

The Senate

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Environment and Communications  
References Committee

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Allegations of political interference in the  
Australian Broadcasting Corporation

April 2019

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ISBN 978-1-76010-921-9

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# Committee membership

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Senator Anthony Chisholm	ALP, Queensland
Senator the Hon Kristina Keneally	ALP, New South Wales
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# Table of contents

<b>Committee membership .....</b>	<b>iii</b>
<b>Chapter 1: Introduction .....</b>	<b>1</b>
Referral and terms of reference .....	1
Conduct of the inquiry .....	1
Acknowledgement .....	2
Structure of the report .....	2
Background of the inquiry .....	2
<b>Chapter 2: Governance arrangements .....</b>	<b>7</b>
ABC Board .....	8
Options for strengthening governance arrangements .....	17
<b>Chapter 3: Events of 2018 .....</b>	<b>25</b>
Ms Guthrie's termination .....	25
Conduct of the ABC Board and Chair .....	27
ABC's complaints process .....	37
<b>Chapter 4: Allegations of political interference in the ABC .....</b>	<b>43</b>
'Political interference' .....	43
Operational independence .....	44
Editorial independence .....	54
Concluding comments .....	65
<b>Australian Greens' additional comments .....</b>	<b>67</b>
<b>Government Senators' additional comments .....</b>	<b>69</b>
<b>Appendix 1: Submissions, tabled documents, additional information and answers to questions on notice .....</b>	<b>75</b>
<b>Appendix 2: Public hearings .....</b>	<b>77</b>



# Chapter 1

## Introduction

### Referral and terms of reference

1.1 On 16 October 2018, the Senate referred the following matter to the Environment and Communications References Committee (committee) for inquiry and report by 29 March 2019:

The allegations of political interference in the Australian Broadcasting Corporation (ABC), with particular reference to:

- (a) the termination of ABC Managing Director, Ms Michelle Guthrie;
- (b) the conduct of the Chair and the Board;
- (c) the structure, composition and appointments of the ABC Board;
- (d) the political influence or attempted influence of the Government over ABC editorial decision-making, including:
  - (i) outcomes of the Competitive Neutrality of the National Broadcaster Inquiry and Efficiency Review—ABC and SBS, and
  - (ii) the role of funding uncertainty in facilitating political influence;
- (e) governance, legislative and funding options to strengthen the editorial independence and strength of the ABC to prosecute its charter obligations; and
- (f) other related matters.<sup>1</sup>

### Conduct of the inquiry

1.2 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to a number of individuals and organisations, inviting submissions by 13 November 2018. The committee continued to accept submissions received after this date. In total, the committee received 13 submissions, which are listed at Appendix 1.

1.3 The committee held public hearings in Canberra on 30 November 2018 and in Sydney on 5 and 6 March 2019. The witnesses who appeared before the committee are listed at Appendix 2. The public submissions, additional information received and *Hansard* transcripts are available on the committee's website at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/ABCInterferenceAllegations](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/ABCInterferenceAllegations).

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1 *Journals of the Senate*, No. 123, 16 October 2018, pp. 3926–3927.

## Acknowledgement

1.4 The committee thanks the organisations and individuals who made submissions and who gave evidence to assist the inquiry. In particular, the committee wishes to acknowledge two journalists—Ms Emma Alberici and Mr Andrew Probyn—who are frequently mentioned throughout the inquiry. Nothing in this report is intended to reflect upon them either personally or professionally.

## Structure of the report

1.5 This report comprises the following four chapters:

- Chapter 1—outlines the conduct and background of the inquiry;
- Chapter 2—examines governance arrangements for the ABC;
- Chapter 3—discusses the events of 2018 leading to termination of the managing director's employment and resignation of the Chair; and
- Chapter 4—enquires into allegations of political influence in the ABC.

## Background of the inquiry

1.6 The ABC is one of Australia's two public service broadcasters and provides content on multiple platforms.<sup>2</sup> It is established as a statutory corporation under the *Australian Broadcasting Corporation Act 1983* (ABC Act),<sup>3</sup> which forms part of the ABC's legislative framework.<sup>4</sup>

1.7 The ABC Act provides specifically for the ABC's functions and management:

- section 6 sets out the corporation's functions (Charter);
- sections 7–8 establish the ABC Board and set out its role, including 'to maintain the independence and integrity of the corporation' (paragraph 8(1)(b)); and
- sections 9–10 establish the position of ABC Managing Director (MD) and provide for the MD to manage the affairs of the corporation.

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2 ABC, 'ABC History', <https://about.abc.net.au/abc-history/> (accessed 15 March 2019).

3 Australian Government, 'Federal Register of Legislation, *Australian Broadcasting Corporation Act 1983*', <https://www.legislation.gov.au/Details/C2018C00079> (accessed 15 March 2019).

4 ABC, 'Legislative framework', <https://about.abc.net.au/how-the-abc-is-run/what-guides-us/legislative-framework/> (accessed 15 March 2019).



1.8 In September 2018, the ABC Board comprised:

- Mr Justin Milne, Chair;
- Mr Peter Lewis, Director (2 October 2014–1 October 2019);
- Dr Kirstin Ferguson, Director (12 November 2015–11 November 2020);
- Ms Donny Walford, Director (24 November 2015–23 November 2020);
- Dr Vanessa Guthrie, Director (23 February 2017–22 February 2022);
- Ms Georgie Somerset, Director (23 February 2017–22 February 2022);
- Dr Jane Connors, Staff-Elected Director (1 May 2018–30 April 2023);
- Mr Joseph Gersh, Director (11 May 2018–10 May 2023); and
- Ms Michelle Guthrie, MD.

### ***Key events in September 2018***

1.9 On 24 September 2018, Mr Justin Milne, ABC Chair, announced that the ABC Board had terminated the employment of Ms Michelle Guthrie, MD. He told media that 'political leaders did not pressure the ABC or have any involvement in its decision to sack Ms Guthrie'.<sup>5</sup>

1.10 On 26 September 2018, Fairfax Media published details of an email purportedly showing Mr Milne directing Ms Guthrie to sack ABC chief economics correspondent Ms Emma Alberici following complaints from then Prime Minister, the Hon Malcolm Turnbull.<sup>6</sup>

1.11 That same day, ABC triple j's *Hack* program reported that Mr Milne had pressured the radio station not to move the date of its Hottest 100 music countdown (from Australia Day to a nearby weekend), citing Mr Turnbull's possible reaction as a key reason.<sup>7</sup>

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5 ABC News, 'Michelle Guthrie sacked from ABC managing director role halfway through term', 26 September 2018, <https://www.abc.net.au/news/2018-09-24/michelle-guthrie-leaves-as-md-of-the-abc/10297608> (accessed 15 March 2019). Also see: Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 2, where he said he had abstained from the vote.

6 Michael Koziol and Jennifer Duke, "'They hate her': emails show ABC chairman told Michelle Guthrie to fire Emma Alberici", *Sydney Morning Herald*, 25 September 2018, <https://www.smh.com.au/politics/federal/they-hate-her-emails-show-abc-chairman-told-michelle-guthrie-to-fire-emma-alberici-20180925-p505z4.html> (accessed 15 March 2019).

7 Triple j Hack, 'ABC chairman tried to stop triple j moving date of Hottest 100, sources confirm', *ABC*, 26 September 2018, <https://www.abc.net.au/triplej/programs/hack/abc-chairman-tried-to-stop-triple-j-moving-date-of-hottest-100/10308214> (accessed 15 March 2019). Independent research showed 60 per cent of triple j listeners favoured changing the date.

1.12 On 27 September 2018, News Corp Australia published an article which claimed that Mr Milne had ordered Ms Guthrie to sack political editor Mr Andrew Probyn because Mr Turnbull hated him.<sup>8</sup> Later that day, Mr Milne resigned from his position as Chair of the ABC.

### *Government's response*

1.13 In response, the Australian Government announced that an inquiry would be undertaken by Mr Mike Mrdak, Secretary of the Department of Communications and the Arts (Secretary). The purpose of the inquiry was to establish the facts in the matters raised by Fairfax Media, triple j and News Corp Australia, and to seek to answer whether the independence of the ABC had been upheld by the ABC Board.<sup>9</sup>

1.14 On 15 October 2018, Senator the Hon Mitch Fifield, Minister for Communications and the Arts, tabled the Secretary's report in the Senate.<sup>10</sup> The Secretary was not able to determine what part the former Chair's conduct had played in the ABC Board's decision to terminate Ms Guthrie's employment and therefore whether the ABC Board had breached the duty set out in paragraph 8(1)(b) of the ABC Act.<sup>11</sup>

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8 Sharri Markson and Matthew Benns, 'Shoot Him', *Daily Telegraph*, 27 September 2018, p. 1, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22media%2Fpressclp%2F6234150%22;src1%3Dsm1> (accessed 15 March 2019).

9 Senator the Hon Mitch Fifield, Minister for Communications and the Arts, 'Doorstop interview about the ABC', *Transcript*, 27 September 2018, <https://www.minister.communications.gov.au/minister/mitch-fifield/transcripts/doorstop-interview-about-abc> (accessed 15 March 2019).

10 Department of Communications and the Arts, Inquiry into allegations relating to the Australian Broadcasting Corporation, *Tabled Paper*, 15 October 2018.

11 Department of Communications and the Arts, Inquiry into allegations relating to the Australian Broadcasting Corporation, *Tabled Paper*, 15 October 2018, p. 3.

