



**Friends of the ABC (ACT & Region) Inc**  
GPO Box 2625  
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Friends of the ABC (ACT & Region) welcomes this opportunity to make a submission to the Senate Committee inquiring into the Australian Broadcasting Corporation Amendment Bill.

## **EXECUTIVE SUMMARY**

### **Conflict of interest**

The proposal to abolish the staff-elected director position is based on a misconception. The staff nominee does not represent the industrial interests of ABC staff. He or she has the duty, like all other directors, to act in good faith in the interests of the whole ABC, not of any particular part of it.

### **Human capital integral to the ABC**

A director elected by ABC staff, far from having a conflict of interest has a *direct interest* in seeing that the Board carries out its duties. This is because of the special nature of the ABC, as set out in the ABC Act (S 6), to provide broadcasting services which are, inter alia, innovative, comprehensive, contributing to a sense of Australian identity. In other words as a public broadcaster the ABC is statutorily required to produce programming distinctive from commercial broadcasters; and to do this the Corporation is dependent upon the creative resources of its staff.

As the ABC Board is required (ABC Act S8) to see that the Corporation carries out its distinctive functions, ABC staff are essential to the ability of the ABC Board to fulfil its duties. Therefore a staff presence on the ABC Board is essential.

### **Modern principles of good governance**

The proposal to abolish the staff-elected director position purports to be consistent with the modern principles of good governance outlined in the Uhrig Review of the Corporate Governance of Statutory Authorities and Office Holders.

That review however was principally into regulatory or service delivery agencies and took as its reference point comparable examples in the private sector. There is no reference point to a public broadcaster in the private sector, nor was the ABC was among the statutory bodies investigated by Uhrig.

It is therefore particularly pertinent that Uhrig should have said that “there are no universally accepted structures and practices that constitute good governance”<sup>1</sup>

The “representational appointments”, which Uhrig is cited as opposing, taken as they are from private sector examples of representatives of the parent company sitting on the board of subsidiaries, bear no relation to the staff-elected director on the ABC Board.

Nor does the term “representational appointments” as used by Uhrig have any connection with “election”. It is wrong to confuse Uhrig’s use of the word “representational” with “election” and thence the staff-elected directorship.

### **Recommendation**

Friends of the ABC (ACT & Region) recommend that the position of staff-elected director on the Board Australian Broadcasting Corporation be retained

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<sup>1</sup> Review of the Corporate Governance of Statutory Authorities and Office Holders, p.17 (and p.2)  
[http://www.finance.gov.au/governancestructures/docs/The\\_Uhrig\\_Report\\_July\\_2003.pdf](http://www.finance.gov.au/governancestructures/docs/The_Uhrig_Report_July_2003.pdf)



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It is asserted that the staff-elected director potentially faces a conflict of interest between the duties of a director and the appointment via election by ABC staff, and that this conflict is not consistent with principles of good governance. It is on this basis the legislation seeks to abolish the staff-elected position.

The objection is misconceived. There is no conflict. A staff-elected director enhances the ability of the Board to carry out the statutory public broadcaster functions vested in it. The suggestion of conflict rests upon a misconception that the staff appointee is to represent and further the industrial interests of ABC staff. The proposed abolition of the staff-elected position also rests upon the assumption that the special statutory duties imposed upon the ABC can be adequately carried out without staff input at Board level.

We first address the question why a staff-elected director contributes to the Board.

## **I A STAFF-ELECTED DIRECTOR ON THE ABC BOARD**

A director elected by ABC staff, far from having a conflict of interest between the responsibilities as a Director and the position on the staff has a *direct interest* in seeing that the Board carries out its duties.

