

CHAPTER 3

REFORMING THE APPOINTMENT PROCESS

It may be a Utopian view but I would like to see selection to the ABC Board as sought after, cherished and respected in the public mind as winning Olympic gold or the Nobel prize.¹

Introduction

3.1 The previous chapter discussed what sort of people should be on the ABC Board. A key finding was a widespread perception that appointments to the Board are made on the basis of political affiliation and patronage rather than on merit. Whether or not this is actually the case, the consensus of much of the evidence is that the most effective way of correcting this perception is to reform the way in which appointments are made.

3.2 This chapter therefore considers how members should be appointed. To do so, this chapter examines the process in stages: determining the selection criteria; developing a list of potential candidates; and making the final selection decision. This analysis is prefaced by a discussion of the core principles that should underpin whatever system is chosen.

3.3 Frequent mention is made throughout this chapter to the ‘Nolan Rules’, which are considered by many witnesses to represent international best practice. These derive from the UK Committee on Standards in Public Life, chaired by Lord Nolan, which in 1995 developed a model for making senior appointments to public sector agencies. The model revolves around a Code of Practice, seven principles of public life, and a procedural model administered by the Commissioner for Public Appointments. The Principles underpinning the UK Code of Practice is reproduced at Appendix 3.²

3.4 The chapter concludes with a general discussion relating to the governance of the Board that should help increase the degree of public confidence in the ABC Board.

General principles

3.5 Before embarking on any changes to the current system of appointments, there should be agreement on the expected result of any reform or changes to the system of appointing the ABC Board, or any board in general, including the characteristics to underpin that appointment process. The answers to this draw on the conclusions of the last chapter.

1 Forster, Submission 353

2 A copy of the full *Code of Practice for Ministerial Appointments to Public Bodies*, published by the UK Office of The Commissioner for Public Appointments is available from www.ocpa.gov.uk

3.6 The key principles underpinning a system of appointment should be:

- competitive selection based exclusively on merit;
- support for equal opportunity and the diversity of the Australian community;
- openness and transparency; and
- costs and procedures that are practical and proportional to the nature of the position.

3.7 These principles seem relatively self evident, and are a feature of both the Nolan Rules, and the Public Service Act provisions governing appointments to public sector agencies.³

3.8 Application of these principles should ensure that appointees are, in both fact and perception, independent of political influence, and are appropriately qualified for the requirements of the position.

3.9 Evidence to the inquiry has stressed the importance of these qualities:

The CPSU has consistently sought two commitments to address these problems: ... a new system of Board appointments that ensures that appointments are based on merit and minimises claims of real or apprehended bias and of political patronage.⁴

3.10 Mr Dempster argued for a single overarching criterion stressing independence:

Would the appointment be judged by the Australian people as bolstering the ABC's independent role?⁵

3.11 Transparency in particular is considered to be the most important characteristic, with the view that secrecy should be very much the exception rather than the rule.⁶ For the Friends of the ABC, the choice of methods of appointment is secondary to ensuring that the process is transparent.⁷ The Chair also notes that there are growing public expectations of the transparency of public institutions, as explained by Ms Jakubowski:

I think the public has come to expect a degree of accountability from government that is quite onerous. For appointing a board like the ABC I

3 *Public Service Act (Commonwealth) 1999*, Section 10 – APS values.

4 CPSU, Submission 363, p 3.

5 Dempster, Submission 365, p 3.

6 For example: Morgan, *Proof Committee Hansard*, Canberra, 20 August 2001, p 6; Dempster, *Proof Committee Hansard*, Canberra, 20 August 2001, p 44.

7 Cassidy, *Proof Committee Hansard*, Canberra, 20 August 2001, p 30.

think those standards should be as high as they possibly can be, because of its ultimately incredibly influential role in Australian society.⁸

3.12 This is reflected also in the UK Code of Practice:

All stages of the process, including relevant conversations, must be documented and the information readily available for audit.⁹

The selection criteria

3.13 The first step in an appointment process is determining the selection criteria: for example, the skills, experience, qualifications or attributes which are most desired for the position. This issue has already been discussed in Chapter 2. This section is concerned with how the selection criteria are developed and by whom.