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### *Scope of the inquiry*

1.15 In mid to late 2018, Ms Guthrie commenced two actions against the ABC: first, at the Fair Work Commission for termination in breach of the *Fair Work Act 2009*;<sup>12</sup> second, in the Federal Court of Australia for unfair dismissal.<sup>13</sup> These actions do not form part of the committee's deliberations or report.<sup>14</sup>

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- 12 Michaela Whitbourn and Michael Koziol, 'Michelle Guthrie lodges Fair Work claim against the ABC', *Sydney Morning Herald*, 18 October 2018, <https://www.smh.com.au/national/michelle-guthrie-lodges-fair-work-claim-against-the-abc-20181018-p50ahi.html> (accessed 15 March 2019).
- 13 Jennifer Duke, 'Michelle Guthrie files lawsuit against ABC for unfair dismissal', *Sydney Morning Herald*, 27 December 2018, <https://www.smh.com.au/business/companies/michelle-guthrie-files-lawsuit-against-abc-for-unfair-dismissal-20181227-p50odu.html> (accessed 15 March 2019).
- 14 Jennifer Duke, 'Should be made public': ABC rebuked for secret Michelle Guthrie settlement', *Sydney Morning Herald*, 3 March 2019, <https://www.smh.com.au/business/companies/should-be-made-public-abc-rebuked-for-secret-michelle-guthrie-settlement-20190303-p511fg.html> (accessed March 2019); Natasha Gillezeau, 'Michelle Guthrie's case against the ABC goes to mediation – again', *Financial Review*, 5 February 2019, <https://www.afr.com/business/legal/michelle-guthries-case-against-the-abc-goes-to-mediation--again-20190205-h1avan> (accessed 15 March 2019).



# Chapter 2

## Governance arrangements

2.1 The independence of the Australian Broadcasting Corporation (ABC) was a foundational principle supported by all sides of politics in 1932.<sup>1</sup> The ABC submitted:

Australians have a deep and abiding trust in the ABC, recognising that because it is free from political agendas and commercial imperatives the only reason for its being is to serve the public interest. Public confidence in the ABC and in its integrity is essential if it is to fulfil its role as the national broadcaster. This level of confidence can only be sustained through the protection of editorial independence, operational self-determination and budgetary security.<sup>2</sup>

2.2 Other submitters also strongly supported this principle. The Community and Public Sector Union (CPSU) argued:

The independence of the ABC is paramount—it underpins the social contract which the ABC has with the Australian people, and it is what distinguishes the ABC from state media propaganda. The independence of the ABC Chair and ABC Board are paramount too. The people who Australians entrust to hold these positions cannot be political appointments for the government of the day. They are there to serve the 17 million plus Australians who read, watch, listen to and rely on ABC content every week.<sup>3</sup>

2.3 The Journalism Education and Research Association of Australia (JERAA) also noted the high regard in which the ABC is held by the Australian public:

The ABC is trusted by 80 percent of the Australian public, according to the Roy Morgan MEDIA Net Trust Survey which revealed in May 2018 that the ABC was by far the nation's most trusted media organization. To quote the report: "Australians told us that their trust of the ABC is driven by its lack of bias and impartiality, quality journalism and ethics".<sup>4</sup>

2.4 Dr Denis Muller, an expert on media ethics based at the University of Melbourne, emphasised the importance of not destabilising Australia's most trusted source of news. He identified 'the erosion of truth and trust in public discourse', fake news and the influence of social media as challenges in a democratic society:

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1 Note: the 'Australian Broadcasting Corporation' was established in 1932 as the 'Australian Broadcasting Commission'.

2 Australian Broadcasting Corporation, *Submission 2*, p. 1.

3 Community and Public Sector Union, *Submission 10*, p. 1.

4 Journalism Education and Research Association of Australia, *Submission 5*, p. 4.

The ABC is part of the antidote to this problem because it helps provide a common conversation that societies need in order to decide how to respond to issues as they arise. Thus it is incumbent on those in public life to recognise that the responsibility to not unjustifiably undermine trusted sources of the common bedrock of news and information is heavier now than at any time in the past.<sup>5</sup>

2.5 The Walkley Foundation commented similarly and argued that an independent ABC is crucial to public interest journalism, as demonstrated by the ABC's high level of performance in the annual Walkley Awards for Excellence in Journalism.<sup>6</sup>

2.6 Senator the Hon Mitch Fifield, Minister for Communications and the Arts (Minister), recently stated: 'it is important for the community to have confidence in the ABC and its independence'. He expressly rejected that the Australian Government has sought to undermine this independence through the use of various levers.<sup>7</sup>

2.7 However, submitters and witnesses argued that provisions in the *Australian Broadcasting Act 1983* (ABC Act) enable the Australian Government—specifically the Prime Minister and Minister—to exert political influence in the ABC.

2.8 This chapter discusses governance arrangements for the ABC Board and options for strengthening those arrangements.

## **ABC Board**

2.9 The ABC Act provides for the merit-based appointment of non-executive directors to the ABC Board (Part IIIA). In brief, a Nomination Panel (NP) conducts a selection process and assesses all applicants against selection criteria, as determined by the Minister in a legislative instrument.<sup>8</sup> A report is then provided to the Australian Government containing a list of at least three nominees.<sup>9</sup> The government then makes a recommendation to the Governor-General, who is responsible for the appointment of non-executive directors to the ABC Board.<sup>10</sup>

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5 Dr Denis Muller, *Submission 9*, p. 7.

6 The Walkley Foundation, *Submission 1*, p. 2.

7 Senator the Hon Mitch Fifield, Minister for Communications and the Arts, 'Statement from Minister Fifield on the ABC', *Tabled Paper*, 15 October 2018, p. 1.

8 See: Australian Government, 'Federal Register of Legislation, Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013', <https://www.legislation.gov.au/Details/F2013L02091> (accessed 15 March 2019).

9 *Australian Broadcasting Corporation Act 1983*, ss. 24B(1)–(2).

10 Department of Communications and the Arts, 'ABC and SBS', <https://www.communications.gov.au/what-we-do/television/abc-and-sbs> (accessed 15 March 2019). Also see: Professor Andrew Podger, *Committee Hansard*, Sydney, 5 March 2019, p. 61, who argued that the requirement to consult should apply to all appointments to the ABC Board.

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### *Appointment of non-executive directors*

2.10 Submitters and witnesses commented that Australian Governments have avoided the selection process outlined above. Section 24X of the ABC Act enables this to occur, by allowing the Prime Minister or the Minister to select a candidate not nominated by the NP.

2.11 According to The Australia Institute (TAI) and ABC Alumni Limited, the Minister, the Hon Senator Fifield, has made several such appointments.<sup>11</sup> For example, current board members Ms Donny Walford, Dr Vanessa Guthrie and Mr Joseph Gersh were ministerial appointments. Ms Ita Buttrose AO OBE, announced on 28 February 2019 as the next ABC Chair, was a prime ministerial appointment.<sup>12</sup>

2.12 ABC Alumni Limited submitted that the circumstances of appointment do not necessarily affect on-the-job performance: 'the most respected chairs have been those who met the criteria set out in the [ABC] Act by fiercely maintaining the independence and integrity of the ABC'.<sup>13</sup>

2.13 However, several submitters and witnesses questioned the appointment process provided for in section 24X of the ABC Act. Media, Entertainment and Arts Alliance (MEAA) submitted, for example:

There is a concern that several Board appointments have been influenced by political patronage, an antithetical disposition towards the corporation, or as a "trophy" appointment to crown an individual's corporate curriculum vitae. None of these qualities have served the ABC or its audience well.<sup>14</sup>

2.14 Dr Muller was less equivocal, submitting that governments of all political persuasions have used the board appointment process as a lever of influence to exert political pressure on the ABC.<sup>15</sup> TAI agreed and argued that the process of appointment breaches basic governance standards, notwithstanding the arm's-length merit-based reforms established by the *National Broadcasting Legislation Amendment Act 2012* (NBLA Act).<sup>16</sup>

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11 The Australia Institute, *Submission 7*, p. 2; ABC Alumni Limited, *Submission 8*, p. 14.

12 The Hon Scott Morrison MP, Prime Minister of Australia, *Transcript*, 28 February 2019, <https://www.pm.gov.au/media/press-conference-sydney-nsw-0> (accessed 15 March 2019).

13 ABC Alumni Limited, *Submission 8*, p. 15. Also see: Professor Andrew Podger, *Committee Hansard*, Sydney, 5 March 2019, p. 62.

14 Media, Entertainment and Arts Alliance, *Submission 4*, p. 4. Also see: Community and Public Sector Union, *Submission 10*, p. 8.

15 Dr Denis Muller, *Submission 9*, pp. 1 and 7.

16 The Australia Institute, *Submission 7*, Attachment 2, pp. iv and 9; Mr Roderick Campbell, Research Director, The Australia Institute, *Committee Hansard*, Sydney, 6 March 2019, p. 2. Also see: Australian Government, 'Federal Register of Legislation, National Broadcasting Legislation Amendment Act 2012', <https://www.legislation.gov.au/Details/C2012A00112> (accessed 15 March 2019).

*Committee view*

2.15 The committee acknowledges that there might be circumstances in which it is necessary and/or desirable for a Minister or Prime Minister to appoint non-executive directors to the ABC Board. For example, if the NP did not shortlist someone whose experience was required on the board. However, this not an unfettered right or privilege, as indicated in section 24X of the ABC Act, and the committee therefore considers that the appointment process should incorporate higher standards of transparency and accountability.

***Requirement to 'consult'***

2.16 Subsection 24X(1) of the ABC Act requires the Prime Minister to 'consult' the Leader of the Opposition before making any recommendation for the chairmanship to the Governor-General. If the Prime Minister decides to appoint a candidate not nominated by the NP, the Prime Minister must table the reasons for that appointment in each House of the Parliament, including an assessment of that person against the selection criteria (subsection 24X(2)).

2.17 On 18 February 2019, at Additional Estimates, the Senate Finance and Public Administration Legislation Committee (F&PA Committee) heard that the NP had provided the Prime Minister with a list of nominees for appointment as the next ABC Chair.<sup>17</sup>

2.18 Some months previously—on 30 September 2018—the Leader of the Opposition, the Hon Bill Shorten MP, had written to the Prime Minister requesting a bipartisan approach to the appointment.<sup>18</sup>

2.19 Senator the Hon Mathias Cormann, Minister for Finance and the Public Service, explained to the F&PA Committee that the Prime Minister did not agree to the request for the following reason:

The Prime Minister has said...that the appointment of the next chair of the ABC board would be conducted in precisely the same way and consistent with the provisions in the relevant act, as was the case under the previous government.<sup>19</sup>

2.20 The Department of the Prime Minister and Cabinet (PM&C) advised that, in the case of the former Chair, consultation comprised 'a phone call between the

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17 Mr Simon Duggan, Deputy Secretary, Industry and Jobs Group, Department of the Prime Minister and Cabinet, *Estimates Hansard*, 18 February 2019, p. 87.

