

Australian Broadcasting Corporation

Submission to the

**Senate Environment and Communications
Legislation Committee**

**Inquiry into the Australian Broadcasting
Corporation Amendment (Fair and
Balanced) Bill 2017**

January 2018



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Introduction

The ABC welcomes the opportunity to make this submission to the Senate Environment and Communications Legislation Committee's inquiry into *The ABC Amendment (Fair and Balanced) Bill 2017*. The Bill, introduced by the Minister for Communications and the Arts, Senator the Hon Mitch Fifield, proposes to alter the *Australian Broadcasting Corporation Act 1983* ("the ABC Act") and legislate to insert the terms 'fair, balanced,' after "information is" in Section 8(1)(c) of the ABC Act, which sets out a duty of the ABC Board 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;*¹

This submission addresses the implications of the proposed amendment to the ABC Act and sets out the reasons the ABC strongly opposes the enactment of this Bill.

¹ <https://www.legislation.gov.au/Details/C2016C00300>

Formation of the Bill

On 15 August 2017, Senator Pauline Hanson announced that One Nation had given conditional support for passage of the Government's Media Reform Bill through the Senate in exchange for a number of concessions. These concessions include the introduction of legislation that would result in the formation of the Bill currently before this Inquiry.² The Minister for Communications and the Arts, Senator the Hon Mitch Fifield later announced that the Government welcomed One Nation's support for the media reform package in return for the implementation of various pieces of legislation, including a number of measures One Nation asked to be applied to the ABC.³

In the second reading speech for the Bill on 18 October 2017, Minister Fifield stated in support of the proposed legislation that:

"The Australian people expect a publicly funded broadcaster to canvass a broad range of issues, and report on those issues in a fair and balanced manner.

There is also a strong public interest in ensuring that Australians have confidence that they can rely on the ABC as a source of information to inform their views on significant issues.

*A statutory requirement for fair and balanced reporting will promote such confidence, and ensure that the ABC is a source of information which they can draw on to inform their views on significant public issues."*⁴

In introducing the Bill to Parliament, the Minister's assertion for the enactment of the amendment was that it would engender confidence from the public in the ABC as a source of news and information.

The ABC's current duty to uphold the recognised standards of objective journalism through accurate and impartial newsgathering and reporting has remained constant since the ABC Act

² <https://shop.onenation.com.au/blogs/labor-ldp-plan-to-burn-cane-growers/one-nation-gives-conditional-support-to-media-reform>

³

http://www.minister.communications.gov.au/mitch_fifield/news/one_nation_support_for_media_reform_package#.WjM5nlWWZaQ

⁴ http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/e760b7a0-eeb1-41ed-8fd6-253e13ea6855/0278/hansard_frag.pdf;fileType=application%2Fpdf

was enacted in 1983. This requirement has served the public well, with both independent and internal ABC surveys of public perceptions about the ABC consistently finding that the Corporation is the most trusted media organisation in Australia and one of the most trusted institutions in general.

Recent public surveys that confirm this confidence in the ABC include:

- The 2016 independent Omnipoll, which found 86 per cent of those surveyed felt that the ABC provides a valuable service to the Australian community;⁵
- The October 2017 Essential 'Trust in Media' poll, which found that ABC TV news and current affairs was the most trusted source of media in Australia;⁶
- The October 2017 Essential 'Trust in Institutions' poll, which found that the ABC was the fourth most trusted institution in Australia, behind only the federal and state police forces and the High Court.⁷

The ABC's own polling in 2017 of a nationally representative sample of 1,500 Australians found that the ABC is significantly more trusted than alternative media outlets. The survey identified that 80 per cent of those polled trust the ABC, compared to 58 per cent for commercial radio, 57 per cent for commercial television, 55 per cent for newspapers and 32 per cent for Facebook.⁸

It is apparent that there is no lack of public trust or confidence in the ABC and the amendments do not achieve any real public policy outcome or are driven by public interest. Prior to the Minister's announcement on 15 August 2017, the Government had made no indication that it was considering amending the ABC Act in this way and it is clear that the impetus for the Bill came solely from the One Nation party, without public consultation and for purely political motives.

⁵ <http://www.abc.net.au/corp/annual-report/2016/c2-audience-trends.html>

⁶ <http://www.essentialvision.com.au/trust-in-media-13>

⁷ <http://www.essentialvision.com.au/trust-in-institutions-10>

⁸ http://about.abc.net.au/wp-content/uploads/2017/10/ABC7171_AR_2017_Vol1_tagged_v4.pdf P.29

The ABC's editorial standards

Under Section 8(1)(e) of the ABC Act, the ABC Board has a duty to develop a code of practice relating to its television and radio programming, and to notify this code to the Australian Communications and Media Authority ("the ACMA"). The ABC Code of Practice sets out expected editorial standards for the gathering and reporting of news and information, including standards for accuracy, impartiality and fair and honest dealing.⁹

Under Section 4 of the ABC Code of Practice, 'Impartiality and Diversity of Perspectives', standards expected of the ABC include:

4.1 Gather and present news and information with due impartiality.

4.2 Present a diversity of perspectives so that, over time, no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented.

4.3 Do not state or imply that any perspective is the editorial opinion of the ABC. The ABC takes no editorial stance other than its commitment to fundamental democratic principles including the rule of law, freedom of speech and religion, parliamentary democracy and equality of opportunity.