### **THE DUTIES OF THE ABC BOARD**

As set out in the ABC Act (S.8), they include:

- ensuring that the Corporation's output is of "maximum benefit to the people of Australia" S.8(1)(a);
- maintaining the "independence and integrity" of the ABC; S.8 (1) (b)
- benchmarking the accuracy and impartiality of news and information presentation by "recognised standards of objective journalism" S 8(1) (c)

### **THE CORPORATION'S OUTPUT**

The ABC is statutorily required - S 6 (1) (a) - to provide broadcasting services which are

- innovative and
- comprehensive,
- contributing to a sense of Australian identity
- entertaining
- informative
- educational

It is also required - S 6 (1) (c) - to

- encourage the performing arts in Australia

The ABC is also required - S 6 (1) (b) - to

- encourage awareness of Australia and of Australian attitudes on world affairs by broadcasting programs to countries outside Australia

## THE IMPORTANCE OF STAFF IN RELATION TO THE CORPORATION'S OUTPUT

It is as a public broadcaster that the ABC's production of broadcasting services is, and must be, different from its commercial counterparts. The measure of commercial broadcasters' success is the size of the audience they deliver to their advertisers. The size of the audience in turn determines the type and timing of their entertainment and of their news and current affairs, not only in what is put to air, but what is not. By contrast, the quality of the programme itself is the focus of a public broadcaster. The treatment of issues and subjects of interest to minority groups is possible only when the delivery of a large audience to the advertisers is not paramount to the broadcaster.

Distinctive programming is possible only with staff who are committed to those distinctive qualities – people who are allowed to develop specialised interests in, and given the time to research, religion, rural Australia, youth music culture, health, media, the law, literature, current affairs inside and out of Australia.

In other words the product of the ABC is essentially a matter of the ABC's creative human resources. It certainly cannot be measured by advertising revenue; it is not just a matter of conscientiousness or diligence, measurable by the increase in customer numbers or in units of production. Nor is it merely caring about the organisation in which the staff are employed. It is the quality of their reporting, their research, their filming and sound production, their innovation, which is at the core of the ABC's value.

Staff are essential to whether the legislated functions of the Corporation are in fact given effect. The ABC will produce programs of high journalistic quality only if it has the staff willing to do so.

## THE NEED FOR A STAFF PRESENCE ON THE BOARD

It is also critical to the Board's ability to fulfil its duty - to see that the Corporation gives effect to its legislated functions - that the staff have an interest in maintaining the public broadcasting character of the Corporation.

The Board's function in regard to programming is supervisory but it is essential for it to gauge the relationship of programming to the public broadcaster functions imposed upon the Corporation. It is not a case of it measuring the profitability or likely profitability of programmes, which can be assessed by the business judgment of the Board, presentation of financial material, and if necessary *ad hoc* staff consultation. The more complex test of measuring the distinctive public broadcaster quality of programming requires the continuing presence of a staff representative on the Board.

Other Australian Government agencies which, like the ABC, depend on the human capital - of staff and of students - have staff and students on their boards or councils.

**The Australian National University** is established under federal legislation, the *Australian National University Act*. The act provides for two members of the ANU Council to be elected by and from the academic staff, and one member to be elected by and from the general staff. In addition both postgraduate and undergraduate students are entitled to elect a Council member from the respective student body.

**The Australian Institute of Health and Welfare** is an Australian Government statutory authority within the Health and Ageing portfolio, reporting direct to the portfolio Minister. The Institute is governed by a board whose composition is spelt out in Section 8(1) of the Australian Institute of Health and Welfare Act. While the federal minister nominates six members of the board the Act provides for the staff of the Institute to elect one member of the board.

**The Australian Film Television and Radio School** was established under the *Australian Film and Television School Act*, and comes within the portfolio of the Minister for Communications, Information Technology and the Arts, Senator Coonan. The AFTRS is run by a Council, which reports to the Minister. Section 8 of this Act provides that while the government appoints a number of members of the Council, one Council member is elected by and from the staff of the Council, and one Council member is elected by and from the students.

Because of the particular nature of these institutions they too have a special need for the continuing presence of staff and student representatives to ensure the bodies' functions are carried out.

The above relates only to federal agencies. However, many state agencies also have provision for staff representation, of which the most significant are probably the universities.

