

LABOR SENATORS' MINORITY REPORT

SENATE ENVIRONMENT, COMMUNICATIONS, IT AND THE ARTS REFERENCES COMMITTEE

ABC Board Appointments

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Introduction

1.1 The terms of reference for this inquiry are to inquire into and report on:

The development and implementation of options for methods of appointment to the board of the Australian Broadcasting Corporation (ABC) that would enhance public confidence in the independence and representativeness of the ABC as the national broadcaster.

1.2 At the outset, it is important to note the context of the referral of this matter for the Committee's consideration. The ABC has undergone considerable change over the past eighteen months since the appointment of the new Managing Director by the ABC board. Many of the changes made have elicited considerable community comment on the future and independence of our national broadcaster.

1.3 Australians revere the ABC for its independence and integrity. It fills a unique and critically important role in Australian society as an independent provider of information to the public.

1.4 Labor Senators support the ABC's independence in this important role. The Australian Labor Party's Platform states that:¹

Labor is committed to the provision of an independent, balanced, comprehensive and national public broadcasting service free from political or ideological interference, and free from advertising and sponsorship.

1.5 Some witnesses before the Committee blame the ABC board for inappropriate changes in the ABC by the Managing Director, because the board is ultimately responsible for fulfilling the obligations in the ABC Act and Charter. However witnesses have been unable to provide proof demonstrating that the board has acted in a politically partisan manner.²

1.6 Clearly however, the dubious propriety of some recent events in the ABC raises a perception of political interference. The perception of interference is equally

1 ALP Platform 2000, Chapter 14. Available at http://www.alp.org.au/policy/platform2000/chapter_14.html

2 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.7; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.23; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, pp.36,37; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.56.

damaging as proof of actual interference for an organisation that is characterised by its reputation for independence and impartiality.³

1.7 The vast majority of submissions to the inquiry fail to address the terms of reference, that is, they do not address ‘*options* for methods of appointment to the board of the ABC’. Rather, many submissions express dissatisfaction with the present board, Chairman and/or Managing Director, and call on this Senate inquiry to recommend the introduction of a system of selection of ABC board members which ensures members of the ABC board are appointed on the basis of merit and commitment to independent and comprehensive public broadcasting.

1.8 The issue of whether change in the method of appointment of Board members is warranted is outside the scope of the terms of reference of this inquiry, and so these submissions go to matters outside the Committee’s inquiry. This issue is discussed in the following paragraphs entitled “Impetus for change”.

Impetus for change

1.9 Submissions to this inquiry indicate considerable community concern about the independence of the ABC, the direction of the ABC, and the possible impact of politicisation of the ABC (for example submissions to the Mansfield inquiry indicated the extent of community concern for the integrity and independence of the ABC; the amount of press attention to the ABC is indicative of importance;⁴ recent public rallies have been well attended; and letters to editors regularly express public concern.⁵)

1.10 Some of these concerns relate to the politicisation of appointment of board members, however adequate funding of the national broadcaster would solve many concerns.

1.11 A number of arguments have been put to the Committee for change in the method of appointments to the ABC board. Potentially, however, disadvantages of the models may, in the case of the ABC, defeat the purpose of changing the method of appointment in the first place. This is why it is so important that potential models are properly analysed and attention is paid to their detail prior to selection of one particular model.

1.12 Arguments advanced in support of the change are founded on the premises that changing the method of appointment of board members will depoliticise the board and in turn, depoliticising the board will improve the performance and independence of the board. Those arguments are that:

3 Mr Thompson, CPSU, *Proof Committee Hansard*, 20/8/01, p.14.

4 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.4.

5 Mr Thompson, CPSU, *Proof Committee Hansard*, 20/8/01, p.14.

- By ensuring the ABC is well governed and well managed so that it produces excellent quality programs⁶ and independent, cutting edge news and current affairs, the ABC board will serve the common good of the people, as it should;⁷
- The disposition of the board should not compromise the ABC's independence through commercialisation or privatisation;⁸
- Independence, integrity and autonomy of the ABC is central to Australia's system of media regulation;⁹ and
- Any perception of political interference in appointments to the board, which is charged with maintaining the independence of the organisation, tarnishes the ABC's reputation for independence, and consequently, undermines the ABC's value.¹⁰

1.13 Contradicting the premise that a change in the method of appointment of board members will depoliticise the board is the fact that all methods suggested to the Committee pose some degree of risk of politicisation of the appointment process.