3.14 There is currently no clear system of developing selection criteria. In a general sense, the qualifications are described by section 12 of the ABC Act, and as noted previously, these are deliberately broad. The exact details of the process remain unclear as neither the Board nor the Minister provided submissions to the inquiry. However, it may be surmised that the process has no formal selection criteria. As one submission noted:

It is perhaps telling that there is little easily found information about the criteria for selection of ABC Board members. The ABC's website section on the Board provides no information about why the current Board members have been appointed – their skills, who (if anyone) they represent, and the link to section 8 of the relevant Act is of little assistance. One positive outcome of the inquiry would be more accessible information about the criteria for selection of Board members.¹⁰

3.15 The Chair considers that formal selection criteria are necessary in order for applicants and the public to know what attributes are required, and they are crucial in providing an objective standard against which to judge applicants. As such they are prerequisites to an open and transparent selection process, and are accepted as basic elements of any best practice system,¹¹ a fact recognised by many.¹²

3.16 As with other stages of the appointment process, there are several possibilities for determining selection criteria. The principal consideration as noted in Chapter 2, is the requirement that the Board is a team with a complementary range of skills but who can each demonstrate a commitment to public sector broadcasting.

8 Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 56.

9 OCPA Code of Practice for Ministerial Appointments to Public Bodies, para 2.12

10 Batchelor Institute of Indigenous Tertiary Education, Submission 379

11 See for example *Public Service Act (Commonwealth) 1999*, Section 10(2). The Committee notes the comment of Mr Cassidy that it is increasingly the practice on a range of boards to set selection criteria and advertise. Cassidy, *Proof Committee Hansard*, Canberra, 20 August 2001, p 38.

12 See for example: Puls, Submission 434, p 1; CPSU, Submission 363; Dempster, Submission 365, p 4.

Recommendation 5

The Chair recommends that formal selection criteria be developed for positions on the ABC Board and reflect the criteria already established under the ABC Act. The selection criteria should be drafted by an independent agency, such as the Public Service Merit Protection Commission.

Developing a field of candidates

3.17 Currently, the process is opaque. As the CPSU explain:

The current closed process ensures that only those applicants who are close to or move in the same circles as the Minister are likely to come to the attention of the Minister. The open advertising of positions is therefore likely to throw up the names of potential candidates who otherwise would not have come to the attention of the Minister.¹³

3.18 Several options have been suggested for a system by which various groups would have the right to nominate, such as: education authorities and universities; environmental, arts, cultural, religious groups;¹⁴ community groups;¹⁵ Parliament;¹⁶ the states;¹⁷ or by the individual themselves.¹⁸

3.19 By far the greatest support is for public advertisements calling for applications to Board positions.¹⁹ This mirrors the procedure for public service vacancies, and is also an element of the Nolan Rules. It is also the most transparent and fair: it enables anyone with an interest in serving on the Board to apply, without limiting the capacity of any group to encourage skilled people to apply as well.

3.20 The Chair endorses this view and recommends accordingly.

3.21 In accordance with the principles of transparency set out earlier in this chapter, those seeking appointment to the Board must put in a written application

13 CPSU, Submission 363, p 12. See also Jakubowski, Submission 643, p 3.

14 For example: Millar, Submission 4; Appleton, Submission 498, p 3.

15 Smith, Submission 45, p 2.

16 Kiers, Submission 269

17 Cahill, Submission 1, p 2.

18 Jakubowski, Submission 643, p 3.

19 Beck, Submission 7; Leisegang & McCaughey, Submission 94, p 2; Colbourne, Submission 123; Waller, Submission 200; Butler, Submission 243; Wood, Submission 260; Dempster, Submission 365, p 4.; Jakubowski, Submission 643, p 3.

addressing the selection criteria. The Chair also considers that the Minister should not be able to appoint someone who has not made formal application.

