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Second submission to Senate Standing Committee on Environment and Communications, Legislation Committee, inquiry into Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015

29 September 2016

Dear Committee,

Thank you for the opportunity to make a second submission on the Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015.

Since our last submission we have published a research report relevant to this inquiry, *No politics at Aunty's table: Depoliticising the governance of the ABC*. This report addresses the issue of political interference in the governance structures of the ABC, including its charter. A copy has been uploaded with this submission.

The Australia Institute advocates that the ABC equitably serve regional and rural communities and be adequately funded to do so. However, changing the ABC Act is not an appropriate mechanism for enforcing granular decisions on operational matters. The ABC's strategy needs to evolve faster than federal legislation can. It must remain the purview of the ABC board and the executive.

It remains problematic that this proposal comes from the National Party. While support for increased regional ABC coverage goes beyond rural areas, it is the Nationals' electoral base that would primarily benefit. Changing the ABC Charter to primarily benefit the constituents of one party sets a dangerous precedent. A future Labor government could mandate a degree of coverage of union-related content. The Greens could require coverage of environmental issues. One Nation could push for a level of content devoted to their view of Australian culture.

Far better options exist for expanding ABC rural coverage, such as tying additional funding to rural and regional content, or grants aimed at restoring and expanding ABC facilities in regional Australia.

We would welcome the opportunity to expand on this submission in the future either at a public hearing or in writing.

Yours sincerely,

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No Politics at Aunty's Table: Depoliticising the Governance of the ABC

Fergus Pitt

March 2016



The **Australia Institute**

Research that matters.

No politics at Aunty's table

Depoliticising the governance of the ABC

Tackling the ABC for its performance is part of the Australian political game. Partisan attempts to change the ABC's governance arrangements, however, amount to moving the goalposts.

Discussion paper

Fergus Pitt

March 2016

ABOUT THE AUSTRALIA INSTITUTE

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

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As we begin the 21st century, new dilemmas confront our society and our planet. Unprecedented levels of consumption co-exist with extreme poverty. Through new technology we are more connected than we have ever been, yet civic engagement is declining. Environmental neglect continues despite heightened ecological awareness. A better balance is urgently needed.

The Australia Institute's directors, staff and supporters represent a broad range of views and priorities. What unites us is a belief that through a combination of research and creativity we can promote new solutions and ways of thinking.

OUR PURPOSE – 'RESEARCH THAT MATTERS'

The Institute aims to foster informed debate about our culture, our economy and our environment and bring greater accountability to the democratic process. Our goal is to gather, interpret and communicate evidence in order to both diagnose the problems we face and propose new solutions to tackle them.

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Summary

The ABC's governance arrangements are designed to ensure it is independent and politically neutral. The success of these arrangements is demonstrated in repeated editorial reviews and its long running support from the Australian public. Given this success, changes to these governance arrangements should be made only when demonstrably necessary and certainly not for partisan political or commercial gain.

Debate around the ABC's content, performance and personalities is welcome. Tackling the ABC for its performance is part of the Australian political game. However, attempts to use the governance arrangements as political levers are attempts to move the goalposts.

But that is what has occurred: Important aspects of the ABC's governance have become political battlegrounds – the ABC's Charter, the ABC Board and its appointment process, and the ABC's funding.

Depoliticising the ABC Charter

Debate as to whether the ABC is meeting its charter obligations is important for keeping the broadcaster relevant and accountable. However, recent debate has been around changing the charter itself, with two key examples:

Commercial media interests argue that the ABC's popular digital services are not within its charter as a broadcaster. If the ABC was required to curtail digital services it would limit its activities in the most rapidly expanding area of media, to the benefit of commercial media. A minor change to the charter was made to include 'digital services', a change that could easily be reversed by a hostile government severely restricting the ABC's reach and relevance in the 21st Century.

National Party MPs have called for 'sweeping changes' to the Charter, including prescriptive measures over services to regional areas, the National's electoral base. While increasing ABC services to regional Australia is widely supported, doing this through the Charter should be avoided and would set a precedent for parties to adjust the Charter for their own benefit.

To avoid such unwelcome changes, the ABC charter should be taken above the politics of the day. It should be mentioned in the Australian Constitution, to help ensure that changes are only made with the overwhelming support of the Australian people.

Polling commissioned by The Australia Institute shows strong support for constitutional recognition of the ABC, with 54 percent of Australians supporting the move and only 15 percent opposed.

However, recognition would be difficult under Australia's current constitution, despite public broadcasters featuring in several other countries' constitutions. But if and when an opportunity arises for major constitutional reform, perhaps if Australia becomes a republic, recognition of the ABC should be pursued.

Depoliticising the ABC Board and appointment process

The ABC Board carries the ultimate responsibility for the independence and integrity of the national broadcaster. In previous eras both sides of politics made inappropriate partisan appointments to the ABC board. Despite the 'arms-length, merit based' reforms made in 2013, the appointment process has once again become deeply politicised. Basic governance standards are being breached.