1.14 Several witnesses acknowledged that depoliticising the board would not necessarily improve the performance of the board, and one witness acknowledged that the general performance of appointed board members was at a remarkably good level across the board.¹¹ There do, however, seem to be problems at the ABC that can be correlated to politicisation of the present board.

1.15 Witnesses acknowledged that political involvement of a board member does not necessarily result in politicised decision-making and behaviours. Several witnesses even concluded that political involvement should not necessarily preclude an applicant's appointment if selection criteria are fulfilled.¹²

1.16 Unfortunately the premises on which these arguments are based cannot be taken for granted, and this is one reason why potential appointment processes require in depth examination to ensure that they will achieve their objectives.

6 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.3.

7 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.1.

8 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.1.

9 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.3.

10 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.14; Friends of the ABC, Submission 593, p.3.

11 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.6.

12 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, pp.6-7; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, pp.17, 21; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, p.35; Mr Dempster, Submission 365, p.3.

Alternatives for appointment of board members

1.17 A variety of alternative processes for appointment of board members have been canvassed in the few submissions that address this matter. There is no consensus on the most appropriate method, and a number of submissions concede that each has merits and disadvantages. There has not been detailed analysis of the relative merits of proposed alternatives. A more thorough consideration of the alternatives than this inquiry permits is necessary.

1.18 There are a number of guiding principles that, it has been suggested, are critical elements of an appointment process. These are as follows:

- Appointment process should be public, transparent, open and accountable.¹³
- Applications should be invited in advertisements in the national media – criteria should be stipulated in advertisements.¹⁴
- Assessment of applications should be independent.¹⁵
- Applications should be assessed according to certain defined and publicly available criteria.¹⁶ Suggested criteria include:
 - a. A commitment to public broadcasting.¹⁷
 - b. Breadth of vision.¹⁸
 - c. Regard for community interests.¹⁹
 - d. Regard for the public good.²⁰

13 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.16; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, p.37; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.42; Ms Jakubowski, Submission 643, p.3; Friends of the ABC, Submission 593, p.9.

14 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.44; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.58, Submission 643, p.3; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, p.30, Submission 593, p.9.

15 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, pp.15-16; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.58, Submission 643, p.3.

16 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.42; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.59; Friends of the ABC, Submission 593, p.9.

17 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.20; Friends of the ABC, Submission 593, p.9; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.44, Submission 365, p.4.

18 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.17.

19 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.17.

- e. Nolan's seven principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty, leadership.²¹
- f. Areas of expertise required on the board.²²

1.19 Labor Senators believe that making selection criteria publicly available would be a useful step towards ensuring the competence of applicants. This action would also counteract any public perception of bias in the selection process and the resultant damage to the ABC's reputation.

The method of appointing board members

1.20 Several models have been implemented internationally for the appointment of board members to public institutions. Notable examples brought to the Committee's attention were the systems operating in the UK and the USA.

1.21 The Nolan system in the UK has been implemented for all appointments to public office. In this system, an independent assessment by bureaucracy filters applicants according to criteria, which include Nolan's seven principles of public life, and then hands the Minister a short-list from which the Minister makes his or her selection.²³

1.22 The United States has a congressional hearing system where candidates for public appointments are vetted publicly at public hearings to guarantee their competence and disposition for the appointment.²⁴

1.23 Based on these international examples, submissions to the Inquiry suggested alternatives modelled on those systems.

1.24 One suggestion that received considerable support was that an independent individual be given the task of assessing applications to the ABC board in the same way the UK's Nolan Committee assesses all appointments to public office.²⁵ Difficulties implementing such a system would include practical problems ensuring

20 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.5.

21 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.57.

22 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.20; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.57; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, p.28; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.44; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, p.30, Submission 593, p.9.

23 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.3; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15.

24 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.3.

25 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.15; Friends of the ABC, Submission 593, p.9.

the assessor was not a political appointment, and because the Minister retains ultimate decision-making authority the risk of politicisation remains.

1.25 It has been argued that the transparency of the process would make sure the government or Minister of the day was accountable for decisions made.²⁶ However all political board appointments to the ABC have been made in the face of public scrutiny, and the political consequences of the decisions have not historically deterred Australian governments and Ministers.²⁷

1.26 Similarly, the suggestion that appointments be made by a joint standing committee of the parliament fails to take account of the fact that such a committee would have a majority of members from the government of the day, who would therefore control the process.²⁸

1.27 Labor Senators conclude that without means of overcoming the problems with the suggested systems, depoliticisation of the board would not be an assured outcome of change to the appointment process.