3.22 It is also important that candidates be obliged to openly declare any political activity or affiliations. However, as discussed in Chapter 2, political affiliation should not be a barrier to appointment. Disclosure of any such affiliation following appointment damages the credibility of both the process and the appointee and has led to the current lack of public faith and the perceptions of bias which underpin the current process. The Chair notes the categories of disclosure required under the Nolan model,²⁰ and supports the adoption of similar rules in Australia.

Recommendation 6

The Chair recommends that vacancies on the ABC Board should be advertised through the national press, and through ABC services, including radio, television and online.

Recommendation 7

The Chair recommends that the Minister cannot approve the appointment of a member to the ABC Board if the person has not made a formal application.

Recommendation 8

The Chair recommends that all applicants, as part of their formal application, make clear their political affiliations.

Shortlisting and appointments

3.23 There have been a variety of suggested models for making a final decision on appointments, both how this should be done and by whom. Suggestions include:

- the Minister assisted by the department;
- an independent body;
- the Parliament; or
- direct election.

Ministerial appointment

3.24 The first possibility is for the Minister, assisted by the department, to shortlist candidates and make the appointment decision. Several submissions suggested that if

20 See Appendix 3.

the key criteria of transparency and due process were adopted, the Minister would be an appropriate decision maker:

[T]he process of ministerial responsibility probably should be preserved – that is, it can and should be the Minister who makes the final call at the end of the day.²¹

3.25 Ms Jakubowski agrees:

As long as the public is satisfied that the government of the day is in fact choosing from the best pool of people and is using the appropriate measures of best practice for getting those people, ultimately it is that government of the day's prerogative to choose that Board.²²

Appointment by an independent body

3.26 A second option is to create a separate body charged with the exclusive task of selecting Board members, or expand the purview of the Public Service Merit Protection Commission. Submissions perceived this as a means of taking the appointment process out of the hands of the Minister and depoliticising it:

New appointments are made by public nomination to an independent body, which subsequently recommends appointments to the Board by the Governor-General. The independent body should be convened annually by State governments on a rotating basis in a fixed order.²³

3.27 There are difficulties in establishing an entirely new structure for the purpose of appointment to the ABC Board alone. Such a body would incur considerable public expense to establish and administer, especially considering its limited workload, given the small number of ABC Board appointees. Secondly, creating an 'independent body' would create the same issues that arise in this inquiry – that of independence. In all likelihood, creating such a body would merely move the political game from one field to another. As Professor Inglis observed, it is probably not possible to depoliticise the appointment process, and at the end of the day the elected government should have the final say.²⁴

3.28 Both of these problems could be remedied if the government were to create a public appointments commission similar to the Office of the Commissioner for Public Appointments (OCPA) in Britain, which would be responsible for all appointments to public boards. In this case, the number of appointments to be made across the Australian public sector, would justify the cost of establishment. At the same time, impartiality of commissioners under the UK system is achieved by ensuring that they

21 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 15.

22 Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 56.

23 Butler, Submission 243. See also FABC Hunter region, Submission 18; Waller, Submission 200, p 3; Wood, Submission 260; Fraser, Submission 2, p 1.

24 Inglis, *Proof Committee Hansard*, Canberra, 20 August 2001, p 29.

are selected by the same transparent and merit based system that they then administer.²⁵

3.29 An alternative is to utilise an independent party within the process. As the CPSU point out, an independent assessor on the assessment panel is a key procedural feature of the UK system.²⁶ An Australian system could utilise the services of the Public Service and Merit Protection Commissioner or use a person agreed to by both the Prime Minister, the Leader of the Opposition,²⁷ and the Leader of other Parliamentary parties. Mr Thomson of the CPSU argues that this would not be difficult in practice:

There are systems like that which operate in some of the industrial mechanisms in the ABC where the union is required to agree on the selection of a third person to conduct particular investigations in the ABC. Those processes usually take five or 10 minutes to work our way through. It is not a particularly difficult task.²⁸

3.30 Under this model, a selection panel could be formed comprising, for example, a nominee of the ABC Board; a nominee of Minister; and an independent assessor as discussed above. As in the UK system, this panel could be responsible for shortlisting of candidates and providing a list of candidates to the Minister who would then be responsible for the final recommendation and appointment.

