

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

Referral

1.1 On 16 November 2017, the Senate, on the recommendation of the Selection of Bills Committee, referred the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017 (the bill) to the Senate Environment and Communications Legislation Committee (the committee) for inquiry and report by 9 February 2018.¹

1.2 On 12 February 2018, the Senate granted an extension of time to report until 16 February 2018.²

Purpose of the bill

1.3 The Australian Broadcasting Corporation (ABC) is Australia's primary publicly funded national broadcaster. Established under the *Australian Broadcasting Corporation Act 1983* (ABC Act), it provides broadcast and digital media services to diverse social, cultural and geographic audiences across Australia.³

1.4 The ABC provides news and information services of the highest standard to domestic audiences. It also delivers international media services which offer an Australian perspective to the Asia-Pacific region, and which help connect Australians living and working abroad.⁴

1.5 Section 6 of the ABC Act establishes the functions of the ABC through a Charter while section 7 establishes the Board of the ABC and section 8 details the duties of the Board.

1.6 The bill proposes to amend section 8 of the ABC Act to modify and expand the existing statutory duty of the Board to ensure the gathering and presentation of news and information is accurate and impartial according to the recognised standards of objective journalism. As such, the bill proposes to expand this duty to require the gathering and presentation of news and information to be 'fair' and 'balanced' according to the recognised standards of objective journalism.⁵

1.7 As noted in the Explanatory Memorandum (EM), the ABC, as a publicly funded broadcaster, is expected to canvass a broad range of issues, and to report on these issues in a fair and balanced manner. Further, there is a strong public interest in

1 *Journals of the Senate*, No. 71, 16 November 2017, p. 2249.

2 *Journals of the Senate*, No. 84, 12 February 2018, p. 2666.

3 EM, p. 2.

4 EM, p. 2.

5 EM, p. 2.

ensuring that Australians are able to have confidence in relying on the ABC to inform their views on significant issues.⁶

1.8 The EM also states that introducing a statutory requirement for the ABC to be fair and balanced 'will support and strengthen the ABC's reputation for providing trustworthy and dependable reporting'. The EM acknowledges that the ABC's Editorial Policies already cover 'fair treatment' as well as having a balance that follows the weight of evidence. However, the bill proposes to 'cement these requirements in the ABC's Charter and ensure the ABC continues to uphold the standards expected of it by the Australian public'.⁷

1.9 The proposed amendment will create a legislative requirement for the ABC Board to ensure that any news or information relating to a particular person or group is presented in a fair and balanced manner, ensuring that an impartial view, supported by evidence, is put forward. It would not however, require that every perspective of an issue be granted equal time, nor every facet of an argument be explored.⁸

1.10 In his second reading speech, the Minister for Communications, Senator the Hon Mitch Fifield, noted that 'it is important to recognise that the bill will not alter or diminish in any way the ABC's independence'. Rather, the bill:

...will support and strengthen the ABC's reputation for providing trustworthy and dependable news and information services, and ensure the organisation upholds the standards expected of it by the Australian public.⁹

Conduct of the inquiry

1.11 The committee advertised the inquiry on its website and wrote to relevant organisations inviting written submissions. The date of receipt of submissions was 12 January 2018.

1.12 The committee received nine submissions which are listed at Appendix 1 of this report. The public submissions are available on the committee's website at: https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications.

1.13 The committee thanks all of the individuals and organisations that contributed to the inquiry.

6 EM, p. 2.

7 EM, p. 2.

8 EM, p. 5.

9 Senator the Hon Mitch Fifield, *Senate Hansard*, 18 October 2017, p. 7901.

Reports of other committees

1.14 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.15 In its Scrutiny Digest No. 13 of 2017, the Scrutiny of Bills Committee stated that it had no comment on the bill.¹⁰

Support for the bill

1.16 Those submitters who expressed support for the bill noted that there is an expectation that journalism is 'accurate and impartial, and free of political motivation', particularly where this journalism is publicly funded.¹¹ The National Farmers' Federation submitted that:

...the NFF supports extending the statutory duties of the ABC Board to also require the gathering and presentation of news and information to be 'fair' and 'balanced' according to the recognised standards of objective journalism.¹²

1.17 It was noted that the bill does not change the ABC's existing editorial policies, rather it creates a new statutory duty for the ABC Board. Those supporting this approach raised concerns with some aspects of current ABC reporting. For example, submissions drew the attention of the committee to some reports produced by the ABC, such as the 4 Corners episode titled *Pumped*, and contended that these had not been impartial.¹³

1.18 Cotton Australia also noted the important role that the ABC plays in Australia, particularly in rural and regional Australia where it 'keeps people connected and informed which is vital to a healthy social fabric'. It further noted that the ABC has a number of 'longstanding, valued rural programs...which remain relevant and high quality news sources'.¹⁴

10 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest*, No. 13 of 2017, 15 November 2017, p. 2.