18 Senator Jenny McAllister, *Estimates Hansard*, 18 February 2019, p. 87.

19 Senator the Hon Mathias Cormann, Minister for Finance and the Public Service, *Estimates Hansard*, 18 February 2019, p. 87. Also see: Senator the Hon Mitch Fifield, Minister for Communications and the Arts, *Estimates Hansard*, 19 February 2019, p. 21.



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Prime Minister and the Leader of the Opposition in advance of making the appointment, or progressing the appointment, with the Governor-General'.<sup>20</sup>

2.21 Mr Mike Mrdak, Secretary of the Department of Communications and the Arts, confirmed that past practice has been to advise the Leader of the Opposition of the government's intention. Mr Mrdak stated 'I'm not aware as to whether it'd provide an opportunity for the Leader of the Opposition to suggest alternatives'.<sup>21</sup>

2.22 Mr Mrdak considered that the form of consultation would ultimately be a matter for the Prime Minister.<sup>22</sup> However, witnesses to the inquiry argued that the term 'consult' does not mean 'advise' or 'inform'. For example, Professor Andrew Podger, Honorary Professor of Public Policy at the Australian National University, stated that 'a phone call an hour or so before a press conference is not what I would have thought the parliament intended by the word consult'.<sup>23</sup>

2.23 Professor Podger referred to a statutory example of consultation—the *Fair Work Act 2009*—which he argued demonstrates that the term means discussions and a proper exchange of information prior to the making of a decision (for example, subsection 83(1)).<sup>24</sup>

2.24 Professor Podger submitted that, consistent with the constraints set out in section 24X of the ABC Act, Prime Ministers should refer their preferred candidates to the NP for assessment against the selection criteria and relative to its shortlist of candidates. He acknowledged that this is not required by the ABC Act however, 'it was open to the Prime Minister, and it would have been in line with the spirit of the law and the parliament's intent'.<sup>25</sup>

2.25 Professor Podger added:

What surprises me is that there isn't bipartisan acceptance of a due process here...it's not red tape; it's nothing particularly special. The idea of degrees of independence operates throughout the separation of policy from

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20 Mr Simon Duggan, Deputy Secretary, Industry and Jobs Group, Department of the Prime Minister and Cabinet, *Estimates Hansard*, 18 February 2019, p. 88.

21 Mr Mike Mrdak, Secretary, Department of Communications and the Arts, *Estimates Hansard*, 19 February 2019, p. 22.

22 Mr Mike Mrdak, Secretary, Department of Communications and the Arts, *Estimates Hansard*, 19 February 2019, p. 21.

23 Professor Andrew Podger, *Committee Hansard*, Sydney, 5 March 2019, p. 62. Also see: Mr William Browne, Researcher, The Australia Institute, *Committee Hansard*, Sydney, 6 March 2019, p. 4; Mr Jonathan Holmes, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 10.

24 Professor Andrew Podger, *Committee Hansard*, Sydney, 5 March 2019, p. 64. Also see: Australian Government, 'Federal Register of Legislation, *Fair Work Act 2009*', <https://www.legislation.gov.au/Details/C2018C00512> (accessed 15 March 2019).

25 Professor Andrew Podger, *Committee Hansard*, Sydney, 5 March 2019, p. 61.

administration. In some cases, the degree of independence expected is very considerable, as in the case of the ABC. I would have thought that, having put in a requirement to consult, the best arrangement would have been to provide a bit more information and some time for response. The information might have been the panel's short list, its assessment of them and, preferably, its assessment of the Prime Minister's preferred candidate.<sup>26</sup>

### *Committee view*

2.26 The committee notes that the NBLA Act, which came into operation on 24 November 2012, introduced the consultation requirement currently set out in section 24X of the ABC Act. The purpose of that amendment was to 'facilitate greater transparency and parliamentary scrutiny of the selection and appointment of candidates to the ABC Board'.<sup>27</sup>

2.27 Although Australian Governments claim to have followed proper process, the committee does not agree that the requirement to consult has been properly fulfilled in recent years. The committee agrees with Professor Podger and other witnesses that consultation entails more than simply advising the government's decision. Accordingly, the requirement to consult needs to be defined if it is to be meaningful.

2.28 In the committee's view, the requirement for the Prime Minister to consult the Leader of the Opposition on the appointment of an ABC Chair involves the provision of information about the outcome of the NP recruitment process and any alternate nominee, and the opportunity to discuss a proposed appointment. A bipartisan approach such as this is likely to inspire greater confidence in the appointment, including that that appointee will act free from political influence.

### **Recommendation 1**

**2.29 The committee recommends that the *Australian Broadcasting Corporation Act 1983* be amended to define the term 'consult' in subsection 24X(1), to ensure that the Prime Minister provides the Leader of the Opposition with information about the outcome of the Nomination Panel recruitment process and any alternate nominee, and the opportunity to discuss a proposed recommendation for appointment.**

2.30 In addition, the committee expresses grave concern that, notwithstanding the events of 2018 and this contemporaneous inquiry, the Prime Minister has chosen to make yet another so-called 'captain's pick'. Further, it appears from information provided to the Senate Environment and Communications Legislation Committee

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26 Professor Andrew Podger, *Committee Hansard*, Sydney, 5 March 2019, p. 62.

27 National Broadcasting Legislation Amendment Bill 2010, Explanatory Memorandum, p. 11. The Explanatory Memorandum does not define or give context to the term 'consult'.

(Legislation Committee) that the Coalition Government has no interest in addressing this issue.<sup>28</sup>

### *Application of merits-based selection criteria*

2.31 Subsection 4(1) of the Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013 (Determination) requires applicants to demonstrate substantial experience or knowledge in at least one of the following fields:

- (a) the media industry, including broadcasting, digital media and/or digital technologies;
- (b) business or financial management;
- (c) corporate governance, including managing large and/or complex operations in the private, public or not-for-profit sectors;
- (d) cultural industry and/or cultural policy, including its administration.<sup>29</sup>

2.32 The following provision—subsection 4(2) of the Determination—sets out the personal attributes that applicants will possess:

- (a) demonstrated high level leadership and vision, and the ability to articulate a clear direction for an organisation;
- (b) a commitment to high standards of governance;
- (c) high-level judgement;
- (d) the highest standards of professional and personal integrity; and
- (e) an understanding of the media environment, in particular the ABC, its Charter and its place within the Australian community.

2.33 ABC Alumni Limited expressed a view that recent appointees to the ABC Board have not met the selection criteria nor sought to meet them once appointed.<sup>30</sup>

2.34 However, other submitters and witnesses argued that the key issue is the diversity and range of experience on the ABC Board,<sup>31</sup> particularly in relation to the

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28 Senator the Hon Mitch Fifield, Minister for Communications and the Arts, *Estimates Hansard*, 19 February 2019, p. 21.

29 Australian Government, 'Federal Register of Legislation, Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013', <https://www.legislation.gov.au/Details/F2013L02091> (accessed 15 March 2019).

30 ABC Alumni Limited, *Submission 8*, p. 17. Also see: Senator the Hon Mitch Fifield, Minister for Communications and the Arts, *Estimates Hansard*, 19 February 2019, p. 20, who stated that the Australian Government has only appointed appropriately qualified people to the ABC Board.

31 For example: Dr Denis Muller, Senior Research Fellow, Centre for Advancing Journalism, University of Melbourne, *Committee Hansard*, Sydney, 6 March 2019, p. 21; Dr Alexandra Wake, President, Journalism Education and Research Association of Australia, *Committee Hansard*, Sydney, 6 March 2019, pp. 21–22.

media industry (paragraph 4(1)(a) of the Determination). For example, Ms Margaret Reynolds, President of ABC Friends National, stated:

The current board, for example, has a range of expertise in a number of very important areas—and they are to be respected for the work that they do in their own area of expertise—but it's not expertise in managing the direction of a public broadcaster. Perhaps with the exception of the staff representative and now the new chair, people have no specific background in broadcasting, journalism, digital services.<sup>32</sup>

2.35 Ms Michelle Guthrie, former Managing Director (MD) of the ABC, made a similar observation, telling the committee 'I felt very strongly a lack of media experience'.<sup>33</sup>

2.36 Mr Paul Murphy, Chief Executive Officer of MEAA, added that all ABC Board Directors should have demonstrated commitment to public broadcasting, consistent with the ABC Charter.<sup>34</sup> This idea resonated with Ms Reynolds who said:

It should be possible, in detailing the criteria for consideration, to require, just as with job applications...that anyone applying to be considered for the ABC board put down their media, digital, journalistic and general community understanding and even perhaps a statement about why they believe public broadcasting is so essential to Australian democracy. Then, as Australians who pay for the ABC, you would have a greater reassurance and trust that people on the board, while they would of course make decisions you disagreed with an occasion—that will happen—would have a fundamental commitment to independence and public broadcasting and an understanding of what public broadcasting is.<sup>35</sup>

#### *Committee view*

2.37 The committee notes that the selection criteria for appointment to the ABC Board are generally determined by the Minister in a legislative instrument. Further, the Minister or Prime Minister is responsible for assessing whether a proposed appointee has met the criteria if the appointment is made under subsection 24X(1) or (4) of the ABC Act. This process does not guarantee a fair or independent assessment of all candidates for appointment to a position on the ABC Board.

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32 Ms Margaret Reynolds, President, ABC Friends National, *Committee Hansard*, Sydney, 6 March 2019, p. 26.

33 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 38. Also see: Mr Joseph Gersh, Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 49.

34 Mr Paul Murphy, Chief Executive Officer, Media, Entertainment and Arts Alliance, *Committee Hansard*, Sydney, 5 March 2019, p. 52.

