

# Australian Broadcasting Corporation Amendment Bill 2006

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Candidate for staff-elected director 2006

## *Duties of the Board*

8. (1) *It is the duty of the Board:*

- (a) *to ensure that the functions of the Corporation are performed efficiently and with the maximum benefit to the people of Australia;*
- (b) ***to maintain the independence and integrity of the Corporation;***
- (c) *to ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism; and*
- (d) *to ensure that the Corporation does not contravene, or fail to comply with:*
  - (i) *any of the provisions of this Act or any other Act that are applicable to the Corporation; or*
  - (ii) *any directions given to, or requirements made in relation to, the Corporation under any of those provisions.*

Extract from Australian Broadcasting Corporation Act 1983

1. The position of staff elected Director of the ABC has prevailed in the ABC Act since the creation of the corporation in 1983, a period of 23 years. The staff elected Director is an executive director of the corporation and is subject to the Act's provisions 17 *Disclosure of interests* and 18 *Removal from office*. The Bill is said to address an 'ongoing tension relating to the position' and a 'potential conflict' between the duties of the staff-elected Director under paragraph 21 (1) (a) of the *Commonwealth Authorities and Companies Act 1997* to act in good faith in the best interests of the ABC, and the appointment of that Director via election by ABC staff. It is said that the election method creates a risk 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. While the Act's provisions requiring an election of eligible employees as the method of appointment may imply a constituency, a director so appointed is subject to the Act's Duties of the Board. (See above).
2. Section 17 (1A) of the ABC Act directly addresses the potential conflict issue while 17 (2) requires all directors, including the staff-elected Director, to adopt procedures where directors disclose a direct or indirect pecuniary interest in a decision of the Board. The recommendation of the Uhrig Review on 'representational appointments' covering statutory authorities and office holders is not relevant to the ABC which has its own enabling legislation designed for its specific purpose as the national public broadcaster.
3. It is submitted that it is incumbent on the proposer of the Bill to demonstrate the deleterious effects on the ABC of the alleged ongoing tension or the

alleged conflict on the success of the entity, particularly after 23 years of operation of the Act's provisions. While undoubtedly there is a tension from time to time (as there may be among any of the directors acting independently) it is submitted that the record shows the staff-elected Director position has evolved as structurally integral to the protection of the ABC's independence and integrity. Rather than being an 'anomaly' as the proposer contends, the record shows the position has become a dynamic contributor to the perception and reality of the ABC's independence from government and the integrity of its commercial arrangements. Any tension created is dynamic tension in the processes of policy development by the Board. This can be demonstrated.

4. **Breaches of the ABC Act and ABC Board editorial policies - 'Backdoor sponsorship'** :- The staff-elected Director position (1992-1996) was crucial to the exposure of illegalities through funding of ABC programs from external sources in the 1990s. An inquiry conducted on behalf of the ABC Board by Mr George Palmer QC established breaches of the ABC Act and board editorial and co-production policies. The staff-elected Director acted to protect the independence and integrity of the corporation and assisted the Board to expose systemic editorial compromise of television programs. The then Board used the position of staff-elected Director to help restore public confidence in the ABC and its procedures. The issue was distressing because many careers were destroyed or adversely affected. Rather than act in the narrow self-interest of the ABC's staff, the staff-elected Director's role in the exposure was an agonising episode requiring the ABC's interests and reputation to be placed above those of its employees. As a consequence of the backdoor sponsorship episode, work in the 'infotainment' strand of television programming came to an end resulting in significant job losses for journalists, producers and support staff. Under the ABC Act's Section 8 (Duties of the Board) the staff-elected Director acted to fulfil the Act's clearly stated requirements to protect the corporation's reputation. With the ABC being seen to clean up its own editorial compromises in 1995 the national broadcaster was in a much less vulnerable position when its television program *Media Watch* exposed cash-for-comment practices in commercial radio in 1997 and 1999. The development of editorial policies to accommodate external funding of programs had been informed by the input of the staff-elected Director (1984-1988 and 1988-1992) and when illegal practices became apparent the staff-elected Director (1992-1996) acted to raise concerns at the highest governance levels of the corporation. The ABC was seen by its audiences, the media industry and the public of Australia to be taking its obligations to the ABC Act very seriously. The role of the staff-elected Director in the exposure of 'backdoor' compromise of programs through external funding was acknowledged (p 23, 24 and 25) in the Report of the Senate Select Committee on ABC Management and Operations – Our ABC – of March 1995. The Select Committee was chaired by Senator Richard Alston (LP Victoria) later to become the Minister for Communications. At no time during his eight years in the communications portfolio, with direct responsibility for the ABC and the ABC Act, did Senator Alston ever raise any pressing need for the abolition of the staff-elected Director position from the ABC Board even through his time of

contentious dispute with the corporation in pursuit of his allegations of bias in ABC radio current affairs programs.