Appointment by Parliament

3.31 An option that has received considerable attention is transferring some or all responsibility for ABC Board appointments to the Federal Parliament. Several variations of this have been suggested.

3.32 Many envisaged the use of a Parliamentary Joint Select Committee,²⁹ or a Senate Committee.³⁰ A form of this was recommended by the 1995 Senate Select Committee on ABC Management and Operations Report *Our ABC*, which suggested:

that before the appointment of a person to the Board, the proposed nominee should be required to appear before a joint parliamentary committee to enable the Parliament to scrutinise the person's credentials. The Committee

25 OCPA, Code of Practice for Ministerial Appointments to Public Bodies, Annex A.

26 The importance the public attach to this was a finding of a review of the OCPA system: *Public perceptions of the Ministerial Public Appointments process*, July 2000, p 5.

27 CPSU, Submission 363, p 15.

28 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 17.

29 For example: Dynes, Submission 19; Chopra, Submission 37; Leisegang & McCaughey, Submission 94, p 2; Curtis, Submission 143; Birch, Submission 182; Humanist Society of Victoria, Submission 493; Appleton, Submission 498, p 3. Beck, Submission 7; Crowe, Submission 209; Gray, Submission 247; Wingate, Submission 302 Dempster, Submission 365, p 4; Bass, Submission 5, p 4; Morrow, Submission 262; Forster, Submission 353

30 Chambers, Submission 268

would not have a power of veto, but would be able to comment on the suitability of a nominee prior to appointment.³¹

3.33 A similar model was proposed by Senator Vicki Bourne in the ABC Amendment Bill 1999:

The bill establishes a Joint Committee on the ABC who will approve and recommend appointments to the ABC Board. The Committee is established to ensure the Minister no longer has sole discretion in recommending Board appointments to the Governor-General.

The Committee will have 10 members, with five members each from the House of Representatives and the Senate. Appointments will be made in the same manner as for joint select committees, so that minor parties can be involved.³²

3.34 The Committee would approve or reject a nominee within 14 days, but may take up to 44 sitting days in further consideration providing that they advise the Minister accordingly. If the Committee did not accept a nominee, and the Minister does not accept the Committee's report, the Minister would be required to table his or her reasons for not doing so in both houses of Parliament.³³

3.35 An alternative is for candidates to be approved by the Houses of Parliament as a whole, either in a joint sitting, or alone.³⁴ According to one submission:

The Australian Parliament is the most representative body of the Australian people as a whole, with unique state and territory representative ingredients. While it is preferable to curtail direct Board appointments from the Federal Executive Government, it will be appreciated that the government of the day does represent the majority view point expressed by the Australian people.³⁵

3.36 Some submissions cautioned on the use of the Committee process, and Mr Thomson, noted the possible parallels this may have with the US Congressional system of appointments:

a preferred candidate basically having to run the gauntlet of a congressional inquiry, which I think can be quite a destructive affair. I think it probably does focus very much on personal characteristics and can lead to character assassination as a way of killing off a candidate.³⁶

31 The Committee would be established pursuant to the new Part VIIA

32 ABC Amendment Bill 1999, Second Reading Speech, p 6.

33 ABC Amendment Bill 1999, section 77D(11)

34 For example: Davidson, Submission 198; Newell, Submission 246; Dow, Submission 51; Marks, Submission 56

35 Cahill, Submission 1, p 1.

36 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 16.

3.37 However, the Chair is firmly of the view that with the appropriate selection criteria and transparency of process, this need not occur. The Committee should only be able to question the applicant on the selection criteria, and the matters raised in the application. This is the reason the declaration of any political affiliation is recommended in the application.

3.38 The Chair further believes that any best practice system that it recommends for appointments to the ABC Board should be capable of being adopted for appointments to any public sector board.