4.4 Do not misrepresent any perspective.

4.5 Do not unduly favour one perspective over another.

Further, in Section 4 of the Code of Practice the ABC sets out that the principles of impartiality include:

- *a balance that follows the weight of evidence;*
- *fair treatment;*
- *open-mindedness; and*
- *opportunities over time for principal relevant perspectives on matters of contention to be expressed.*

These hallmarks of impartiality, with balance and fair treatment appropriately qualified and placed in proper context, are in accordance with the recognised standards of objective

⁹ <http://about.abc.net.au/wp-content/uploads/2016/05/ABCCodeOfPractice2016-1.pdf>

journalism. This is in contrast with the proposed Bill, which establishes these principles as ends in themselves, without consideration or context.

A complaint alleging the ABC has acted contrary to its Code of Practice in its television or radio programming may be made to the ABC. Under Section 150 of the *Broadcasting Services Act 1992* (“the BSA”) a person is also able to take their complaint to the ACMA if the ABC fails to respond to the complainant in a timely manner or if the complainant considers the ABC’s response is inadequate. This co-regulatory system ensures that the ABC appropriately takes responsibility for its content and complaint handling, but that the ACMA is also available as an independent adjudicator when a matter cannot be satisfactorily resolved between a complainant and the ABC.

According to ABC records, the ACMA has investigated 85 complaints under Section 4 of the ABC Code of Practice in the last five years, and has found one breach in that time.¹⁰ The lack of adverse ACMA findings regarding the ABC’s impartiality standards is further evidence that the current ABC processes are effective in ensuring recognised standards of objective journalism.

The ABC Code of Practice underpins the Board’s responsibilities under Section 8(1)(c) of the ABC Act to ensure the ABC meets recognised standards of objective journalism. This legislative requirement is further bolstered by the ABC’s editorial policies and procedures documents, guidance documents, independent editorial reviews, editorial training and complaint handling procedures.¹¹ This level of scrutiny, training and application of the most rigorous standards of editorial practice and procedure gives weight and context to the Board’s duties under Section 8(1)(c) of the ABC Act and ensures that the ABC has best practice in maintaining a robust editorial system.

¹⁰ <https://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/abc-news-breached-impartiality-requirements>

¹¹ <http://about.abc.net.au/how-the-abc-is-run/what-guides-us/abc-editorial-standards/>

Implications of the Bill

The prevailing view among those who understand the ABC's existing editorial standards is that the proposed amendment is meaningless and without any practical consequence. This view was articulated by the Communications Minister, Senator Fifield, in an interview on the ABC's *Insiders* program on 17 September 2017. In the interview Minister Fifield stated:

*"Chapter 4 of the ABC's own editorial policies talks about the importance of fair treatment. It also talks about a balance that follows the weight of evidence. So, these are not new or strange journalistic concepts...What I'm talking about is effectively enshrining in legislation that which is already in the ABC's own editorial policy...it will operate exactly as it does now. That is, the ABC will make judgements on these matters. The government doesn't have a role in editorial arrangements at the ABC. That's not going to change. We're simply reinforcing through legislation that which is already in the ABC's own editorial policies."*¹²

It is correct that the ABC's editorial standards call for fair and honest dealing and also describe one of the hallmarks of impartiality as "a balance that follows the weight of evidence". However, if the intention of the legislative change is to do nothing more than enshrine those specific references to fairness and balance in that specific context, then the change to the legislation will do nothing more than describe what the ABC already does. In the ABC's view, that is no argument to make the change – it is, in fact, an argument not to make the change as it adds nothing of substance.

Further, the amendments manifestly risk creating expectations or misleading the public into believing that the change to the ABC Act will impose new statutory requirements on the ABC that have not previously existed. This expectation was set out most clearly by Senator Brian Burston of One Nation, who stated on Sky News on 16 August 2017, the day after the Minister's announcement, that the ABC should broadcast the views of anti-vaccination campaigners to ensure that there is balance in coverage.¹³

¹² <http://www.abc.net.au/insiders/mitch-fifield-joins-insiders/8954450>

¹³ <http://www.qa.skynews.com.au/news/politics/federal/2017/08/16/one-nation-says-abc-should-air-anti-vaxxers.html>

Those who are familiar with the notion of objective journalism would understand that in its proper context, 'balance' needs to be carefully separated from 'false balance'. In other words, editorial balance does not require the inclusion of all perspectives all the time and it does not require equal time to be provided to all views. Nor does it operate independently of the balance of evidence, the weight of opinion, the underlying facts and the need for editorial judgement.

Stripped of the context that exists within the ABC's editorial policies, where balance is not an end in itself, but rather one of the hallmarks that helps define the broader and more relevant standard of impartiality that already exists in the ABC Act, the risk is that 'balance' will be confused with 'false balance' or 'he said/she said journalism'. Therefore, these amendments give rise to the potential where a range of unfiltered, unassessed opinions are all given equal weight and served to audiences without context, explanation or appropriate rigour.

Senator Burston's view that anti-vaccination campaigners should be given equal time with scientifically proven evidence is a clear example of the dangers of this amendment. The ABC's concerns are particularly magnified given that his party, One Nation, is the initiator of this Bill.

Closing comments

Considering the existing high level of public trust in the ABC, the ABC's maintenance of the most robust and rigorous editorial system in Australian media and the lack of evidence of any systemic failure by the ABC to meet standards of objective journalism, at best, this proposed amendment to the ABC Act is unnecessary and redundant. On this basis alone, there is no compelling reason for the enactment of this Bill.

At worst, the amendment sets a concerning precedent that risks imposing false balance and poor journalism on the ABC, and contradict, rather than serve, the recognised standards of objective journalism, the inverse of the stated intention of the legislation. On this basis, the Bill must be opposed.