5. **Strategic independence: Sectoral diversity – subscription (pay) television; ABC On-line.** The staff-elected Director position has been integral to the development of Board policy and operational procedures covering the ABC's commercial undertakings in subscription television and ABC On-line. The Senate Select committee report on ABC management and operations (1995) noted: "... the *Australian Broadcasting Corporation Act (1983)* specifically empowers and indeed encourages the Corporation to enter into commercial business arrangements. .... The range of commercial activities engaged in by the ABC varies enormously, as does the potential impact of the different activities on the independence of the ABC and the concomitant public concern about them". The committee acknowledged tension existed between the ABC's commercial activities and its Charter obligations, particularly the potential for the corruption of news value judgements to meet a commercial imperative. The ABC's 1993 consortium partnership with John Fairfax Holdings Pty. Ltd and the U.S. based Cox Communications in a commercial pay TV 24 Hour News Channel accessing ABC material required rigorous policy debate to protect the ABC's taxpayer funded free-to-air services. As a direct result of boardroom debate and later submissions to the Senate select committee, the committee validated the staff-elected Director's consistent concerns about maintaining the ABC's editorial and structural independence from its commercial undertakings: "The committee therefore recommends that the position of Managing Editor of all news and current affairs should be abolished and replaced by separate offices of managing editors of free-to-air television news and pay television news. This physical separation will ensure that editorial independence of free-to-air news is maintained in appearance as well as practice". (P78 *Our ABC* report). Such were the concerns about ABC independence (including from the ABC's media rivals, particularly News Corporation) that the Senate Select committee also recommended: "... that two years after the transmission of ABC Pay TV, an external review should be conducted to assess the effects on the ABC's editorial and program making independence of the recently announced joint venture between the ABC, Fairfax Holdings and Cox Communications and, if necessary, recommend appropriate measures to protect such independence". The staff-elected Director had been consistent in bringing to the board table practical concerns about the diversion of ABC free-to-air resources to the commercial entity. History shows that the venture failed (with the loss of 100 jobs) when it could not negotiate a cable or satellite carrier. Again the staff-elected Director had to act in the best interests of the ABC's independence in this very necessary debate and not the particular interests of staff. The same dynamic tensions existed on the ABC's other commercial ventures – Broadcast News Australia and Australia Television, the sponsored satellite service to Asia. In 2001 the then staff-elected Director assisted the Senate ECITA committee in its inquiries into the proposed partnership between Telstra and the ABC through the provision of ABC content to Telstra's broadband portal. Again the issue of editorial control and independence was raised. The issue was crystallised through this statement from a Telstra representative: "What we do think we are buying is the ABC's integrity, honesty and independence". As a result of the debate and the

Senate inquiry, consultants reviewed the ABC-Telstra deal and questioned the proposed contract's duration and the obligation on the ABC to provide to Telstra **all** ABC produced content. The then Managing Director subsequently declared: "The obligations that would have been imposed on the ABC by Telstra, the cost of servicing the deal and the fact that it did not sufficiently recognise the value of the ABC's breadth of content were, in the end, the critical issues for the ABC". Telstra withdrew from the deal. It is understood former staff-elected Director, Kirsten Garrett, will be making a submission canvassing this important period and the staff-elected Director's vital role in board policy development. Rather than acting in the narrow self-interest of ABC staff who stood to gain substantial job opportunities through the ABC-Telstra partnership, the staff-elected Director placed the ABC's independence at the highest priority.

6. **Trust.** Surveys consistently show that the ABC is one of the most trusted institutions and corporations in Australia. It is submitted that the dynamic tension which surrounds the staff-elected Director's role has established in the public mind the perception and, through the examples above, the reality of that role's part in sustaining the ABC's independence in the media marketplace and from the government of the day. Party political influence apparent in some ABC Board appointments has always had the potential to politicise and undermine public confidence in the ABC. Debates about the role, functions, funding and future of the ABC are part of the Australian story. Rather than being a perversity, as some contend, the position of staff-elected Director has become a vital part of the ABC and its obligations to the Act, the Parliament and engagement with all its audiences who are the taxpayers who pay for it. Remove the position and you risk turning the ABC in both perception and reality into 'the government station'. You further politicise the ABC and undermine the public's trust in this great institution.
7. **The future of the ABC.** In its 2005 annual report the ABC Board reported (P21): "A critical point has been reached. Unless adequate funding is secured for the coming triennium, the Board will be faced with a range of fundamental questions about the extent and quality of ABC programming and services". In the likely event that operational base funding is not substantially enhanced in the May budget the ABC faces a reduction in services or the quality of current services. Additionally, the ABC Board will be under a self-imposed pressure (as all previous boards have been as the last **five** triennial funding submissions from the ABC Board to government have been rejected outright) to pursue commercial partnerships. This is an intolerable Catch-22 for the national broadcaster. Knowing that full scale commerciality would put at risk the ABC's hard won trust with all its audiences and compromise its independence, the Board is enticed down that road by funding deprivation. The ABC is a major and daily producer of content on radio, television and on-line. With the digital revolution bringing rapidly expanding platforms like pod-casting and video pod-casting, downloads to mobile phones, internet broadband audio and video streaming; web TV and web radio, the ABC is well

placed to sustain and grow its audiences. But an ABC Board strapped for sustainable revenue will be forced to consider selling this content to users or to enter licensing agreements or exclusive partnerships with broadband service providers or global search engines seeking to wrap ABC content in advertising or individual program sponsorship arrangements. What is wrong with that? It changes the public purpose of the ABC to one of commerciality. Over time content would be created and designed to meet the needs of a competitive market and to drive commercial revenue returns. The ABC would become dependant on commercially-derived revenues. ABC Charter objectives of comprehensive content genres, innovation, rural and regional programming and audience inclusiveness and engagement would be diminished in any corporate or business plan written with commercial revenues in mind.

While ever government avoids the consequences of this strategic uncertainty for the national broadcaster, the protection of the corporation's independence and integrity will remain of vital concern. In the interests of the broadcaster, its Charter and its obligations to the ABC Act and the Australian people it is vital that the staff-elected Director position continue. **End of Submission.**