35 Ms Margaret Reynolds, President, ABC Friends National, *Committee Hansard*, Sydney, 6 March 2019, p. 29.

2.38 The committee acknowledges witnesses' key concern that there is insufficient diversity of knowledge and experience on the ABC Board. Given the ABC Charter, the committee agrees there should be stronger representation of media experience, as well as experience in education, culture and performing arts. The committee recognises that the ABC is first and foremost a public institution that should not be governed predominantly as though it were a corporate entity.

## **Recommendation 2**

**2.39 The committee recommends that the Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013 be amended to:**

- **allow for applicants with substantial experience or knowledge in the field of education;**
- **emphasise the need to demonstrate an understanding of the role of the fourth estate and independent media in democracy; and**
- **require no less than two non-executive members of the ABC Board to demonstrate substantial experience or knowledge in the media industry**

### *Appointments to the NP*

2.40 Sections 24A and 24B of the ABC Act establish the NP, to conduct a selection process for appointments of non-executive directors to the ABC Board and to assess applicants for appointment against the selection criteria and on the basis of merit. The NP comprises a Chair and at least two, but not more than three, other members, all of whom are appointed by the Secretary of PM&C (sections 24E and 24F).

2.41 Some submitters commented on the process of appointment to the NP. ABC Alumni Limited argued that 'it is no longer appropriate for the selection process for the ABC Nomination Panel Board to involve the Prime Minister's Department'.<sup>36</sup> Similarly, TAI stated that 'the nomination panel has become almost as partisan as the board appointments had been earlier'.<sup>37</sup>

2.42 ABC Alumni Limited noted that the ABC Act does not set out selection criteria for appointment to the NP. In its view, these criteria should be made publicly available to increase transparency in the process.<sup>38</sup>

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36 ABC Alumni Limited, *Submission 8*, p. 16.

37 The Australia Institute, *Submission 7*, Attachment 2, p. 11. The submission added that the position of Secretary to the Department of Prime Minister and Cabinet has itself become highly politicised. Also see: Media, Entertainment and Arts Alliance, *Submission 4*, p. 5.

38 ABC Alumni Limited, *Submission 8*, p. 16.

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*Committee view*

2.43 The committee considers that the problem of politicisation of appointments runs deep and wide, which is why it is important to bring transparency and accountability, including to NP processes. At time of writing, answers to questions on notice taken by the Department of Communications and the Arts at Senate Estimates on 19 February 2019 are yet to be provided. These answers may provide some insight into how the NP operates and what scope there may be to enhance transparency and accountability of the NP around the selection of candidates.

**Recommendation 3**

**2.44 The committee recommends that the Australian Government amend the *Australian Broadcasting Corporation Act 1983* to set out the selection criteria for the Nomination Panel and enhance the transparency and accountability of the work of the Nomination Panel.**

*Assistance from recruitment firms*

2.45 Recruitment firms assist the NP to determine suitable applicants for positions as non-executive directors on the ABC Board. At Supplementary Budget Estimates, the Legislation Committee heard that global consulting firm Korn Ferry was engaged to provide assistance in the search for the next ABC Chair.<sup>39</sup>

2.46 Mr Mrdak advised that prospective contractors were asked to identify any conflicts of interest during the tender process. He conceded that a principal of Korn Ferry, who might have been involved in the recruitment process, failed to specifically disclose membership of or donations to the Liberal Party.<sup>40</sup>

2.47 The ABC Board has now engaged global executive search firm Spencer Stuart to assist in the recruitment of a new MD for the ABC. Ms Walford acknowledged that Spencer Stuart is not part of the ABC panel and had been invited to participate in the process based on the recommendation of one or more members' experience. She stated that the firm was awarded the contract as it was clearly the top contender:

The reason why we unanimously chose Spencer Stuart was they were seamless in their presentation. There were three people, including their head of the psych area, who worked very seamlessly in the presentation, and they really stood out in understanding our brief, in understanding the needs of the organisation to get the best result as a managing director.<sup>41</sup>

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39 Mr Mike Mrdak, Secretary, Department of Communications and the Arts, *Estimates Hansard*, 23 October 2018, p. 17.

40 Mr Mike Mrdak, Secretary, Department of Communications and the Arts, *Estimates Hansard*, 19 February 2019, pp. 23–25. Also see: Mr Richard Eccles, Deputy Secretary, Department of Communications and the Arts, *Estimates Hansard*, 19 February 2019, p. 24.

41 Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 32. Also see: pp. 30–31.

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*Committee view*

2.48 The committee understands the need to engage specialist firms to assist recruitment for board and executive teams. The committee is concerned that, with the events of 2018 fresh in mind, the Australian Government awarded one contract to a firm where a key principal has political connections. Further, the ABC Board invited another firm to participate in a recruitment process on the recommendation of a board member, who might have been a ministerial or prime ministerial appointment.

2.49 At time of writing, answers to questions on notice taken by the Department of Communications and the Arts at Senate Estimates on 19 February 2019 around the identification and declaration of potential conflicts of interest in the appointment of Korn Ferry are yet to be provided. These answers may inform an understanding of what checks and safeguards against political interference are needed in relation to the use of recruitment firms for ABC appointments.

2.50 In respect of the Australian Government, and noting also its recent exercise of section 24X, the committee considers that these appointments demonstrate complete contempt for the issues currently being investigated by the committee. At best, it demonstrates a fundamental misunderstanding of the issues involved.

2.51 The committee further considers that the engagement of the two recruitment firms could feed or create a perception that this part of the recruitment process has also been politically influenced, as well as constituting and providing an actual opportunity for political interference.

### **Options for strengthening governance arrangements**

2.52 Submitters and witnesses suggested multiple options for strengthening governance arrangements for the ABC, to support the broadcaster's independence and to curb political interference. These suggestions focussed primarily on appointment processes and composition of the ABC Board, some of which are discussed below.

#### ***Appointment process for non-executive directors of the ABC Board***

2.53 MEAA submitted that there is no justification for the Australian Government to 'opt out of the established appointments process', which it argued demonstrates bad faith toward the NP and compromises public trust in the ABC. In its view, section 24X of the ABC Act should be amended 'to remove the ability of a Minister or Prime Minister to appoint persons not nominated by the panel'.<sup>42</sup>

2.54 Alternately, some submitters and witnesses argued that section 24X could be amended to remove political interference, or the suggestion of political interference, from the appointment process. TAI, for example, suggested that the Minister should

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42 Media, Entertainment and Arts Alliance, *Submission 4*, p. 5.

only be able to 'bypass the nomination process' if there has been 'genuine consultation with the shadow minister'.<sup>43</sup>

2.55 The CPSU proposed an even stronger requirement: if the Australian Government is to retain the power provided for in section 24X, then the government must have the support of the Leader of the Opposition:

If retaining executive powers is deemed necessary to deal with exceptional or unprecedented circumstances, then limiting the use of this power to ensure it is not abused could assist to depoliticise the process. One way this might be achieved would be for the Government to secure the support of the Leader of the Opposition before being able to override the recommendations of the Nomination Panel. The CPSU would also suggest that the detailed reasons for doing so should be tabled in Parliament.<sup>44</sup>

2.56 ABC Alumni Limited agreed that the Prime Minister must genuinely consult with the Leader of the Opposition and then explain the reasons for the government's decision:

[The] consultative process needs sharper definition in the Act, requiring the Prime Minister to make a statement to the House of Representatives (or on the Prime Minister's website if the House is not sitting) prior to the appointment of a new Chair, stating clearly whether or not the leader of the Opposition is in agreement with the appointment, and if not, why the Prime Minister has decided to proceed with the appointment despite that lack of agreement.<sup>45</sup>

2.57 ABC Friends National argued that, as a further safeguard, the Leader of the Opposition should have a right of veto in the appointment process. However, Mr William Browne, Researcher at TAI, and Mr Jonathan Holmes, Member of ABC Alumni Limited, did not consider that this would be appropriate.<sup>46</sup>

2.58 Instead, Mr Holmes suggested that there would need to be some form of penalty to encourage the Australian Government and Leader of the Opposition to reach consensus on appointments.<sup>47</sup>

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43 The Australia Institute, *Submission 7*, Attachment 3.

44 Community and Public Sector Union, *Submission 10*, p. 8.

45 ABC Alumni Limited, *Submission 8*, p. 15.

46 Mr William Browne, Researcher, The Australia Institute, *Committee Hansard*, Sydney, 6 March 2019, p. 7; Mr Jonathan Holmes, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 15.

47 Mr Jonathan Holmes, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 15.



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*Committee view*

2.59 The committee agrees that appointments of non-executive directors to the ABC Board should be made in accordance with a merit-based process and, in the normal course of events, based on the recommendations of an independent NP. This will help to ensure the integrity of the process and the independence of the appointee, as well as promoting confidence and trust in the ABC Board.

2.60 The committee considers that, in exceptional circumstances, the Australian Government should have the power to make appointments of non-executive directors to the ABC Board. This should not be normal practice and should be subject to constraints, as is currently indicated in the ABC Act.

***Transparency in the application of section 24X***

2.61 Submitters and witnesses contended that a further problem with section 24X is that it enables the Australian Government to appoint people independent of the merit-based appointment process. According to information received in the inquiry, the key concern is then a lack of transparency and accountability in the appointment.

2.62 In 2018, Mr Milne's appointment came into question because of his pre-existing relationship with then Prime Minister, the Hon Malcolm Turnbull MP. Mr Milne struggled to describe this relationship while ABC Chair but acknowledged:

It's a bit difficult to describe your relationship with a Prime Minister, because of course you don't get to see the person when they're Prime Minister very much at all. I have known Mr Turnbull for quite a while—approaching 20 years, I think. He has been a good acquaintance and a business associate of mine, in that our paths have crossed many times, and I count him as a friend.<sup>48</sup>

2.63 Mr Gersh—and possibly other ABC Board members—had pre-existing and longstanding friendships with various political figures.<sup>49</sup>

2.64 ABC Friends National argued that, if section 24X is to remain in the ABC Act, the process must be totally transparent. Ms Reynolds stated that the Prime Minister should be required to table in Parliament reasons for not following the recommendations of the NP. She illustrated the types of questions that can arise from not providing this level of accountability:

[In the latest appointment for ABC Chair] the government hasn't told us how many people were nominated. We don't know that detail. We don't know how they were rated. I understand no women were nominated, and

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48 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 7. Mr Milne conceded that he was on social terms with Mr Turnbull prior to his appointment as ABC Chair.

