

## SUBMISSION TO SENATE INQUIRY INTO POLITICAL INTERFERENCE IN THE ABC

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### Introduction

I thank the Committee for giving me the opportunity to make this submission. It is made on my own behalf and does not necessarily represent the views of the Centre for Advancing Journalism at the University of Melbourne.

I begin with a definition of “political interference” and of “editorial independence” as those terms are used in the submission. This is followed by a discussion of the concept of editorial independence, its applicability to the ABC, and a brief history of ABC independence more broadly.

The submission concludes with some proposals for strengthening ABC independence against political interference, with a particular focus on editorial independence.

### Defining “political interference”

The phrase “political interference in the ABC” as it applies to the Committee’s terms of reference needs to be defined with some precision.

It is obvious that not all political action that bears upon the ABC amounts to interference, even though it often has a decisive effect on the ABC’s operations.

The typical types of action that touch upon the ABC are legislative measures, funding, appointments to the ABC Board, and sustained campaigns against ABC editorial content, usually on the grounds of alleged bias. Legislative and funding decisions are political; appointments to the Board are made by the Governor-General on the advice of the Government, making them also inherently political. The campaigns are nakedly political both in nature and intent.

Of course accountability on the part of the ABC to government and the wider society is both necessary and desirable, and some of the political actions that affect the ABC are directed at that purpose. It is when those political actions are calculated to undermine the ABC’s independence that they become improper. It is they that can be classified as political interference, and it is to that class of political action that this submission is addressed.

Over the ABC’s 86-year history, governments of all political persuasions have used these levers -- legislation, funding, board appointments and hostile campaigns -- for this improper purpose.

However, the most recent upheaval in which the ABC’s managing director and editor-in-chief, Michelle Guthrie, was sacked, and the chair, Justin Milne, subsequently resigned shows the destructive effects this kind of political jobbery can have on the ABC independence as well as its stability.

Since those events provide the proximate reason for the convening of this Senate inquiry, my submission will focus on the issue of political interference in the ABC of a kind calculated to undermine the ABC's independence.

That independence has two elements: operational independence concerning such matters as transmission arrangements, budget management and decisions about corporate strategy, and editorial independence which is specifically concerned with the news and current affairs service of the ABC. This submission is addressed primarily to the latter.

## The concept of editorial independence

Editorial independence is not to be equated with editorial licentiousness. It does not leave journalists at large to publish or broadcast anything they like.

Editorial independence is about the freedom to publish or broadcast, without fear or favour, material that has the character of news. Such material will exhibit at least some of what are called "news values", and commonly will be both interesting to the public and in the public interest.

"News values" are well established in media literature. They include magnitude, conflict, shock, negativity, timeliness, cultural or geographic proximity, significance, human empathy, novelty, and consonance with how audiences see the world.<sup>1</sup>

The public interest is not the same as public curiosity and can be elusive to define, but the definition used by the Herald and Weekly Times is as good as any:

"Public interest" is defined as involving a matter capable of affecting the people at large so that they might be legitimately interested in, or concerned about, what is going on, or what might happen to them or to others.<sup>2</sup>

In other words, the public has a clear and definable stake in the subject-matter.

It is commonly the case that material meeting these criteria upsets people with a vested interest in the matter, and very often these people wield power: advertisers, politicians, captains of industry, big institutions, celebrities, occupants of high office.

If editorial independence is to be preserved, editors and journalists making decisions about what to publish must be free to do so without being cowed by potential blowback from these vested interests, or by the desire to do some vested interest a favour.

In commercial media, editorial independence finds practical expression in the separation of editorial operations from commercial and corporate operations.

This is sometimes referred to as the separation between church and state. While this might sound like a conceit, it nonetheless reflects the fundamental importance of creating a newsroom culture in which decisions on publication are made on the basis of relevant considerations such as news values, accuracy, verification, impartiality and the public interest, and not on irrelevant considerations such as corporate, political or commercial pressure.

The essentials of editorial independence were captured in the Charter of Editorial Independence developed by *The Age's* editorial staff and adopted by the board of the Fairfax company in 1988. The

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<sup>1</sup> See, for example, Harcup T. and O'Neill D. (2001), "What Is News? Galtung and Ruge Revisited." *Journalism Studies - JOURNAL STUD.* 2. 261-280. 10.1080/14616700118449.