The most recent example of this is the appointment of board member Donny Walford, which saw the appointment panel bypassed and Walford directly recommended by the minister. The minister's reasons for this have not been published online at time of writing. This appointment barely meets the letter of the law, and surely fails its intent.

Recommendations to improve this process:

- A cross-party committee should be given responsibility for overseeing the ABC Board appointment process, either replacing the current nomination panel, or overseeing it.
- ABC audiences and the wider public should be more involved. Better publicity around upcoming vacancies and selection criteria should be provided.
- Consideration should be given to selection of an 'audience supported board member'. Candidates who wish to make their applications public could publish their profile, CV and interviews on the ABC website. Support from ABC audiences for these nominations could be assessed through online or written submissions.
- The option for the Minister to bypass the nomination process should be removed, or available only with consultation with the shadow minister.

Depoliticising funding of the ABC

Ostensibly, the ABC is funded on a three-year cycle, giving management crucial predictability in funding, and therefore far greater ability to plan. This system came in almost thirty years ago, but has recently become unsteady, and is not adhered to by

governments. The 2014 Budget and MYEFO cuts to the ABC budget were the most dramatic example.

A triennial funding cycle can only be a convention, not binding law. The government of the day must retain the ability to adjust the Federal budget year by year, according to their policies and in light of prevailing economic conditions. However, governments need more incentive to treat the ABC's triennial budget convention with respect.

That can come from greater transparency and wider engagement by opening the triennial funding process to public input. We recommend:

- The Communications Department should, when the end of each triennial approaches, call for public submissions regarding ABC funding. The call-out should be appropriately publicised to reach current and potential ABC audiences, industry groups, and stakeholders with special interests.
- When submissions are made, the Communications Department should hold physical and digital forums to examine the submissions and their implications. These should be held in a range of locations, and at a range of times.
- At the end of the consultation process, the Communications Department should publish a report summarising the debate.

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Introduction

The ABC is required to be independent and impartial to perform its functions as a broadcaster without political favour. A substantial part of its guiding legislation, the Australian Broadcasting Corporation Act 1983, regulates how 'political or controversial matters' should be broadcast and also restricts the involvement in board oversight by current or former political staff members.¹

Because the ABC broadcasts extensively on political matters, it is constantly at the centre of political debate in Australia. By reporting and broadcasting politics, the ABC is a part of politics.

But it is perhaps because political neutrality is written into the ABC's governance structures that it is able to produce content that brings such extraordinary popular support. All six editorial reviews commissioned in the last two years showed that the ABC had made no major breaches of its guiding policies.² Each year, Newspoll surveys the population and each year more than 80% of respondents say the ABC provides valuable services.³

While healthy debate rages around the matters broadcast on the ABC and how the ABC broadcasts them, it is the apolitical nature of the ABC's governance that is central to maintaining the quality and integrity of its operations and its support from the

¹ Australian Broadcasting Corporation Act 1983, Part III and Part VIII,
<http://www.comlaw.gov.au/Details/C2014C00721>

² Wills, Andrea. "Editorial Review 1: ABC Radio Interviews With The Prime Minister and Leader of the Opposition During the 2013 Federal Election Campaign," January 2014. <http://about.abc.net.au/wp-content/uploads/2014/03/EditorialAudit1January2014.pdf>

Stone, Gerald. "Editorial Review 2: Breadth Of Opinion and Impartiality in Select TV Current Affairs Coverage of the Asylum Seeker Issue.," March 2014. <http://about.abc.net.au/wp-content/uploads/2014/03/EditorialAudit2January2014.pdf>

Mott, Graham. "Editorial Review 3: Story/issue Choices on Selected ABC Radio Programs," September 2014. <http://about.abc.net.au/wp-content/uploads/2014/08/EditorialReview03-August2014.pdf>

Ryan, Colleen. "Editorial Review 4: Budget 2014," February 2015. <http://about.abc.net.au/wp-content/uploads/2015/02/Editorial-Review-No-4.pdf>

Harris, Steve. "Editorial Review 5: Higher Education 2015." ABC Editorial Review, August 2015. <http://about.abc.net.au/wp-content/uploads/2015/08/ABCEditorialReviewNo5.pdf>.

Martin, Ray. "Editorial Review 6: Content, Conduct and Panel Composition of the Q&A Program," December 2015. <http://about.abc.net.au/wp-content/uploads/2015/12/ABCEditorialReview6.pdf>.

³ "ABC Annual Report 2014-15," October 2015. http://about.abc.net.au/wp-content/uploads/2015/10/2014-15_Annual_Report.pdf. Page 26

Australian public. While the ABC is rightly part of Australian politics, politicisation of the ABC's governance should be avoided at all costs.

Yet in recent years, several aspects of the ABC's governance have become political battlefields. In this report we look at how:

- The ABC's key guiding legislation, the ABC Charter, has come under pressure from political parties and commercial interests.
- The ABC's Board has been politicised by both Labor and Coalition governments.
- Political parties have made the ABC's funding less predictable and therefore management more difficult.

