

AUSTRALIAN LABOR PARTY, AUSTRALIAN GREENS AND AUSTRALIAN DEMOCRATS

MINORITY REPORT

Since 1983 under both Coalition and Labor Governments, the Board of the ABC has included a director elected by the staff. The staff-elected director is but one of a maximum of 9 directors. Up to 7 members of the Board are appointed by the Government and the Managing Director is appointed by the Board.

The Australian Broadcasting Corporation Amendment Bill 2006 (the Bill) proposes to abolish the staff-elected position.

In the view of Labor, Green and Democrat Senators, the Government has failed to make the case for changing the composition of the Board in this way.

We believe that the Bill will adversely impact on the performance of the ABC Board and undermine public confidence in the independence of the ABC.

Experienced broadcasters have always filled the staff-elected position. In the future, if this Bill is passed, the Board will be deprived of the valuable insight into policy issues that the staff-elected director has been able to bring to Board deliberations. The actions of ABC management are likely to receive less scrutiny,

The Government has claimed that the staff-elected director is subject to a potential conflict because they may feel obliged to represent the interests of the people who elected them rather than to act in the best interests of the ABC.

Evidence received by the committee at the hearing demonstrated conclusively that there is no such conflict. While the method of appointment for the staff-elected director differs from other non-executive directors, the ABC Act is quite clear that the duties and responsibilities are the same for all directors.¹ The current staff-elected director and former holders of that office all stated that the role does not involve representing the staff in the Boardroom.

Mr Dempster stated:

You are not the shop steward for any of the in-house unions. That is clearly understood...You are there for policy development and operational matters.²

1 *Australian Broadcasting Corporation Act 1983*, s. 8.

2 Mr Quentin Dempster, *Proof Committee Hansard*, 13 April 2006, p. 3.

The committee did not receive any evidence that the current or previous staff-elected directors had failed to act in the best interests of the ABC or that they have put the interests of staff ahead of the corporation.

Indeed a number of examples were cited where staff-elected directors argued against initiatives that would have directly benefited staff because they would have undermined the ABC's independence. One case was the proposed partnership between Telstra and the ABC which would have allowed Telstra to influence the ABC's production decisions.³

In making the case for change, the Government has relied heavily on the Uhrig Review of Corporate Governance of Statutory Authorities and Office holders. Mr Uhrig cautioned against representational appointments to Government boards.

Labor, Green and Democrat Senators do not believe that these comments are relevant to the position of the staff-elected director on the ABC Board.

The *Australian Broadcasting Corporation Act 1983* (the ABC Act) makes quite clear that the staff-elected director has no role to represent the interests of the ABC employees. As Ms Greenhill from the Friends of the ABC (ACT and Region) noted 'Uhrig's use of the term 'representational is not at all the same as by means of election.'⁴

The method of appointment to the Board is not the exclusive determinant of whether a position is a representative one. In the case of the ABC, the staff-elected director is not a representative of the staff just as directors appointed by the Government should not be representatives of the Government on the Board.

Furthermore, it is clear that Mr Uhrig did not examine the governance arrangements at the ABC. He did not make any inquiries of any current or previous member of the ABC Board. Mr Uhrig's terms of reference directed him to focus on a very different class of Government agency than the ABC.⁵

3 See *Proof Committee Hansard*, 13 April 2006, p.6.

4 Ms Jill Greenwell, *Proof Committee Hansard*, 13 April 2006, p. 30.

5 Mr Uhrig's terms of reference asked him to examine:

'Opportunities to improve the governance arrangements for statutory authorities and office holders, particularly those that have critical business relationships such as: the Australian Taxation Office, Australian Competition and Consumer Commission, Australian Prudential Regulation Authority, Reserve Bank of Australia, Australian Securities and Investments Commission, Health Insurance Commission and Centrelink.' *Review of the Corporate Governance of Statutory Authorities and Office Holders*, Commonwealth of Australia, 2003, p. 106.

We believe that the ABC is a special institution. Its governance needs require specific consideration.

