

# **SUBMISSION OF ABC ALUMNI LIMITED TO SENATE STANDING COMMITTEE ON ENVIRONMENT AND COMMUNICATIONS**

13 November 2018

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## **INTRODUCTORY STATEMENT**

ABC Alumni Limited represents a community of former staff and supporters of the Australian Broadcasting Corporation. We campaign for properly funded, high quality, independent, ethical, and free public media in Australia. We promote excellence across all platforms through education, mentoring, public forums and scholarships.

The selection of the Australian Broadcasting Corporation's Board and Managing Director must be free of political favouritism. Funding for the ABC must be guaranteed.

We welcome this inquiry into 'allegations of political interference in the Australian Broadcasting Corporation (ABC)'. It is vitally important that the Senate committee establishes the detail; the who, what, where and, most importantly, why of Managing Director Michelle Guthrie's dismissal and Board Chair Justin Milne's subsequent resignation.

We are alarmed by the widely publicised allegations made by Ms Guthrie about the conduct of Mr Milne (and any possible complicity by Board directors; for example, was there a failure to act on the allegations when presented with them?). Ms Guthrie's allegations if true, in whole or in part, clearly indicate that the current legislation and Chair/Board appointment processes fail to protect the ABC from overt and covert political interference. This makes the corporation vulnerable to punitive funding cuts that affect its ability to continue to provide the range and quality of fearless, independent broadcasting and online publishing for which it is known.

These issues are fundamental to the important contribution the ABC makes to Australian society.

In our view there is a need for amendments to the ABC Act and for changes to existing processes for the appointment of the Chair and Board directors. We urge senators to put political prejudices aside and recommend changes to legislation governing the ABC to ensure that the corporation is, and is seen to be, free from political harassment and interference.

The owners of the ABC are the taxpayers of Australia, not the government. They pay for it and according to all research are happy to do so. They need to have confidence that governments respect the statutory independence of the ABC.

## **NOTES:**

### **Submission Structure:**

Our submission addresses each of the Terms of Reference. **Section 1** scrutinises the existing public record about the events of September-October and raises fundamental questions that we hope will be answered in the course of the Committee's inquiry. **Section 2** considers legal and structural problems inherent in existing selection and appointment practices for the ABC Chair and Board, which have led to perceptions of political interference. **Section 3** discusses political influence, funding uncertainty and options, and governance.

### **Terminology:**

\* In this submission we have followed the practice of the Committee in using the term 'Chair' in preference to 'Chairperson' (as in the ABC Act) or 'Chairman' (Department of Communications).

\* References to 'the Act' mean the ABC Act.

\* References to 'ABC Alumni' mean ABC Alumni Limited.

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## **Section 1 Terms of Reference:**

The allegations of political interference in the Australian Broadcasting Corporation (ABC), with particular reference to:

- (a) the termination of ABC Managing Director, Ms Michelle Guthrie;**
- and**
- (b) the conduct of the Chair and the Board**

### **BACKGROUND**

#### **SACKING OF MS GUTHRIE**

Michelle Guthrie was sacked by the ABC Board on the morning of 24 September 2018, only half-way through her scheduled five-year term. The decision was conveyed to her by a delegation of Board members led by the Chair, Justin Milne. When publicly announcing her premature departure on ABC platforms, Mr Milne declined to outline specific reasons for the sacking.

Some ABC staff, and some former staff retrenched during her reign, were pleased to see Ms Guthrie leave the building. Morale was poor, she had presided over a dramatic restructuring which many felt was unnecessary and wasteful, and Ms Guthrie was regarded as not having become a forceful public advocate for the corporation.

Fairfax Media reported extensively on tensions which had built up in previous months between Ms Guthrie and Mr Milne. Ms Guthrie had been counselled by the Board about her performance. She had responded by promising to remedy her perceived inadequacies.

In an 11-page dossier sent to all Board members on 21st September Ms Guthrie alleged, among other things, that she had been under constant pressure from Mr Milne because the Federal Government was annoyed by some of the ABC's reporting.

(It is worth noting that the ABC employs more than 1000 journalists around the country and internationally who produce an extraordinary range of news and current affairs reporting 24 hours a day/seven days a week. ABC News has an admirable reputation for the high quality of its journalism and enjoys a very high level of trust by its many and varied audiences.)

In her dossier Ms Guthrie quoted from an email sent to her by Mr Milne on 8 May which focussed on Emma Alberici, chief economics correspondent and former *Lateline* presenter.

'They [the government] *hate her,*' Mr Milne wrote in the email, quoted by Fairfax Media.

1. *'We are tarred with her brush. I think it's simple. Get rid of her. We need to save the ABC – not Emma. There is no guarantee they [the Coalition] will lose the next election.'*

Ms Guthrie's dossier to fellow Board members also reported a telephone conversation in which she claimed Mr Milne berated her about ABC News's political editor, Andrew Probyn, saying that Prime Minister Malcolm Turnbull "hates" him, his employment was putting government funding for the digital transformation "Project Jetstream" at risk and she ought to "shoot" him. This was reported by Sydney's *Daily Telegraph* on 27 September.

One of the more comprehensive accounts of Ms Guthrie's dossier was published by the *Sydney Morning Herald* on 28 September:

<https://www.smh.com.au/politics/federal/dear-directors-explosive-dossier-reveals-bitter-war-between-michelle-guthrie-and-abc-board-20180928-p506p7.html>

The publication of these stories forced the Federal Government to announce an inquiry by the head of the Communications Department, Mike Mrdak (on which we will comment later in this submission).

