

The Senate

Environment and Communications
Legislation Committee

Australian Broadcasting Corporation
Amendment (Fair and Balanced) Bill 2017

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Committee membership

Committee members

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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**

Labor Senators' dissenting report

1.1 Labor Senators reject the views and recommendation of the Committee in this report.

1.2 Labor Senators note that the Australian Broadcasting Corporation (Fair and Balanced) Bill 2017 is politically motivated and furthers One Nation's vendetta against the ABC in retaliation for quality investigative journalism by the ABC.

1.3 Moreover, Labor Senators note that this bill was introduced further to a backroom deal between the Turnbull Government and One Nation in exchange for Pauline Hanson's support for the repeal of the 2 out of 3 cross-media control rule, which Labor opposed. The Government used the ABC as a bargaining chip in exchange for support for the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 which made final passage through the House of Representatives on 16 October 2017.

1.4 The Turnbull Government couldn't get its media ownership changes through on merit, so they dragged the national broadcaster into the whole sorry mess of deals – deals which undermine media diversity and the public interest in Australia.

1.5 Labor Senators note that the ABC is already required to be accurate and impartial. We note that these concepts are interpreted as including notions of fairness and balance and that it is completely unnecessary to amend the Charter with the inclusion of the words 'fair and balanced'.

1.6 Labor Senators note that even the Minister for Communications has acknowledged that this bill is completely and utterly pointless as it will not alter existing standards expected of the ABC.

1.7 Labor Senators will not permit the Turnbull Government and One Nation to meddle with the ABC Charter simply because Pauline Hanson didn't like being scrutinised in a Four Corners episode, last year. We note the changes proposed by this bill are not in the public interest, they are in Pauline Hanson's complete self-interest.

1.8 Labor Senators believe it is important to note the context which led to the introduction of this bill into Parliament, last year.

1.9 In April 2017, the ABC Four Corners program aired an investigative story into One Nation called 'Please Explain' and ABC News subsequently published leaked recordings of conversations between Pauline Hanson on the donation of a light aircraft, among other things. In May 2017, One Nation complained of bias at the ABC and threatened to refuse to support the Federal Budget unless the ABC's funding was cut by \$600million over four years.

1.10 In August 2017, the Turnbull Government announced a deal with One Nation on the media ownership changes, inclusive of a number of unnecessary and

unwarranted amendments to the ABC Act and Charter as well as an insidious 'competitive neutrality inquiry' aimed at reducing the role of the ABC to that of a market failure broadcaster. In a subsequent press conference, Pauline Hanson also made it clear that she will be speaking to the Treasurer and going after the ABC's budget in 2018.

1.11 The Liberal-National Government used the ABC as a bargaining chip in exchange for One Nation's support for the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 which made final passage through the House of Representatives on 16 October 2017.

1.12 Labor Senators note the remarks of ABC Managing Director, Michelle Guthrie, in her speech at the ABC Friends Public Conference Dinner in October 2017:

The ABC's role in the media law reform debate was supposed to be as an interested bystander. We had no skin in the game. Or so we thought. We now find ourselves very much impacted by the deal-making and with a real need to ensure that the public interest – as opposed to vested interest – is protected.[and]

The ABC Act and Charter should not be tampered with simply to suit political or commercial agendas. Legislation designed to further a political vendetta by one party uncomfortable with being scrutinised by our investigative programs is not good policy-making. Neither is using the ABC Act as a bargaining chip in industry machinations that have nothing to do with the national broadcaster.

1.13 Labor Senators oppose the bill because the insertion of the words "fair, balanced" into the ABC Act is completely unnecessary, given that the concepts "accurate and impartial" are already interpreted and applied by the ABC to include 'a balance that follows the weight of evidence' and 'fair treatment', among other things. The new words add nothing in practice, may confuse established interpretation and even create the danger of 'false balance'.

1.14 We note that, in an August 2017 interview, One Nation Senator Brian Burston said that the 'fair and balanced' requirement meant giving equal weight to anti-vaxxers.

1.15 Labor Senators do not support a bill that achieves nothing of policy value and that permits the Turnbull Government to use the ABC as a political bargaining chip, that forms part of a concerted effort by One Nation to attack the ABC, that provides a platform for One Nation to spread misinformation about vaccination, among other things, and is an unjustified incursion on the independence of the ABC.

