

REPORT BY GOVERNMENT SENATORS

Introduction

The Government Members of the Committee do not agree with important elements of both the central findings and the recommendations of the Chair's report.

This Dissenting Report addresses several underlying problems with the Chair's report, and then examines the individual recommendations.

Problems with the board – no case to answer

The starting point for any inquiry into the ABC should have been establishing whether there are problems with the ABC, and the primary criterion for this judgement is whether the ABC is meeting its Charter as set out in the ABC Act. Only where there is evidence that the Charter is not being met should the Board be called to account for its performance. If the Board is found to be wanting, then and only then is there a legitimate case to examine whether the method used to select that Board has failed to produce Board members of the required qualities, and accordingly the method should be reformed.

Instead, the Terms of Reference for this inquiry bypass all these stages. It is apparently not even necessary to **assume** that the Board is failing in its duties, to conclude that all such failings are attributable to a lack of independence and representativeness in how the Board members are selected. To this extent, the Terms of Reference are flawed by asking the wrong question. In turn, the Chairs Report is flawed by answering this fundamentally flawed question with blithe partiality.

It is the strong view of the Government Senators that evidence to the inquiry did not demonstrate that the ABC is failing to meet its Charter. Nor is there a cogently argued case that the ABC Board would perform to greater satisfaction if it were selected by an allegedly more representative and independent, but certainly far more convoluted, method.

A significant amount of the evidence received by the inquiry focused on the perceptions of political bias as the basis of criticisms of the ABC Board. In some cases, these criticisms are plainly misinformed and misplaced. A number of submissions, for example, referred to the failure of the Board to argue for increased funding. In fact, in several public forums the Board has argued for the need for increased funding, and has subsequently achieved substantial increases of funds to the ABC of \$71.2m over four years.¹

To take another example, various submissions criticised the reductions in local-content programming. In fact, on ABC television, recent changes will result in almost

1 Media Release, Senator Richard Alston, Minister for Communications, 22 May 2001.

70 percent of programming between the prime viewing times of 6pm and 11pm being Australian.² ABC radio is of course almost 100 per cent local content.

At the same time, the ABC has expanded its regional radio services involving the recruitment of 50 new program makers at 32 stations to broadcast more than 10,000 hours per year of local programming.³

Criticisms of the closure of the ABC archives unit are also misplaced. According to evidence provided to this Committee during the Senate Estimates hearings, the changes are limited to a reduction in staff from 16.5 to 12.⁴

The closure of the Cox Peninsula transmission facility was another case. It is noted that the ABC Chairman, Mr McDonald, has said that he argued against the closure of the Cox Peninsula transmission facility, and that:

As a result of the ABC's advocacy, we have received from the Government an additional \$9m for increased transmission capacity for Radio Australia and a minimum \$75m for an Asia Pacific television service.⁵

It should also be stressed that disagreement with the decisions of the ABC Board does not amount to evidence of political bias on the part of the Board. Indeed, it is to be expected that an independent Board will make, and is entitled to make, decisions that are unpopular with parts of the population.

This point seemed lost on some of the witnesses.

An indication of this relates to the decision by the ABC Board not to make a submission to the inquiry. A number of witnesses found this an indication of political interference or at least the Board's timidity where political interference results. In fact, the Board did write to the Committee declining to make a submission on the ground that it was entirely a matter for the Parliament.⁶ Although the clear intent of the letter was that the Board did not wish to engage in political debate, their position when made known was taken as further proof by several witnesses⁷ that the Board was suffering from political interference!

The Government Senators also note that the majority of the submissions received by this inquiry are based on a form letter prepared by the Friends of the ABC. Most of them accept without discussion the assertion by the Friends of the ABC that the ABC

2 Mr McDonald, *The Australian*, 16 July, p 12.

3 ABC Media release, ABC Radio announces major expansion in regional Australia, 8 August 2001.

4 *Official Hansard*, Senate Environment Communications, Information Technology and the Arts Legislation Committee, Thursday 7 June 2001, p 497.

5 Mr McDonald, *The Australian*, 16 July, p 12.

6 The text of the letter is at *Proof Committee Hansard*, Canberra 20 August 2001, p 50.

7 Mr Dempster, *Proof Committee Hansard*, Canberra 20 August 2001, p 48. See also Mr Cassidy, *Proof Committee Hansard*, Canberra 20 August 2001, p 37.

Board is in fact politicised. Accordingly, there is real doubt as to the representativeness or independence of many of the submissions received. On this basis, the Government Senators do not accept the finding of the Chair's report that there is necessarily a widespread perception that the Board is politicised.

It is further noted that the Chair's report makes the point⁸ that appointees who were 'generally sympathetic to the view of the governing party' have not been 'either incompetent or ineffective in serving the interests of the ABC or the public'. Why then the necessity of a wholesale change to the method of appointment, in favour of a complex and untested method?

Should the ABC be unique?