These topics should not be removed from debate, quite the contrary. Debate over how and whether the ABC is fulfilling its charter is welcome. The Board should be subject to scrutiny and held accountable for the ABC's performance. The public has a right to discuss and criticise how its money is being spent on its broadcaster. However, attempts to adjust these aspects of the ABC's governance to suit political parties or commercial interests should be rejected. In this report we offer suggestions for how to defuse these battles and how to depoliticise these key aspects of the governance of the ABC.

Depoliticising the ABC Charter

The ABC Broadcasting Services Act ("the ABC Act" or "the Act") sets out what the ABC is and what it does. Within the Act, section 6 - the Charter - is perhaps the most important. Some key lines are quoted here:

The functions of the Corporation are:

(a) to provide within Australia innovative and comprehensive broadcasting services of a high standard as part of the Australian broadcasting system consisting of national, commercial and community sectors and, without limiting the generality of the foregoing, to provide:

(i) broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and

(ii) broadcasting programs of an educational nature;

The Charter also says the ABC must transmit Australian content to international audiences, provide digital services, and support the arts.

The Act and the Charter are intended to give rationale and legitimacy to all the organisation's activities. They must have durability, but also allow responsiveness to an evolving operating environment. As such, the Charter does not prescribe specific programming or publishing measures, and is open to interpretation. Many people interpret the Charter differently and debate as to whether the ABC is meeting its Charter obligations is not uncommon. Legislators from country areas and the smaller states have called for more local production that adequately reflects regional events and identities. For example, independent Tasmanian MP Andrew Wilkie writes:

The ABC charter clearly states the national public broadcaster must serve all regions of Australia. Closing down TV production in Tasmania would be contrary to this charter and the ABC must reverse its apparent decision and guarantee internal television production in Tasmania.⁴

⁴ Wilkie, Andrew. "Submission to Senate Standing Committee of Environment and Communications," January 18, 2013. <http://www.aph.gov.au/DocumentStore.ashx?id=00f90714-0e44-477b-bcaf-82242ec44355>. See also Nikolic, Andrew. "Aunty Fails Charter and Tasmanians." The Australian, November 25, 2014.

The level of support given to the arts is another area of complaint:

One of the criticisms made of the recently announced cuts to ABC staff and programs is that it could place the broadcaster in breach of its own charter. The reason? It could be failing in its requirement to cover the arts.⁵

This kind of debate around how the public broadcaster functions and what it should be doing is a welcome influence towards accountability and relevance for all Australians. Campaigns relating to how the ABC interprets and fulfils its charter have considerable value.

Politicians and the ABC's competitors have not been, and should not be, shy about entering this debate. More recently, however, political and commercial interests have focused on changing not just how the ABC interprets its Charter, but to changing the Charter itself. Unsurprisingly, these changes would advance the interests of those proposing them.

ABC CHARTER AND DIGITAL SERVICES

Commercial media organisations have expressed the view that the ABC should be focused on its radio and TV services, as distinct from its digital services. This of course, has a context: as digital media has risen at the expense of traditional media, the popularity of the ABC's digital services, such as iView, podcasts and websites, is unwelcome competition for commercial media. If the ABC's digital content could be limited or eliminated, the argument goes, Australian media landscape could be more profitable for these companies.

The dynamics of changing media business models are, of course, much more complex. Traditional revenue sources; advertising, subscriptions and "newsstand sales", have all changed enormously. Competition from international companies, such as The Guardian, BuzzFeed and Netflix, provide arguably greater challenges to Australian incumbents than the ABC. However, this does little to appease critics of the ABC's digital services.

<http://at.theaustralian.com.au/link/39534723680f9bbaf219085cf8f3ea61?domain=theaustralian.com.au>.

⁵ Quinn, Karl. "Is the ABC in Breach of Its Charter?" The Age, August 18, 2011.

<http://www.theage.com.au/it-pro/is-the-abc-in-breach-of-its-charter-20110818-1iz6v.html>.

Meade, Amanda. "Looming ABC Cuts Could Undermine Arts Charter." The Australian, August 1, 2011.

<http://www.theaustralian.com.au/business/media/looming-abc-cuts-could-undermine-arts-charter/story-e6frg996-1226105645704>.

The Australian newspaper for example, views the ABC's online popularity as "a reckless development, pushing the broadcaster further into the most dynamic area of the media world", creating a "digital empire".⁶ To protect them from this reckless empire, the editor demanded that "the Abbott government must rewrite the ABC's charter quickly", to ensure the ABC would direct its resources away from digital media and towards "those gaps in the market that commercial outlets are neglecting".

At the time of The Australian's editorial, the ABC Charter had recently been changed on this issue. Until 2013, the ABC Act did not explicitly include digital services – services that had not been imagined when the Act was written in 1983. This omission opened the door to suggestions that the ABC's digital services should be severely curtailed. Details of lobbying for this change are unclear, but soon-to-be Prime Minister Tony Abbott had concerns "partly fuelled by soundings he received from private media interests."⁷ The lobbying had prompted then Communications Minister Stephen Conroy to review areas where the ABC might be vulnerable and to pass an amendment to the ABC Act, confirming that the "functions of the Corporation [include]... digital media services".