## **RESIGNATION OF MR MILNE**

On the morning of Thursday 27 September, just four days after the sacking of Ms Guthrie, the ABC Board convened but asked that Mr Milne not join the conversation. The Board asked Mr Milne to stand aside pending investigations. Mr Milne decided, he said in the interests of saving the ABC from a media firestorm, that the best course was to resign.

Later that morning Mr Milne gave a substantial interview to Leigh Sales, the presenter of the ABC's 7.30: <https://www.abc.net.au/7.30/justin-milne-resigns-as-abc-chairman/10314302>

In the course of the 17-minute interview Mr Milne defended his conduct.

### **Excerpt (1) from the 7.30 interview:**

Justin Milne: *"I have never sent an email to Michelle Guthrie, or anybody else, which says 'You must sack Emma Alberici,' or Andrew Probyn, or anybody else. This is a piece of an email which I actually haven't seen, but nevertheless, it's a piece of an email that's taken out of a context in a conversation which was a confidential conversation, and a conversation which you'd expect should be had."*

If Justin Milne gives evidence to the Committee, we consider that he should be asked to clarify the following:

- How can it be that the alleged email is *"a piece of an email which I haven't actually seen"*?
- How can Mr Milne claim not to have seen the email, given that he went on to say, *"it's a piece of an email which was confidential?"*

- Did he write of the government's view of Ms Alberici: *'They fricken hate her. She keeps sticking it to them with a clear bias against them. We clear her as OK. We're tarred with her brush. I just think it is simple. Get rid of her.'*
- On what basis did he claim that *'she keeps sticking it to them with a clear bias against them.'*
  - Would not Ms Guthrie reasonably take *'get rid of her'* to be a formal direction from Chair to Managing Director?
  - By writing: *'We are tarred with her brush. I think it's simple. Get rid of her. We need to save the ABC - not Emma. There is no guarantee they [the Coalition] will lose the next election,'* was not Mr Milne declaring that for the sake of the ABC's relationship with a re-elected Coalition government, Ms Alberici must be sacrificed?

Questions needing clarification from Ms Guthrie include:

- Did she raise any or all of the issues contained in her 11-page document formally with Mr Milne and the Board prior to 21 September, by which time she had been informed that her position as Managing Director was under threat?
- Did Ms Guthrie raise these issues informally with the Chair and/or any member/s of the Board in May or at any time prior to delivery of her 11-page document in September?
  - If so, when and how?
  - If not, why not?
- In her time as Managing Director did Ms Guthrie experience attempts at direct or indirect political influence by the Prime Minister or his staff or public servants? Or by the Communications Minister, his staff or by any other Federal MP's.
- Was Ms Guthrie aware of any attempts at political influence at state government level?

**Excerpt (2) from the 7.30 interview:**

Justin Milne: *"Nobody from the Government has ever rung me and told me what to do in relation to the ABC. Nobody ever told me to hire anybody, fire anybody or do anything else. They absolutely didn't. I mean, I know that's the sort of narrative that's been running in the papers, but that absolutely never happened."*

In relation to the previous paragraph, it is ABC Alumni's view that there is a need for Mr Milne to itemise all his communications (including face-to-face interactions and

telephone calls) with the government during his tenure as ABC Chair and to table all emails, texts and other written correspondence between himself and both the Prime Minister and the Minister for Communications.

Mr Milne has not clarified the following:

- Did he keep a log of complaints, particularly from the Prime Minister and the Communications Minister, that were addressed to him personally, rather than or as well as to ABC management?
- How many times did Mr Turnbull complain to him personally, rather than or as well as to ABC management, and what were the issues?
- How many times did the Communications Minister, Senator Mitch Fifield, complain to him personally, rather than or as well as to ABC management, and what were the issues?
- Was Mr Milne advised by members of the ABC's Executive team and/or any government liaison people employed by the ABC that the government had communicated such concern about Ms Alberici and Mr Probyn that they should be sacked?
- On what basis did Mr Milne draw his implied conclusion that the government would act more favourably towards the ABC if Ms Alberici were removed from her position?

## **TURNBULL/GOVERNMENT COMPLAINTS**

In the interests of accuracy and context it is important to clarify the circumstances of the relevant government complaints about the journalism of both Ms Alberici and Mr Probyn.

### **Ms Alberici**

#### Corporate Tax stories

In February 2018 Prime Minister Turnbull lodged a series of complaints about two ABC Online stories written by Emma Alberici about corporate taxation, one a news piece and the other analysis, published on 14 February. The main story was re-edited and published again. The analysis piece was re-written and re-published later. A summary of ABC's internal investigation <https://about.abc.net.au/complaints/abc-news-online-265> was published on its website on 3 May 2018, with some aspects of the complaint being upheld and others not upheld. *The Australian* newspaper subsequently made claims about inaccuracies in Ms Alberici's reporting of the issue, in a story it published on 18 May, and these were rebutted in a statement posted on the ABC's website <https://about.abc.net.au/statements/statement-from-abc-news> on the same day.