<sup>2</sup> Herald and Weekly Times Ltd Editorial Professional Conduct Policy.

charter was developed when it looked as if the company might fall into the hands of the late Robert Maxwell, a British media proprietor notorious for improperly interfering in editorial decision-making. The charter has been subsequently endorsed by all owners of Fairfax, including most recently by Nine Entertainment.

The key provisions are:

- That the proprietor(s) acknowledge that journalists, artists and photographers must record the affairs of the city, state, nation and the world fairly, fully and regardless of any commercial, political or personal interests, including those of any proprietors, shareholders or board members.
- That full editorial control of the newspapers, within a negotiated, fixed budget, be vested with the editors of the papers and that the editors alone shall determine the daily editorial content of the newspapers.
- That the editors alone shall hire, fire and deploy editorial staff.
- That the editors shall not sit on the board of the owning company or companies, or any non-publishing subsidiary companies, and shall not be directly responsible to the board but to its appointed management.
- That the editors must at all times carry out their duties in a way that preserves the independence and integrity of the mastheads.

### Editorial independence and the ABC

If the material published so far about the sacking of Ms Guthrie and the resignation of Mr Milne is correct – and its veracity was reinforced by the testimony they both gave on 4 Corners (12 November 2018) – then it is clear that the attempts by Mr Milne to have two senior ABC journalists sacked because the Government “hated” them was a serious assault on the editorial independence of the ABC.

It represented a clear breach of the first principle of *The Age* charter as listed above.

The Government’s view about a journalist is not a relevant consideration for a media organisation to take into account if it wishes to uphold its editorial independence.

In a liberal democracy such as Australia, there is a necessary tension between media organisations and governments. This has its roots in what has come to be called the Fourth Estate function of the media: the function of holding others in power to account.

A media organisation that sacks, or threatens to sack, a journalist because he or she is disliked by the Government, abandons its Fourth Estate function. In doing so, it breaches the trust that society places in it to perform the functions expected of the media in a liberal democracy.

In the event, the two senior ABC journalists, Emma Alberici and Andrew Probyn, were not sacked, but Michelle Guthrie, who as managing director and editor-in-chief refused to sack them, was herself sacked.

Without knowing more than is currently on the public record, it is impossible to know exactly how big a part the dispute between Mr Milne and Ms Guthrie over editorial independence played in the Board’s decision to sack her.

However, the evidence provided by 4 Corners clearly showed it played a large part in the breakdown of their relationship that led first to her dismissal and then to his resignation. More specifically, it was clear that Ms Guthrie’s circulating of a dossier of emails in which Mr Milne had stated a strong

preference for the removal of Alberici and Probyn, was the catalyst for the Board's request to Mr Milne that he step aside.

Aside from plunging the ABC into a crisis unprecedented in its history, this episode points up a fundamental weakness in the ABC's editorial structure: the combining of the two offices of managing director and editor-in-chief.

This combination is inherently conflicted. Each has different responsibilities and they cannot always be reconciled. The managing director is responsible for the corporate well-being of the organisation, which includes advancing its corporate interests. As a member of the Board, the managing director is bound by Board decisions and cannot act in ways that are inimical to that bond.

These considerations apply to the ABC as much as to commercial media organisations. That is why in the fourth principle from *The Age* charter listed above it is stated that the editors shall not sit on the board of the owning company or companies, or any non-publishing subsidiary companies, and shall not be directly responsible to the board but to its appointed management.

The editor-in-chief is responsible for producing an independent news service regardless of anyone's corporate interests, including those of his or her own corporation. He or she cannot do this if bound by Board solidarity or inhibited from publishing stories that may damage the corporation's interests when those stories are in the public interest, or open to direct lobbying from fellow members of the Board.

A further consideration is that the skills needed for the two roles are not necessarily to be found in the one person. As it happens, they were found in the person of Mark Scott, who had been a senior journalist at Fairfax before becoming managing director of the ABC.

