Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017

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Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

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The Bills Digest at a glance

In August 2017 the Government secured the support of Pauline Hanson’s One Nation Party (PHON) for passage of the Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017. In exchange for this support, the Government agreed to put forward a Bill amending the Australian Broadcasting Corporation Act 1983 (the Act) altering the duties of the ABC Board in section 8.

The Bill amends the Act to insert the words ‘fair’ and ‘balanced’ into paragraph 8(1)(c). The amended Act would require the Board ‘to ensure that the gathering and presentation by the Corporation of news and information is fair, balanced, accurate and impartial according to the recognized standards of objective journalism.’

Both the Government and Senator Hanson acknowledge that the ABC’s editorial policies already require ‘fair treatment’ and ‘a balance that follows the weight of evidence’.

The Minister for Communications, Senator Fifield, argues that the amendment would reinforce these requirements by enshrining them in legislation. Supporters of the Bill, such as the National Farmers Federation, highlight instances where they consider the ABC has not met these standards in its reporting.

Both the Australian Labor Party (ALP) and the Australian Greens oppose the Bill. Critics of the Bill include the ABC and the Media, Entertainment and Arts Alliance (MEAA).

Critics of the Bill argue that the amendment:

• is not needed in order to strengthen the ABC’s reputation for trustworthiness because opinion polling shows that the ABC already enjoys a high level of public trust
• will undermine rather than strengthen the ABC’s reputation for providing trustworthy and dependable reporting
• will have no practical effect on the behaviour of ABC staff because it adds nothing to the obligations already set out in the Corporation’s editorial policies and
• may undermine standards of objective journalism by encouraging demands for false balance.
**Purpose of the Bill**

One of the duties of the Australian Broadcasting Corporation (ABC) Board under section 8 of the Australian Broadcasting Corporation Act 1983 (the Act) is to ‘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’ (paragraph 8(1)(c)).

The purpose of the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017 (the Bill) is to amend the Act to insert the words ‘fair’ and ‘balanced’ so that paragraph 8(1)(c) reads: ‘to ensure that the gathering and presentation by the Corporation of news and information is fair, balanced, accurate and impartial according to the recognized standards of objective journalism.’

**Background**

Concerns about fairness and balance are part of a broader debate about bias at the ABC. This debate was part of the context for the development of the Act. Over the years, a number of commentators have claimed that ABC news and programming has a left-wing bias.¹

**Origin of the Bill**

In August 2017 the Government secured the support of Pauline Hanson’s One Nation Party (PHON) for passage of the Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017.² In exchange for this support, the Government agreed to put forward a Bill amending paragraph 8(1)(c) of the Act to add the words ‘fair’ and ‘balanced’ to the duties of the Board.³

While Senator Hanson has acknowledged that fairness and balance are already required under the ABC’s editorial policies, she argued that inserting the words into the Act is ‘about making sure that everyone is aware of the need to be fair and balanced’.⁴

According to the Bill’s Explanatory Memorandum:

> The addition of the words ‘fair’ and ‘balanced’ will support and strengthen the ABC’s reputation for providing trustworthy and dependable reporting. The ABC’s own Editorial Policies cover fair treatment, as well as having a balance that follows the weight of evidence. This amendment will cement these requirements in the ABC’s Charter and ensure the ABC continues to uphold the standards expected of it by the Australian public.⁵

As part of the negotiations over the Broadcasting Legislation Amendment (Broadcasting Reform) Act, the Government also agreed to:

- an inquiry into ‘whether or not the practices of the national broadcasters are breaching the general principle of competitive neutrality and that they are operating on a level playing field with their commercial counterparts’⁶