### Research and Innovation Policy story

In May Prime Minister Turnbull sent a second series of 11 grievances to the ABC about Ms Alberici's reporting on the government's research and innovation spending. It was on 8 May immediately after Ms Guthrie reported to Mr Milne that these new complaints had been made that he is alleged to have suggested to Ms Guthrie that she should "*Get rid of her*" (Ms Alberici). Later that day the ABC's Audience and Consumer Affairs department reported that in its view, apart from one relatively minor factual error (UTS Professor Roy Green was described as a government adviser when he was not), the piece on innovation policy was "*accurate, newsworthy, in the public interest and presented in context.*"

The Communications Minister, Mitch Fifield, also complained about this and other ABC stories.

### **Mr Probyn**

Communications Minister Mitch Fifield lodged a complaint about an assertion made by Andrew Probyn, in a 7pm News story on 25 May, that the Labor Party had been "squeezed" by "the Prime Minister's decision to time the super-Saturday by-elections with a long-scheduled Labor national conference". Mr Fifield complained that the by-election date was chosen by the Speaker of the House of Representatives Tony Smith, not by the Prime Minister.

The ABC's News Corrections page <https://www.abc.net.au/news/corrections/2018-06-26/super-saturday-by-elections/9911334> records that: "*The story attributed that decision to the Prime Minister despite him having denied earlier that day that he had made the decision. The story should have included that denial and a similar statement from the Speaker of the House of Representatives. ABC News apologises for the error.*"

Michelle Guthrie claimed in her dossier that Mr Milne, after a meeting with Mr Turnbull and Senator Fifield, told her in a telephone conversation on 15 June that she should "shoot" Andrew Probyn.

### **DIGITAL INFRASTRUCTURE ISSUE**

During the 7.30 interview on 27 September Mr Milne emphasised his ambition for the ABC "*to build digital infrastructure for the future. That's going to cost a lot of money, my estimation about half a billion dollars.*"

### **Excerpt (3) from the 7.30 interview:**

Justin Milne: *And the ABC has started a dialogue with the Government and with the department to put a business case together to get half a billion dollars of funding up-front, which we will spend over two or three years, the benefits of which will come towards the end of a 10-year period.*

*But I mean, I think it would be naive not to understand that the relationship between the Government and the ABC is a difficult one, because on the one hand, the*



*Government provides the funding. On the other hand, the ABC is supposed to be independent of the guy who is providing the funding.*

*But you can't — you can't be — you can't go around irritating the person who is going to give you funding again and again and again, if it's over matters of accuracy and impartiality.*

*And in fact, what happened in those — in that particular area, was that we, the ABC, found that we were not accurate, nor impartial.*

ABC Alumni regards the above quotations as extraordinary. Mr Milne shows a blatant disregard for the principles of the ABC's legislated editorial independence. They reveal a Chair who has directly linked his desire for the government to provide a huge amount of extra funding for digital infrastructure with his concerns about "irritating the person who is going to give you the funding".

Mr Milne is right that the relationship between governments and the ABC can be difficult. But this is precisely why, over the course of decades, elaborate structures have been put in place by the ABC to ensure that compliance with high editorial standards is maintained and that complaints can be dealt with ethically and efficiently. Every Chair before Mr Milne has faced this challenge as required by the Act and it is reasonable to predict that future Chairs will face the same challenge.

Some of the questions that emanate from this part of the interview include:

- How is it appropriate to frame the future success or otherwise of the ABC's proposed \$500-million-dollar Jetstream digital initiative in the context of two reporters' alleged failings, however high profile they may be?
- What contacts with the Federal Government brought Mr Milne to the conclusion that the Project Jetstream was imperilled by Ms Alberici's and/or Mr Probyn's continued employment at the ABC?
- Does Mr Milne accept, with the benefit of hindsight, that he overreacted to what he perceived to be government anger at Ms Alberici?

**Excerpt (4) from the 7.30 interview:**

*Leigh Sales: By raising things, like the availability of Jetstream funding and the Government's view of the ABC in the context of these editorial discussions, did you, as the chairman, breach a wall — breach your role, I guess — to be the wall between politicians wanting to influence the reporting of the ABC and the ABC's editorial independence?*

*Justin Milne: No. Nobody has told me that I'm supposed to be a wall. I think, more what I'm likely to be is a conduit.*

*You know, the Government is a fundamentally important — fundamentally important — stakeholder in the ABC, and it's necessary, and I think it's the role of the board to be a conduit so that the left hand knows what the right hand is doing and we understand how people are feeling about things.*

*That doesn't mean — and people leap to a conclusion there and say, "Well, there you go — independence breached," — but I don't believe that's the case at all. I believe it's unthinkable that a chair would not be involved.*

ABC Alumni contends that the above exchange reveals a Chair who failed to understand the way that he should conduct himself in leading Australia's most important journalistic institution. Protecting the ABC's editorial independence is a key role for the ABC Board. The ABC is not "the left hand" of the government as Mr Milne implies, and it is not a "state" broadcaster which represents the government. As head of that Board Mr Milne should, we submit, have acted more as "a wall" and less as "a conduit".

### **Four Corners reveals more detail**

On 12 November the ABC's leading current affairs program *Four Corners* devoted an hour to examining the sequence of events which led to both Ms Guthrie and Mr Milne leaving the Corporation. Both were interviewed, Ms Guthrie for the first time since the events of late September.