But they most decidedly were not found in the person of Michelle Guthrie. Whatever her skills, being an editor-in-chief was not one of them. Throughout her tenure, she showed scant understanding of the role, although on the face of it she deserves some credit for taking a stand at the last minute against Mr Milne's pressure to sack Alberici and Probyn.

Not long after her appointment at the ABC, she gave a keynote address at the 2016 New News conference run by the University of Melbourne's Centre for Advancing Journalism. In answer to a question from the floor, she said she was not responsible for every story that appeared on the ABC. Well, the fact is that as editor-in-chief she was responsible for every story. The journalists present were astonished.

It follows that one big lesson from the current upheaval at the ABC is that the roles of managing director and editor-in-chief should be separated.

As Creighton Burns said when editor of *The Age*: "Managing directors exist to protect editors from boards."

That does not mean editors are immune from pressure. Far from it. Politicians and other powerful people try it on every day. What it does mean is that when that pressure is exerted through the board, the managing director acts as a buffer and defender.

Nor does it mean that editors and journalists are shielded from accountability. When stories are wrong or commentaries ill-informed, corrections are required. In well-run media organisations such as the ABC and *The Guardian*, decisions on complaints are made at arm's length from the journalists involved, independent of both the editor and the board.

Attempts to go around these processes, as Mr Milne evidently tried to do, also represent violations of editorial independence.

Questions also remain about the role of other members of the ABC Board in the current matter. Reports in the Fairfax newspapers, which so far stand unchallenged, stated that at the time of her sacking, Ms Guthrie circulated a dossier containing emails in which Mr Milne set out his views about Alberici and Probyn, as well as on other matters bearing on the ABC's editorial independence.

Paragraph 1(b) of the ABC charter, set out in Section 8 of the ABC Act 1983, requires members of the Board to maintain the independence and integrity of the ABC.

Therefore, the following questions need to be addressed to each and every member of the existing board:

- What did they know about Mr Milne's attempts to undermine the ABC's editorial independence as evidenced by the Guthrie dossier?
- When did they know about it?
- What did they do about it?

According to Mr Milne on 4 Corners, the other members of the Board did indeed know of the contents of the dossier and did nothing. And according to Ms Guthrie, when she raised the issue of Mr Milne's political interference, they did not respond.

So the question arises: Are they too in breach of S8 1(b) of the ABC Act? This would seem to be a relevant avenue of inquiry for the Committee.

## The history of ABC independence

In the lead-up to the creation of the ABC in 1932, the independence of the organisation was a foundational principle supported by all sides of politics.

The ABC historian Ken Inglis records a meeting between the then Prime Minister, Joe Lyons, of the United Australia Party, and a deputation including the founder of the Liberal Party, R. G. Menzies, in which the Government was urged to establish the ABC on an independent basis as modelled by the BBC.<sup>3</sup> The Labor Party likewise supported this principle.

In the event, the degree of independence recognised as applying to today's ABC was hard-won and was not clearly established in legislation until the ABC Act of 1983.

In the original legislation, enacted in 1932, the Minister (the Postmaster-General) could require the ABC to broadcast any matter he directed as being in the public interest and could prohibit the ABC in writing from broadcasting any matter.<sup>4</sup>

In 1948 the ABC Act was amended giving the ABC full discretion over "political or controversial" broadcasts but retaining the Postmaster-General's general powers of censorship. The last time the power was exercised, incidentally, was in 1946 when he forbade "talks relating to sex matters or venereal disease".

The 1948 Act also changed the source of funding from a licence fee levied on the owners of radio receivers to general revenue.<sup>5</sup> Thus was placed in Government hands control of a lever of influence

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<sup>3</sup> Inglis, K. S. (1983), *This is the ABC*, Melbourne, Melbourne University Press, p17.

<sup>4</sup> Ibid. p18.

<sup>5</sup> Ibid. p186.

over the ABC that successive administrations on both sides of politics have not hesitated to use, on occasion punitively.

Finally, the 1948 Act provided for the creation of two positions on the Commission to be filled by public servants. The appointees came from Treasury and the Postmaster-General's department, and one of the former was implicated in the suppression of a book about the ABC by Clement Semmler, who for six years was Assistant Controller of Programmes.