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² M Fifield (Minister for Communications), *One Nation support for media reform package*, media release, 15 August 2017.
⁴ P Hanson, ‘Second reading speech: Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017: Commercial Broadcasting (Tax) Bill 2017’ Senate, Debates, 14 September 2017, p. 7438. In September 2017 Senator Hanson said: ‘... you need for something to be fair and balanced from anyone. It's pretty much in the ABC's manifesto now, at the moment, but it needs to be put there. They actually tend to agree with it themselves in their own manifesto. So it is actually about making sure that everyone is aware of the need to be fair and balanced’.
⁵ Explanatory Memorandum, Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017, p. 2.
⁶ M Fifield (Minister for Communications), *One Nation support for media reform package*, op. cit., p. 2.
• a public register of foreign-owned media assets, and a community radio package, addressed in the Broadcasting Legislation Amendment (Foreign Media Ownership and Community Radio) Bill 2017, and a commitment to further funding in 2019–20 and 2020–21 to support community digital radio rollout

• proposals to enhance the ABC’s focus on rural and regional Australia, addressed by the Australian Broadcasting Corporation Amendment (Rural and Regional Measures) Bill 2017 and

• measures to require the disclosure of the remuneration of senior staff and on-air talent at the national broadcasters, addressed by the National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017.

**Existing requirements for fairness and balance**

The existing Act requires the ABC Board to ensure that news and information is impartial. The requirement for impartiality does not appear in the ABC Charter (section 6), but in the duties of the Board (section 8).

The ABC Board’s Directors (other than the staff-elected Director) are appointed by the Governor-General on the recommendation of the Government. The Board appoints the Managing Director. Paragraph 8(1)(e) of the Act requires the Board to develop a code of practice relating to its television and radio programming. According to this Code of Practice, two hallmarks of impartiality are ‘fair treatment’ and ‘a balance that follows the weight of evidence’.

**The duties of the ABC Board**

According to paragraph 8(1)(c) of the Act ‘it is the duty of the Board ... 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’.

**The ABC Code of Practice and editorial policies**

The ABC’s Code of Practice interprets the impartiality requirement for ABC staff. Under the heading of ‘Impartiality and diversity of perspectives’, the Code of Practice states:

Judgements about whether impartiality was achieved in any given circumstances can vary among individuals according to their personal and subjective view of any given matter of contention. Acknowledging this fact of life does not change the ABC’s obligation to apply its impartiality standard as objectively as possible. In doing so, the ABC is guided by these hallmarks of impartiality:

- a balance that follows the weight of evidence;
- fair treatment;
- open-mindedness; and

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opportunities over time for principal relevant perspectives on matters of contention to be expressed.

... Impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented.\textsuperscript{13}

The Code notes that ‘[a]ssessing the impartiality due in given circumstances requires consideration in context of all relevant factors.’ These listed factors include ‘the range of principal relevant perspectives on the matter of contention’ and ‘the timeframe within which it would be appropriate for the ABC to provide opportunities for the principal relevant perspectives to be expressed.’\textsuperscript{14}

This information is mirrored in the ABC’s online editorial policies.\textsuperscript{15}

\textbf{Dealing with breaches}

If a member of the public believes that the ABC has breached the standards set out in the editorial policies or code of practice, they can make a complaint to the ABC. Written complaints are handled by the ABC’s Audience and Consumer Affairs which is described as ‘independent of program making divisions within the ABC’.\textsuperscript{16}

In relation to complaints which alleged breaches of the editorial policies or ABC Code of Practice, the ABC’s annual report for 2017 stated:

During 2016–17, 2,348 complaint issues were investigated. A total of 163 (6.9\%) were upheld in cases where Audience and Consumer Affairs determined that ABC editorial standards had not been met. A further 266 issues (11.3\%) were resolved, after the relevant content area took prompt and appropriate action to remedy the cause of the complaint.\textsuperscript{17}

It is unclear how many of these received complaints related to concerns regarding ‘fairness’ or ‘balance’. The Audience and Consumer Affairs area publishes quarterly reports regarding audience contacts including complaints. These reports indicated that a substantial number of complaints received were categorised as relating to topics such as ‘balance’, ‘bias’, ‘news value’, ‘standards of interviewing’, ‘standards of reporting’ and ‘unfair treatment’.\textsuperscript{18} Details regarding upheld complaints and the resulting action taken by the ABC are published on the ABC website.\textsuperscript{19}