Private enterprise in the ACT provides at least one example of stakeholder directors. Canberra Girls' Grammar School, an Anglican school, has on its board a nominee director from each of old scholars, the parent body, and staff. The staff nominee is elected by staff.

## **II GOOD GOVERNANCE**

The second issue to address is the reason for abolishing the position of staff-elected director on the ABC Board. It is asserted in the Second Reading Speech that such positions are uncommon amongst Australian Government

agency boards, and that the position of a staff-elected director is not consistent with modern principles of good governance.

Firstly it is important to distinguish two facets of the staff-elected director: the “stakeholder” attribute, “representing” the interests of a particular group in the management of the agency as a whole; and the attribute of the manner of appointment – election or nomination – and its impact on the nature of the stakeholders’ “representation”.

### **(i) STAKEHOLDERS AND GOOD GOVERNANCE**

The ABC is not an “anomaly amongst Australian Government agency boards”<sup>2</sup> in having stake holder representation. As mentioned above other institutions have a Board member elected by and from staff and/or from students.

This is not a question of representing the industrial interests of staff – rates of pay, terms and conditions, accommodation. To suggest that a “potential conflict of interest” arises because the staff director is appointed “via election by ABC staff” is to confuse industrial matters with broader policy issues of the Corporation.<sup>3</sup>

#### **ELECTION AND CONFLICT OF INTEREST**

Nor does the fact that the staff nominee director is elected have anything to do with being answerable to a constituency. Once elected, the staff-elected Director along with all other Directors is required to act in good faith in the interests of the whole ABC, not of any particular part of it, nor of any outside interest.

The Explanatory Memorandum outlines a “potential conflict” created by the election method: “that a staff-elected Director will be expected by the constituents who elect him or her to place the interests of staff ahead of the interests of the ABC as a whole where they are in conflict”.<sup>4</sup> It cites paragraph 23 (1)(a) of the *Commonwealth Authorities and Companies Act 1997*.

However it does not go on to point out that there is a civil penalty provision for any contravention of that paragraph. See Note 1 to S23(1). In other words there is already a means of dealing with any failure by a Director to fulfil his or her obligations.

Consistent with the Second Reading Speech, (and with Senator Coonan’s media statement), that “there is a clear legal requirement on the staff-elected Director that means he or she has the same rights and duties as the other Directors, which includes acting in the interests of the ABC as a whole” there is no need to abolish the directorship<sup>5</sup>.

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<sup>2</sup> Media Release, Sen. Hon Helen Coonan, 24 March 2006

[http://www.minister.dcita.gov.au/media/media\\_releases/restructure\\_of\\_abc\\_board](http://www.minister.dcita.gov.au/media/media_releases/restructure_of_abc_board)

<sup>3</sup> [http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?ID=2268&TABLE=EMS](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2268&TABLE=EMS)

<sup>4</sup> [http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?ID=2268&TABLE=EMS](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2268&TABLE=EMS)

<sup>5</sup> [http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?ID=2314877&TABLE=HANSARDS](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2314877&TABLE=HANSARDS)

## **(ii) “MODERN PRINCIPLES OF CORPORATE GOVERNANCE”**

Secondly it is necessary to test what are principles of governance in general, and what in particular is “good governance”.

In his Second Reading Speech, the Minister for Finance and Administration said that the position of a staff-elected Director is “not consistent with modern principles of corporate governance”.<sup>6</sup> To support the Government’s opinion he cited the conclusions of the Uhrig Review of the Corporate Governance of Statutory Authorities and Office Holders .