Ad-hoc Parliamentary Committee

3.39 The Chair notes a precedent which occurred in 1983, for an ad-hoc committee set up by the then Minister, Mr Duffy, which sought to gain bipartisan agreement to board candidates:

At a meeting of three ministers - Duffy, Button and Senator Susan Ryan - with the Prime Minister, Hawke, a list of nine names was drawn up, and those names were put to an ad hoc consultative committee of those three ministers, Senators Peter Baume (Liberal) and Don Chipp (Democrat) and Bruce Lloyd, MHR (National) which pared the list down to seven. Cabinet endorsed that list.³⁷

3.40 Obviously this system relies entirely on the goodwill of the Minister at the time, who may abandon the consultative arrangement at will or who may reject, outright, the recommendations of the Committee. Senator Bourne's Private Member's bill requires the Minister, in such circumstances, to table his/her reasons for rejecting the Committee's recommendation as a way to ensure transparency and accountability.

Election of board members

3.41 The final option suggested to the Committee is to allow members of the public to elect the board of the ABC. Submissions pointed to the process of electing the NRMA and the ATSIC boards, and propose the creation of an ABC Board electoral roll, using a proportional representation system, with voting by postal and on-line ballots, and administered by the Australian Electoral Commission.³⁸

3.42 Proponents of this system believe it has the advantage of bringing a directly democratic process to Board selection, with the ABC's 'shareholders' – the Australian public – able to register and participate. It also powerfully reinforces the principle that the Board should be accountable to the public and not the government. However, it suffers several drawbacks. First, the costs of running a national election for a such a

37 FABC, Submission 593, p 14. [Professor Inglis] see also Inglis, *Proof Committee Hansard*, Canberra, 20 August 2001, p 29. This idea is supported by Hundley, Submission 490, p 4.

38 Newman, Submission 226; Doust, Submission 500; Socialist Alliance, Submission 514, p 1 & 3; Neville, Submission 9, p 1.

small number would be prohibitive.³⁹ Second, there are difficulties with ABC voters receiving appropriate information to make an informed judgement on candidates, without the process becoming absolutely politicised.

Conclusions and recommendations

3.43 Having considered the various models proposed, the Chair concludes that it is appropriate for the Minister to appoint the members of the ABC Board. This is consistent with the established system of Australian and Westminster tradition that a Minister is invested with the authority to make decisions but remains answerable to the Parliament for the exercise of that authority, and for the appropriateness of appointees.

3.44 Whilst each of the other models have their advantages, the Chair is concerned with various limitations, as discussed above. The creation of an independent body to appoint board members is both problematic and expensive if it is only to have the sole task of ABC Board appointments. Parliamentary oversight remains the preferred option, according to submissions, with the Minister retaining the authority to make the final appointment decision. As long as the process for selecting and recommending appropriate applicants is transparent and accountable, the Chair endorses this approach.

3.45 At the same time, the principal advantages of each of these can be incorporated into a mixed system. Thus, the role of an independent body is preserved, by creating a selection panel to shortlist applicants. The principle of parliamentary scrutiny can be maintained by ensuring that candidates recommended to the Minister are not appointed without an opportunity for parliamentary and public comment.

3.46 Thus, while the Minister retains the power to make appointments, the process incorporates significant procedural safeguards, in which other institutional actors, and the public, have a role to play. Accordingly, the Chair recommends an approach by which a selection panel, incorporating an independent assessor, shortlists candidates and forwards a list of at least two names to the Minister, who is responsible for the final appointment decision.

3.47 In order for the qualifications of the applicants to be public, the Minister could only appoint people who had submitted a formal application addressing the selection criteria.⁴⁰ The shortlist of candidates must be made public prior to the Minister's decision, with enough time allowed for public and parliamentary comment.⁴¹

39 As noted by Morgan, *Proof Committee Hansard*, Canberra, 20 August 2001, p 9.

40 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 26.

41 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 16.

Recommendation 9

The Chair recommends that:

- an independent selection panel shortlist applications, and forward a list of at least two candidates to the Minister, together with the candidates' applications and declarations of political affiliation.
- the short list of candidates, together with a summary of their qualifications against the selection criteria and their statement of political affiliation, be public.
- the Minister should not be obliged to select any of the candidates recommended by the selection panel. However, the Minister must not select a candidate who has not first been scrutinised by the independent selection panel.