In this absence of solid evidence of a problem, Government Senators do not see the rationale of creating for the ABC a costly and complex system that would be unique among Australian public sector Boards. Government Senators have been unable to find any other Board of a statutory body that is selected by such an onerous process.

Nor, for the same reasons outlined above, can Government Senators support the implied recommendation of the Chair's Report, that the model suggested be extended to all public sector boards.⁹ That seems to us to be an exercise in creating an end to justify a means.

The Government Senators stress that the Nolan Rules, that inspired much of the recommendations of the Chair's report, were created as a response to the finding of severe problems in the UK system of appointments. As such, they may have been an appropriate solution to those problems. It does not automatically follow that these rules should also be applied here.

Finally, Government Senators note that a key concern of the Chair's Report is to overcome a public **perception** of politicisation in appointments to the ABC. In this respect, it should be noted that the findings of a recent review of the UK Office of the Commissioner for Public Appointments (OCPA), conducted five years after its inception, demonstrate mixed results for the reformed process. Public responses continue to demonstrate a widespread ignorance of the existence and role of the OCPA, and a vague but overwhelmingly negative impression of the process by which appointments are conducted, based on a strong belief in politicised appointments.¹⁰

If the problem is one of public perception, there is room for some doubt that adoption of the UK system would necessarily go far in rectifying this in Australia.

8 At paragraphs 2.44 and 2.48.

9 Recommended Model, paragraph 3.

10 *Public perceptions of the Ministerial public appointments process*, Research study conducted for the Office of the Commissioner for Public Appointments, July 2000, pp 4-5.

Comments in relation to recommendations

Government Senators make the following comments in relation to specific recommendations:

Recommendation 1

- We do not support this recommendation. There is no substantive evidence to suggest that the appointment of the ABC Board has not met the principles of merit and transparency, or that political affiliation has been a basis of appointment.

Recommendation 2

- We do not support this recommendation. There has been no suggestion that the position of the staff-elected director will be abolished.

Recommendation 3

- We do not support this recommendation, as it is clearly an affront to the ABC Board. We accept that current appointees to the ABC Board have demonstrated a commitment to the principles of public broadcasting.

Recommendation 4

- We do not support this recommendation. The relationship between the ABC Board and its Advisory Council is a matter for the ABC Board to determine in accordance with its charter.

Recommendation 5

- We do not support this recommendation. Since, as stated, the desired selection criteria are already established under the ABC Act, the substance of this recommendation is superfluous.

Recommendation 6

- We do not support this recommendation, as its purpose is not clear.

Recommendation 7

- We do not support this recommendation, as its purpose is clearly superfluous. It is difficult to envisage a situation where a person might be appointed to a public office without this person's expressed willingness to apply for and to serve in that appointment.

Recommendation 8

- We do not support this recommendation as the purpose and meaning of this recommendation is ambiguous, and possibly in contravention of anti-discrimination laws.

Recommendation 9

- We do not support this recommendation. The recommended process appears to be unnecessarily laborious, prescriptive and untested.

Recommendation 10

- We do not support the first part of this recommendation, noting that the benefit of this proposal is entirely obscure. We further note that the dominant practice of public sector boards of management is for the presiding officers to be appointed or, in the notable case of capital city councils, to be elected directly.
- We do not support the second part of this recommendation, noting that the ABC Board reports annually to the Parliament.
- We do not support the third part of this recommendation, noting that matters discussed at the meetings of the ABC Board may be in confidence, and should only be made public at the discretion of the Board in accordance with its duties of governance.

Recommendation 11

- We do not support this recommendation for reasons described above.

Conclusion

By basing the inquiry on a flawed terms of reference, the Chair's report finds a solution to a problem before the problem has been demonstrated to exist. It is perhaps inevitable that the solution so offered is superficial and irrelevant.

A significant proportion of the evidence given before the Inquiry was critical of the successive Managing Directors. Much of this criticism was directed at the style of the individuals rather than their competence. Nevertheless, given that the role of this office as chief executive of the ABC and a full member of its Board is pivotal for the performance of organisation, logically it should be the focus of any suggestion of reform. Yet the Chair's report finds no change should be made to the office of the Managing Director, or its functions. This is indeed a telling illustration of the futility of this report.

It needs to be recognised that the ABC is currently in a period of considerable change, caused by rapid developments in both technology and the structure of the telecommunications industry. As Mr Jonathan Shier, the current Managing Director of the ABC, recently pointed out in a speech to the National Press Club, 'to do nothing is not an option for the ABC'.¹¹ This is also occurring in a wider context in which all aspects of government expenditure have been under considerable pressure.

11 Mr Jonathan Shier, *Do not adjust your set*, National Press Club, 7 March 2001.

In these circumstances, it is not surprising that the ABC Board has made some significant changes and that a number of these decisions will be disagreed with by sections of society. This, however, is the reality of an independent Board, and should not be used to justify unnecessary changes to a long established and effective system.

SENATOR TSEBIN TCHEN

LP (VIC)