49 Mr Joseph Gersh, Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 46.

that has been given as one of the reasons for the captain's pick. That information is all very closely withheld by government.<sup>50</sup>

2.65 Dr Muller agreed:

The Act should be amended so that if the minister rejects a merit panel's recommendation for a board member, he or she must report to Parliament who has been rejected and the reasons for the choice of replacement.<sup>51</sup>

#### *Committee view*

2.66 There have been occasions in recent years when nominees, who *prima facie* fulfil the selection criteria, have been appointed to the ABC Board, only to have their independence questioned due to their appointment under section 24X.

2.67 The committee suggests that, if the Australian Government has a candidate in mind for appointment as a non-executive director, that person should be invited to participate in the appointment process and should participate in the recruitment process by applying in the usual way.

2.68 As it stands, the provisions that allow the Australian Government to make non-executive appointments to the ABC Board need to be significantly strengthened, to more fully embed measures of transparency and accountability.

#### **Recommendation 4**

**2.69 The committee recommends that the Australian Government amend section 24X of the *Australian Broadcasting Corporation Act 1983* to require the Prime Minister to table a statement advising the Parliament on the extent and outcome of consultations with the Leader of the Opposition.**

#### *Audience supported board member*

2.70 TAI argued that the ABC audience should have greater capacity to be involved in the ABC. Mr Roderick Campbell, Research Director at TAI, said:

The ABC's biggest stakeholders are its audience, and its audience has almost no capacity at the moment to have input into board selection processes, let alone a vote on the board itself.<sup>52</sup>

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50 Ms Margaret Reynolds, President, ABC Friends National, *Committee Hansard*, Sydney, 6 March 2019, pp. 26–27.

51 Dr Denis Muller, *Submission 9*, p. 8. Also see: Community and Public Sector Union, *Submission 10*, p. 8; Mr William Browne, Researcher, The Australian Institute, *Committee Hansard*, Sydney, 6 March 2019, p. 5, who suggested that the same effect could be achieved by publishing the Nomination Panel's recommendations in advance of the government decision.

52 Mr Roderick Campbell, Research Director, The Australia Institute, *Committee Hansard*, Sydney, 6 March 2019, p. 5. The submission identified the possibility of an online process.

2.71 As a solution, TAI suggested that the appointment of an 'audience supported board member'.<sup>53</sup> Ms Reynolds from ABC Friends National agreed that audience representation is critical:

We do have to remember that this is a public broadcaster and that millions of Australians rely and depend on the ABC for a whole variety of purposes, so I think it is fundamental that they should be represented...if we are looking at new ways of managing and protecting the independence of the ABC, an audience person, an ABC Friends person, nominated by the general community, would be there as a person who spoke up on many of these issues...it's important to have a person who is there to represent audiences, be they in the Northern Territory, where shortwave services were cut, or in the far north or the far west, where I'm told the Western Australian ABC office, like the Brisbane office and the Adelaide office, have suffered in terms of not just finance but local decision-making and initiative.<sup>54</sup>

2.72 Mr Holmes stated that it 'would be pretty hard to institute—a public election for one director on a public board like that'.<sup>55</sup> However, logistics aside, Mr Matt Peacock, also from ABC Alumni Limited, maintained that there is a desperate need for better recognition of who actually owns the ABC:

There's been discussion about who the shareholder is and who the stakeholders are. My view has always been clear: the ABC is an institution that we all should own. If there's a much more public investment in it in the sense of a representative of the public—not a representative, but an elected person—on the board, that would give a much more public recognition of that stake.<sup>56</sup>

2.73 ABC Alumni Limited highlighted also the role of the ABC Advisory Council, as an important point of contact between the broadcaster and its audience:

The Council has proved invaluable in raising with the ABC Board issues and concerns that its members have deemed crucial to audience interests. These might include matters of which Council members have special knowledge and experience, such as rural and regional programming or programs for young people; and issues directly related to the Committee's

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53 The Australia Institute, *Submission 7*, Attachment 3. Also see: ABC Friends National, *Submission 3*, Attachments 2 and 3; Journalism Education and Research Association of Australia, *Submission 5*, p. 5.

54 Ms Margaret Reynolds, President, ABC Friends National, *Committee Hansard*, Sydney, 6 March 2019, p. 28.

55 Mr Jonathan Holmes, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 14.

56 Mr Matt Peacock, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 14.

inquiry such as funding cuts, the effect of staff cuts on programs, and apparent threats to the Corporation's independence.<sup>57</sup>

### ***Overall composition of the ABC Board***

2.74 Some submitters and witnesses argued that, notwithstanding the selection criteria set out in the Determination, the current ABC Board has too narrow a range of expertise.<sup>58</sup> For example, ABC Friends National submitted:

We are not happy with the current board representation—neither its range of skills and experiences, nor its diversity. Further, there have been too many "captain's choices".<sup>59</sup>

2.75 The argument put to the committee was that appointees' expertise has been concentrated in only a few of the fields set out in subsection 4(1). Mr Milne suggested that the ABC Board should have greater input into the appointment of non-executive directors, to identify skills and knowledge shortages, and to allow for more effective succession planning and good governance.<sup>60</sup>

2.76 MEAA contended that a specific need exists in the area of staff representation. In its view, a second staff representative would help to address a dramatic decline in staff engagement and morale, as well as build staff confidence in the ABC Board's operations and assist in avoiding future 'misadventure'.<sup>61</sup>

2.77 The CPSU agreed that the role of a staff-elected director is integral on the ABC Board:

Their duties are identical to other Board member however the Staff Elected Director is uniquely placed to enhance Board deliberations by providing accurate insights about how Board decisions are landing in the ABC workplace.<sup>62</sup>

### ***Committee view***

2.78 The committee recognises that the appointment of an audience representative could help to reinforce the Australian public's ownership of and stake in the ABC. However, the committee has reservations about how this representation could be achieved and if the idea were to proceed, it would need to be investigated further.

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57 ABC Alumni Limited, additional information, received 7 March 2019.

58 For example: ABC Alumni Limited, *Submission 8*, p. 18; Dr Denis Muller, *Submission 9*, p. 8.

59 ABC Friends National, *Submission 3*, p. 6.

60 Mr Justin Milne, *Submission 11*, p. 4.

61 Media, Entertainment and Arts Alliance, *Submission 4*, p. 5. Also see: ABC Alumni Limited, *Submission 8*, p. 4.

62 Community and Public Sector Union, *Submission 10*, p. 9. Also see: Mr Matt Peacock, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 14.

2.79 The committee acknowledges concerns that the ABC Board is out of touch with ABC staff, including at the senior levels, notwithstanding the existence of a Staff-Elected Director on the board. The committee considers that the inclusion of a second Staff-Elected Director should be investigated further, however the committee is wary that this may have the effect of undermining consistent staff representation at board level.

### *Crisis management plan*

2.80 In the critical period 21–27 September 2018, there was no Deputy Chair appointed to the ABC Board.<sup>63</sup> Mrs Georgie Somerset, ABC Board Director, alluded to governance issues that this had caused.<sup>64</sup> Dr Kirstin Ferguson, Deputy Chair and Acting Chair, concurred that the absence of a Deputy Chair had been 'challenging' at times and it was not always clear how to proceed with the deteriorating situation.<sup>65</sup>

2.81 Ms Guthrie also experienced difficulties in the months leading up to 21–24 September, where she did not know where to turn when conflict arose between her and the former Chair, Mr Milne (see chapter three).

2.82 Mr Paul Murphy from MEAA said that normally:

Any board should have a discussion about significant threats to the organisation they could see as emerging in the future and have a plan in place to initiate if they encounter that situation.<sup>66</sup>

2.83 Ms Walford acknowledged that there is a need for a crisis management plan for the ABC Board:

One of the lessons that we [learned], besides making sure we have a deputy chair, was to have that board charter, that board crisis management. There was one for the organisation but not one specifically for the board. That is something we've...asked the executive to put together for the board, in what would be the process if this ever happened again.<sup>67</sup>

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63 See: Senator the Hon Mitch Fifield, Minister for Communications and the Arts, 'Appointment of ABC Deputy Chair', *Media release*, 28 September 2018, <https://www.minister.communications.gov.au/minister/mitch-fifield/news/appointment-abc-deputy-chair> (accessed 15 March 2019).

64 Mrs Georgie Somerset, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 23.

65 Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 42.

66 Mr Paul Murphy, Chief Executive Officer, Media, Entertainment and Arts Alliance, *Committee Hansard*, Sydney, 5 March 2019, p. 55.

67 Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 42.

*Committee view*

2.84 The committee acknowledges that a crisis management plan is currently being developed for the ABC Board. As demonstrated by the events of 2018, such a plan is clearly needed. The committee urges the ABC Board to give particular consideration to those sections of the plan which deal with conflict resolution between the Chair and MD. The committee also regards the legal duties in the ABC Act and PGPA Act to provide guidance to the ABC Board and would encourage the board to obtain independent, expert advice on what should be done in the event that a question around board member compliance with statutory duties or Board Protocol arises.

# Chapter 3

## Events of 2018

3.1 On 24 September 2018, the ABC Board terminated the employment of its then Managing Director (MD), Ms Michelle Guthrie. Mr Justin Milne, then Chair of the ABC Board, said 'the Board was unanimous in its view that Ms Guthrie's departure was in the best interests of the ABC'.<sup>1</sup>

3.2 This chapter discusses whether political interference played any part in the ABC Board's decision to terminate Ms Guthrie and the conduct of the ABC Chair (terms of reference (a) and (b), respectively).

