided to the Minister for Communications.

Despite the “Groundhog Day” quality of efficiency reviews, each review of note has been seen by the public for what it is – an unveiled attempt to undermine public broadcasting. The major reviews of the past 20 years have, in turn, galvanised the Australian community to defend the ABC’s and SBS’s value and independence. The recent turmoil within the ABC’s board has simply increased the community’s resolve to ensure that the ABC is properly maintained and not regularly exposed to imagined political slights.

Despite public goodwill, ABC employees despair at the government’s selective, ill-motivated and continuous scrutiny of the ABC’s operations. This is not to say that all reviews are unwarranted. Instead, MEAA concurs with Geoff Heriot’s view that:

*“the public interest would be better served if both national broadcasters underwent rigorous performance appraisals, not in ad hoc political circumstances, but at regular intervals using criteria that remain constant over time. These reviews might be scheduled, say, every five years’ Opportunities for citizen input would help mitigate the baseness of tribal politics, compensate for the leverage of cashed-up rent seekers and transcend fads of marketing management.”*<sup>9</sup>

### **Competitive Neutrality Review (2017)**

In addition to two efficiency reviews in four years, the federal government announced a competitive neutrality review in 2017. An Issues Paper was released in April 2018. The Issues Paper noted that the Minister for Communications had agreed to extend the review’s completion date to the end of September 2018. MEAA is not aware of how the inquiry progressed or what its recommendations are.

We said in our submission that the review was ordered by the Minister for Communications before Treasury’s comprehensive, whole of government review of competitive neutrality policy was completed and before the main threats to the Australian media sector’s plurality and sustainability - digital platforms such as Facebook and Google and unregulated content providers including *Netflix*, *Amazon* and *Stan* – had been assessed and reported on by the ACCC. In addition, the review was progressed despite no complaints having been lodged with the Productivity Commission’s Competitive Neutrality Complaints Office (AGCNCO) since 1999.<sup>10</sup>

The review was supported by commercial broadcasters, each of whom has found profitability and strong revenues hard to maintain in the digital era. Unfortunately, these broadcasters appeared to believe that the ABC should not directly compete and take audience share from them by airing appealing programs and making content available through a range of platforms, especially digital.

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<sup>8</sup> Efficiency Review – ABC and SBS – Terms of Reference, Department of Communications and the Arts, 2018

<sup>9</sup> *The Public Interest in Public Broadcasting*, Geoff Heriot, Inside Story, 6 March 2014.

<sup>10</sup> The AGCNCO dismissed the 1999 complaint concerning the ABC’s production facilities

It has been fundamental to the national broadcasters' ability to meet its charter obligations (and public expectations) that they embraced digital media and multi-platform operations. They prudently anticipated the rapid uptake of digital media by the industry and consumers. This does not equate to acting improperly or in a manner designed to cause hardship to competitors.

The ABC's expansion into new media areas is also consistent with the initiatives of most other public broadcasters in the world.

As MEAA said in its 2017 submission, it would be absurd if the national broadcasters were constrained from making use of the technological tools that encourage public access to their platforms. There is simply no public utility in doing so. It would impair the value and purpose of these enterprises' delivery of excellent news and entertainment.

Meanwhile, the progressive failure by government to modernise broadcasting regulation to suit the digital era continues. For as long as this situation prevails, all producers of content in Australia will be fighting with one hand tied behind their back, revenues will continue to fall and the alarming trend of media job losses will continue.

### **ABC Funding**

The ABC was better funded in the 1980s than it is today.

It is a matter of record that undertakings by the current Government not to cut ABC funds were not honoured. Significant cuts were announced in May and November 2014. The first cut was an annual \$9 million (1%) reduction to the budget; the second was \$254 million over five years. In 2016, there was a partial renewal only of earmarked news and current affairs funding, amounting to a \$20 million per annum cut.<sup>11</sup> A further \$84 million was taken from the ABC in the 2018 budget as a result of an indexation freeze.