The addition of digital services in the ABC Act were presented as a minor, common-sense amendment to reflect the reality that "broadcasting" did not adequately describe how the corporation was serving the Australian public. The ABC's digital services were, by then, firmly entrenched in many Australians' media diet. Any change to exclude or limit digital media activity would have a detrimental effect on the ABC's relevance in the current era and the future.

ABC CHARTER AND REGIONAL AUSTRALIA

More recently, National Party members have called for "sweeping changes" to the ABC Charter that would define how the ABC serves regional Australia – the National's electoral base.⁸ The amendments to the ABC Act, proposed in December 2015 but not yet passed, would (amongst other measures) establish a rural and regional advisory

⁶ Editorial. "The ABC's Digital Rush to Nowhere." The Australian, Nov 24, 2014. <http://at.theaustralian.com.au/link/90841bbb90759f50bf44c07c5f40a33a?domain=theaustralian.com.au>.

⁷ Peter Van Onselen. "How the ABC's Mark Scott Sealed Digital Prize." The Australian, Nov 27, 2014. <http://at.theaustralian.com.au/link/19128d38dec3fcda4212f6e65e503a35?domain=theaustralian.com.au>.

⁸ Matthew Knott. "ABC Should Provide Local Television News: Warren Truss." The Sydney Morning Herald. Accessed January 27, 2016. <http://www.smh.com.au/federal-politics/political-news/abc-should-provide-local-television-news-warren-truss-20160120-gm9w21.html>.

council, mandate two board members from regional areas and require public reporting of staffing and expenditure in regional and rural areas.

More problematically, the National's proposals call for quotas of editorial content and particular delivery platforms. It says the ABC must "broadcast daily from each radio broadcasting service, at regular intervals, at least 5 radio bulletins that consist solely or primarily of regional or local news."⁹

The Australia Institute has advocated that the ABC equitably serve regional and rural communities and be adequately funded to do so.¹⁰ However, the ABC Act is not an appropriate mechanism for enforcing granular decisions on operational matters. The ABC's strategy needs to evolve faster than federal legislation can. It must remain the purview of the ABC board and the ABC executive.

It is clear that the ABC Act and Charter are becoming the focus of political contests. Given the huge and long-standing support for the ABC under the existing charter (and ABC management's interpretation of it), it is clear that major changes to the ABC's legislated mission and mandate must be widely deliberated and supported. The intense partisanship, politicking and instability that have characterised recent parliaments produce an inappropriate environment in which to define the charter and operations of the ABC – a valuable national institution.

THE CONSTITUTION AND PUBLIC MEDIA

One measure to strengthen public media's position in other countries has been to include reference to public media in the Constitution. In Australia, such a measure's intent would be to prevent fundamental changes being made to the ABC by a hostile government. It would also quickly quash the radical arguments that the very existence of the ABC is unconstitutional.¹¹

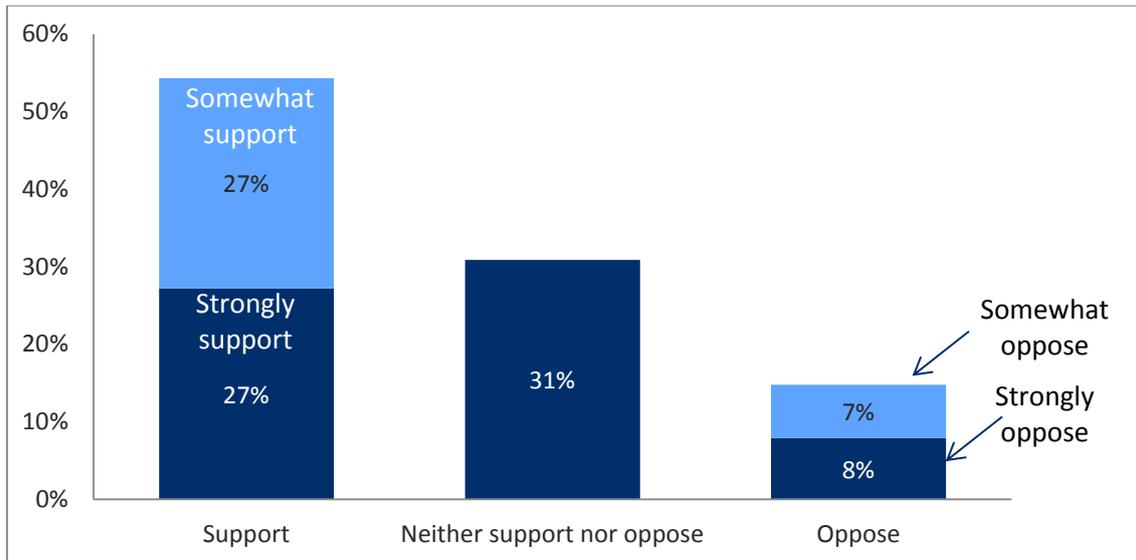
⁹ Senator Bridget McKenzie. Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015, 2015. http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s1028_first-senate/toc_pdf/1523320.pdf;fileType=application%2Fpdf.