### **Excerpt (1) from Four Corners:**

*Sarah Ferguson: Milne told the Board that the Alberici complaints could jeopardise funding. He said: We're planning to ask the govt for extra money for ABC 2.0 (Project Jetstream). Our chances of getting extra money – or perhaps even maintaining current funding may have been significantly diminished by this issue.*

*Michelle Guthrie: There was this real sense that we needed to please the government and that the government had expressed a number of complaints around Emma's reporting and that we needed to placate the government.*

This excerpt shows that Mr Milne was quite direct with the Board linking the issue of "the Alberici complaints" with extra funding and he was already calculating that the ABC's budget could be cut. Ms Guthrie took the message that there was a need to **please** and **placate** the government (our emphasis).

### **Excerpt (2) from Four Corners:**

*Sarah Ferguson: In early May on the eve of the Federal budget Alberici filed a story critical of the PM's signature Innovation Policy. The response came quickly. A lengthy complaint from the Minister for Communications Mitch Fifield. The Minister's complaint set off a chain of emails between MD and Chair.*

*Guthrie told Milne by email that the complaints about the innovation story, where there was 'one small error' was 'complete overkill' and that 'Mitch is out to use anything to discredit us, partic Emma.' Shortly after, in the May budget the government imposed an \$84 million "indexation freeze" on the ABC.*

*Milne urged Guthrie not to attack the government. 'Looks like a swiftie from our buddy, game is only just beginning. I reckon we put this behind us and stick to our current plan. It's the big prize we want, not the little one.'*

*Michelle Guthrie: I wasn't allowed to fight the government on the indexation cuts because we needed the bigger prize. I was getting texts from Justin saying 'don't criticise the government'.*

*Four Corners* reports that Guthrie came to the view that the "indexation freeze" meant that there was no prospect of getting half a billion dollars from the government for Project Jetstream. They argued about it. Milne wrote, *'I'm working very hard in*

*the background but we have to stop poking the bear (the government) if I'm to have a chance of getting it to dance to our tune.'*

On 15 June Mr Milne went to a meeting with Mr Turnbull and Senator Fifield to try and "sell" Jetstream. At 4pm the same day he rang Guthrie. She says that he shouted at her about the reporting of Political Editor Andrew Probyn.

Mr Milne denies shouting or berating at Guthrie, preferring the term "*an elevated conversation. We had a disagreement.*"

**Excerpt (3) from Four Corners:**

Sarah Ferguson: *Did the Prime Minister at any time communicate to you his dissatisfaction or anger with Probyn?*

Justin Milne: *Not in the sense that he rang up and said "I hate Probyn, you have to get rid of him" or anything else.*

*Four Corners* revealed that Guthrie was summoned to Milne's city office on 22 August. Milne read from a pre-written script, to which he said all Board members had had input, warning Ms Guthrie of deep concerns about her position as Managing Director.

Subsequently Ms Guthrie prepared her dossier for the Board detailing the pressure she felt she was under from Mr Milne to placate the government; and instances of the Chair's interference in management issues.

**IMPLICATIONS AND QUESTIONS REGARDING THE BOARD**

ABC Alumni believes that the Senate committee should question not just Mr Milne and Ms Guthrie, but all the other Board members as well.

- Was there a change in the relationship between the ABC and the government between the period in which Jim Spigelman was the Chair and when Justin Milne took the position in early 2017?
- Were Board members told by Mr Milne, as reported by *Four Corners*, that the government's complaints about Ms Alberici's tax stories could imperil extra funding for digital transformation?
- And were they told that this could even mean less triennial funding?
- Were Board members comfortable with the proposition that because the government was unhappy with Ms Alberici and later with Mr Probyn that these journalists should be sacked to placate the government?
- Were Board members told not to complain about the government's "indexation freeze" imposed in the May budget for fear that it could harm the case for digital funding?

## **PERSPECTIVES OF PAST ABC CHAIRS**

The perspectives of other former ABC Chairs regarding Mr Milne and recent events are informative:

**David Hill**, Chair of the ABC (1986) and Managing Director (1986-1995), told 7.30 (26 September): *“Never has the Chairman been involved in questions of hiring and firing staff. It’s not part of the job of the Chairman. It is an improper thing to have done... There was never any grounds for taking action against the journalists. You investigate complaints. You answer them as honestly as you can but you don’t go sacking staff just because you’ve been asked to by a minister or a Prime Minister.”*

It needs to be stressed here that Malcolm Turnbull, a close personal friend of Mr Milne, has denied the assertion voiced by Mr Hill that he asked for staff to be sacked.

**Donald McDonald**, who chaired the ABC for a decade (1996-2006) and was a close friend of then Prime Minister John Howard, asserted in various media reports including in an interview on 27 September with ABC 702 Breakfast presenter Robbie Buck that he only ever engaged in formal discussions with Mr Howard about the ABC. He also made clear on 7.30 where he considers that the ABC’s prime responsibility lies: *“The people who are paying the piper are the taxpayers, the general public and they should always call the tune.”*

## **THE MRDAK INQUIRY**

ABC Alumni acknowledges the inquiry ordered on 26 September by Communications Minister Mitch Fifield into the facts surrounding the firing of Ms Guthrie, which was conducted by Communications Department Secretary, Mike Mrdak. It is our view that the subsequent report, tabled in mid-October, shone some light onto the issues of Ms Guthrie’s sacking but was inadequate and inconclusive.