If a person is not satisfied with the ABC’s response to their complaint (or does not receive a response within 60 days), they can refer it to the Australian Communications and Media Authority (ACMA).\textsuperscript{20} ACMA deals with complaints about matters covered by the ABC’s Code of Practice. In September 2017, ACMA found that ABC News had breached the impartiality provisions of the Code of Practice in relation to certain historical child sexual abuse allegations. ACMA noted that this was the first time ‘since 2011 that the ABC has been found in breach of those impartiality provisions.’\textsuperscript{21} Earlier this year, ACMA again found that the ABC had breached the impartiality

\begin{itemize}
  \item 13. Ibid., pp. 5–6.
  \item 14. Ibid.
  \item 15. ABC, ‘Editorial policies’, ABC website.
  \item 16. ABC, ‘Complaints process’, ABC website.
  \item 17. ABC, \textit{Australian Broadcasting Corporation (ABC)—Report for 2016-17—Volume II}, 26 October 2017, p. 60.
  \item 18. For example: ABC, \textit{Statistical report on audience comments and complaints (October to December 2017)}, ABC website, 31 January 2018, p. 3.
  \item 19. ABC, ‘Upheld complaints’, op. cit.
  \item 20. Australian Communications and Media Authority (ACMA), ‘Complaints about the ABC or SBS’, ACMA website, last updated 29 January 2016.
  \item 21. ACMA, \textit{ABC News breached impartiality requirements}, ACMA, media release, 26 September 2017.
\end{itemize}
provisions in its coverage of a climate change speech by former Prime Minister Tony Abbott to the
Global Warming Policy Foundation think tank.\footnote{ACMA, \textit{Statement in ABC News breaches impartiality rules}, media release, 1 May 2018.}

The legislative requirements of the complaints process are set out in sections 150 to 153 of the

\textbf{History of the existing provision}

The \textit{Australian Broadcasting Corporation Act 1983} was part of the Government’s response to the

One of the issues the report covered was the question of bias. In discussing the need for balance and impartiality, the Dix report drew on a report on the future of broadcasting by Lord Annan in the United Kingdom.\footnote{Great Britain, Committee on the Future of Broadcasting, Report of the Committee on the Future of Broadcasting [Annan report], Her Majesty's Stationary Office, London, [March] 1977, p. 268.}

\textbf{The Annan report}

The Annan report was presented to the UK Parliament in 1977. It argued that broadcasters could
not achieve due impartiality through balance or neutrality:

\begin{quote}
Due impartiality should not be synonymous with a mathematical balance, nor should it be confused with neutrality or interpreted as indifference. The broadcasters are operating within a system of parliamentary democracy and must share is assumptions. They should not be expected to give equal weight or show an impartiality which cannot be due to those who seek to destroy it by violent, unparliamentary or illegal means.\end{quote}\footnote{Ibid., p. 270.}

At the time, violent conflict in Northern Ireland posed a problem for broadcasters. The Annan report noted that terrorism feeds off publicity as terrorist acts form part of a campaign to attract attention for a cause.\footnote{Ibid., p. 269.}

As a result, giving equal time to all sides in the conflict could fuel further violence.

The Annan report argued that ‘due impartiality’ was different from balance and neutrality. It
argued that rather than treating issues as having only two sides, broadcasters should ‘allow the widest possible range of views and opinions to be expressed’. The report also stressed that the ‘duty to let the public hear various voices does not oblige them to give too much weight or coverage to opinions which are not widely held.’ The report urged broadcasters to recognise that the range and weight of various views was constantly changing.\footnote{As quoted in: Committee of Review of the Australian Broadcasting Commission, The Dix report, op. cit., p. 249, 992.}

\textbf{The Dix report}

The Dix report agreed that impartiality could not be equated with mathematical balance, neutrality or indifference. It also argued that professionalism had to go beyond impartiality. The report quoted the 1978 BBC Handbook:

\begin{quote}
The BBC does not feel obliged to be neutral as between truth and untruth, justice and injustice, freedom and slavery, compassion and cruelty, tolerance and intolerance.\end{quote}\footnote{As quoted in: Committee of Review of the Australian Broadcasting Commission, The Dix report, op. cit., p. 249, 992.}
The Dix report stated that ‘The ABC has a responsibility to adopt a positive attitude on basic values without which a humane and just society will be at risk.’