### Ms Guthrie's termination

3.3 Mr Milne provided the committee with a submission, which stated that the ABC Board terminated Ms Guthrie's employment due to 'poor leadership skills leading to a loss of confidence and trust'. Further, that this decision was not taken lightly but resulted from more than three months' careful consideration.<sup>2</sup>

3.4 Mr Milne described a series of events and factors relevant to the ABC Board's decision, commencing in March 2018 with a 360 review of Ms Guthrie's performance. He submitted that the results of the review were 'extremely poor and unexpected', and worse than the results of an earlier 360 review:

What the board felt it had was an organisation which was becoming increasingly disengaged and an organisation which was becoming increasingly uncomfortable with its leader...you'd expect that a change agent would come in, ruffle feathers...but then that there would be a turnaround. But that turnaround was not apparent, and that was the question. So, the board was faced with the problem of: do we continue with this change agent who's losing the people or do we do something about it?<sup>3</sup>

3.5 The Community and Public Sector Union (CPSU), which supported the ABC Board's decision, agreed that there were ongoing concerns among ABC staff, including concerns related to the excessive restructuring.<sup>4</sup>

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1 Mr Justin Milne, *Submission 11*, p. 2.

2 Mr Justin Milne, *Submission 11*, p. 1. Also see: Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 58; Dr Jane Connors, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 64.

3 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, pp. 4–5. Also see: p. 2.

4 Community and Public Sector Union, *Submission 10*, p. 2.

### ***Executive coaching***

3.6 Mr Milne outlined how the ABC Board had attempted to address the results of the 360 review, including the appointment of Ms Donny Walford, ABC Board Director, to act as an executive coach for Ms Guthrie. Ms Walford told the committee that Ms Guthrie erroneously believed their conversations were reported back to the board and contributed to the decision to terminate her employment:

[Ms Guthrie] thought her termination was because of the knowledge I had of our coaching sessions and the 360...what I guaranteed to Michelle, to Ms Guthrie—that everything she said to me and I said to her would remain confidential—has remained, to this day, confidential.<sup>5</sup>

3.7 Prior to a third coaching session, Mr Milne and Ms Walford met with Ms Guthrie to inform her of the ABC Board's loss of confidence (22 August). Mr Milne speculated that this meeting was the catalyst for the lodging of a formal complaint by Ms Guthrie to the ABC Board (see below), including allegations of improper conduct on his part.<sup>6</sup>

### ***Alleged improper conduct***

3.8 The allegations of improper conduct by Mr Milne toward Ms Guthrie were first brought to Ms Walford's attention on 22 August. With Ms Guthrie's consent, Ms Walford informed the ABC Board, including Mr Milne, of the allegations the next day.<sup>7</sup>

3.9 The ABC Board asked Mr Joseph Gersh, ABC Board Director, to meet with Ms Guthrie, which he did on or about 29 August. Her impression was that the meeting was held 'not to elicit an investigation into the matters I had raised but to encourage me to resign from the ABC'.<sup>8</sup> Mr Gersh did not agree:

The purpose of that meeting was, at the direction of the board, to meet with Ms Guthrie to ascertain whether she was prepared to make a complaint, formal or informal, in relation to the restaurant allegation...Most of the

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5 Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 58. Also see: Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 34, who found it 'extraordinary' that the 360 review (a performance tool) had been used as a basis for her termination.

6 Mr Justin Milne, *Submission 11*, p. 2; Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 21.

7 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 43; Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 56.

8 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 43.



conversation was directed to that. I did ask her whether she would be prepared to complain. She said no.<sup>9</sup>

### ***Alleged political interference***

3.10 Ms Guthrie provided a submission to the committee's inquiry in which she disputed that her termination was performance-based. Instead, Ms Guthrie argued that the ABC Board's decision was based on her defence of the ABC's independence:

When I reflect on the events of September, I look back at months of growing undue pressure by the then Chair of the ABC to fire journalists in order to "please the Government" and as a quid pro quo for supposed funding of \$500 million for Project Jetstream. When I disagreed with the Chair, the pressure increased.<sup>10</sup>

3.11 Ms Guthrie submitted that she had 'nowhere to go to raise the appropriateness and the impact of this pressure and intervention by the Chair'. Further, when she informally approached individual ABC Board members (Dr Vanessa Guthrie, Ms Donny Walford and Dr Kristin Ferguson):

[They] were not prepared to confront the Chair. They viewed my concerns as a personal matter between me and the Chair. They either did not understand or want to understand how the then Chair's pressure was impacting on my role and more importantly the independence of the ABC.<sup>11</sup>

3.12 On 21 September 2018, Ms Guthrie wrote to the ABC Board in response to its concerns about her leadership (the dossier): 'I received no response to my letter. Two days later, the Board resolved to terminate my appointment'.<sup>12</sup>

### **Conduct of the ABC Board and Chair**

3.13 On 27 September 2018, Mr Milne resigned from his position as Chair of the ABC. This followed publication of Ms Guthrie's dossier which set out the allegations of political interference and improper conduct.

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9 Mr Joseph Gersh, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 47.

10 Ms Michelle Guthrie, *Submission 12*, p. 2. Project Jetstream was a proposed digital transformation project.

11 Ms Michelle Guthrie, *Submission 12*, p. 2. Other ABC Board members told the committee that they were not aware of Ms Guthrie's concerns regarding interference by the Chair until 21 September 2018, for example: Mr Joseph Gersh, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 48.

12 Ms Michelle Guthrie, *Submission 12*, p. 2.

***Mr Milne's response to the allegations of political interference***

3.14 Mr Milne submitted that he used 'best efforts' to fulfil the ABC Board's statutory obligations, including 'to maintain the independence and integrity of the Corporation' (paragraph 8(1)(b) of the ABC Act). He expressly rejected that his conduct has ever been influenced by politicians or government bodies:

I have never allowed any politician or government body to influence or attempt to influence my role as Chairperson of the ABC and unequivocally reject any and all allegations of political or government influence, attempted or otherwise with the ABC. I have exercised my own judgment in the discharge of my duties as Chairperson of the ABC in the pursuit of the best interests of the ABC, its employees and the Australian public at all times and have acted with the complete support of the Board at all times.<sup>13</sup>

3.15 According to Mr Milne, the ABC Board did not consider anything 'wrong' with his conduct:

Nothing could be further from the truth...The board met with me often. I spoke with board members often, in between board meetings—as chairmen do—and this process of terminating Ms Guthrie's employment, as I've said, went on over the course of three, perhaps three-and-a-half, months involving many meetings...it entirely beggars belief that those people would not have brought up those matters, had that been their feeling. And they didn't, not in the slightest. Not only that, but the board was unanimous in its conviction to pursue this path, but careful not to make that decision until the absolute moment. But there was no dissent.<sup>14</sup>

***ABC Board's initial reaction to the dossier***

3.16 The ABC Board, with few exceptions, was aware of a declining relationship between Mr Milne and Ms Guthrie prior to presentation of the dossier. However, witnesses emphasised that the reasons for that decline were not related to perceived political interference in the ABC.<sup>15</sup>

3.17 According to Dr Guthrie, the source of that tension appeared to be the former Chair's over involvement in ABC management:

**Senator KENEALLY:** Did you have a concern that the chair was overstepping his role as chair?

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13 Mr Justin Milne, *Submission 11*, p. 1. Also see: pp. 4, 6 and 22.

14 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 5.

15 For example: Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 57; Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 5; Dr Vanessa Guthrie, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 5.

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**Dr Guthrie:** I expressed that to him, and I expressed that to the managing director at the time.<sup>16</sup>

3.18 In her submission, Ms Guthrie expressed concern about the extent to which Mr Milne had involved himself in management issues: 'the chair had an inappropriate perspective on his role in relation to the management of the corporation'.<sup>17</sup>

3.19 Mr Milne categorically rejected that he had interfered in the management of the ABC, stating that he is very aware of the distinct roles of a managing director and Chair. However, Mr Milne contended that all boards and their Chairs must be deeply aware and involved in an organisation:

There's a difference between being an engaged chair and a chair who wants to sort of take the tools and do the job themselves. But it's an important line ...if you're not involved enough, then things can go wrong. And it's important—fundamental—for boards to be deeply involved and deeply aware of what's going on in the business. And I believe we were, and I was, but I never interfered in that business.<sup>18</sup>

3.20 According to various board members, the contents of the dossier were 'surprising' and 'shocking'. Dr Jane Connors, Staff-Elected Director, said 'I wish she had raised it formally with the board for the proper attention that...a matter that serious deserves'.<sup>19</sup> Ms Walford similarly said:

We'd never heard it before. Don't forget: I'd been in coaching sessions. It had never been raised. And I would have thought—if there was something that had allegedly been going on for that long, why wouldn't I have, why wouldn't we have, been told before?<sup>20</sup>

### ***ABC Board's response to the allegations of political interference***

3.21 ABC Board members told the committee that, in their interactions with Mr Milne, there had not been any cause for concern regarding political interference.<sup>21</sup>

3.22 Upon presentation of the dossier, the ABC Board considered the allegations of political interference and improper conduct to be serious. Dr Ferguson described the

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16 Dr Vanessa Guthrie, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 20.

17 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 30.

18 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 5.

19 Dr Jane Connors, Staff-Elected Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 61.

20 Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 58.

21 For example: Mr Joseph Gersh, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 7; Dr Jane Connors, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 7.

two types of allegations as being of 'equal importance', while Dr Connors viewed the allegations of political interference as 'clearly the most serious'.<sup>22</sup>

3.23 The ABC Board decided to deal separately with the issues of Ms Guthrie's leadership and her allegations against Mr Milne. Dr Guthrie, Dr Connors, Mr Gersh, Mrs Somerset and Dr Ferguson all stated that these issues were legitimately separable and needed to be worked through in a stepped process. As explained by Dr Connors:

We had been three months into a very difficult procedure to terminate a MD. In our view, it had reached the crisis point and the moment where we felt the position was untenable and we needed to act on the continuation of the MD. So, on a weekend, an email arrives which contains allegations...I was appalled by it. It was my absolute intention to deal with it. I honestly wished we had been given the chance to deal with it at a proper time earlier, in the 4½ months in which the MD had had it...But I didn't see that it held up the termination of the MD at the point we had got to. I saw it as a matter that we would deal with expressly once we had got through that crisis...Events overtook us at that point...I can entirely understand why people have put the two things together and seen them the way they did, but it didn't have the causation that it looks like.<sup>23</sup>

3.24 Dr Ferguson emphasised that, notwithstanding the allegations, the incidences of alleged political interference never actually 'came to fruition' and 'on each occasion...as soon as there was an indication that action needed to be taken [the ABC Board] acted on that'.<sup>24</sup>

3.25 Similarly, Mr Milne argued that 'the fact that all of the things that I am supposed to have done to interfere with the ABC never actually, ultimately, occurred' demonstrates that he never politically interfered in the ABC.<sup>25</sup>

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22 Dr Jane Connors, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 21. Also see: Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 21; Mr Joseph Gersh, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 23.

