

CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation



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Introductory Statement

The Community and Public Sector Union (CPSU) would like to acknowledge and thank the Senators who voted in support of this inquiry. On behalf of CPSU members, we welcome the opportunity to make this submission.

The ABC section of the CPSU represents editorial and operational staff employed by the ABC in its content making, technological, administrative and other professional areas.

Like many Australians, CPSU members were concerned by the events of September 2018 that gave rise to this inquiry. The ABC is Australia's most trusted media organisation, much loved by the Australian people.

The leadership tensions between the former ABC Managing Director and Chair in September 2018, the role of the ABC Board, and the allegations that have ensued, raise fundamental questions about the governance and independence of the ABC. They also raise questions about the role that the Coalition Government has played given its demonstrated hostility towards the ABC.

The independence of the ABC is paramount – it underpins the social contract which the ABC has with the Australian people, and it is what distinguishes the ABC from state media propaganda. The independence of the ABC Chair and ABC Board are paramount too. The people who Australians entrust to hold these positions cannot be political appointments for the government of the day. They are there to serve the 17 million plus Australians who read, watch, listen to and rely on ABC content every week.

Beyond establishing the facts, this inquiry presents an opportunity to address existing shortcomings in the ABC's governance and funding arrangements. The CPSU has put forward several recommendations that we believe will strengthen the ABC's independence well into the future, and we would welcome the opportunity to discuss these with the Committee if needed.

A note about this submission:

This submission does not cite references on matters which we believe have been well-documented by multiple sources in the public realm. However, if the Committee seeks verification on any statements within this submission, or would like to discuss the contents further, please contact Ms Sinddy Ealy, ABC Section Secretary for the CPSU
on _____ or _____

CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation

The termination of the ABC's Managing Director

On the 24th September, the CPSU sent ABC members a short statement in support of the ABC Board's decision to terminate the contract of the Managing Director, Ms Michelle Guthrie.

For reasons which have been well ventilated by the CPSU, concerns with Ms Guthrie's leadership style had been identified by union members as early as late 2016 following decisions by the ABC to cut music programs and specialist content from Radio National and to terminate ABC shortwave radio services. Dissatisfaction with Ms Guthrie's leadership intensified throughout 2017 as she embarked on what the CPSU asserts was an unsustainable agenda to corporatise the ABC and its culture.

The CPSU believe Ms Guthrie failed to acknowledge or address employees' concerns about the impact excessive restructuring was having on the ABC's organisational stability and content making, and the financial and human cost of ABC redundancy. Ms Guthrie was perceived as reluctant to advocate for the ABC or its staff publicly.

It has been widely reported that Ms Guthrie presented the ABC Board with an 11-page dossier on the 21st September, just three days prior to her contract with the ABC being terminated. It is understood that Ms Guthrie made several allegations regarding the conduct of the ABC Chair, Mr Justin Milne. The CPSU submission will only be addressing allegations pertaining to editorial and political interference.

Questions for Ms Guthrie:

It is unclear to the CPSU whether Ms Guthrie has agreed to assist the Committee with its inquiries. If yes, the CPSU believe the following questions should be raised:

1. Did Ms Guthrie seek to formally raise any of the issues contained in her 11-page dossier with Mr Milne or the ABC Board prior to the 21st September 2018?
2. If yes, when did these conversations occur and what was the nature of those conversations?
3. If no, why not, given the seriousness of the allegations and their ability to bring the reputation of the ABC into disrepute?
4. Did Ms Guthrie experience, observe or have knowledge of behaviour by Coalition MP's or their staffers, which could be reasonably interpreted as political interference?

To what extent factors other than leadership performance contributed to the ABC Board's decision to terminate Ms Guthrie's employment, is a matter for the Committee to establish. The CPSU notes that seven ABC Board Members plus the Chair made the decision to terminate Ms Guthrie's contract on the 24th September 2018.

CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation

The conduct of the ABC Chair and Board

The ABC Chair, Mr Justin Milne, resigned on the 27th September 2018, following explosive allegations he sought to terminate the employment of two ABC journalists to placate the Coalition and secure funding for an ABC technology project. The CPSU notes that although Mr Milne sought to explain his actions, he has not sought to deny them. Therefore, the CPSU considers Mr Milne's resignation necessary and appropriate.

The fundamental question that remains regarding the former Chair is to what extent his actions were influenced by the Coalition Government? And what role did the ABC's seven other Board members play?

Questions for ABC Board Members

The CPSU believes the following matters should be canvassed with all ABC Board members who served between 2014 to the present by way of an interview or by asking them to provide a written statement to the Committee:

1. When did each ABC Board member's appointment commence, how many ABC Board meetings did they attend and how many were they eligible to attend?
2. Were they shortlisted by the ABC Board Nominations Panel? If not, why did they believe they were appointed to a position on the ABC Board? And what, if any, conversations occurred between them and the Coalition Government or their staffers, on this matter, prior to their appointment?
3. Have they at any time during their ABC Board Directorship discussed editorial matters with members of the Coalition Government or their staffers? And if yes, when did those conversations occur and what was the nature of those conversations?
4. In relation to the Chair's views on changing the date of TripleJ's Hottest 100:
 - a. When did they first become aware of these views?
 - b. What, if any, action did they take after being made aware of these views?
5. In relation to the Chair's views on the employment of Andrew Probyn and Emma Alberic:
 - a. When did they first become aware of these views?
 - b. What, if any, action did they take after being made aware of these views?
8. Were ABC editorial matters discussed in ABC Board meetings? If yes, when did this occur and what was the nature of those discussions?
9. Have they discussed ABC editorial matters with other Board members, and if yes, when did this occur and what was the nature of those discussions?

CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation

10. Have they discussed ABC editorial matters with members of the ABC's Executive, and if yes when did this occur and what was the nature of those discussions?
11. Have they ever criticised ABC editorial in the presence of ABC Executive members? And if yes when did this occur and what was the nature of those discussions?
12. Have they ever made direct contact with ABC content makers or journalists about ABC editorial matters, including contact on social media? And if yes when did this occur and what was the nature of those discussions?
13. What steps have they taken during their Board tenure, to uphold the ABC's editorial independence:
 - a. Prior to 21st September 2018?
 - b. Since the 21st September 2018?

Political interference at the ABC

In May 2016, away from the glare of the media spotlight, the CPSU sent union members an email warning of political interference at the ABC. In the email the CPSU flagged our concern that ABC decision-making at the highest levels of the organisation was potentially being influenced by a view that displeasing the Government would result in additional funding cuts¹.

This concern was triggered by a meeting between the ABC staff unions and the ABC management on the 27th April in ABC Ultimo. It was the first formal negotiation meeting for the new ABC staff agreement. A representative of the ABC Executive advised the group that the ABC was adopting the Government's contentious Commonwealth Workplace Bargaining Policy. The policy had been the subject of considerable industrial disputation in the Australian Public Sector in the preceding years, and at the time of the meeting, many public service agencies had failed to negotiate new agreements because of the policy's harsh parameters.

CPSU representatives questioned the ABC's reasons for adopting the policy given how problematic it had proved to be elsewhere in the sector. The ABC's representative responded that the decision to adopt the Government's policy was made because the ABC Executive did not want to upset the ABC's funding body. This response immediately set off alarm bells with the CPSU delegation for two reasons:

1. Section 32 (2) of the ABC Act states that "the terms and conditions of employment shall be determined by the Corporation"²; and
2. This was the first indication the CPSU received that at least some members of the ABC Executive anticipated funding cuts if they upset the Government.

¹ CPSU Member Update, 26 May 2016, "Eroding ABC independence one decision at a time".

² Australian Broadcasting Corporation Act (1983)

CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation

Fortunately, the ABC ended up abandoning this position and successfully negotiated a staff agreement outside of the policy's parameters, however the behaviour of senior Coalition Ministers in response, says much about the way the Coalition has at times sought to undermine the ABC's independence.