Senator Anne Urquhart
Senator for Tasmania

Senator Anthony Chisholm
Senator for Queensland

Australian Greens' dissenting report

1.1 Public trust in the journalistic integrity of the Australian Broadcasting Corporation remains higher than that for any other news source in the country. There is no dearth of trust in the ability of the ABC's journalistic output to produce content that is fair, balanced, well-researched and independent of political motivation.

1.2 In this context, there is debate to the extent that this bill will have effect.

1.3 The Government argues that the ABC's editorial standards already require 'fair treatment, and that the ABC is similarly obligated to demonstrate a journalistic balance that follows the weight of evidence. It argues that this amendment is justified plainly for its effect on the ABC's reputation "for providing trustworthy and dependable news and information services".

1.4 It is precisely for the effect that this amendment will have on the reputation of the ABC that it should not proceed. Legislation that does not solve a problem, by the Government's own admission, risks being construed as legislation that is required to correct some concern. The public maintains a reasonable expectation that the time, effort and cost involved in producing legislation should be spent on legislative outcomes that will produce some benefit to some people. Nobody is arguing that this is the case. Moving unnecessary amendments for the purpose of 'reputation' begs the question why this amendment is necessary if the reputation of the ABC is not in question, which it is not.

1.5 While the Government's support for this amendment is muted, others have made submissions offering stronger endorsement of its ambitions.

1.6 Cotton Australia noted in its submission that it had taken issue with one edition of one program that detailed allegations of water theft in the Murray-Darling Basin.

1.7 This view was supported by the submission from the National Farmers' Federation, which took similar issue.

1.8 There is no evidence that the edition in question was borne of political motivation, other than to say it contributed to a debate about the use of taxpayers' money within the context of a heated political debate in which Cotton Australia and the National Farmers' Federation have a demonstrable and sizeable stake. Other coverage of the issue by the ABC has been overwhelmingly favourable to the position of these lobby groups and their interests.

1.9 Support for this amendment would constitute an expression of support for the position of these political lobby groups, which argue less for journalism that is "free of political motivation", and more for journalism that supports their particular political motivation. They take no issue with the favourable coverage they receive, but do not dispute its existence.

1.10 A commitment to being 'fair and balanced' that hobbles the coverage of one side of a political debate with no offsetting restriction on the coverage of another is neither fair nor balanced.

1.11 Further, should such a restriction on both sides exist, the capacity for the national broadcaster to inform the public on matters of political contestation would be hopelessly compromised.

1.12 It is preferable to allow the ABC to canvas the views of a multiple of sources, with a weight of coverage of a position offered in line with the weight of evidence in support of that position.

1.13 Opponents of this amendment have noted that the ABC is already required to report with 'accuracy and impartiality according to the recognised standards of objective journalism' (an argument the Government does not dispute).

1.14 The ABC's Editorial Policies demand independence, integrity, objectivity, impartiality and 'fair and honest dealings'. Section 4 of the ABC Code of Practice defines the principles of impartiality to which the broadcaster is bound.

1.15 It is dishonest to suggest that this represents some new statutory requirement on the ABC that has not previously existed. If, as the Government says, this will have no effect on the content of the public broadcaster, then its only effect will be to suggest to its audience that such a legislative amendment was somehow justified based on past breaches of a commitment to fairness and balance.

1.16 It undermines faith in a national public institution by implying it is correcting a problem, even though no problem exists.

1.17 Submissions such as those of Mr Mark Zanker question if it is in the service of public interest that 'discredited views [should] be given equal time... in the name of balance'.¹

1.18 The ABC has expressed concern that if this amendment is to have any of the effect its most strident supporters hope it will, the net effect may be 'a range of unfiltered, unassessed opinions...all given equal weight and served to audiences without context, explanation or appropriate rigour'.²

1.19 In short, if this bill does what the Government says it will do, it should not proceed.

1.20 If the bill does what its supporters say it will do, it should not proceed.

1.21 If this bill does what its opponents say it will do, it should not proceed.

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

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

Recommendation 1

1.22 The recommendation of the Australian Greens is that this bill should not proceed.

**Senator Janet Rice
Senator for Victoria**

**Senator Sarah Hanson-Young
Senator for South Australia**

Appendix 1

Submissions

Submissions

- 1 Media Entertainment and Arts Alliance
- 2 Australian Democrats (Queensland Division) Incorporated
- 3 Mr Mark Zanker
- 4 Mr Darryl Fallow
- 5 Australian Broadcasting Corporation
- 6 Cotton Australia
- 7 National Farmers' Federation
- 8 ABC Friends
- 9 Confidential