A key question that remains unresolved is whether Ms Guthrie was sacked because, for example, she was considered a poor public communicator and staff morale under her tenure was low, or whether a significant factor was her refusal to sack economics correspondent Emma Alberici and “shoot” political correspondent Andrew Probyn and/or she pushed back against other pressures from Mr Milne

Mr Mrdak interviewed both parties. Ms Guthrie told him she felt pressured by the Chair. Mr Milne acknowledged emailing and shouting at Ms Guthrie but claims he didn’t instruct her to dismiss anyone. One thing they agreed on, according to Mr Mrdak’s report, was that rows with the government over reporting by Ms Alberici and Mr Probyn, as well as over issues relating to the television program *Tonightly with Tom Ballard* and the timing of radio Triple J’s *Hottest 100* broadcast, *‘would affect the ABC’s standing, relationships and support within government, including for future investment and funding support.’*

That single sentence highlights the problem. Any government is entitled to challenge the accuracy of ABC reporters, to question the judgment of a comedy, to question a programming decision by an ABC network. What it is not entitled to do is to embark

on harassment or coercion such that ABC Board members and/or managers find themselves weighing the cost of principle.

## **PAST POLITICAL INTERFERENCE**

ABC Alumni are only too well aware that political interference has occurred repeatedly throughout the ABC's history. Governments become particularly sensitive at times of war. One famous example is Prime Minister Bob Hawke's carpeting in Canberra of the ABC's then Managing Director, David Hill, and Chair, Bob Somervaille, in late January 1991 during the first Gulf War, over the tone and content of the nightly TV News and Current Affairs program *The Gulf Report*. As Mr Hill told ABC historian K.S. Inglis, "Hawke was really wound up". Hill subsequently wanted Middle East expert Robert Springborg, whom Hawke regarded as biased, "labelled" so that his personal opposition to the war (which was never expressed on *The Gulf Report*) was made known to viewers. This suggestion was resisted by the then head of TV News and Current Affairs, Peter Manning. It was also believed at the time that Mr Hill wanted one of the presenters, Geraldine Doogue, moved off the program, although Hill denies this.

We would be happy to provide the Committee with a detailed submission on this broad subject if it were thought that this might help inform its deliberations.

## **Section 2 Terms of Reference:**

The allegations of political interference in the Australian Broadcasting Corporation (ABC), with particular reference to:

### **(c) the structure, composition and appointments of the ABC Board**

#### **THE NOMINATION PROCESS FOR BOARD AND CHAIR APPOINTMENTS**

A Nomination Panel for assessing and recommending candidates for ABC Board appointments was established by an Amendment to the ABC Act in 2012 in an effort to improve on previous practices which had led to perceptions of 'jobs for the boys/girls' and accusations of board stacking.

The Explanatory Memorandum to the Amendment stated that the assessment of applicants for appointment to the Board would "be undertaken by an independent Nomination Panel established *at arm's length from the Government*" (our emphasis): [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4430\\_ems\\_15504724-d4fd-4c05-bb2a-eb82b3faddc9/upload\\_pdf/347333.pdf;fileType=application/pdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4430_ems_15504724-d4fd-4c05-bb2a-eb82b3faddc9/upload_pdf/347333.pdf;fileType=application/pdf)

Under the amended Act, the Secretary of the Prime Minister's Department appoints part-time members of the Panel for three years. The Nomination Panel is responsible for assessing applicants for ABC director positions on the basis of merit. It recommends at least three to the Prime Minister for the Chair position or to the Minister for non-executive directors. The Minister determines criteria for Panel assessments by legislative instrument and can add to these criteria. [ABC Act, s.24W]

## THE PROCESS OF CHAIR/DIRECTOR SELECTION AND APPOINTMENT

We have preferred the description 'process' to 'system', which implies a degree of order, and, as will be seen, there are significant loopholes in the operations of the Panel.

### Reporting and Consultation

The Act states:

*When the Nomination Panel gives the Prime Minister a report concerning the appointment of the ABC Chairperson, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives before making a recommendation to the Governor-General that a particular person be appointed as Chairperson. [ABC Act, s.24X (1)]*

*... if the Prime Minister recommends that the Governor-General appoint as Chairperson a person who has not been recommended by the Nomination Panel, the Prime Minister must table his or her reasons for recommending the appointment of that person in each House of the Parliament no later than 15 sitting days after that appointment is made. [s.24X (2)]*

A joint media release dated 23 March 2017 from the Prime Minister and the Minister for Communications announced Mr Milne's appointment as Chair and concluded with the words: *'Mr Milne's appointment follows a selection process undertaken by an independent ABC Nomination Panel. Mr Milne was recommended by the Panel.'*

The Department of Communications' Annual Report must include "a statement in relation to each selection process for the appointment of a Director that was completed in that financial year". [ABC Act, s.24Y] The DCA Annual Report 2016-2017, reporting on compliance with this section, noted its provision of secretariat support for merit-based selection processes for two non-executive positions (not the Chair) on the ABC Board, completed in February 2017. A second process in March involved the ABC Chair position: <https://www.communications.gov.au/who-we-are/department/annual-reports>

However, while Mr Milne appears to have been on the list of recommended candidates put forward by the Nomination Panel, the Act leaves it open to the Communications Minister (or the Prime Minister, in the case of selecting the Chair) to ignore any or all of the Panel's recommendations and this has occurred on a number of occasions. The Australia Institute states: *'The majority of board appointments have been the 'direct recommendation' of Communications Minister Mitch Fifield rather than recommended by the nomination panel in what is the default process anticipated by the ABC Act.'* The Institute lists half a dozen such appointments between 2015 and 2018. [Depoliticising the ABC Board and Appointment Process, Sept 2018, pp7-8]

ABC Alumni notes that, of the current Board, Donny Walford, Dr Vanessa Guthrie and Joseph Gersh were *not* recommended by the Nomination Panel.