¹⁰ Johnson, Molly. "Heartland - Why the Bush Needs Its ABC." Text. The Australia Institute, September 9, 2015. <http://apo.org.au/resource/heartland-why-bush-needs-its-abc>.

¹¹ The argument that the ABC's existence is unconstitutional, which gets very little traction outside libertarian circles, rests on the idea that the "head of power" under which parliament makes laws for the ABC is generally understood to be "Section 51(v), [...] regarding 'postal, telegraphic, telephonic and other like services.'" The next part of the argument is that section 51(v) should not cover broadcasting services, because they are categorically different from the aforementioned methods of sending "point-to-point messages", and therefore the government has no right to make laws regarding broadcast

The idea of enshrining the ABC in the Constitution has broad popular support. In 2015 the Australia Institute polled 1,413 Australians, on a range of ABC-related issues. Respondents were asked “Would you support the role of our national broadcaster, the ABC, being enshrined in the Constitution to help protect it from political interference?” Overall 54 percent either supported, or strongly supported, with only 15% opposing or strongly opposing, as shown in Figure 1 below:

Figure 1: Public opinion on constitutional recognition of the ABC



Source: Online survey of 1,413 people conducted by Research Now, an independent online survey provider. Respondents earn reward points to participate. Respondents were representative of the adult Australian population by age and gender and state.

Several countries have reference to public media organisations in their constitutions (see sidebar). However, there are significant obstacles to such an inclusion, in Australia. Australia’s constitution was largely written in 1900 and an inclusion of the ABC would be a departure from our Constitution’s structure and style. The Australian Constitution establishes the parliament, the executive and the judiciary; and describes their powers. The only other body it specifically mandates (apart from the states and their parliaments) is “the inter-state commission” (which has ceased to exist in a discrete form). If the ABC were to find a place in the constitution, it would be quite an exception.

Furthermore, changes to the constitution face a difficult democratic path. Proposed changes must pass parliament, then go to a referendum, and attract a majority of ‘yes’

communications. The argument was raised and defeated in a High Court of Australia case of 1935, *R v Brislan*, but re-emerged in “Is Aunty Even Constitutional?” by Phillip Lillingston in *The Center For Independent Studies’ journal Policy: A Journal of Public Policy and Ideas* 30, no. 4., December 2014. <http://apo.org.au/node/54244>.

votes nationally, and a majority of 'yes' votes in every state. Historically, this has meant a change has needed strong bi-partisan support, and a long public "education" campaign. Only 8 out of the 44 proposed changes to the constitution have cleared all these hurdles to become enshrined. The most likely approaching referendum concerns recognition of Indigenous Australians, an issue that some may feel deserves to stand alone without the distraction of an "ABC" amendment.

A more successful path to including the ABC in the constitution may come with a campaign towards Australia becoming a republic. That movement (which has ebbed and flowed with different national leadership) would entail a number of reforms to the constitution, and could be an opportunity to modernise the document, and buttress the roles of the ABC and other key institutions.

Public Media In International Constitutions

National broadcasters and related free speech concepts feature in the constitutions of Timor-Leste, South Africa and Germany.

Timor-Leste's constitution, enacted in 2002, makes mention of public media in section 41, specifically impartial radio and television services. Part 5 guarantees their existence, with a mandate to "protect culture and traditional values, and guarantee expression of different opinions (among other objectives)." It also guarantees freedom of the press and goes on to define that in some detail:

"Freedom of the press comprises, namely, the freedom of expression and creativity for journalists, the access to information sources, editorial freedom, protection of independence and professional confidentiality, and the right to create newspapers, publications and other means of diffusion."

and

"The State guarantees the freedom and independence of the public organs of social communication from political and economic powers."

The South African Constitution of 1996 deals with free expression and media in two places: Section 16 mandates freedom of the press and other media, while section 192 says "National Legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society".

The German Constitution, known as "The Basic Law", also includes the line "Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship." This provided a basis of legal challenges when regional governments tried to cut funding for the ARD broadcasters in 2004.

The constitutions of South African, Timor-Leste, and Germany are very modern documents in comparison to Australia's. They are longer, deal with many more topics, and are - on the whole - much more prescriptive. It is fair to characterise them as more politically progressive than Australia's; They variously have sections dealing with environmental protection and equality of the genders, bills of rights, and statements that property is to be used for the betterment of society as a whole.