The issue of the politicisation of the ABC Commission and later the Board has been contentious for decades. Inglis notes that the governments of Gough Whitlam (Labor) and Malcolm Fraser (Liberal-National) "had both replaced every commissioner appointed by the preceding regime, each giving the governing body a preponderance of people sympathetic to its own"<sup>6</sup>.

Inglis observed that pressures from politicians, vested interests and community groups made every affirmation of independence an effort.<sup>7</sup> Over the decades, this relentless struggle wore down successive chairs and senior managers. They became, in Inglis's words, "weather-cocks, trimmers, Vicars of Bray, who needed no prompting to act conservatively and if need be repressively". It was a culture that encouraged the "pre-emptive buckle", an immortal turn of phrase attributed to Michael Cosby in Radio Special Projects.<sup>8</sup>

Mr Milne's reported attempt to stop Triple J moving its Hottest 100 from Australia Day because of the anticipated disapproval of the then Prime Minister, Malcolm Turnbull, is a classic example of the "pre-emptive buckle".

A highly significant development in the strengthening of ABC independence was the appointment by the Fraser Government in 1979 of an inquiry chaired by Alex Dix, a businessman, to review the operations of the ABC. This extensive and thoroughgoing inquiry formed the basis for a complete overhaul of the ABC Act ultimately enacted by the Hawke Labor Government in 1983.

The Act corporatised the ABC, created a Board in place of the Commission, established the position of managing director (and editor-in-chief) and included a charter specifying the duties of the Board<sup>9</sup>.

Relevantly for this inquiry, that charter included at paragraph 1(b) the duty to maintain the independence and integrity of the Corporation.

The provisions of the 1983 Act received broad bipartisan support, but that was not to immunise the ABC from subsequent attacks by both sides of politics.

In 1984 Bob Hawke, as Labor Prime Minister, accused the ABC of bias against his government and made threatening noises about retaliating with funding cuts. In 1991, during the first Gulf War, Hawke assailed the ABC for broadcasting an analysis of the war that was "loaded, biased and disgraceful".<sup>10</sup>

In 2003, during the second Gulf War, Senator Richard Alston, as Minister for Communications in the Liberal-National Government of John Howard, lodged 68 complaints of bias in respect of the ABC's coverage of that war. During the protracted process of resolving those complaints, the Government refused to give the ABC a cent in supplementary funding<sup>11</sup>.

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<sup>6</sup> Inglis, K. S. (2006) *Whose ABC?* Melbourne, Black Inc, p243.

<sup>7</sup> Inglis (1983) *op. cit.* p191.

<sup>8</sup> *Ibid.* p395.

<sup>9</sup> Inglis (2006) *op. cit.* pp 6, 7.

<sup>10</sup> *Ibid.* p228

<sup>11</sup> *Ibid.* pp545-547.

It is clear from this brief history that even though the ABC's independence is asserted in legislation, by the choice of board appointments, by using funding as a means of punishing the ABC and by engaging in sustained and sometimes hostile campaigns of complaint about ABC editorial content, successive governments have sought to undermine that independence and in particular the ABC's editorial independence.

### Some proposed solutions

As the foregoing indicates, governments use four levers of influence to exert political pressure on the ABC, including to seek to undermine the ABC's editorial independence:

1. Legislative measures
2. Funding
3. Appointments to the Board
4. Sustained and sometimes hostile campaigns of complaint

The present crisis in which both the chair and the managing director have gone more or less simultaneously has been a consequence of political pressure of an improper kind, in which funding, Board appointments, a sustained and hostile campaign against the ABC on grounds of alleged bias, and threats of legislative change have all been deployed.

Funding has been cut by \$338 million since 2014. Board appointments, aside from Mr Milne's have included the chair of the Minerals Council, a political lobby group that is a central party to the current debate over climate change. The campaign on bias has been typified by the Government's preparedness to support Senator Pauline's Hanson's complaints about bias, including agreeing to her proposal for include "fair" and "balanced" in the ABC Charter, requiring an amendment to the ABC Act. These requirements already exist in the ABC's Editorial Policies.

It was in this climate that the Liberal Party's peak council voted in June this year to privatise the ABC. The Government immediately repudiated the decision, but the vote itself demonstrated the level of hostility against the ABC that exists in some quarters of the Liberal Party.