ABC Alumni asks the Senate Inquiry to consider why the Minister for Communications Mitch Fifield appears to have ignored his statutory responsibilities. What is the point of having an independent Nomination Panel if the Minister in most instances ignores its recommendations?

Former Liberal Minister and strong ABC critic Neil Brown wrote after his service on the Nomination Panel that *“The spirit relating to the nomination panel has not been complied with. I think it has been ignored and ignored in a very serious and repetitive way”*. <https://www.smh.com.au/politics/federal/more-honoured-in-the-abuse-than-application-abc-panel-member-hits-out-at-board-appointments-20180930-p506zy.html>

In appointing the Chair, the Prime Minister is required to consult with the Leader of the Opposition, although the manner of this consultation is not transparent and clearly should be.

ABC Alumni’s view is that this consultative process needs sharper definition in the Act, requiring the Prime Minister to make a statement to the House of Representatives (or on the Prime Minister’s website if the House is not sitting) prior to the appointment of a new Chair, stating clearly whether or not the leader of the Opposition is in agreement with the appointment, and if not, why the Prime Minister has decided to proceed with the appointment despite that lack of agreement.

Further, it may be worth exploring the viability of mandatory consultation being expanded to include a body such as the ABC Advisory Council or a cross-party committee.

As former ABC staff members at different periods over much of its history, we are keenly aware of efforts by governments of all political shades to influence the conduct of the Corporation. This happens by appointing as Chair, and as non-executive directors, people who are believed to be politically compliant, or who are known to be partisan champions of one side of politics or the other. This has not necessarily always worked in the favour of the government making such a choice.

The most respected chairs have been those who met the criteria set out in the Act by fiercely maintaining the independence and integrity of the ABC, regardless of the circumstances of their appointment or of their own perceived political inclinations.

Various safeguards aimed at depoliticising Board appointments, written into the Act since the establishment of the Corporation, have met with limited success. Time has shown that the degree of independence maintained by the Chair and Board depends to a great extent on the individuals involved, both in government and in the ABC Chair. There is no perfect solution, but much depends on the demonstrable implementation of a strong selection process free of interference.

## **APPOINTMENT AND ADMINISTRATION OF NOMINATION PANEL**

The establishment of the Panel was a well-intentioned effort to depoliticise the process of Board appointments. (The Act states that the Panel is not subject to

direction by or on behalf of government. S.24C) However, the Act does not specify criteria for selection of Panel members.

The role of the Secretary of the Prime Minister's Department in selecting members potentially leaves the process open to direct pressure and partisan choices. For example, the appointment of Neil Brown and Janet Albrechtsen to the Panel by the then secretary of the Department of Prime Minister and Cabinet (PMC) under the Abbott government, Dr Ian Watt, were seen by many as blatantly partisan appointments. In a column in *The Australian* this year Ms Albrechtsen stated that she was "invited to join the nomination panel by prime minister Tony Abbott".

<https://www.theaustralian.com.au/opinion/columnists/janet-albrechtsen/fangirl-ferguson-would-be-a-poor-fit-to-chair-abc/news-story/3e4f59d58784f92ea2567dcc02a28897> (paywalled)

As indicated earlier, the Panel is also involved with the Department of Communications in refining Board selection criteria and identifying possible ABC Board candidates. These relationships place it at the heart of government and vulnerable to political pressure.

Selection criteria for the Panel itself, and for its recommendations of Directors, should be publicly available, ideally on the Department of Communications website. At least one person on the Nomination Panel should have public media experience.

The Panel should be at arm's length from the government of the day, as originally intended. If it is to be seen as genuinely independent, a more transparent layer of oversight is desirable, for example by this Senate Standing Committee. This is particularly relevant at the consultation stage where the process can fail and the Panel's recommendations can be ignored.

If the Secretary of the Prime Minister's Department continues to select members of the Panel, the Act must stipulate that the Secretary should act according to his/her sole judgement and not be subject to direction by or on behalf of the Government, the Prime Minister or any other Minister/Member/Senator.

The ABC Alumni view is that it is no longer appropriate for the selection process for the ABC Nomination Panel Board to involve the Prime Minister's Department. We consider that the selection process could be managed by bodies which are not party-political. Two possibilities for the Committee to consider would be the Australian Public Service Commission (APSC) or the Auditor-General, given that the Australian National Audit Office already regularly audits the ABC's performance. It recently assessed the ABC'S independent complaints process and was complimentary.