1.28 A number of witnesses before the Committee indicated that benefits from these systems are primarily the direct result of the transparency in the decision-making processes that is achieved.²⁹ Although it is true that publicity arising from transparency can affect Government decision-making, Labor Senators conclude that experience with ABC board appointments suggests that depoliticisation would not result simply from transparency of the process.

1.29 Another alternative appointment process would be to require bicameral approval of appointees by passage of appointments through a joint sitting of both houses of parliament or alternatively through both houses consecutively.

1.30 This brings the appointment process very close to the political process such that politicisation remains a risk.

1.31 In any event, the detail of all of these processes has not yet been elaborated, and requires further investigation.

26 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, pp.21, 26; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, pp.31, 39.

27 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.13.

28 Senator Schacht, *Proof Committee Hansard*, 20/8/01, p.13.

29 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, pp.21, 26; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, pp.31, 39; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.55; Mr Dempster, *Proof Committee Hansard*, 20/8/01, p.44, 46.

Labor Senators' criticisms of Chair's report

1.32 Labor Senators dispute a number of the Chair's conclusions based on their failure to take account of the evidence presented to the Committee, or their direct contradiction of the evidence.

1.33 The Chair's report finds that there is a reality and perception that appointments to the ABC board, by both parties, have been on the basis of political affiliation rather than exclusively merit. However the conclusion that appointments made partly on the basis of political affiliation rather than exclusively on merit have led to any real political bias of the board is a tenuous one. Indeed a number of witnesses have stated that there is no evidence of a link between political affiliation and demonstrable bias as a board member.³⁰

1.34 In response to that finding, the Chair's report recommends a system based on the principles of openness and transparency modelled on the UK Nolan rules. The proposed system calls for the development of selection criteria, public advertising for applications, short listing of candidates by a parliamentary Committee, and final appointment by the Minister.

1.35 The model proposed was not suggested by a single witness. Witnesses and those who have made submissions to the inquiry have not had an opportunity to comment on the merits of this new model envisaged by the Chair. Indeed several witnesses indicated flaws in the models from which this proposal draws which have not been addressed. Additionally, the parliamentary model suggested by the Chair is based on the American system which received some strong criticism as not being adequately transparent and falling well short of world best practice.³¹

1.36 Some specific criticisms of the model recommended by the Chair are detailed below under "Development of the selection criteria" and "Shortlisting by a Parliamentary Committee".

Development of the selection criteria

1.37 The Chair's model suggests the development of selection criteria by the Merit Protection Commissioner. One of the points that emerged in the evidence was that a key consideration is the balance of skills on the Board taken as a whole. Arguably, the Merit Protection Commissioner would not be in a position to set good selection criteria on the grounds that he or she would lack the detailed knowledge of the

30 Prof. Morgan, *Proof Committee Hansard*, 20/8/01, p.7; Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.23; Prof. Inglis, *Proof Committee Hansard*, 20/8/01, pp.36,37; Ms Jakubowski, *Proof Committee Hansard*, 20/8/01, p.56.

31 CPSU, Submission 363, p.17. The CPSU thought the US system can be "quite a destructive affair" which focuses "on personal characteristics and can lead to character assassination as a way of killing off a candidate": *Proof Committee Hansard*, 20/8/01, p.16.

strengths and weaknesses of the existing board, and thus, the sort of skills needed in an appointment round.

1.38 A better solution may be for the selection criteria to be prepared by the Board itself, or the Department, subject to the approval of the Minister. The main consideration is that the appointment be made on the basis of public selection criteria.

Shortlisting by a Parliamentary Committee

1.39 A number of witnesses raised concerns at the suggestion of a parliamentary Committee reviewing applications for board positions.³² The major concern was that the process would subject candidates to a public interrogation by members of the Committee, and unless this was tightly controlled, questioning could become personal and be aimed at destroying the credibility and political sympathies of the candidate rather than exploring their expertise. This would be both unfair and a potential deterrent to worthy applicants.