**Controversy over proposed legislation**

After the dismissal of the Whitlam Government in 1975, the ABC faced accusations of bias. Peter Nixon, the Minister responsible for broadcasting, claimed that the ABC had a ‘now well-established bias towards Labor and, socialist sides of politics’. He called for a Supreme Court judge to act as a moderator of ABC news during the election campaign.

When the Fraser Coalition Government introduced a Bill in response to the recommendations of the Dix inquiry, the Bill (the Australian Broadcasting Corporation Bill 1982) included provisions for a Commissioner for Complaints. The Bill sought to give the Commissioner the power to enter ABC premises, obtain documents, and examine witnesses under oath.

The proposal for a Commissioner for Complaints came from Cabinet. It was not one of the recommendations of the Dix report. The Labor Party opposed the proposal arguing that it threatened the ABC’s independence. Peter Milton, the Labor Member for La Trobe, argued:

> It appears to me that the sole purpose of the proposed Commissioner for Complaints is to provide an institutionalised channel for noisy, conservative and bigoted critics of the ABC to organise campaigns designed to force the ABC to refrain from reporting or commenting objectively on political, social and economic aspects of Australian life.


**Committee consideration**

**Senate Standing Committee on Environment and Communications**

The Bill was referred to the Senate Environment and Communications Legislation Committee for inquiry and report by 9 February 2018. The Committee reported on 16 February 2018. Details of the inquiry are at the inquiry’s home page. The majority report recommended the Bill be passed and considered that ‘enshrining a statutory requirement for fair and balanced reporting in the ABC Act will promote community confidence in the news and information presented by the ABC’. In relation to concerns raised that the Bill may result ‘false balance’ in the ABC’s coverage, the majority committee report highlighted that the Bill ‘does not create new editorial requirements

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29. Ibid., p. 249, 992.
and simply enshrines existing policies in legislation.’\textsuperscript{40} However, separate dissenting minority reports from Labor and Australian Greens senators opposed the Bill (discussed below).

**Senate Standing Committee for the Scrutiny of Bills**

The Scrutiny of Bills Committee had no comment on the Bill.\textsuperscript{41}

**Policy position of non-government parties/independents**

**Australian Labor Party**

In their dissenting report on the Bill, Labor Senators on the Environment and Communications Legislation Committee opposed the Bill. They argued that it is unnecessary to amend the Act because the ABC interprets ‘accurate and impartial’ to include ‘a balance that follows the weight of evidence’ and ‘fair treatment’. They also argued that adding the words may confuse established interpretation and possibly create a danger of ‘false balance’.\textsuperscript{42}

**Australian Greens**

Australian Greens Senators also argued that the amendments are unnecessary, raised the issue of false balance and stated that the Bill ‘undermines faith in a national public institution by implying it is correcting a problem, even though no problem exists.’\textsuperscript{43}

**Pauline Hanson’s One Nation (PHON)**

Pauline Hanson’s One Nation Senators support the Bill. Senator Hanson has expressed the view that her party has not received fair treatment by the ABC. For example, Senator Hanson characterised an investigation by the ABC into PHON’s compliance with electoral laws as a ‘witch hunt by the ABC’ and questioned ‘how many other political parties do they chase up.’\textsuperscript{44} While sitting as a One Nation Senator, Malcolm Roberts said that many of his constituents complained that the ABC was not fair and balanced. In a speech to the Senate he stated:

\begin{verbatim}
... its Greens’ dominated, capital-city staff in Melbourne and Sydney are killing the ABC’s reputation.
People in the bush and people in the suburbs laugh at the ABC. They don’t treat it seriously. There is the
misappropriation of taxpayer funding to push the political agenda. Everyday Australians, everyday
taxpayers, are fed up with political correctness that has been incorrect and unreasonable and is peddled
by the ABC. The ABC, sadly, is not accountable to anyone.
\end{verbatim}