Depoliticising the ABC board

The ABC Board is the body with highest direct authority over the public broadcaster. The ABC Act makes the board responsible for the whole of the ABC's operations. Under Part II(8) of the Act, the board must:

- ensure that the ABC is performing “efficiently”, and providing “maximum benefit to the people of Australia”.
- maintain “independence and integrity” and “accurate and impartial” journalism.
- ensure the ABC is complying with The Act and Charter and
- develop codes of practice (these include editorial standards and complaints handling).
- consider any Commonwealth Government policy statement about “broadcasting or digital media services, or any matter of administration, that is relevant to the performance of the functions”

Unfortunately, the ABC Board became a political battlefield with obviously partisan appointments from both sides of politics. Examples include Victorian Liberal Party powerbroker Michael Kroger, outspoken conservative columnist Janet Albrechtsen and controversial historian Keith Windschuttle. When in power, the Labor Party also appointed the ideologically like-minded, including their former polling expert Rod Cameron, former Queensland Public Sector Union leader Janine Walker, and former South Australian Labor premier John Bannon.

The practice of board-stacking from both major parties attracted criticism and calls for reform from many sections of the public sphere. The Friends of The ABC, as part of their long-running campaign for reform, in 2001 compiled numerous examples of prominent figures to complain about appointments and the appointment process, including:

- Liberal Prime Minister John Howard
- Liberal Senator Richard Alston
- Labour Minister Gareth Evans
- Labour Minister Stephen Smith
- Democrat Senator Vicki Bourke
- Former ABC Board chairman Mark Armstrong

- Former managing director David Hill
- ABC historian Ken Inglis.¹²

APPOINTMENT PROCESS

The whole board consists of up to nine people, but no fewer than seven. Currently there are four women and five men sitting. The non-executive directors (normally seven) are appointed for five-year terms, which the government may renew once. The two other directors are the managing director, who is ultimately chosen by the board, and a staff-elected director.¹³ This paper is largely concerned with the appointments of the seven non-executive directors. For simplicity, it will consider the managing director and the staff-elected board member “non-independent” directors.

Under the current legislative arrangements, established in 2013, there are two routes by which non-executive, or “independent” board members are appointed. The default route is via the *Nomination Panel for ABC and SBS Appointments*. (The formation of this panel is discussed below.)

The nomination panel works with the Communications Department to identify potential applicants. In practice, the Panel and the Department develop selection criteria and often contract a recruitment firm to advertise and attract candidates. The 2014 contracts went to a small agency called Amanda O’Rourke and Associates,¹⁴ whose website says they specialize in government and public sector appointments, and partially attributes their success to “networks, and trusted relationships”.¹⁵

¹² Kennedy, Darce. “Friends of the ABC Submission to the Senate Environment, Communications, Information Technology and the Arts References Committee,” August 11, 2001. http://www.aph.gov.au/~media/wopapub/senate/committee/ecita_ctte/completed_inquiries/1999-02/abcboard/submissions/sub593.ashx.

¹³ The staff elected director’s position was only re-instated in the 2013 amendments to the ABC Act. It had been abolished in 2006 under controversial circumstances. Commentators suggested that the Communications Minister of the day, Helen Coonan, got rid of the position to specifically target staff-elected director Romana Koval, herself accused of circulating information that, critics said, should have been kept confidential to the board. Senator Coonan maintained that she moved to abolish the position because of its inherent conflicts of interest.

¹⁴ “Appointment as a Non-Executive Director to the Board of the Australian Broadcasting Corporation (ABC) - Position Description.,” n.d. April 2014. & “AusTender: Contract Notice View - CN2139181 - Recruitment Agency ABC SBS Board Appts.” Accessed February 22, 2016. <https://www.tenders.gov.au/?event=public.cn.view&CNUUID=0F644812-C7FD-7B9B-6FE5246CB95EB139>.

¹⁵ “Amanda O’Rourke Executive Search.” Accessed February 23, 2016. <http://amandaorourke.com.au/>.

The nomination panel assesses candidates against the criteria, and provides the Communications Minister with a shortlist of applicants. The Minister then makes his/her final choice, and recommends the appointment to the governor general, who has never been known to reject the recommendation. For all practical purposes, the Minister makes the final decision. The process is very similar for the chairperson, but in that case the nomination panel gives its report to the Prime Minister instead of the Minister, and the Prime Minister is required to consult the leader of the opposition before making his or her recommendation to the Governor General.

The alternative route is for the Communications Minister to make a unilateral recommendation from outside the shortlisted candidates. The Minister must then table their reasons for the direct recommendation in Parliament within 14 sitting days.

NOMINATION PANEL AND ITS MEMBERS

The *Nomination Panel for ABC and SBS Appointments* was introduced under former Labor Communications Minister Stephen Conroy in an attempt to introduce a merit-based arms-length nomination and appointment system, as had been Labor's policy in opposition leading up to the election of 2007.

Minister Conroy did not immediately move to implement the "merit-based appointments" policy on gaining power, but at various points leading up its eventual passage in 2012, his department and enquiries examined submissions on the precise way to systematise good appointments.

