

SUBMISSION BY

MEDIA, ENTERTAINMENT & ARTS ALLIANCE

TO

**SENATE ENVIRONMENT, COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS
COMMITTEE**

**INQUIRY INTO
THE AUSTRALIAN BROADCASTING
CORPORATION AMENDMENT BILL 2006**

APRIL 2006



The Media, Entertainment & Alliance –the people who inform and entertain Australia

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

“The ABC Board is responsible for the ABC’s operations. Up to seven Directors are appointed by the Governor-General on the recommendation of the Government. The Managing Director is appointed by the Board and another Director is elected by the staff of the ABC.

”The ABC Act requires that Directors must be experienced in broadcasting, communications or management, or have expertise in financial or technical matters, or have cultural or other interests relevant to the provision of broadcasting services.

”The duty of the Board is to ensure that the functions of the Corporation are performed efficiently with maximum benefit to the people of Australia, and to maintain the independence and integrity of the Corporation. The Board is also responsible for ensuring that the gathering and presentation of news and information is accurate and impartial, according to recognised standards of journalism, and that the ABC complies with legislative and legal requirements.”¹

The Media, Entertainment & Arts Alliance welcomes the opportunity to make a submission to the Inquiry into the Australian Broadcasting Corporation Amendment Bill 2006.

In 2001, the method of appointments to the Board of the Australian Broadcasting Corporation (ABC) was considered by the Senate Environment, Communications, Information Technology and the Arts References Committee (Senate ECITA Committee).

The inquiry attracted 720 written submissions – an indication of the interest taken by the general public in the governance of the ABC.

The resulting report, *Above Board? Methods of appointment to the ABC Board*, included:

- the Chair’s Recommendations which argued for a comprehensive reform of the manner in which Board members are appointed,
- the report by Government Senators which argued for the maintenance of the status quo on the basis that there was no case to answer,
- the Labor Senators’ Minority Report which criticised many of the Chair’s recommendations but found “merit in the establishment of criteria against which applications for board membership can be assessed, and advertising and inviting applications for board positions”, and
- Additional Comments by Senator Bob Brown, which while supportive of the Chair’s recommendations, argued for the adoption of the British model involving an Office of the Commissioner of Public Appointments.

While noting that some submissions had argued a case for increasing the number of staff-elected directors from one to two, the Chair recommended the retention of the staff-elected director.²

Curiously, the Government Senators’ report rejected the Chair’s recommendation, but went on to state “There has been no suggestion that the position of the staff-elected director will be abolished.”³ Thus, it appears the Government Senators in fact supported the retention of the staff-elected director.

Since the release of the Senate ECITA Committee’s report, no changes have been made to the manner in which directors are appointed to the Board of the ABC.

The Alliance believes that the case for reforming the manner in which appointments to the ABC Board are made remains as compelling as it was in 2001. However, the abolition of the position of the staff-elected director is not the answer and is indeed likely to do more harm than good.

¹ The ABC Board – About the Board, see online at http://www.abc.net.au/corp/board/about_board.htm.

² *Above Board? Methods of appointment to the ABC Board*, Report of the Senate ECITA Committee, September 2001, page 23.

³ *Above Board? Methods of appointment to the ABC Board*, Report of the Senate ECITA Committee, September 2001, page 50.

Other than the staff-elected director, elected by ABC staff in an election conducted by the Australian Electoral Office, there are two other classes of director, namely the Managing Director, who is appointed by the Board, and not fewer than five and not more than seven other Directors, appointed by the Governor-General on the advice of the Minister for Communications. Arguably, the staff-elected director is the only genuinely independent appointment to the Board and certainly the only director whose appointment is transparent in process.

The Alliance notes that the reason posited for abolishing the staff-elected position is that it is in line with recommendations made in the June 2003 Review of the Corporate Governance of Statutory Authorities and Office Holders (generally known as the Uhrig Review), namely to eliminate “the potential for these appointments to be primarily concerned with the interests of those they represent rather than the success of the entity they are responsible for governing.”⁴

However, the Alliance is surprised that the Government should see fit to adopt just this one recommendation rather than review the manner of appointments to the Board of the ABC as a whole. Whilst not supporting staff or departmental appointments to the boards of statutory authorities, the Report did note that “Boards require the skills, experience and characteristics necessary to ensure the success of the entity. In the appointment process, consideration should first be given to the attributes of potential appointees including the ability for critical thought, objectivity, wisdom gained through appropriate experience, authority and the ability to exercise judgment. Subsequently, consideration should be given to the skills that will be beneficial to the board. For example, as boards are involved in the oversight of financial management, it will be beneficial to have members with financial skills and experience. However, it should be stressed that such skills are a secondary consideration as specialist advice can be accessed by the board as required.”⁵

The duties of the Board are set out in section 8 of the Australian Broadcasting Corporation Act 1983.