<https://www.anao.gov.au/work/performance-audit/australian-broadcasting-corporation-complaints-management>

## **CRITERIA FOR CHAIR AND BOARD APPOINTMENTS.**

Criteria for the Nomination Panel's assessments of candidates are determined by the Minister by legislative instrument and can be added to by the Minister. [ABC Act, s.24W] An Explanatory Statement to ABC Act 1983 (Selection criteria for the appointment of non-executive Directors) Determination of 2013



<https://www.legislation.gov.au/Details/F2013L02091/Explanatory%20Statement/Text> states:

*The selection criteria are intended to reflect the duties, skills and desirable attributes of non-executive Directors on the ABC Board and to address the requirements set out under subsection 12(5) of the Act in relation to a person's suitability for appointment.*

*Subsection 4(1) requires candidates to demonstrate substantial experience or knowledge in at least one of the following fields:*

- the media industry, including broadcasting, digital media and/or digital technologies;*
- business or financial management;*
- corporate governance, including managing large and/or complex operations in the private, public, or not-for profit sector;*
- cultural industry and/or cultural policy, including its administration.*

*The fields listed in subsection 4(1) reflect the operations of the ABC as a broadcaster and provider of digital media services, the ABC's status as a large and complex organisation, and the ABC's functions under its Charter (see section 6 of the ABC Act). Amongst other things, under its Charter, the ABC is required to contribute to a sense of national identity and reflect the cultural identity of the Australian community, and to encourage and promote the musical, dramatic and other performing arts in Australia.*

*Subsection 4(2) sets out the duties and attributes that candidates are expected to possess. These are:*

- demonstrated high level leadership and vision;*
- a commitment to high standards of governance;*
- high-level judgment;*
- the highest standards of professional and personal integrity; and*
- an understanding of the media environment, in particular the ABC, its Charter and its place within the Australian community.*

In 4(2) the words 'expected to possess' suggest that these attributes were considered essential. The criteria listed seem to us to be an admirable definition of requisite attributes for both the ABC Chair and the Board, and an excellent guide for the conduct of people holding these positions. Recent events at Chair and Board level suggest that these objectives have not been applied to the selection of appointees, nor have they followed them once appointed.

The Panel is currently able to recommend ‘at least three’ candidates to the Prime Minister (Chair) or Minister (non-Chair, i.e. directors). We submit that this should be changed to allow the Panel to recommend a maximum of three candidates. Three would provide a reasonable number of candidates chosen on merit from which the Minister could choose.

A member or former member of the Parliament of the Commonwealth, a member or former member of State or Territory Parliaments, and current or former political staff members are currently barred from selection for a period of one year. [s.5AA] This period is insufficient to distance these individuals from their former roles and from undesirable contact with possible political pressure, and in our view should be extended to three years.

A section [s13A(5)] concerning the term of office of a staff-elected director was inserted in the Act for specific purposes at a specific time and is no longer relevant. In our view it should be deleted and the term of office brought into line with that of other directors.

ABC Alumni would like to see an additional Amendment inserted into the Act specifying that the overall composition of the Board should reflect a diversity of cultural, business, media and other stakeholder experience. While the desirable qualifications laid down for appointment to the ABC Board differ from those specified for the Special Broadcasting Service (SBS), the relevant section in the SBS Act can serve as a model from which to extrapolate a suitable overall balance in the expertise required of an ABC Board. [SBS Act, s.17(2)]

## **APPOINTMENT AND CONDUCT OF ABC CHAIR**

The dangers inherent in the deficiencies of the selection process become apparent when the selection of a Chair is not supported by the Nomination Panel, and/or is perceived as being what is colloquially referred to as a “captain’s pick”.

Mr Milne is on the public record as a long-time friend of Malcolm Turnbull, who was Prime Minister at the time of his appointment. Mr Milne encountered Mr Turnbull in connection with the company OzEmail, in which Mr Turnbull was an investor. Mr Milne told the *Australian Financial Review* in an interview in July 2017 shortly after his ABC appointment:

*“After the OzEmail years, our paths sort of crossed a bit, so essentially we just became friends. It’s not like Malcolm and I were bosom buddies who go to the club every Friday night together. We’ve never been. We’re very good friends, and our families are friends, but I’m not claiming to be one of Malcolm’s closest friends.*  
<https://www.afr.com/business/media-and-marketing/tv/justin-milne--from-father-of-oz-broadband-to-abc-chair-20170709-gx7qgc>

A “very good friendship” such as existed between Prime Minister Turnbull and Mr Milne should have sounded an alarm at the selection stage. That it apparently did not do so emphasises the importance of strengthening the selection process to avoid such a situation arising again.

If a Prime Minister were found to have used a Chair as a direct conduit to the ABC for political advantage it would be a clear breach of the Act which specifies that it is the duty of the Board to **“maintain the independence and integrity of the Corporation”**. [s.8.1(b)]

It is regrettable that a search for a new Chair has been set in motion in the current environment of uncertainty leading up to a Federal election. A hasty decision on this appointment would be ill-advised and could lead to further problems of the kind recently experienced. Consideration of any ABC Board appointments, including those of non-executive directors, by the Nomination Panel and the Ministers concerned, should be accorded adequate time and should involve more than token consultation with the Opposition leader and possibly smaller parties.

### **FUNDING CUTS, STAFF MORALE AND THE EFFECT ON EDITORIAL INDEPENDENCE**

As former staff members, many of us maintain lines of communication with our former colleagues. It is patently clear that morale in the ABC is at an all-time low as a result of a sequence of funding cuts and 15 efficiency reviews in the past 13 years.

The strain of treading a line between the Charter requirements concerning the provision of programs and making do with increasingly less funding, combined with the need for consequent staffing losses and diminished resources for program-making, have taken a heavy toll.

Such an environment can breed timidity because of the apparently well-founded fear that giving offence to government might result in further assaults on the ABC's independence, funding and functions.