Other governance issues

3.48 The Committee also received evidence on several matters relating to the Board's composition, and the extent to which the Board operates transparently and responsively to ABC audiences and the public. Specifically, these relate to:

- the manner of appointment of the Chair and Deputy Chair;
- the transparency of Board operations;
- Annual General Meetings; and
- terms of appointment.

Appointment of the Chair and Deputy Chair

3.49 A number of submissions argued in favour of the Board itself electing two of their members to be the Chair and the Deputy Chair, instead of the current system of direct appointment by the Minister.⁴²

3.50 Mr Gordon-Smith, argues that there has been too little emphasis on governance arrangements within the Board:

the attention that has been given to the ABC has focused largely on its management, the appropriate role it should have and so on, without giving a

42 McLaren, Submission 120; McLaren, Submission 121; Waller, Submission 200, p 3; Crawford, Submission 377; Humanist Society of Victoria, Submission 493; Morgan, Submission 3, p 1.

great deal of attention to what might be called the governance framework which has a very substantial effect in driving those other features.⁴³

3.51 A board elected chair is a standard feature of private sector boards, and is important in establishing the collegiality of the Board as a team. It also ensures that the natural leaders are chosen; that internal leadership disputes are resolved, and as a result, ensures that the Chair can confidently speak with the support and authority of the rest of the Board. As Mr Gordon-Smith explains:

Governments may appoint skilled and talented individuals to these positions. They have certainly done so in the past. However, where the board does not appoint the chairman, it will only be by happy accident that the official occupant of the chair is the director who is the natural, actual leader and representative of that particular board.

This structural flaw makes the position of chairman more than usually difficult. The chairman's key roles, of guiding the board to work effectively, and of representing and speaking for the board both depend on it being clear that the chairman has the authority or the confidence of the board.

Without an election, there is no mechanism for confirming or bestowing that authority on the chairman, nor for changing the chairman should that confidence be lost or the strategic circumstances demand a different style of leadership from the board.⁴⁴

3.52 And further that:

If the chair of a board is appointed not by that board but by an external body, then to a very large extent that group of people has not been delegated fully the trust of whoever has put them there to perform the tasks of the sort of trustee role, if you like, that they are charged with.⁴⁵

3.53 Election of the Chair by the Board is also a concrete and visible measure of the Board's independence.

3.54 The Chair agrees with these suggestions and recommends accordingly.

Should the Managing Director be a member of the Board?

3.55 The Committee also heard evidence in relation to whether the Managing Director should be a member of the Board. According to one submission:

43 Gordon-Smith, *Proof Committee Hansard*, Canberra, 20 August 2001, p 51.

44 Gordon-Smith, Submission 608. See also Gordon-Smith, *Proof Committee Hansard*, Canberra, 20 August 2001, p 52.

45 Gordon-Smith, *Proof Committee Hansard*, Canberra, 20 August 2001, p 51.

While it is common business practice for the CEO to be automatically a board member, in the case of the ABC this could be counter productive because:

- (i) A separation of the board from the executive would bring an independence of thought to the two top tiers of ABC management.
- (ii) Past experience has shown that CEOs have tended to dominate board proceedings and, on occasions intimidated board members and chairmen.⁴⁶

3.56 This proposition was rejected by two other witnesses, who argue that there is little evidence of problems under the current arrangements, and that it remains appropriate to have the Managing Director as a full member of the Board.⁴⁷

3.57 The Chair endorses the current practice of the Managing Director being a Board member.

Transparency of Board operations

3.58 The other area of concern is the secrecy of Board operations. As witnesses explain, little information is available on the work of the Board or what decisions it makes on policy and the future directions of the ABC. Several submissions rejected the so-called 'commercial-in-confidence' approach that the Board is seemingly increasingly engaged. As Mr Gordon-Smith explains, the Board has a duty to be responsive and transparent to its 'shareholders' which for a public corporation, means the Australian public:

The terms of the ABC Act relating to the duty of its Board reflect that although they are appointed by the Commonwealth Government, particularly because of the high importance attached to the ABC's independence, the ABC's directors have a fiduciary relationship to all Australians.⁴⁸

3.59 This principle is not complied with:

Currently all ABC Board papers and minutes of meetings are kept totally confidential and with rare exception, not released to the public unless special requests are lodged through formal FOI processes. In a small number of cases, confidentiality needs to be maintained because breach may reflect adversely on an individual or area, or thwart strategic negotiations with third parties. As a general principle, however, secrecy should be the exception, not the rule. The public as taxpayers should know more about the decision-making processes of the national broadcaster.