11 Cotton Australia, *Submission 6*, p. 1.

12 National Farmers' Federation, *Submission 7*, p. 4.

13 Cotton Australia, *Submission 6*, pp. 1–2. See also National Farmers' Federation, *Submission 7*, p. 3.

14 Cotton Australia, *Submission 6*, p. 1.

Issues raised in submissions

1.19 The committee received some submissions which expressed concern with the bill. In particular, submitters expressed a view that the bill is unnecessary, noting that existing ABC Editorial Policies already require fair and honest dealing in reporting. Submitters also expressed concern that the bill may have unintended consequences such as creating a 'false balance' or 'he said/she said journalism'.¹⁵

1.20 Other issues raised included that the bill does not establish a compliance mechanism to scrutinise whether the news services of the ABC are indeed fair and balanced.¹⁶

Existing requirements

1.21 In expressing a view that the bill is unnecessary, submitters noted that the ABC is already required to report with 'accuracy and impartiality according to the recognised standards of objective journalism'. Further, the ABC's Editorial Policies articulate the requirements for independence, integrity, objectivity, and impartiality and 'fair and honest dealing'.¹⁷

1.22 It was noted that the ABC Act requires the ABC Board to develop a code of practice relating to its television and radio programming. The ABC Code of Practice establishes editorial standards for the gathering and reporting of news and information, including standards for accuracy, impartiality and fair and honest dealing. Section 4 of the ABC Code of Practice, 'Impartiality and Diversity of Perspectives' establishes the standards expected of the ABC. It also defines the 'principles of impartiality'. The ABC describes these 'hallmarks of impartiality' as 'in accordance with the recognised standards of objective journalism'.¹⁸

1.23 The Media, Entertainment and Arts Alliance (MEAA) submitted that the ABC's current Editorial Policies 'exceed, in scope and length, any other known editorial policies covering Australian media organisations' and 'recognise all necessary professional journalistic standards'.¹⁹

1.24 The ABC submitted that if the intention of the bill is 'to do nothing more than enshrine' the requirements of the ABC's Editorial Policies, then 'the change to the legislation will do nothing more than describe what the ABC already does'. It

15 Australian Broadcasting Corporation, *Submission 5*, pp. 7–8.

16 Australian Democrats (Queensland Division) Incorporated, *Submission 2*, p. 1.

17 Media, Entertainment and Arts Alliance, *Submission 1*, p. 2.

18 Australian Broadcasting Corporation, *Submission 5*, pp. 5–6. See also Australian Broadcasting Corporation, *Code of Practice 2011*, (<http://about.abc.net.au/wp-content/uploads/2016/05/ABCCodeOfPractice2016-1.pdf>).

19 Media, Entertainment and Arts Alliance, *Submission 1*, p. 2.

concluded that 'in the ABC's view, that is no argument to make the change – it is, in fact, an argument not to make the change as it adds nothing of substance'.²⁰

1.25 The ABC also expressed concern that the bill 'manifestly risk[s] creating expectations or misleading the public into believing that the change to the ABC Act will impose new statutory requirements on the ABC that have not previously existed'.²¹

Implementation

1.26 A number of submitters expressed concern that the proposed amendments to the ABC Act would be difficult to implement and enforce. In particular, it was noted that concepts of fairness and balance are subjective and without context or explanation as to how these requirements should be implemented, there may be unintended consequences such creating 'false balance'.