**Position of major interest groups**

**National Farmers’ Federation**

The National Farmers’ Federation (NFF) supports the Bill. In its submission, the NFF claims that the ABC has attempted to sensationalise issues and to influence public policy rather than simply inform its audience. The NFF cites two examples: the ABC’s persistence in appealing a court decision that prevents it from broadcasting illegally obtained footage of alleged animal cruelty;

\begin{itemize}
  \item \textsuperscript{40} Ibid., p. 7.
  \item \textsuperscript{41} Senate Standing Committee for the Scrutiny of Bills, *Scrutiny digest*, 13, 2017, The Senate, 15 November 2017, p. 2.
  \item \textsuperscript{43} Greens Senators, *Dissenting report*, Senate Environment and Communications Legislation Committee, *Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017*, The Senate, Canberra, February 2018, pp. 11–12.
  \item \textsuperscript{44} J Bavas, ‘One Nation breaches Queensland electoral laws multiple times, blames weather and computer’, *ABC News*, 3 August 2017.
\end{itemize}
and a story on alleged water theft by the *Four Corners* program (‘*Pumped: Who’s benefitting from the billions spent on the Murray-Darling*’).

**Cotton Australia**

Cotton Australia supports the Bill. In its submission Cotton Australia echoed the NFF’s concern that the ABC has attempted to sensationalise issues affecting agricultural industries and influence public policy.

Cotton Australia also cites the *Four Corners* episode on irrigation in the Murray Darling Basin (‘Pumped’) arguing that the ABC failed to treat the issue in an impartial and balanced way. Cotton Australia argues that the ABC failed to give industry representatives an opportunity to address negative claims about the industry.

**Australian Broadcasting Corporation**

The ABC opposes the Bill. In its submission the ABC argues that ‘there is no lack of public trust or confidence in the ABC and the amendments do not achieve any real public policy outcome or are driven by public interest.’

**Media Entertainment and Arts Alliance**

The Media, Entertainment & Arts Alliance (MEAA) opposes the Bill. In its submission the MEAA argues that the proposed amendment to the Act is ‘rooted in a transgressive campaign to undermine the performance and reputation of the nation’s most esteemed (and scrutinised) broadcaster.’

**Financial implications**

The [Explanatory Memorandum](#) states that the measure in this Bill is expected to have no financial impact.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights (PJCHR) assessed the Bill in relation to its compatibility with the right to freedom of expression. After receiving further advice from the Minister, the PJCHR concluded that ‘[o]n balance and in light of the information provided by the

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50. [Explanatory Memorandum](#), Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017, p. 3.

51. The Statement of Compatibility with Human Rights can be found at page 4 of the [Explanatory Memorandum](#) to the Bill.
Minister, the Committee considers that the measures are likely to be compatible with the right to freedom of expression’.52

Key issues
Most of the controversy about the Bill is over the insertion of the word ‘balanced’. Supporters of the Bill argue that it will reinforce standards the ABC has already recognised in its editorial policies. As Senator Hanson put it in a speech to the Senate, ‘It’s part of what they are supposed to be doing anyway.’53

The ABC opposes the change arguing that balance should not be an end in itself but should be seen as part of the broader standard of impartiality.54 The ABC and other critics of the Bill argue that including the word ‘balanced’ outside of the context of the editorial policies as a whole could lead to pressure for ‘false balance’ and ‘he said/she said journalism.’55

What does the amendment do?
According to the Explanatory Memorandum: ‘This amendment will cement these requirements [for fairness and balance] in the ABC’s Charter and ensure the ABC continues to uphold the standards expected of it by the Australian public.’56

However, the amendment does not alter the ABC’s Charter (set out in section 6 of the Act). Instead it alters the duties of the Board (section 8). If the amendment influences the behaviour of ABC staff it would do so through the actions of the Board. As the Minister Mitch Fifield explained in an interview with the ABC’s Fran Kelly:

... the Act is given effect to ultimately by the board of the ABC. And it finds expression through the ABC’s editorial policies. The ABC’s editorial policies, as they are today, will be matters that are determined within the organisation, because the ABC has legislated independence...57

If a member of the public makes a formal complaint about the ABC, they refer to the Corporation’s Code of Practice and editorial policies, not to section 8 of the Act.58 There is no direct way for members of the public to hold the ABC Board accountable for failing to discharge its duties under the Act. Subsection 8(3) of the Act states that the duties of the Board are not enforceable by proceedings in a court.