How the Coalition responded to the ABC asserting its independence in 2016

On at least four occasions, potentially there are more, senior members of the Coalition's ministry sought to direct the ABC to adopt its workplace policy despite having no legal jurisdiction to do so.

- **4 May 2016:** The office of Senator the Hon. Michaelia Cash was quoted in The Australian newspaper stating that "*ABC employees are indeed bound by the PS bargaining policy*".³
- **7 September 2016:** Senator Cash wrote to the ABC's Managing Director, Michelle Guthrie, again stating that the ABC was required to comply with the Coalition Government's policy. Shortly thereafter the ABC Chair, James Spigelman responded to Ms Cash's letter advising her that the ABC was not legally required to comply with the policy.⁴
- **14 October 2016:** Senator Cash and Senator the Hon. Mitch Fifield jointly wrote to the ABC asserting "*the Government's expectation that the ABC would comply with the terms of the Policy*". The ABC Chair responded to this letter advising that the ABC was not required to comply with the policy.⁵
- **27 October 2016:** Australian Public Service (APS) Commissioner Mr John Lloyd makes a public statement about the ABC in which he stated:

"Management of the ABC asserted that it was not subject to the bargaining policy. This is not the position of the government or the Public Service Commissioner...Ministers and myself have conveyed to the ABC's management our utmost concern at the position they have adopted in breaching the policy".⁶

- **2 November 2016:** Former ABC Chair James Spigelman wrote a letter to the APS Commissioner in which he stated:

"Your assertion of authority to control internal staffing policies of the ABC, potentially in any aspect of the wider-ranging powers conferred on you by the Public Service Act, is a fundamental challenge to the independence of the ABC from Government interference."⁷

³ "ABC told to cap staff pay rises, show savings" The Australian, 4 May 2016.

⁴ Letter from the ABC Chairman to the Australian Public Service Commissioner, 2 November 2016. Accessed at <http://about.abc.net.au/statements/letter-from-abc-chairman-to-the-australian-public-service-commission/>

⁵ Letter from the ABC Chairman to the Australian Public Service Commissioner, 2 November 2016. Accessed at <http://about.abc.net.au/statements/letter-from-abc-chairman-to-the-australian-public-service-commission/>

⁶ Letter from the ABC Chairman to the Australian Public Service Commissioner, 2 November 2016. Accessed at <http://about.abc.net.au/statements/letter-from-abc-chairman-to-the-australian-public-service-commission/>

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CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation

It is clear from these events that Coalition Ministers sought to undermine the ABC's independence and impose their political agenda onto the ABC in relation to employment matters. It is also clear they sought to do this by way of harassing and publicly berating the ABC when it asserted its independence, and by enlisting a senior government official, then-APS Commissioner Mr. John Lloyd, to assist them.

The CPSU draws attention to these events from 2016 in our submission because we believe they characterise the attitude and behaviour of the Coalition towards the ABC in many of the actions it has taken including:

- Breaking their election promise not to cut ABC funding. The Coalition has imposed a funding cut on the ABC for every budget year that it has overseen in government since 2013, as well as announced future funding cuts to the ABC beyond 2019.
- Terminating the Australia Network contract. Recent comments by the Prime Minister indicate the Government see the value in providing Australian content in the Pacific but they don't want it to be ABC content.
- Two efficiency reviews in less than four years. The first efficiency review was headed by Mr Peter Lewis from Seven West Media and Mr Lewis was subsequently appointed to sit on the ABC Board. The current review has been conducted by former News Ltd Executive, Mr Peter Tonagh.
- A Competitive Neutrality inquiry.
- A deal with crossbencher Senator the Hon. David Lleyonhelm to impose additional operational and cost requirements on the ABC, in return for support for the Government's ABCC legislation in the Senate.
- A deal with crossbencher Senator the Hon. Pauline Hanson resulting in two proposed bills that seek to impose additional operational and editorial requirements on the ABC, in return for support for Media Reform package in the Senate.
- Ignoring the arms-length process for ABC Board appointments and directly appointing ABC Board members who were not selected by the Nominations Panel.
- Enlisting the services of an executive recruitment agency for the new ABC Chair, whose Head of Board Services is reported to be a major donor of the Liberal Party.
- The Communications Minister making six editorial complaints to the ABC within a period of five months.
- The Culture Wars. That a term has been coined to describe the Coalition's repeated criticisms of ABC staff and the work that they do is indicative that many Australians believe the Coalition is hostile to the ABC. Although the CPSU notes that the Liberal Party's national conference vote to privatise the ABC in July 2018 is not the official position of the Government, we remain concerned

CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation

that senior Liberal MP's voted in favour of the motion, and that the Communications Minister himself once championed the merits of privatising the ABC.

Action is needed to strengthen ABC independence.

The events that led to this inquiry provide an opportunity to critically assess and address shortcomings in the current governance and funding arrangements for the ABC. As the CPSU notes many times in this submission - the ABC's independence is paramount. Therefore, discussions about potential ways to strengthen the ABC's independence are welcome.

1. Secure ABC funding

Funding certainty for the ABC is essential. The perception and reality that the government of the day can undermine the ABC's independence by threatening or cutting its funding for political gain, is a severe problem for the national broadcaster.

The current convention to fund the ABC triennially cannot be legislated without constitutional reform. Current triennial funding arrangements are not providing the ABC with the financial stability that it needs to maintain efficient operations. As we saw in November 2014, triennial funding commitments which the ABC secured in good faith with the Government, were not honoured.

If triennial funding is to continue as the preferred method for funding the ABC, then the CPSU believes that more work needs to be done to:

- 1. Increase transparency and public participation in the ABC triennial funding process.** If the ABC wants to ask for more money, then it should make its case to the Australian people and garner their support. The government of the day should also encourage public submissions on ABC funding to ensure that the ABC is in step with the needs of the community. Opening the process up creates stronger accountability on all parties and is good for democracy. Up until 2006, the ABC published their triennial funding submissions and many organisations including the CPSU⁸ have previously participated in these negotiations by making public submissions.
- 2. Increase the triennial funding period from three to five years.** This affords the ABC sufficient time to implement operational changes and reinvest efficiencies back into ABC content making and capital. Given the current funding arrangement is only a convention, the ABC would still be able to make additional funding requests over the five years if it saw fit, and the government of the day would still be able to increase ABC funding including tied funding for special projects, if it saw fit to do so. The ABC would however maintain certainty for its base funding for the five years.
- 3. Create a future fund for the ABC.** The CPSU is aware of several public broadcasting funding models that could be adapted to the ABC. Shortly we will be releasing a paper proposing the establishment of an ABC Future Fund. We

⁸ <https://iloveabc.org.au/wp-content/uploads/2018/11/CPSU-ABC-Funding-Submission-2013-2015.pdf>

CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation

look forward to discussing this idea and others with MPs of all persuasions in future.

2. Depoliticising the process for ABC Board appointments

The current ABC Board appointment process needs to be improved. The Nominations Panel process that was implemented by the Labor Government in 2012 was intended to support merit-based appointments and depoliticise the ABC Board. Sadly, the intention that this process be conducted at arms-length from the government, has been too-easily manipulated by the Coalition.

Three of the current ABC Board members were not recommended by the Nominations Panel and instead were appointed directly to the ABC Board by the Minister. The CPSU believes the following measures *may* assist to depoliticise the ABC Board appointment process.