46 Bass, Submission 5, p 4. See also Socialist Alliance, Submission 514

47 Dempster, *Proof Committee Hansard*, Canberra 20 August 2001, p 50; Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 59.

48 Gordon-Smith, Submission 608, p 1.

In the same way that most other publicly appointed boards or committees provide minutes, or a judge provides reasons for judgement, the ABC Board should provide information about its decisions to the general public. By comparison, the BBC provides minutes of all of its meetings to the general public on its website.⁴⁹

3.60 The practical outcome is that it is difficult for the public to make any informed judgements about the Board:

[I]t is frequently difficult for me and the CPSU generally to make assessments about the performance of the board, given that they never report on what they are doing. I am therefore limited to reporting on only about two or three very high-profile issues that have come to our attention.⁵⁰

3.61 Although not presented in evidence, these sentiments were expressed in the Mansfield inquiry into the role and function of the ABC:

Because of the Board's statutory duties in this areas [ie independence and impartiality] and because of the high level of public interest in the maintenance of ABC independence, it is important the ABC publicly demonstrates that it takes its responsibilities in this area seriously and that it regularly reviews and publicly reports on its performance. To this end I consider that the Board should regularly publish the criteria by which it monitors balance and objectivity and its assessment of ABC performance against these criteria.⁵¹

3.62 An improvement would be the enhancement of the ABC Board website, noting that the staff-elected director already has established a web site for ABC staff.⁵² The Board site could be a forum for publishing:

Minutes or descriptions of key decisions taken by the Board and main committees, especially in regard to the allocation of budgets and personnel, should also be made available for public inspection. This relates to standards of disclosure and accountability that currently are non-existent and shrouded in secrecy.⁵³

3.63 Ms Jakubowski also suggests the use of other forums for developing the exchange of information and ideas with the public, including public consultations, and the equivalent of special 'governors seminars'.⁵⁴ Some of these things may in fact be happening already, but given the limited information available on the Board's

49 Jakubowski, Submission 643, p 8. See http://www.bbc.co.uk/info/bbc/acc_govs_monthly.shtml

50 Thomson, *Proof Committee Hansard*, Canberra, 20 August 2001, p 18.

51 Mansfield, *The Challenge of a Better ABC*, vol 1, p 28.

52 Jakubowski, Submission 643, p .

53 CPSU, Submission 363, p 18.

54 Jakubowski, *Proof Committee Hansard*, Canberra, 20 August 2001, p 60.

activities and the absence of any Board or government submission to the inquiry, the extent of such activities is unclear.

3.64 The Chair also agrees with suggestions to increase the transparency of Board operations. The Chair considers it important that more information is publicly available about the operations of the Board. This is part of the Board's public duty, but it also provides a valuable opportunity for the Board to communicate with ABC audiences and explain its policies and decisions, and would go towards rectifying the perception that the Board is unresponsive to public concerns. In this sense, better communications should be viewed not as a threat but an opportunity.

3.65 The Chair therefore recommends the expansion of the current website and the information available on it to include information on policy issues and directions, and summaries of minutes of Board meetings. The Chair also encourages the use of mechanisms for feedback and comments to Board members via email and interactive on-line discussions. These already operate on the ABC website in relation to current affairs and other programming, and could easily be extended to include discussion on ABC governance and policy.

3.66 The Chair also notes the suggestion of Mr Gordon-Smith who argues that the Board may be more transparent through the convening of an annual general meeting:

At present, Senate Estimates Committees provide almost the only opportunity for the ABC to be held to account. It may be argued that these Committee hearings are addressed chiefly to management rather than board level issues. It would be extremely unusual for all directors of the ABC to be present. There is no other mechanism that provides even symbolically for open accountability of the ABC's Board to all Australians.