However, despite these efforts the nomination panel has become almost as partisan as the board appointments had been earlier. The nomination panel is appointed by the Secretary of the Department of Prime Minister and Cabinet, a position that has itself become highly politicised in recent years. Out of three panel members, two are highly questionable: Janet Albrechtsen, the News Limited columnist and former board member perceived by many as hostile to the ABC, and Neil Brown, who told *The Australian*, if it were up to him, he would "scrap the ABC and start over".¹⁶ The new chairperson of the panel is former Treasury Secretary and Westpac bank chair, Ted Evans.

¹⁶ "Brown: I'd Scrap ABC and Start over," *The Australian*, July 4, 2014.
<http://at.theaustralian.com.au/link/aea57c639520de8077d4b84f8233c405?domain=theaustralian.com.au>.

PROBLEMS OF THE CURRENT APPOINTMENT PROCESS

The appointment process, in practice, has failed to meet well-known standards for public sector boards. The Labor government invoked the “Nolan Principles” when they announced their intention to depoliticise the board appointment process. Named after former UK judge Michael Nolan, these seven principles aim to limit problems including bias and abuse of power, while elevating public trust and the quality of public institutions.

The current appointment process (as operated) does not follow these principles, with limited openness and transparency. Of the two board appointments made in late 2015, that of the mining health and safety expert Kristin Ferguson, was made through the default process. However, the appointment of the leadership coaching executive and entrepreneur Donny Walford was a direct recommendation (effectively an appointment) made by the Communications Minister Mitch Fifield.¹⁷

The Nolan Principles

- *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 programmes to deliver equal opportunity 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 workings must be transparent and information must be provided about the appointments made.
- *Proportionality* — the appointment 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.

In 1995, former UK judge Michael Nolan handed down a report from the country’s Committee on Standards in Public Life. His brief had been to consider how the Conservative government might clean up its reputation for the sleaze, lobbying and ‘jobs for mates’. These principles have subsequently become embedded in public life in the UK and Northern Ireland. In the lead-up to Stephen Conroy’s reform of ABC Board appointments, a team at the Australian National University published an influential book ‘*Public Sector Governance in Australia*’ that described how the principles might locally apply.

¹⁷ Department of Communications. “Appointment of Two New Directors to the ABC Board,” November 18, 2015.

http://www.minister.communications.gov.au/mitch_fifield/news/appointment_of_two_new_directors_to_the_abc_board.

When making such an appointment, the minister is required to table in parliament his reasons quickly (the law says within 14 sitting days).¹⁸ Walford's appointment was on November 18, 2015, taking advantage of the approaching long parliamentary summer break to shift back the transparency deadline to February 11, 2015, almost three months after the announcement. When the Communications Department did produce its Statement of Reasons, on February 2, the document was not published online – indeed the only publically accessible reference was a single line on page 3639 of the "Journals of the Senate".¹⁹ This instance of the process barely meets the letter of the law and surely fails its intent for openness, transparency, and independent scrutiny.

POTENTIAL MEASURES FOR DEPOLITICISING THE ABC BOARD AND SELECTION PROCESS

This section has shown that the 2012 Labor government reforms, while replacing some very bad practices, leave room for improvement. The results of the process have deficiencies as well. It is opportune to ask which parts of the current system work, and how it might be strengthened.

- Firstly, the audience of the ABC and the wider public should be more involved in the appointment process. Upcoming Board and Nomination Panel vacancies should be better publicised on the ABC's own TV, radio and digital platforms as well as other media. Selection criteria and explanation on how they are to be applied should also be easily available to interested applicants and members of the public.
- The Senate Standing Committee on Environment and Communication, or other suitable cross-party body, should oversee the nomination process to ensure a greater degree of bipartisanship. This body could either take responsibility for the ABC Board nomination process overall, eliminating the Nomination Panel for ABC and SBS Appointments, or could appoint the Nomination Panel itself.
- An 'audience supported board member' could be initiated to give some recognition to ABC audiences. They are arguably the major stakeholders in the Board appointment process, but stakeholders that are currently largely excluded from it. Applicants that have been shortlisted by the Committee or Nomination Panel would be given the option to make their application public.

¹⁸ ABC Act, Section 24X(C)

¹⁹ "Journals of The Senate, No. 135." The Parliament of The Commonwealth of Australia, February 2, 2016. http://parlinfo.aph.gov.au/parlInfo/download/chamber/journals/c72d053c-80ba-45d9-97b4-0eda118fbf72/toc_pdf/sen-jn.pdf;fileType=application%2Fpdf.

These applicant's profile, CV and interviews would be published on the ABC website. Support from ABC audiences for these nominations could be assessed through online or written submissions. The Minister should be obliged to give consideration to the quantity and quality of submissions in public applicants' favour. This process must be optional to ensure that high-quality nominees who need to keep their application confidential from current employers or other boards are not excluded from applying.

- At the moment, there is little to discourage the Minister from bypassing the nomination body and making a unilateral appointment. The Minister has recently been able to do this with minimal accountability and transparency (see above). This option should be eliminated, or at the very least, consultation with the Committee should be required.