The ABC is facing challenges unprecedented in its history from rapid, massive technological change and the spread of digital media, with impacts on audiences' media choices and on every aspect of the ABC's services. In an environment of extreme uncertainty, ensuring that the Corporation maintains its integrity and independence has never been more important.

### **Section 3 Terms of Reference:**

The allegations of political interference in the Australian Broadcasting Corporation (ABC), with particular reference to:

**(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.**

ABC Alumni represents former staff and contractors to the ABC, as well as supporters of publicly owned media. We seek from the Committee the right to provide a supplementary, detailed submission to this inquiry on points (d), (e) and possibly (f) when we have canvassed our members on recommendations to strengthen the funding base and mechanisms to protect the ABC from political harassment and outright interference in its editorial processes.

What is abundantly clear is that the Coalition government, urged on by commercial media organisations in pursuit of financial benefit, has been overtly hostile to the ABC.

It has used funding as a weapon. A \$254 million cut announced in late 2014, a further \$84 million to be cut over the next triennium starting in July 2019, plus no clarity yet on whether the government will roll over another \$43 million to continue a funding allocation which has been used to build newsgathering in regional and rural areas. If these cuts are not reversed hundreds more ABC staff will be sacked.

In addition, the government cancelled after one year a \$223 million ten-year contract won by the ABC to provide broadcasting and online content to Asia and the Pacific. Belatedly, this year, the government realised the disastrous consequences of that decision, acknowledging a loss of Australian “soft” power in Asia/Pacific at precisely the time that China is engaged in a multi-dimensional diplomatic effort including a far-reaching expansion of broadcasting. After commissioning a review of this issue, the Prime Minister announced, 7 November, significant diplomatic and military initiatives to improve engagement with the region. As for broadcasting he said, "I've been speaking to Free-TV Australia and the commercial TV networks about how we get more of our Australian content into the region. Our Pacific family switching on to the same stories, news dramas and sports we are watching at home." The *Australian Financial Review* described this part of the announcement as “a snub” to the ABC.

The current funding model for the ABC has been so abused by government that it is no longer fit for purpose. In a supplementary submission (referred to above), ABC Alumni will provide recommendations to the inquiry on alternative mechanisms to provide the ABC with the financial security it needs to engage in long-term planning, including for digital transformation, while removing the nexus with political influence.

We thank the Committee for its consideration of this submission and would be willing to give verbal evidence to the committee if that would be helpful.

**Submitted by:**

*Jonathan Holmes, Gil Appleton, Greg Wilesmith, Helen Grasswill, Peter Manning and Matt Peacock* on behalf of ABC Alumni Limited [ACN 628 088 371]

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## APPENDIX: LIST OF RECOMMENDATIONS

ABC Alumni Limited recommends that:

- (a) the process required in the Act of consultation between the Prime Minister and the leader of the Opposition on the appointment of the ABC Chair be more clearly defined; the Prime Minister's mandatory statement to the House should say whether the leader of the Opposition is in agreement and, if not, why the Prime Minister has decided to proceed with the appointment;
- (b) the Committee explore the feasibility of mandatory consultation being expanded, for the purposes of seeking a range of views on the appointment of an ABC Chair, to include a body such as the ABC Advisory Council and/or the Senate Standing Committee on Communications;
- (c) the selection criteria for appointments to the Nomination Panel, and the criteria for the Panel's recommendations of non-executive Board Directors, should be publicly available, ideally on the Department of Communications website; we support the inclusion on the Nomination Panel of at least one person with public media experience;
- (d) the Nomination Panel should be at arm's-length from the government of the day, as originally intended; if it is to be seen as genuinely independent, we recommend a more transparent layer of oversight, by a cross-party entity such as this Committee;
- (e) in the interests of the arm's-length principle, the selection of the Nomination Panel should not be the responsibility of the Prime Minister's Department; we recommend that the Committee consider for this purpose a body such as the Office of the Auditor-General, which already audits the ABC's performance;
- (f) if the Secretary of the Prime Minister's Department continues to select members of the Panel, we recommend that the Act stipulate that the Secretary act according to his/her sole judgement and not be subject to direction by or on behalf of the Government, the Prime Minister or any other Minister/Member/Senator;
- (g) the exemplary criteria for ABC Board membership set out in the Explanatory Statement to the Amendment to the ABC Act 2013 be implemented as intended, and the process of appointment be designed to ensure that all recommended candidates fully understand their roles and responsibilities;
- (h) the Act be amended to require that ABC Board collectively reflects a diversity of cultural, business and media experience (the relevant section in the SBS Act serves as a model from which to extrapolate a suitable balance in the expertise required of an ABC Board);
- (i) the requirement that the Panel recommend "at least three" candidates to the Prime Minister (for the Chair) or Minister (for non-Chair, i.e. directors) be changed to allow the Nomination Panel to recommend a *maximum* of three

candidates, so as to provide a reasonable number of candidates chosen on merit from which the Minister can choose;

- (j) one year is an insufficient period for the barring of a member or former member of the Parliament of the Commonwealth, a member or former member of State or Territory Parliaments, and current or former political staff members, and this period should be extended to three years [s.5AA]; and
- (k) the section [s13A(5)] concerning the term of office of a staff-elected director, which was inserted in the Act for specific purposes at a specific time, is no longer relevant so should be deleted and the term of office brought into line with that of other directors.

###ends###