In public discussion of this Bill, neither Senator Hanson nor the Government appear to have raised concerns about the ABC’s Code of Practice or editorial policies. According to Senator Hanson, the amendment is about raising awareness of the need for fairness and balance.59

55. Ibid., p. 8; Media, Entertainment and Arts Alliance (MEAA), *Submission* to Senate Environment and Communications Legislation Committee, *Inquiry into the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017*, January 2018, p. 4
58. ABC, ‘Complaints process’, op. cit.
The Government’s position

The Government argues that the Bill will compliment rather than add to the requirements already set out in the ABC’s editorial policies. These policies require fair treatment and a balance that follows the weight of evidence.

In his second reading speech, the Minister for Communications, Senator Fifield, stated that the amendment simply enshrines the requirements of the editorial policies in legislation.\(^60\) The Minister made the same point in an interview with the ABC’s Raf Epstein where he said that the Bill is ‘really just seeking to enshrine in legislation that which is already within the ABC’s own editorial policies’ and that ‘it’s a good thing to reinforce in the ABC’s Act some of the commonly understood standards of journalism which the ABC themselves already reflect in the editorial policies.’\(^61\)

The Minister has not said that the ABC is failing to abide by its editorial policies. However, the Bill’s Explanatory Memorandum does seem to imply that the Government intends the amendment to have some practical effect on the behaviour of the ABC:

> … this Bill promotes transparent journalism, facilitates confidence in the ABC, and provides for a better informed Australian public in regards to issues of public significance, which will contribute to a more robust debate in relation to those issues. \(^62\)

In contrast to the Minister, Senator Hanson claims that the ABC regularly fails to meet the obligations set out in its editorial policies. In a speech to the Senate, she claimed that the ABC was opposed to the amendment ‘because, heaven forbid, they may be held to account by the public.’\(^63\)

Arguments against the amendment

Critics of the Bill argue that the amendment:

- is not needed in order to strengthen the ABC’s reputation for trustworthiness
- will undermine rather than strengthen the ABC’s reputation for providing trustworthy and dependable reporting
- will have no practical effect on the behaviour of ABC staff because it adds nothing to the obligations already set out in the Corporation’s editorial policies and
- may undermine standards of objective journalism by encouraging demands for false balance.

The amendment is not needed to strengthen the ABC’s reputation

While the Government argues that the amendment ‘will support and strengthen the ABC’s reputation for providing trustworthy and dependable reporting’,\(^64\) the ABC’s submission cites opinion polls showing that trust in the ABC is already higher than other media outlets.\(^65\) For example, according to an October 2017 Essential ‘Trust in media’ poll: ‘The most trusted media

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\(^{61}\) R Epstein, “Interview with Mitch Fifield”, ABC 774 Drive, transcript, 23 October 2017, p. 6.

\(^{62}\) Explanatory Memorandum, Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017, p. 5.


\(^{64}\) Explanatory Memorandum, Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017, p. 2.

\(^{65}\) Australian Broadcasting Corporation (ABC), Submission to Senate Environment and Communications Legislation Committee, Inquiry into the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017, op. cit., p. 4.
were ABC TV news and current affairs (63% a lot/some trust), SBS TV news and current affairs (61%) and ABC radio news and current affairs (58%).

In a 2017 Senate Estimates hearing, ABC Managing Director Michelle Guthrie said:

I don’t believe that adding the words ‘fair and balanced’ into the charter is necessary. I think that compliance with our editorial policies, which refer to fair and balanced based on the weight of evidence, is sufficient. Frankly, nothing I’ve heard from the minister in public statements says that what we’re doing under our editorial policies needs to be changed. So I query, again, what problem we’re trying to solve to add those words into the charter.

The amendment will undermine rather than strengthen the ABC’s reputation

In their dissenting report on the Bill, Greens Senators argue that the Bill may damage the ABC’s reputation for trustworthy and dependable reporting by suggesting that complaints about fairness and balance are justified.