(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 recognized 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; and
- (e) to develop codes of practice relating to programming matters and to notify those codes to the Australian Broadcasting Authority.

(2) If the Minister at any time furnishes to the Board a statement of the policy of the Commonwealth Government on any matter relating to broadcasting, or any matter of administration, that is relevant to the performance of the functions of the Corporation and requests the Board to consider that policy in the performance of its functions, the Board shall ensure that consideration is given to that policy.

(3) Nothing in subsection (1) or (2) is to be taken to impose on the Board a duty that is enforceable by proceedings in a court.⁶

Staff-elected directors have brought to the Board of the ABC “the skills, experience and characteristics necessary to ensure the success of the entity”, skills and experience in broadcasting not brought to the Board by any Board member appointed by the Governor-General other than Robert Redmond, the founder of *Four Corners*. Whilst Board members have brought necessary skills, particularly and most

⁴ Review of the Corporate Governance of Statutory Authorities and Office Holders, June 2003, pages 98-99, cited in Explanatory Memorandum, Australian Broadcasting Corporation Amendment Bill 2006, in Senator Minchin’s Second Reading Speech and available online at http://www.finance.gov.au/GovernanceStructures/docs/The_Uhrig_Report_July_2003.pdf

⁵ Review of the Corporate Governance of Statutory Authorities and Office Holders, June 2003, page 98.

⁶ Australian Broadcasting Corporation Act 1983, section 8, see online at <http://scaleplus.law.gov.au/html/histact/10/5029/0/HA000120.htm>

often, financial and legal skills and experience and, to a lesser extent, experience in the broader cultural sector, it is the staff-elected directors who bring knowledge and ability in relation to the core business of the ABC – broadcasting. All the staff-elected directors have brought to the Board distinguished careers as program makers.

The Alliance considers that the role played by the staff-elected directors has been and remains essential to good governance at the ABC.

The Alliance rejects the implicit assertion that staff-elected directors cannot and have not been aware of their roles and responsibilities as board directors. They have all been fully aware of their fiduciary and legal responsibilities as board directors and know that they are not elected to the Board to represent the staff, rather they are elected for the contribution they can make to the Board, to the good governance of the organization and, as set out in the Act, “to ensure the functions of the Corporation are performed efficiently and with the maximum benefit to the people of Australia”.

This point has been made by two staff-elected directors, namely by Quentin Dempster in *Death Struggle – how political malice and boardroom powerplays are killing the ABC*⁷ and by Tom Molomby in *Is There A Moderate On The Roof?*⁸

In proposing the only change to the manner in which directors are appointed to the Board be the elimination of the staff-elected director, the Government has confused the method of appointment with representational rights. The staff-elected director does not represent the staff – the person is simply elected by the staff. This distinction has been clearly understood by every staff-elected director

The logical extension of the assumption that staff-elected directors, particularly professionals of the caliber of the staff-elected directors, cannot adequately comprehend and act in accordance with their duties and obligations as directors, is that any director appointed by the Governor-General might also seek to reflect and bring to bear a sectional interest of some kind.

Much was made in the 2001 Review of the political stacking of the ABC Board by successive governments of both persuasions. Whilst debate has raged about the extent to which perceived political appointments have politicised the ABC, what is true is that the position of staff-elected director has had an overtly political history.

The position of staff-elected commissioner was introduced by the Whitlam Labor Government, abolished by the Fraser Coalition Government, reintroduced by legislation by the Hawke Labor Government and is now to be abolished by the Howard Coalition Government.

What remains essential is that the Government is able to ensure good governance at the ABC and to ensure that the best people with the most relevant skills and experience are appointed as Board members. The 2001 Review made many recommendations, a number of which if implemented would ensure better governance and introduce a more transparent, open and accountable method of appointing directors.

Abolishing the position of the most independent director, the director who joins the Board as the result of an election conducted by the Australian Electoral Office, will not improve governance of the ABC. It will, however, eliminate the only position that is guaranteed to bring essential knowledge of the organisation’s core business to the deliberations of the Board.

⁷ *Death Struggle – how political malice and boardroom powerplays are killing the ABC*, Quentin Dempster, Allen & Unwin, 2000

⁸ *Is There A Moderate On The Roof?* Tom Molomby, Heineman, 1991