We live at a time when our democratic society can least afford to have its most trusted source of news<sup>12</sup> destabilised in this way. The erosion of truth and trust in public discourse is shaking democracies across the globe.<sup>13</sup>

We live in an era of so-called fake news. People are confused about whom to believe. To make it worse, public discourse is being fragmented by the influence of social media and the associated development of echo-chambers in which citizens are increasingly isolated from news and information that runs counter to their own views.<sup>14</sup> The ABC is part of the antidote to this problem because it helps provide a common conversation that societies need in order to decide how to respond to issues as they arise.

Thus it is incumbent on those in public life to recognise that the responsibility to not unjustifiably undermine trusted sources of the common bedrock of news and information is heavier now than at any time in the past.

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<sup>12</sup> See, for example, Finkelstein, R. & Ricketson, M. (2012) *Report of the Independent Inquiry into Media and Media Regulation*, Canberra, Australian Government Printer, Annexure F pp375-404.

<sup>13</sup> Vaidhyathan, S. (2018) *Anti-social Media: How Facebook Disconnects Us and Undermines Democracy*, Oxford, Oxford University Press, p13.

<sup>14</sup> Sunstein, C. (2017) *#republic: Divided Democracy in the Age of Social Media*, Princeton, Princeton University Press.

Unjustifiable undermining includes doing so for improper purposes, including vengefulness and the prosecution of ideological hostilities.

At the same time, a public-sector broadcaster such as the ABC cannot expect to be immune to political pressure and political action. It receives public money. It is expected to perform certain public duties laid out for it in a specific Act of Parliament, and it is properly to be held to account for what it does and how it does it.

The challenge is to strike a balance between these two imperatives.

The present crisis has many causes, some of which are doubtless hidden from public view because they concern details of the relationship between the Board and the previous managing director.

However, it also has evident causes that are publicly visible: severe cuts to funding; appointments to the Board which have resulted in an unusually narrow spread of skills focused heavily on business; the appointment of a chair who was a business associate of the Prime Minister who appointed him; a sustained period of hostile criticism which created pressures on editorial independence that were not able to be resisted without the calamitous implosion of the ABC's most senior corporate leadership.

In seeking solutions designed to minimise the risks of this happening again, and to rebuild stability in the ABC, it is proposed to address the four levers of influence listed above.

**On funding:** It is plainly unreasonable to completely insulate the ABC from a Government's overall budgetary strategy. However, Part VI of the ABC Act could usefully be amended to include some mechanism for guaranteeing the agreed level of funding for a triennium, and placing an obligation on the Finance Minister to provide a statement to Parliament giving reasons for any reduction in the agreed level.

**On non-executive Board appointments:** The Act sets out a detailed merit-based appointment process. In recent times it has been routinely circumvented. The existing process should be made mandatory, and the Act should be amended so that if the minister rejects a merit panel's recommendation for a board member, he or she must report to Parliament who has been rejected and the reasons for the choice of replacement.

It may be argued that this would deter good people from applying lest they be subject to the public humiliation of being named as having been rejected by the Minister. This is to underestimate the resilience of people likely to put their names forward and to ignore the fact that being rejected by a Minister is likely to be seen by genuinely independent-minded people as a badge of honour, not a matter for embarrassment.

The narrowness of expertise on the existing Board is a matter of concern. In the past, ABC Boards have drawn people from the arts, education and science as well as from business and finance. The desirability of breadth on the Board should be given specific expression in S24W of the Act, which deals with selection criteria.

The appointment of chair should remain in the hands of the Prime Minister, but with the same disciplines concerning merit as applies to other non-executive directors.

**On campaigns of complaint:** These are political exercises and little can be done to stop them. However, a change in the structure of the ABC's editorial leadership would mitigate the worst effects.

That change is to separate the roles of managing director and editor-in-chief.

The editor-in-chief should be a highly qualified journalist and should be made responsible for the news and current affairs service and nothing else. He or she should report to the Board through the



managing director. He or she should be given an agreed budget with complete discretion as to how it should be spent, and the unfettered authority to hire, fire and deploy editorial staff.

**On legislative measures:** Amend the ABC Act to give effect to these proposals.