23 Dr Jane Connors, Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, pp. 64–65. Also see: Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 7; Mr Joseph Gersh, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, pp. 51–53; Dr Vanessa Guthrie, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 22; Mrs Georgie Somerset, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 23.

24 Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 5.

25 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 22.

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### ***Public Governance, Performance and Accountability Act 2013***

3.26 The ABC is a corporate Commonwealth entity that operates under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). This Act sets out standards of governance, performance and accountability, as well as imposing duties on ABC officials—such as a duty to exercise their powers, perform their functions and discharge their duties with a degree of care and diligence that a reasonable person would exercise (section 25).<sup>26</sup>

3.27 From 21–24 September, the ABC Board did not obtain legal advice on the contents of the dossier, including whether either the former Chair or former MD had breached their statutory duties under the ABC Act or the PGPA Act.<sup>27</sup> However, Dr Ferguson stated that the ABC Board did not breach its duties section 25 of the PGPA Act in deciding to terminate Ms Guthrie's employment:

If a person in our circumstances had all the information that we had to hand, which isn't known to the reasonable person right now in the street, they would have made the same decision.<sup>28</sup>

3.28 Professor Andrew Podger agreed that obtaining legal advice would not necessarily help determine whether the ABC Board had complied with its duties under the PGPA Act, as that Act is about principles, not detailed rules:

I'm not sure that, if I'd been on the board, I would have thought it would necessarily help to get legal advice on the PGPA Act. I certainly think it was very important to ensure that the procedures were in line with the ABC Act. I suppose one could argue for, for safety, getting some legal views on the PGPA Act, but, as I say, the PGPA Act is legislation more of principles than of detailed rules.<sup>29</sup>

### ***Committee view***

3.29 The ABC Board and its former Chair have consistently maintained that Ms Guthrie's employment was terminated for performance-based reasons. The former

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26 Australian Government, 'Federal Register of Legislation, *Public Governance, Performance and Accountability Act 2013*', <https://www.legislation.gov.au/Details/C2017C00269> (accessed 18 March 2019).

27 Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, pp. 7–8. Also see: ABC Board, Australian Broadcasting Corporation, answer to question on notice, received 22 March 2019, pp. 1 and 3, confirming that no legal advice was received in respect of Mr Milne or Ms Guthrie.

28 Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 16. Also see: Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, pp. 15–16, who said that, even without legal advice, the board considered every possible plan and risk.

29 Professor Andrew Podger, *Committee Hansard*, Sydney, 5 March 2019, p. 63.

MD equally maintained that her employment was terminated due to her allegations against Mr Milne of actual or attempted political interference.

3.30 Based on the information provided to the inquiry, the committee accepts that the ABC Board made its decision without reference to real or perceived political interference (of which they had little knowledge). This is not to say that such interference was absent from the corporation.

3.31 The committee notes that the allegations of political interference against the ABC Chair were preceded by government complaints that extended over some months. During this time ABC Board members were aware of a declining relationship between the former Chair and former MD.

3.32 The committee is astounded that the ABC Board did not make further inquiries—both before and after presentation of the dossier—about the source of this tension that was so clearly impacting the corporation and which clearly could have, and did jeopardise, the independence of key personnel.

3.33 Throughout the inquiry, ABC Board Directors emphasised their absolute commitment to the independence of the ABC. However, when presented with allegations against the Chair—by no less than the MD—the first response was not to prioritise and investigate those allegations but to proceed to deal with another issue which had arisen about the same time.

3.34 The committee's view is that the ABC Board members in evidence appeared to be broadly aware of their obligations, to have prioritised relevant factors and weighed risks and to have ultimately obtained legal advice, and referred matters for investigation but there were some deficiencies in their approach in what appears to have been a lack of action or lack of awareness in relation to some matters, including the decision to treat the two matters (Ms Guthrie's termination and her allegations against Mr Milne) separately, as well as the timing and sequencing of their actions.

3.35 The committee believes that, having been presented with allegations of political interference and inappropriate intervention by the ABC Chair in matters more properly the province of the MD and her executive team, the ABC Board should have immediately instigated a thorough investigation. Had the allegations raised by Ms Guthrie in her dossier not leaked to the media the board may never have suggested Mr Milne consider his position, the action which led to his resignation.

3.36 In the committee's view this catalogue of events may give rise to the perception that the ABC Board had not been sufficiently active in protecting either the ABC's independence from political interference or its own integrity.

3.37 The committee further notes that the ABC Board was generally aware of its duties and while the board did consider the risks associated with terminating Ms Guthrie, after receipt of the dossier, and at least one board member considered the decision to be high risk for the financial, reputational and legal risks that might follow, the board proceeded with the termination despite the allegations in the dossier and

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without first obtaining legal advice or undertaking a full investigation. Such investigation may ultimately have altered the potential risks and costs associated with Ms Guthrie's termination.

3.38 The committee further notes that the ABC Board did ultimately appoint an independent expert to investigate the personal conduct of Mr Milne alleged by Ms Guthrie, and that the Minister referred to this investigation in his statement tabled in Parliament in 2018. It is the committee's view that the investigation into the conduct of the former Chair and MD was understandable in the context of private legal action, but unfortunate in the context of public confidence in the independence and integrity of the ABC.

### **Recommendation 5**

**3.39 The committee recommends the ABC Board formally review these events, including the findings of this inquiry, and report to the Minister on lessons learned and steps taken to guard against a similar occurrence in future.**

#### *Submitters' and witnesses' views of Mr Milne's conduct*

3.40 Most submitters and witnesses focussed on Mr Milne's conduct, particularly his view of the role of the ABC Chair. This viewpoint was presented in the *7.30* and *Four Corners* programs, which aired following Mr Milne's resignation.

#### *7.30 program*

3.41 On 27 September 2019, the *Four Corners* program aired a program in which Ms Guthrie intimated that Mr Milne was far from independent in his conduct as ABC Chair:

SARAH FERGUSON: After Milne's arrival, Guthrie noticed an immediate change on the political front.

MICHELLE GUTHRIE: Again, some context is probably relevant here. I mean, certainly when Jim Spigelman was chair of the ABC, Mitch Fifield and I had regular conversations by phone. He would call me if there was an issue. And once Justin really started as chair, those calls stopped.

SARAH FERGUSON: So they had their man?

MICHELLE GUTHRIE: Well, that's what I suspected.<sup>30</sup>

3.42 In that same interview, Mr Milne said:

Nobody has told me that I'm supposed to be a wall. I think, more what I'm likely to be is a conduit...It's necessary, and I think it's the role of the board to be a conduit so that the left hand knows what the right hand is doing.<sup>31</sup>

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30 ABC, 'Bitter End', *Four Corners*, 12 November 2018, <https://www.abc.net.au/4corners/bitter-end/10490434> (accessed 18 March 2019).

3.43 ABC Alumni Limited fundamentally disagreed with this viewpoint:

The ABC is not "the left hand" of the government as Mr Milne implies... Mr Milne should, we submit, have acted more as "a wall" and less as "a conduit".<sup>32</sup>

3.44 Members of the ABC Board agreed that Mr Milne saw himself as a conduit and may, for example, have been concerned about decisions that could impact funding. However, the directors stressed that, even if that were the case, the ABC Board did not share that view. Mrs Somerset, for example, said:

He made a connection between those things, but the strength of a robust board is the diversity of views around the table and the robustness of the discussion and deliberations. I think it is evident that it was not the view of the full board.<sup>33</sup>

3.45 Dr Guthrie added:

The question of upsetting the government is not relevant to our consideration of what we think is in the best interest of the corporation and what we put forward to the parliament through the budget process.<sup>34</sup>

3.46 While Mrs Somerset considered that the ABC Board functioned effectively, she could not describe the degree to which Mr Milne's viewpoint might have interfered with its function.<sup>35</sup> Ms Guthrie was more certain on the degree of interference:

Mr Milne amplified (rather than resisted) any actual or perceived concerns of the Government when he dealt with me, particularly from April through to September 2018.<sup>36</sup>

3.47 Ms Guthrie considered it part of Mr Milne's job to resist pressure from government and not transmit that pressure to ABC staff, a view with which

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31 ABC, 7.30: *The Interviews*, <https://iview.abc.net.au/show/7-30-the-interviews> (accessed 15 January 2019). Mr Milne also stated that 'you can't go around irritating the person who is going to give you funding'.

32 ABC Alumni Limited, *Submission 8*, p. 10.

33 Mrs Georgie Somerset, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 9. Also see, for example: Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 8; Dr Vanessa Guthrie, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 8.