The Results of the Process

This lack of true independence, openness, and transparency raises questions about whether the appointments have produced a board with the best possible members and overall composition. The results are the ultimate test of any process. The board has representatives from six different Australian states, and a good gender balance, but there is little cultural diversity and no indigenous members. Like the ABC overall, the current board is significantly less ethnically diverse than the Australian population.

Furthermore, if one attends to the Board's requirement to ensure quality and therefore have strategic vision, a notable deficiency in the ABC board in recent years has been deep, direct expertise in digital media, progressive technologies and associated innovation - the most significant forces in the media landscape for at least a decade. Harvard Business School Professor, Jeffrey F. Rayport articulated the case in 2012, "*Companies in technology, media, and communications, for example, which have not attracted such talent, are paying the price. Just look at the damage done to high-tech players in the mobile industry when leadership misses a major technology trend like the advent of the smart phone.*" (Harvard Business Review, June 2012). One might also argue that a modern media board needs expertise in social sciences, economics, politics and public administration.

The current ABC board has only one independent director with media experience, and none who could be described as having core digital, technology or social science experience. The most common skills and backgrounds held in the board overall are generic management, leadership, strategy and change management, according to an analysis of their official profiles and LinkedIn resumes. There is also significant finance and law experience, and a number of the members also have sat on boards of arts and culture organisations. While the board's existing expertise has value, and the gender balance is admirable, it leaves significant gaps in subject matter expertise. On balance, it appears that the ABC board appointments have been made to admirably represent stakeholders, but are deficient in areas of necessary experience for strategic direction.

Depoliticising ABC funding

TRIENNIAL FUNDING

Ostensibly, the ABC is funded on a three-year cycle. The ABC submits its projections for necessary funding over a coming three-year period. The Communications and Finance Departments review the projections, and weigh them against competing factors. The results are publicly announced in the Federal Budget.

The triennial funding cycle gives the ABC predictability in funding, and therefore a far greater ability to plan. This system came in almost thirty years ago, in 1987, when the ABC board convinced the Hawke government to institute the system. Historian Ken Inglis wrote that the ABC's previous annual budget bid-and-review cycle was "headache and distraction from the consideration of the ABC's purposes and practices."²⁰

However, under the Australian constitution, a triennial funding cycle can only be a convention, not binding law. The government of the day retains the ability to adjust the Federal budget year by year, according to their policies and in light of prevailing economic conditions. (The budget bills must, of course, pass both houses of parliament, unless the senate intends to block supply.)

In practice, the ABC's triennial funding cycle has become unsteady, and is not adhered to by governments. The 2014 Budget and MYEFO cuts to the ABC budget were the most dramatic, but they were preceded (to the ABC's advantage) by the Labor government's 2012-13 "special extension" of the old triennial, the 2011 allocation of the Australia Network contract, and small out-of-cycle increases for digital radio and ABC News Radio in 2008-09.

A natural tension exists between the ABC's desire for stable funding over three years and a government's need to manage the budget for any given year. Constitutionally ring-fencing a part of the federal budget is not a viable solution: While the overall function of the ABC might be suitable for future constitutional recognition, it would be unworkable to set the ABC's budget above that of other institutions and take it out of the control of the government of the day.

²⁰ Ken Inglis. *Whose ABC?: The Australian Broadcasting Corporation 1983–2006* [Kindle Edition]. Black Ink, 2006. Page 104/Position 1987

Instead, Governments need more incentive to treat the ABC's triennial budget convention with respect. That can come from greater transparency and wider engagement. Casual observers could be surprised to read that 2016 will be the start of a new ABC triennial funding cycle. Indeed few people outside of media industry circles are aware of this.

POTENTIAL MEASURES FOR CIVIC ENGAGEMENT IN ABC FUNDING

An improvement to this situation would be to open the triennial funding process to public input. The underlying principle is that the more people and stakeholders were involved in the ABC's triennial planning the greater the incentive for a legitimate result, and the higher the political cost of diverging from the agreed arrangement. The advent of digital platforms and networks makes it much more feasible for motivated stakeholders, such as regional audiences and production sectors, to be heard. Some suggestions are:

- The Communications Department should, when the end of each triennial approaches, call for public submissions regarding ABC funding. The call-out should be appropriately publicised to reach current and potential ABC audiences, industry groups, and stakeholders with special interests.
- When submissions are made, the Communications Department should hold physical and digital forums to examine the submissions and their implications. These should be held in a range of locations, and at a range of times.
- At the end of the consultation process, the Communications Department should publish a report summarising the debate.

Conclusion

Support for the ABC is remarkably widespread. The vast majority of the public finds value, and a wide range of stakeholders rely on its continued charter fulfilment. The increased politicisation of its charter, funding and governance in recent years is an affront to that public support. The key to lifting the ABC above ideological battles is to manifest its public and stakeholder support into formal processes of wide engagement, particularly around funding and board appointments.