An AGM would provide an occasion for all directors to be present to the general public and to report publicly on the activities and plans of the ABC.⁵⁵

3.67 The Chair agrees with this view, and recommends that the ABC Board hold public Annual General Meetings, at which all members of the Board should be present.

Should the Board Members have shorter or longer terms?

3.68 Several submissions have also recommended the alteration of the current five year term of appointment. Professor Mark Armstrong, former Chair of the ABC Board, argues for terms of seven years instead of the current five, on the grounds that it:

would increase the corporate memory and stability of boards, and move the ABC board slightly further away from the political cycle.⁵⁶

55 Gordon-Smith, Submission 608, p 4.

3.69 Conversely, another submission suggests shortening the length of appointment to 12 months only.⁵⁷

3.70 In considering these suggestions, several familiar considerations apply. Terms of appointment should be long enough to enable directors to gain familiarity with the working of the ABC, and remain for sufficient time to carry out a coherent agenda. At the same time, if terms become too long, the personal commitment may become burdensome, and the capacity to remove any under-performing directors limited.

3.71 From the evidence it has heard, the Chair is of the view that with increased levels of transparency and accountability on the appointment process of the ABC Board, current terms are appropriate.

Recommendation 10

The Chair recommends that:

- at the first meeting of the ABC Board every year, the Board shall elect a Chair and Deputy Chair.
- the ABC Board shall hold a public Annual General Meeting, at which all Board members shall be present.
- the ABC Board shall publish greater information in relation to their activities and decisions of the Board, including summaries of Board Minutes. This may be achieved via publication on the ABC Board website.

Recommendation 11

The Chair recommends a model which is drawn from the range of submissions wishing for the Parliament to have its own joint parliamentary committee on the ABC. The Chair has also considered the evidence presented to it, drawn from Britain's Nolan Committee – a Committee charged with the responsibility for finding an independent method of appointing members to public sector agencies.

The Chair is of the firm view that the implementation of this model would considerably enhance the public's confidence in the quality, representativeness, independence and integrity of the ABC Board.

Accordingly, the Chair recommends that the *Australian Broadcasting Corporation Act (1983)* be amended to reflect the following system of appointments (and, that where appropriate, this model be used for appointing members to other Boards):

56 FABC, Submission 593, p 21

57 Butler, Submission 243

That when a vacancy exists on the Board

1. An ad hoc Independent Selection Committee ('the Committee'), comprising members from both houses of the Commonwealth Parliament, be brought together for the purposes of selecting a member to fill the vacancy on the ABC Board. This Committee will receive applications and recommend a short list of no less than two applicants for the Minister to consider.
2. Selection criteria and processes for scrutinising applicants for the ABC Board be drafted by the Merit Protection Commissioner.
3. The Merit Protection Commissioner be an ex-officio member of the Committee, to provide expertise and advice to the Committee in its deliberations.
4. The ABC Board vacancy be advertised in the national press and via ABC services, including television, radio and online, inviting applications from interested persons.
5. Those wishing to be considered for appointment to the ABC Board must provide a written application addressing the selection criteria, and a statement disclosing political affiliation. Candidates shall be made aware that their applications will be made public.
6. The Secretariat of the Senate Committee responsible for the Communications portfolio, shall provide the Joint Parliamentary Committee provide secretariat support to the Committee as required.
7. The Minister retains the responsibility for appointments to the ABC Board and is not obliged to choose any of the candidates recommended by the Committee. However, the Minister must not select a candidate who has not first been scrutinised by the Committee.

The ABC Act should also be amended to reflect the following:

1. At the first meeting of the ABC Board every year, the Board shall elect a Chair and Deputy Chair.
2. The ABC Board shall hold a public Annual General Meeting, at which all members shall be present.
3. The ABC Board should appoint a member to be a formal liaison officer to the National Advisory Council.
4. The ABC National Advisory Council shall meet four times per year, at times to coincide with the meetings of the ABC Board.
5. The ABC Board shall publish information about their activities and decisions, including summaries of minutes to Board meetings.

SENATOR LYN ALLISON

CHAIR