The amendment will have no practical effect

In a submission to the Committee, the ABC stated: ‘The prevailing view among those who understand the ABC’s existing editorial standards is that the proposed amendment is meaningless and without any practical consequence.’

The ABC’s editorial policies require ‘fair and honest dealing’ and deal with balance in the context of the requirement for impartiality. According to the editorial policy ‘a balance that follows the weight of evidence’ is one of the ‘hallmarks of impartiality’. The ABC’s submission argues that if the purpose of the amendment ‘is to do nothing more than enshrine those specific references to fairness and balance in that specific context, then the change to the legislation will do nothing more than describe what the ABC already does.’

The risk of false balance and the standards of objective journalism

False balance

Both the ABC submission and the Media, Entertainment & Arts Alliance (MEAA) submission warn that the amendment could encourage demands for ‘false balance’.

The term ‘false balance’ refers to the practice of presenting each side of a debate as if they were equally credible even when the evidence favours the claims of one side over others. Individuals and groups may complain about a lack of balance if their opponents’ claims are reported unchallenged but theirs are not. Like many media outlets, the ABC urges its staff to resist unjustified demands for equal time.

Rather than simply calling for balance, the ABC’s editorial policies and guidance call for ‘balance following the weight of evidence.’ As an ABC editorial guidance note explains:

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69. ABC, Submission to Senate Environment and Communications Legislation Committee, Inquiry into the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017, op. cit., p. 7.
71. ABC, Submission, op. cit., p. 7.
The ABC does not require differing viewpoints to be presented evenly, as if they were poised on either side of a scale. In some circumstances, when justified by the weight of evidence, it will be absolutely appropriate for you to give more time or space to one perspective over another. A clear, current example of this is in the vaccination debate where near-universal professional consensus on the value of childhood inoculation is opposed by a vocal minority, who are passionate in their cause but unsupported by the weight of scientific evidence. It is legitimate to report on (and challenge) their views at times when it’s editorially justified, but we would not accord them the same weight of coverage as the scientists and medical organisations on the other side.\footnote{\textsuperscript{73}}

**Objective journalism**

The ABC’s head of editorial policy, Alan Sunderland, has argued that reporters ‘need to sift through facts, weigh them up, make editorial judgements about their relative strength and importance, and then present them in a way that illuminates the truth of a matter.’\footnote{\textsuperscript{74}} The process of identifying facts and evidence and sifting out unsupported claims is part of what is meant by objectivity.

The Bill amends paragraph 8(1)(c) of the Act to make ensuring ‘that the gathering and presentation by the Corporation of news and information is fair, balanced, accurate and impartial according to the recognized standards of objective journalism’ a duty of the Board. An issue in interpreting the provision is whether the phrase ‘according to the recognized standards of objective journalism’ qualifies the words ‘fair’, ‘balanced’, ‘accurate’ and ‘impartial’ or whether it only qualifies the word ‘impartial’.

The Explanatory Memorandum outlines an expectation that the amendment will extend existing obligations “to also require the gathering and presentation of news and information to be “fair” and “balanced” according to the recognised standards of objective journalism.”\footnote{\textsuperscript{75}} If balance is qualified by the recognised standards of objective journalism then the problem of false balance only arises if the requirement for balance is read out of context. If this is the intent, the Bill could be redrafted to make this clearer.

**Balance and values-based issues**

In its editorial guidance the ABC acknowledges that there is more to balance than weighing up evidence. In some cases the differences of opinion hinge on values rather than scientific evidence. For example, in relation to the issue of same sex marriage, ABC guidance for staff notes that opponents of same sex marriage may object to the ABC using the term ‘marriage equality’ arguing that it signals support. The guidance notes that there are no rules for making decisions in these cases.\footnote{\textsuperscript{76}}

Few people would argue that the ABC should always report each side of a dispute over values. The 1981 Dix report noted that ‘the ABC has a responsibility to adopt a positive attitude on basic values without which a humane and just society will be at risk’.\footnote{\textsuperscript{77}} This suggests, for example, that the ABC is not obliged to balance a political leader’s denunciation of a terrorist attack with comments from a supporter of terrorism.