The former ABC executive Michael Ward, recently wrote that:

*"If ABC operational funding had been maintained at its 2013 level, it would now total over \$950 million annually and be over \$1 billion by 2022. The current budget paper forward estimates indicate the ABC budget will be just over \$865 million in 2021-22. That is a real decrease of around \$140 million annually compared to 2013 levels."*<sup>12</sup>

Over eight years (2014 to 2022), in excess of \$600 million will have been taken from the ABC's budget compared to a business as usual scenario being maintained from 2014.<sup>13</sup>

MEAA also notes that Australia invests 34% less per person in public broadcasting than the average of comparable democracies, leaving the corporation with one-eighth the funding of the BBC to serve one-third the population.<sup>14</sup>

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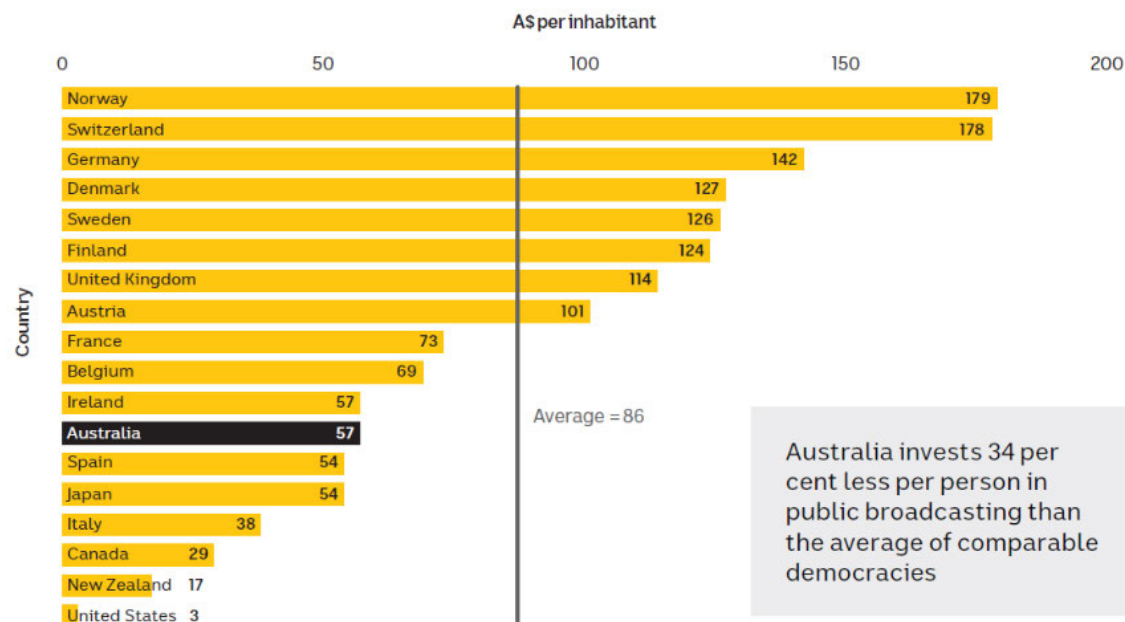
<sup>11</sup> The future of this funding is being further considered by government.

<sup>12</sup> *ABC Budget Cuts: a key expert speaks*, Michael Ward, Screenhub, 18 May 2018

<sup>13</sup> *ibid.*



## Per capita funding for public broadcasters, 2014\*



Source: Nordicity analysis of the annual reports of public broadcasters

\* Excludes any commercial revenue earned by public broadcasters

Note: Australia includes ABC and SBS combined

Bar chart of per capita funding for public broadcasters, 2014. It shows that at \$57 per person Australia invests 34 per cent less in public broadcasting than \$86, the average of comparable democracies led by Norway at \$179, Switzerland at \$178 and Germany at \$142.

Unreliable and reduced funding leaves ABC operations hostage to government whims. It also hampers innovation in what is now very much a consumer-led market. It is a testament to ABC employees that they continue to prove their value and professionalism in the face of funding uncertainty and the operational changes brought about by the ceaseless challenge to the organisation's legitimacy.

The strong preference of ABC employees would be to engage independent advisers to assist government to assess triennial appropriations against relevant ABC business plans and strategies. If this could be facilitated, the triennial allocation would be protected, but subjected to ordinary audit processes to ensure diligence in expenditure of public funds.

### Legislative Attack

In addition to cascading reviews into the ABC's operations, the current Government has three bills before Parliament that have seemingly innocuous titles, but which seek to micro-manage the corporation's functions and ultimately, curb its independence.