- 1. All Nomination Panel members and Board applicants must be supportive of the ABC.** The fact that this needs to be said illustrates how ridiculous the ABC Board appointment process has been in practice. Individuals who were known to be openly hostile to the ABC have been selected to sit on both the Nominations Panel and the ABC Board.⁹
- 2. The Nomination Panel members shouldn't be appointed by the government.** The Australia Institute's suggestion that a cross-party committee select Nomination Panel members and that this group oversees the nominations process, is a sound idea and one that the CPSU would welcome.¹⁰
- 3. Placing limitations on when and how the Minister and Prime Minister can override the Nomination Panel's recommendations.** If Nomination Panel members are selected based on merit, and Board candidates are recommended based on merit, then it is unclear to the CPSU why the Minister or the Prime Minister would need to override the recommendations of the Nomination Panel. If retaining executive powers is deemed necessary to deal with exceptional or unprecedented circumstances, then limiting the use of this power to ensure it is not abused could assist to depoliticise the process. One way this might be achieved would be for the Government to secure the support of the Leader of the Opposition before being able to override the recommendations of the Nomination Panel. The CPSU would also suggest that the detailed reasons for doing so should be tabled in Parliament.
- 4. The ABC Board Selection Criteria should reflect that the ABC is Australia's most trusted and arguably most loved cultural institution:** Unlike many Boards in Australia, the ABC Board is not tasked with delivering a financial dividend to shareholders. The ABC Board's remit is to maintain the independence and integrity of the ABC, to ensure that it is delivering on the ABC Charter and ABC

⁹ Reference to Ms Janet Albrechtsen and Mr Neil Brown as noted in The Australia Institute Report "No politics at Aunty's Table: Depoliticising the Governance of the ABC" by Fergus Pitt. March 2016. Accessed at <http://www.tai.org.au/sites/default/files/No%20Politics%20at%20Aunty%27s%20Table.pdf>

¹⁰ Pg 13 in The Australia Institute Report "No politics at Aunty's Table: Depoliticising the Governance of the ABC" by Fergus Pitt. March 2016. Accessed at <http://www.tai.org.au/sites/default/files/No%20Politics%20at%20Aunty%27s%20Table.pdf>

CPSU Submission: The allegations of political interference in the Australian Broadcasting Corporation

Act, and to provide efficient operations and maximum benefit to the Australian people. The role of the Staff Elected Director (SED) remains an integral part of the ABC Board mix – their duties are identical to other Board member however the Staff Elector Director is uniquely placed to enhance Board deliberations by providing accurate insights about how Board decisions are landing in the ABC workplace.

3. Strengthening the ABC Charter

The purpose of the ABC since its inception in 1932 is one of nation building – it exists to serve the Australian people. This role transcends the advent and evolution of technology. In 1932 it was radio, in the 50s it was television. It's digital now. it will be something else tomorrow. The ABC's Charter should explicitly identify expansion into emerging technologies as a goal for the ABC. Not only because this is where Australians will be getting our content, but because the ABC has also shown itself to be a trustworthy and adaptive media leader.

The ABC Charter should contain a short statement about ABC independence – indeed it is the ABC's independence that underpins its social contract with Australians and distinguishes it from state media propaganda.

The ABC's role promoting the cultural life of Australia needs to be strengthened in the Charter and given greater prominence. Philosophy, religion, literature, history, natural history and science are just some of the areas that are currently invisible in the ABC Charter and which are most under threat in Australia's increasingly concentrated media landscape. Australians are now more reliant on the ABC to provide content that encourages our curiosity and intellect and enriches our culture life.

Conclusion

The independence of the ABC is paramount – it underpins the social contract that the ABC has with Australians and it distinguishes the ABC from state media propaganda. The downfall of the ABC's Managing Director and Chair have raised significant questions about the ABC's independence – questions which it is hoped that this Committee will be able to address. Establishing the facts surrounding these events is necessary to restore public confidence that the ABC's independence remains intact.

That the Coalition Government sought to politically interfere in the ABC is evident through the various actions that it has taken in government. It is also evident that this interference has caused harm to the ABC and its workers. However, in bringing this conduct to light, there is also an opportunity for all parties to identify and address shortcomings in the ABC's governance and funding arrangements. The CPSU has made several suggestions about how we can strengthen the ABC's independence in this submission. We thank you for the opportunity to make this submission and welcome an opportunity for discussion if needed.