1.27 Australian Democrats (Queensland Division) Incorporated submitted that though the requirement for fair and balanced news is a 'laudable objective', 'the notion of fairness can be notoriously subjective'.²² It questioned what criteria would be used in determining fairness, and who would be responsible for such a determination. It also submitted that 'the notion of balance may be equally problematic' and questioned whether 'fringe groups with little scientific or intellectual support' would be able to 'demand equal coverage from the ABC on any issue'.²³

1.28 MEAA noted that though the MEAA Journalistic Code of Ethics recommends that journalists do their 'utmost to give a fair opportunity for reply', the Code has never mentioned 'balance as an ethical requirement'.²⁴ It submitted that there is a difference between the 'right of reply' and 'balance' and stated that:

Balance assumes that multi-faceted discussion is taking place and that, despite the merits of some parts of the discussion and the unworthiness of other parts, each and every side must be given equal measure.²⁵

1.29 MEAA concluded that 'requiring journalists to apply balance may compel them to apply a distorting emphasis to irrelevant, non-newsworthy material that is not factually based'.²⁶ Similarly, the ABC submitted that in understanding the notion of objective journalism, 'balance' must be separated from 'false balance'. That is:

20 Australian Broadcasting Corporation, *Submission 5*, p. 7.

21 Australian Broadcasting Corporation, *Submission 5*, p. 7.

22 Australian Democrats (Queensland Division) Incorporated, *Submission 2*, p. 2.

23 Australian Democrats (Queensland Division) Incorporated, *Submission 2*, p. 1.

24 Media, Entertainment and Arts Alliance, *Submission 1*, p. 3.

25 Media, Entertainment and Arts Alliance, *Submission 1*, p. 4.

26 Media, Entertainment and Arts Alliance, *Submission 1*, p. 4.

...editorial balance does not require the inclusion of all perspectives all the time and it does not require equal time to be provided to all views. Nor does it operate independently of the balance of evidence, the weight of opinion, the underlying facts and the need for editorial judgement.²⁷

1.30 The ABC expressed concern that the bill could give rise to the situation where 'a range of unfiltered, unassessed opinions are all given equal weight and served to audiences without context, explanation or appropriate rigour'.²⁸

1.31 Similarly, Mr Darryl Fallow expressed concern that while impartial news reporting requires balance, this balance should follow the weight of evidence as 'truth, accuracy and objectivity in reporting [carries] more weight than "balance" alone'.²⁹ Mr Mark Zanker questioned whether 'discredited views [should] be given equal time...in the name of balance'.³⁰

Committee view

1.32 The ABC is Australia's primary publicly funded national broadcaster. Over many decades it has played an important role in dependably presenting reliable and trustworthy news and information to the community. The Australian people expect a publicly funded broadcaster to canvass a broad range of issues, and report on those issues in a fair and balanced manner.

1.33 The committee notes the Minister's comments that the bill will not alter, or diminish, in any way the ABC's independence and will not alter the existing standards expected of the ABC. The Minister particularly noted that the ABC's existing Editorial Policies already require the ABC to adhere to fair treatment in the gathering and presentation of news and information, and a balance in its news reporting that follows the weight of evidence. As such, the bill simply enshrines these obligations in legislation.³¹ The committee is of the view that this acknowledges the importance of ensuring that reporting by the ABC is, and remains, independent, impartial, and fair and balanced.

1.34 In addition, the Committee considers that enshrining a statutory requirement for fair and balanced reporting in the ABC Act will promote community confidence in the news and information presented by the ABC. It will ensure that the community will continue to turn to the ABC as an important source of information which can be relied upon to inform views on significant public issues. As such, the committee is of the view that there is a strong public interest in amending the ABC Act as proposed.

27 Australian Broadcasting Corporation, *Submission 5*, p. 7.

28 Australian Broadcasting Corporation, *Submission 5*, p. 8.

29 Mr Darryl Fallows, *Submission 4*, p. 2.

30 Mr Mark Zanker, *Submission 3*, p. 1.

31 Senator the Hon Mitch Fifield, *Senate Hansard*, 18 October 2017, p. 7901.

1.35 The committee notes the concerns raised in submissions that the bill may result in 'false balance' in ABC reporting. However, the committee reiterates that the bill does not create new editorial requirements and simply enshrines existing policies in legislation. The committee notes that this obligation will sit alongside the existing requirement that the ABC's news services are 'accurate and impartial according to the recognised standards of objective journalism'.

Recommendation 1

1.36 The committee recommends that the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017 be passed.

**Senator Jonathon Duniam
Chair**