Not all cases are as clear-cut as terrorism. Reasonable people may make different judgements on which points of view reflect basic values.

\begin{itemize}
  \item \textsuperscript{73} Ibid.
  \item \textsuperscript{74} A Sunderland, ‘Objective reporting: it has never been more necessary’, *The Drum*, 10 September 2015.
  \item \textsuperscript{75} Explanatory Memorandum, Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017, p. 2.
  \item \textsuperscript{76} ABC, ‘Editorial guidance note: impartiality’, op. cit.
  \item \textsuperscript{77} Committee of Review of the Australian Broadcasting Commission, The Dix report, op. cit., p. 249, 992.
\end{itemize}
**Fairness and balance in context**

The debate over fairness and balance is part of a much broader debate over the role of the ABC and the need to avoid bias.

According to the ABC’s editorial policies, a ‘democratic society depends on diverse sources of reliable information and contending opinions.’ The public broadcaster’s role is to provide access to information and opinion that will enable audience members to make up their own minds.

This is a widely held view. For example, American political theorist John Zaller argues that the ‘most important criterion for assessing the quality of the news is that it should provide the information citizens need to discharge their democratic responsibilities.’

If this is the overriding objective, then standards like impartiality or balance cannot be about providing coverage that is equally advantageous to all political parties or candidates. Providing people with the information they need to make up their own minds is likely to disadvantage political actors who do or say things audience members have reason to disapprove of.

Impartiality and balance also need to be understood as applying beyond party political issues. Not all interests in society are represented politically. Many individuals and groups have interests that are affected by media coverage. Impartial or balanced coverage may, at times, disadvantage some of these individuals and groups.

One way of thinking about journalistic norms such as impartiality, fairness, and balance is that they are not ends in themselves, but ways of achieving a broader objective of providing audience members with information and opinion that will enable them to form their own views and participate in the social and political life of the community.

**Avoiding bias**

One way of thinking about media bias is as deviation from an ideal standard. That standard might include finding and reporting the facts about an issue to the extent they can be known. According to this standard, journalists would not be obliged to give false or unsupported claims the same weight as claims that are supported by evidence. This idea is captured in US Senator Daniel Patrick Moynihan’s quip: ‘everyone is entitled to his own opinion, but not to his own facts.’

Understood in this way, claims of bias can be distinguished from claims that a media outlet’s coverage favours one side of politics over another.

**Four aspects of bias**

There are at least four ways claims of bias can arise:

- **Choice of issues.** Reporters, commentators and editors must make choices about what issues to cover and how much space they give each issue. This is often known as the gatekeeping or agenda setting role of the media. From a political perspective this is a concern because the issues covered by the media can affect the issues voters have at top-of-mind when voting or

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79. Ibid., p. 6.
82. D Moynihan, *Social security 'Notch' issue : hearing before the Subcommittee on Social Security and Family Policy of the Committee on Finance*, United States Senate, One Hundred First Congress, first session, January 23 1989, p. 2.
responding to polls. This can affect the results because voters may judge a party more favourably if they are focusing on one issue rather than another.  

- **Choice of frame.** Once an issue is chosen, journalists must make choices about how to frame it. For example, a journalist could approach a story on poverty from an economic perspective, looking at national statistics and exploring the structural causes of change. Alternatively, a journalist could focus on particular individuals in poverty, their experience, and the way they respond. These choices frame the issue by giving it a context. This kind of framing can have an impact on the way the audience attributes responsibility and the kind of policies they are likely to support.

- **Choice of positions and sources.** Many issues are controversial. Different individuals and groups will take different positions on whether a particular state of affairs is a problem, who is responsible for causing it, who should be responsible for responding to it, and on what ought to be done. Journalists must choose which of these positions to include and which sources to use to represent each position.

- **Treatment of sources.** Journalists make choices about how to treat the sources they use in their stories. For example, they might decide to simply report a source’s claims or they might ask them to justify their claims and respond to criticisms made by others. Bias is about consistently treating some sources less favourably than others.

It is not clear that simply adding the words ‘fairness’ and ‘balance’ to the duties of the Board will address public concerns about bias.

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