<sup>14</sup> See: <https://www.abc.net.au/future/public-broadcaster-funding-around-the-world-how-the-abc-compares/9873936>

### ***Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill***

MEAA notes that this Bill – introduced months after the ABC announced substantial cuts to services and staff after the 2014 budget cuts - seeks to amend the *Australian Broadcasting Corporation Act 1983* to ensure the ABC’s responsibilities in regional and rural areas are articulated in its Charter; that the corporation establish a new Regional and Rural Advisory Council; and that relevant regional and rural data as to content and staffing be reported upon. The Bill also requires the ABC to: broadcast at least five radio bulletins that consist solely or primarily of regional or local news between 5am and 8pm, at regular intervals. The Bill, which MEAA found to be duplicitous, appears to have fallen off the Government’s agenda.

### ***Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017***

This Bill infers that balance and fairness are not present in the ABC’s editorial operations. MEAA and its members reject this view. The ABC Act<sup>15</sup> requires the Board *inter alia*: to maintain the independence and integrity of the Corporation; and 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.

Beyond these legislated requirements, the corporation’s detailed Editorial Policies recognise all necessary professional journalistic standards. These policies exceed, in scope and length, any other known editorial policies covering Australian media organisations.

### ***National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017***

This Bill, also believed to be part of a suite of “reforms” promised to the One Nation political party, proposes new annual reporting obligations for the ABC and SBS.

Each broadcaster will be required to report details of annual salaries and allowances of ABC and SBS employees, and amounts paid to “on-air talent” in excess of \$200,000. This reporting threshold amount will be indexed annually.

MEAA believes that the Bill is unsupportable due to the fact that the government does not compel other significant government agencies to report salary information in the same manner. It also threatens the privacy of those affected. Media companies in the private sector do not provide detailed information about what ‘on-air talent’ earn and nor should they.

### **Complaints Processes**

On occasion, the cuts, reviews and legislative threats directed at the ABC manifest themselves in complaints against ABC employees, especially journalists and broadcasters.<sup>16</sup>

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<sup>15</sup> See section 8 of the ABC Act

<sup>16</sup> MEAA does not assert that all complaints lack merit

MEAA has fielded several complaints from ABC personnel about the manner in which the ABC's Audience and Consumer Affairs (ACA) unit deals with complaints. ACA fielded 26,850 complaints in 2017. This figure is down from 2016 and 2015, but higher than the figures from 2014 to 2008. The ACA examines all manner of complaints, from subtitling errors to claims of bias in reporting. One-hundred-and-twenty complaints were upheld in 2017.

On occasion, ACA receives multiple complaints from business and community organisations that allege an ingrained bias against their interests. A number of cases where such bias has been alleged have seen the ACA arrive at preliminary (and sometimes final) findings about bias without first providing allegations to the staff member concerned. Rather than an orderly fact-finding process, the ACA forms a view about breaches of editorial policy, often without seeking out the views of the alleged wrongdoer.

Some of the comments received by MEAA in the last month have been:

- *I wasn't made aware of the complaint "until I was found guilty by Audience and Consumer Affairs".*
- *Vexatious complaints still require many hours of work – or days – to satisfy A and CA.*
- *The procedure was followed "but the ABC issued an apology that I felt was unwarranted, and apologised for elements that were not actually in the story".*

MEAA has assessed the recent Australian National Audit Office (ANAO) performance audit of the ABC's complaints systems. This audit was fundamentally concerned with assessing the overall effectiveness of the ABC's complaints system, in terms of whether the public could be satisfied that complaints would be genuinely assessed. Critically, the audit appears not to have considered the question of how individual staff against whom bias has been alleged are treated during A and CA processes.

MEAA submit that the ABC's complaints system must inform relevant staff of editorial complaints without fail. In addition, the person whose behaviour is complained must have the ability to respond directly to the allegation before a preliminary or final decision is made.

The ACA's current conduct is unfair and leads to unjustified decisions that can be difficult or impossible to retreat from. We understand that the ACA performs a critical job in the midst of so-called culture wars, but making findings without transmitting allegations to the employee concerned and then framing a preliminary decision without seeking out their views brings the current system into disrepute. It also feeds the view that the ACA is overly-concerned that it should appear robust and independent to the corporation's critics at the expense of procedural fairness and natural justice.

**MEAA would welcome the opportunity to answer any questions the Committee may have concerning this submission.**