What he did not cite was Uhrig’s statement that:

“it is not surprising that there is no universally agreed definition of corporate governance, just as there are no universally accepted structures and practices that constitute good governance”<sup>7</sup>

This qualification of Uhrig’s is particularly important if his findings are being used to support changes to governance of the ABC. The Uhrig Review, although set up to review the corporate governance of statutory authorities generally, was concentrating on “the areas of taxation, regulation and the provision of services”.<sup>8</sup> It arose out of a Coalition pre-election promise in 2001 “partly in response to complaints that agencies such as the Australian Competition and Consumer Commission and the Australian Taxation Office were treating big business unfairly”.<sup>9</sup> It was also in the wake of the HIH collapse and the disquiet over the ineffectual insight exercised by the Australian Prudential Regulation Authority.

The ABC is in a completely different category of statutory authority to those on which Uhrig was focusing, so the notions of good governance, qualified as they were by Uhrig, are very likely to have a different emphasis in the ABC to that in the authorities he reviewed specifically.

## **“REPRESENTATIONAL APPOINTMENTS”**

Both in the Explanatory Memorandum and in the Second Reading Speech, the position of the staff-elected ABC Director is equated with the representational appointments which the Uhrig Review said it did not support.<sup>10</sup>

However, Uhrig was not referring to elected directors. What he meant by “representational appointments” were, firstly, examples in the private sector where “representational appointments arise in the context of representatives of the parent company sitting on the board of subsidiaries” - and he went on to

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<sup>6</sup> loc.cit

<sup>7</sup> Review of the Corporate Governance of Statutory Authorities and Office Holders, p.17 (and p.2) [http://www.finance.gov.au/governancestructures/docs/The\\_Uhrig\\_Report\\_July\\_2003.pdf](http://www.finance.gov.au/governancestructures/docs/The_Uhrig_Report_July_2003.pdf)

<sup>8</sup> ibid. p.1

<sup>9</sup> <http://www.aph.gov.au/LIBRARY/pubs/rn/2004-05/05rn50.pdf>

<sup>10</sup> [http://parlinfoweb.aph.gov.au/piweb/view\\_document.aspx?ID=2268&TABLE=EMS](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2268&TABLE=EMS)

outline the conflicts of interest which arise in this situation.<sup>11</sup> Secondly he went on to consider the public sector “representational appointments”:

“Similarly, care should be exercised when appointing public servants to boards. In circumstances where a departmental staff member is appointed on the basis of representing the government’s interests or having a ‘quasi’ supervision approach, conflicts of interest may arise and poor governance is likely”.<sup>12</sup>

This is in no way comparable to either the stakeholder directorship, nor to the election as a means of appointment of a director, of the staff-elected director on the ABC Board.

It is completely misleading to have equated Uhrig’s examples of “representational appointments” with stakeholder directorships. It is quite wrong to have confused the word “representational”, as used by Uhrig, with “election” and thence the staff-elected directorship.

### **III THE CONTRIBUTION OF THE ABC STAFF ELECTED DIRECTOR**

Finally what is the track record of staff-elected directors on the ABC Board?

All of the Staff Elected Directors have been distinguished broadcasters. While there may have been “a tension between the expectations placed by others on their role and their established duties as directors of a corporation” this tension has not been other than productive.<sup>13</sup>

The history of their contributions shows that the staff-elected directors have not shown an interest in narrow industrial issues such as pay and conditions, or the state of the staff canteen, but rather have focused their attention on their key responsibility under the ABC Act, namely “to maintain the independence and integrity of the Corporation”.

### **IV CONCLUSION**

In conclusion Friends of the ABC (ACT & Region) recommend that,

- because the staff-elected director is not in any way an industrial representative of ABC staff,
- because there is no conflict of interest in an essential stakeholder being on the ABC Board,
- because of the contribution over the years to the ABC Board by staff-elected directors,

the position of staff-elected director on the ABC Board be retained

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April 2006

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<sup>11</sup> Uhrig Review, p. 99

[http://www.finance.gov.au/governancestructures/docs/The\\_Uhrig\\_Report\\_July\\_2003.pdf](http://www.finance.gov.au/governancestructures/docs/The_Uhrig_Report_July_2003.pdf)

<sup>12</sup> loc.cit

<sup>13</sup> Donald McDonald, Media release 24 March 2006