The Majority Report also relies on the submission of Professor Stephen Bartos, a director at the National Institute of Governance. It is important to note Professor Bartos did not endorse the removal of the position of the staff-elected director. He stated that this was a matter for political judgement. Professor Bartos also observed that: 'In governance terms, the choice of model to be adopted for a public sector body should not be static or formulaic, but be driven by the objectives of the organisation concerned.'⁶ Given that the objectives of the ABC include the maintenance of independence, it is appropriate for a staff-elected director to sit along side government appointed directors.

For the last twenty three years, the staff-elected position has ensured that at least one member of the Board has an extensive understanding of broadcasting and public broadcasting in particular.

The evidence at the hearing clearly demonstrated that this has been of great value to the ABC.

One of powerful example of the important contribution of the staff-elected director was provided by Mr Cassidy from the Friends of the ABC (SA).

Mr Cassidy related the incident where ABC management under pressure from the Government of Papua New Guinea wanted to censor an interview conducted by Four Corners.

Mr Cassidy told the committee:

Tom Molomby, the staff elected member, was critical in the decision to overrule the management and to uphold the independence of the ABC. That board decision to overturn the management was carried by a majority of one. It was carried against the diehard opposition of some ABC staff, including the then managing director, who threatened to resign if the management proposal was overturned, and including threats from other senior managers at the ABC.⁷

Labor, Green and Democrat Senators believe that this Bill represents an ideologically motivated attack on the ABC. The staff-elected position is one position on the Board that is beyond the Government's capacity to influence or control.

This Bill comes after a decade where the ABC has been chronically under-funded and follows the appointment of a series of strident conservative supporters to the ABC

6 Professor Stephen Bartos, *Submission 2*, p. 2.

7 Mr Darce Cassidy, Friends of the ABC, South Australia Inc, *Proof Committee Hansard*, 13 April 2006, p. 32.

Board. We believe that this legislation is part of a concerted attempt by the Government to crush any semblance of independent thought within the ABC.

It is true that there is public concern about the governance of the ABC. This concern relates to the succession of blatantly political appointments to the ABC Board. There is no doubt that this practice has undermined public confidence in the independence of the ABC.

Labor, Democrat and Green Senators believe that this practice has to stop.

There should be an open and transparent process for making appointments to the ABC board. Vacancies should be advertised and there should be clear merit-based selection criteria.

An independent selection panel should conduct the shortlist selection process.

If the Minister does not appoint a short-listed candidate he or she should be required to table in Parliament a formal statement of the reasons for departing from the shortlist.

These are the measures that are required to strengthen the independence of the ABC and ensure that it has the expertise to meet the challenges of public broadcasting in the 21st century.

This Bill does nothing to advance those objectives and should be immediately withdrawn.

Attack on Ms Koval

Labor and Democrat and Green Senators are disturbed by the attack on the integrity of the current staff-elected director Ms Romana Koval in paragraphs 1.17 to 1.19 of the Majority Report.

The Majority Report criticises Ms Koval for failing to sign the ABC Board Protocol and cites it as an example of the staff-elected director lacking independence.

There is no basis for this claim.

Ms Koval made clear she has no objection to maintaining Board confidentiality and that she had at all times complied with her obligations as a director under the ABC Act and the *Commonwealth Authorities and Companies Act 1997*.

Ms Koval stated that she had received legal advice that the protocol was inconsistent with her legal obligation to act independently.

This legal advice was not challenged in any evidence before the committee.

Ms Koval told the committee that many versions of the protocol were put to her over several months and that:

I was very happy to sign a protocol that I could sign if I felt that it was not illegal for me to sign it. I did not want to sign away my rights as an independent director.⁸

In her submission Ms Koval stated:

It is clear that a Director must act bona fide in the best interests of the Corporation. But that assessment is a matter for the individual director, and is not determined by the opinion of other directors.⁹

Labor, Democrat and Green Senators believe that there is no basis for the Majority Report to impugn Ms Koval's conduct in relation to the protocol.

Senator Kate Lundy
ALP, Australian Capital Territory

Senator Dana Wortley
ALP, South Australia

Senator Rachel Siewert
AG, Western Australia

Senator Lyn Allison
AD, Victoria

8 Ms Ramona Koval, *Proof Committee Hansard*, 13 April 2006, p. 21.

9 Ms Ramona Koval, *Submission 43*, p. 3.