1.40 A further problem with the use of a Parliamentary Committee to shortlist applicants is that the shortlisting would in practice be done principally by the secretariat of the Committee with only the final stages of the shortlisting actually being performed by the Members and Senators. It is questionable whether the secretariat is suited to this role.

1.41 Placing so much of the process in the hands of the Parliament potentially violates the principle of Ministerial responsibility, under which the administration of government is the responsibility of the Ministers, who are accountable to the Parliament for that administration.

1.42 Appointments to government agencies, the judiciary, boards of cultural and educational institutions and other similar public appointments are decisions of the government of the day. Arguably the appointment of ABC board members is indistinguishable from these similar high-level public appointments. If the method of appointment of board members of the ABC were to change, consistency would require an overhaul of all appointment methods.³³ The desirability of such a fundamental transfer of responsibility away from government is a relevant issue that requires further consideration.

1.43 Labor has a plan for better public administration which would apply to appointments to the ABC board, although it does not preclude further measures being considered in relation to the ABC:³⁴

32 Mr Thomson, CPSU, *Proof Committee Hansard*, 20/8/01, p.16; Mr Cassidy, Friends of the ABC, *Proof Committee Hansard*, 20/8/01, p.38, Submission 593, p.10.

33 Regarding politicisation of other appointments, see Friends of the ABC, Submission 593, p.8.

34 Senator John Faulkner, Shadow Minister For Public Administration, "Re-invigorating Commonwealth

With statutory office holders, the relevant Minister will, as a first step, consider whether vacancies should be advertised on the basis that this would normally be done well in advance of vacancies falling due. Ministers will ask the Secretaries of their departments to prepare a report on each vacancy. These reports, which will include such details as the current appointee, the timing of the vacancy, the conditions of appointment and the process followed to identify the recommended new appointee, will be made available to Cabinet, to inform its consideration of proposed appointments.

Therefore, in the case of both Secretaries and statutory office holders there will be a more wide-ranging canvassing of possibilities and broader based advice to the Government that will focus on the inherent merit of individuals rather than on their perceived political alignment.

1.44 Parliament might more appropriately scrutinise the selection process, via the normal procedure of questions asked of the Minister in question time, underpinned by transparency in documenting the process.

1.45 Finally, as mentioned previously, under the usual system of establishing joint Committees, the government has the majority membership of the Committee, otherwise both Houses of Parliament will not agree to the Committee. The result would be a Committee that is still closely associated with the government, and is consequently no more independent than the current system.

Conclusions

1.46 Labor believes that the most important means of ensuring the independence of the ABC is through the provision of adequate funding, since the principal way governments have tried to influence the ABC in the past has been through funding reductions. Labor is committed to adequately fund the ABC:

Labor will provide adequate funding on a triennial basis to ensure quality is maintained in both the program and service delivery areas, as well as ensuring that Australian content levels are maintained at an appropriate level to foster the development of our cultural identity. Where appropriate, Labor will ensure that adequate funding is provided to assist the ABC ... with the introduction of digital broadcasting and online technologies.³⁵

1.47 The Committee has not received sufficient detail on alternative selection processes of ABC board members to be able to conclude that a specific process would ensure depoliticisation of board appointments through the appointment of members on

Public Administration”, Presentation to a Seminar Sponsored by the Institute of Public Administration Australia (ACT Division) and the National Institute for Governance, National Convention Centre, 22/3/01.

35 ALP Platform 2000, Chapter 14. Available at http://www.alp.org.au/policy/platform2000/chapter_14.html

the basis of merit and commitment to independent and comprehensive public broadcasting. Nor is there consensus in evidence to the Committee on the appropriate model for appointment of board members.

1.48 No evidence was received from the Board, the Minister, the department, or the media making it difficult to get a comprehensive picture of the existing system and its practical operation, and potential areas for improvement.

1.49 In order to make an informed decision on the most appropriate method for appointment of board members in Australia, further investigation into the relative merits of the various models proposed, and the success of models implemented internationally, is necessary.

1.50 Labor Senators see merit in the establishment of criteria against which applications for board membership can be assessed, and advertising and inviting applications for board positions. This will assist in achieving the important objective of depoliticising the ABC board, and assuring the independence of the ABC into the future. Further investigation into the merits of alternative processes for selecting appointments from the applications received is needed in order to ensure that the options are well considered and analysed. This will guarantee the best outcome for the ABC.

SENATOR MARK BISHOP

A.L.P. (W.A.)