34 Dr Vanessa Guthrie, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 10.

35 Mrs Georgie Somerset, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 9.

36 Ms Michelle Guthrie, *Submission 12*, p. 8.



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Dr Connors agreed. However, Ms Guthrie indicated that that resistance was not present during her time as MD:

The impact on me was significant pressure...I was put in an invidious position where I was protecting the independence of the ABC from the ABC chair.<sup>37</sup>

3.48 Ms Guthrie identified one particular interaction with Mr Milne as the most critical example of the pressure she was under:

The most critical conversation that is very strong in my mind is that 15 June conversation, because that was a very, very difficult conversation. It takes a lot for me to get close to tears but I was definitely under pressure and felt very close to tears. That was an instance where the very suggestion of firing the chief political editor of the ABC in order to secure funding for Jetstream seemed to me to be the most incredible and ludicrous proposition.<sup>38</sup>

3.49 About 29 August, in the meeting with Mr Gersh, Ms Guthrie confided that 'she was distressed by the heat of the conversations she had had on a couple of occasions with Mr Milne'. Mr Gersh's response was that:

There needs to be the ability for two people in that position to have robust discussion, even, if need be, heated discussion, without it necessarily being personal, and then they need to find a way to work together. It's not uncommon for chairs and managing directors to have differences of opinion, and normally it's worked out between them.<sup>39</sup>

3.50 If not privately, ABC Friends National submitted that the ABC Board and Chair should be 'defending publicly and strongly the ABC management and the Managing Director from political and other criticism'.<sup>40</sup>

#### *Four Corners interview*

3.51 On 12 November 2018, the *Four Corners* program interviewed Mr Milne. During the interview, the former Chair described the Australian Government as the ABC's shareholder, banker and regulator:

SARAH FERGUSON: Did you say that Malcolm would go ballistic over the decision to move the Hottest 100?

JUSTIN MILNE: I don't remember saying that, but I may have.

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37 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 42. Also see: Dr Jane Connors, Director, Australian Broadcasting Corporation, *Committee Hansard*, 30 November 2018, p. 62.

38 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 42.

39 Mr Joseph Gersh, Director, Australian Broadcasting Corporation, *Committee Hansard*, 30 November 2018, p. 48. The outcomes of this meeting were reported to the ABC Board: p. 50.

40 ABC Friends National, *Submission 3*, p. 6.

SARAH FERGUSON: Why should it matter whether Malcolm Turnbull goes ballistic or not?

JUSTIN MILNE: It doesn't really matter whether Malcolm Turnbull goes ballistic, but I think what you're driving at here is, why does it matter what the government thinks? And it does matter what the government thinks.

The ABC should be absolutely independent in that the government should not be able to tell the ABC do this or do that. The government should not be able to ring the Chair give him an instruction, and he delivers the instruction, and that never happened.

SARAH FERGUSON: If you're saying that Malcolm Turnbull never gave you a direction, but you were essentially running his line, you were pre-empting what he would think. If you say Malcolm's going to go ballistic, you think it matters what he thinks about that decision?

JUSTIN MILNE: I think it matters what government thinks. The government, whether it's a Liberal government or a Labour government that's in power, is our shareholder. They're our banker. They're our regulator. They're our occasional inquisitor. It's just naive to think that the board cannot pay attention to that. Because, at the end of the day, one of the jobs of any board of any organisation is to ensure its continued existence and that means funding.<sup>41</sup>

3.52 The Journalism Education and Research Association of Australia submitted that this was an 'extraordinary' misunderstanding of the ABC Act:

The government may be the ABC's banker but it is not the ABC's shareholder. That role belongs to the general public and even the term shareholder defines people narrowly as financial stakeholders rather than as citizens. Nor is the government the ABC's regulator; that role belongs to [the Australian Communications and Media Authority, ACMA], a statutory authority that acts independent of the executive.<sup>42</sup>

3.53 In evidence, Mr Milne sought to clarify portions of his statement on the *Four Corners* program. In relation to funding, he argued that ABC funding is not based on doing what the Australian Government wants but maintaining public trust:

It is important for the board to ensure that the journalism, the product, that the ABC produces is accurate. That accuracy is important to the trust of the ABC, and the trust of the ABC is important to its funding...if the people's trust in the ABC declines, then...elected representatives of the taxpayers, who are funding the ABC, will find it more and more difficult to fund an organisation which is not trusted...The connection is back to trust—not to

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41 ABC, 'Bitter End', *Four Corners*, 12 November 2018, <https://www.abc.net.au/4corners/bitter-end/10490434> (accessed 18 March 2019).

42 Journalism Education and Research Association of Australia, *Submission 5*, p. 3. Also see: Ms Margaret Reynolds, President, ABC Friends National, *Committee Hansard*, Sydney, 6 March 2019, p. 25, who described the government as a trustee of the ABC for the people of Australia.

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doing what the government wants. It's naive to suggest that the board or me or anybody else is running around doing the government's bidding. Honestly, it's just not the case. Is the board aware of the government's feelings on things? Is the board aware of the opposition's feeling on things and of the people's feelings? Of course, and these are taken into account.<sup>43</sup>

3.54 Ms Guthrie questioned an example cited by Mr Milne, by stating that she was not aware of there being any public view that the Australian Government was unhappy with the reporting of Ms Emma Alberici (see chapter four).<sup>44</sup>

### ***Committee view***

3.55 The committee accepts the preponderance of information that Mr Milne perceived himself as a conduit between the ABC and the Australian Government. Although Mr Milne argued to the contrary, the committee considers that his perception influenced the manner in which he interacted with the former MD and other members of ABC Staff (see chapter four).

3.56 According to the ABC Board, whether it did or did not is immaterial as the board conducted itself robustly and in accordance with paragraph 8(1)(b) of the ABC Act. The committee notes that board members appear to consider the argument almost moot because none of the alleged political interference came to fruition.

3.57 In the committee's view, the fact that political influence might have occurred at such a high level within the corporation, and over an extended period of time, should have given the board significant and immediate grounds for action.

3.58 Further, an ABC Chair has a different but equally important relationship with a MD. While the allegations might not have affected the ABC Board, Ms Guthrie's evidence is that she—the person responsible for managing the affairs of the corporation—was being subjected to political interference.

3.59 The committee accepts that the ABC Board did not attempt to intervene, believing there to be only personal issues involved. However, the committee considers that more should have been done to support Ms Guthrie, particularly when the pressures upon her originated with a board member.

### **ABC's complaints process**

3.60 The ABC Act requires the ABC Board to develop a code of practice relating to its television and radio programming and to notify this code to the regulator,

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43 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 14.

44 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 32. Also see: Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, pp. 18–19.

ACMA (paragraph 8(1)(e)).<sup>45</sup> This Code of Practice and the ABC's Editorial Policies are collectively called the 'editorial standards'.

3.61 The ABC's complaints handling procedures include editorial complaints which are handled by its Audience and Consumer Affairs (ACA) unit:

An editorial complaint is a written complaint about one or more specific items of ABC content, in most instances content that has already been broadcast or published by the ABC, alleging a breach of the ABC's editorial standards as expressed in the ABC Editorial Policies or ABC Code of Practice, and with an expectation of a response.<sup>46</sup>

### *Complaints outside of the complaints handling procedures*

3.62 Some submitters and witnesses argued that people with editorial complaints—including politicians and government—should avail themselves of the complaints handling procedures.<sup>47</sup> Dr Muller submitted that any attempts to circumvent these procedures are a violation of editorial independence.<sup>48</sup>

### *Complaints by politicians or government*

3.63 Mr Milne submitted that the Australian Government is entitled to make editorial complaints through ACA:

The government does not dictate the content produced by the ABC. Like any other interested party, they are welcome to raise complaints with the ABC regarding any particular issues they may have with specific content. Such complaints will be investigated in the ordinary manner by ABC management and not the Board, and treated like any other complaint, that is to say, the government is not provided with any special consideration nor are their grievances given any additional weight compared to other parties.<sup>49</sup>

3.64 According to ABC Alumni Limited, the complaints handling procedures were specifically developed to ethically and efficiently manage the 'difficult' relationship between government and the ABC:

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45 Australian Broadcasting Corporation, *Code of Practice 2019*, <https://about.abc.net.au/reports-publications/code-of-practice/> (accessed 18 March 2019).

46 ABC, 'Complaints handling procedures', para 2.3.2, <http://about.abc.net.au/wp-content/uploads/2017/08/ABC-Complaint-Handling-Procedures-final-no-EECA-020817.pdf> (accessed 18 March 2019).

47 For example: Media, Entertainment and Arts Alliance, *Submission 4*, p. 2.

48 Dr Denis Muller, *Submission 9*, p. 4; Ms Michelle Guthrie, *Submission 12*, p. 5.

49 Mr Justin Milne, *Submission 11*, p. 6. Also see: Mr Gaven Morris, Director, News, Analysis and Investigations, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 43.

This is precisely why, over the course of decades, elaborate structures have been put in place by the ABC to ensure that compliance with high editorial standards is maintained and that complaints can be dealt with ethically and efficiently. Every Chair before Mr Milne has faced this challenge...and it is reasonable to predict that future Chairs will face the same challenge.<sup>50</sup>

3.65 Media, Entertainment and Arts Alliance submitted however that aggrieved individuals and groups often complain about perceived political bias by 'directly approaching senior ABC personnel instead of engaging in the established complaints process'.<sup>51</sup>

3.66 Mr Gaven Morris, Director, News, Analysis and Investigations at the ABC, confirmed that it is not unusual for him to receive telephone calls from ministers' or members' offices, or even from senators:

I don't feel under any pressure from anybody who wants to get in touch with me to give me their full and frank advice on the way we conduct our job at ABC News. In fact, I say to anybody who gets in touch with me, 'Please be in touch; please let me know what you think about the way we do our job.'<sup>52</sup>

3.67 Similar to Ms Guthrie, Mr Jonathan Holmes from ABC Alumni Limited said that politicians' offices placed an unprecedented level of pressure on the parliamentary press bureau from mid-2017:

I spent some time in the press gallery talking not only to ABC people but also to other very experienced parliamentary journalists...They detailed the extraordinary day-to-day pressure that the ABC bureau was put under, largely from Mr Turnbull's office...Chris Uhlmann, who is a very experienced gallery journalist who now works for the Nine Network and was the ABC's political correspondent, was one who was prepared to go on the record to say that there were streams of WhatsApp messages coming every day to the head of bureau in Parliament House, as well as to people like Gavin Morris, criticising tiny little things. One example of the extent of this was there was also the use of formal complaints, which of course the government is entitled to make—any viewer or listener can make formal complaints—but the use of that by a minister carries very different weight to the use of it by practically anybody else. After all, this is the man who holds the purse strings.<sup>53</sup>

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50 ABC Alumni Limited, *Submission 8*, p. 9.

51 Media, Entertainment and Arts Alliance, *Submission 4*, p. 3. Also see: Mr Jonathan Holmes, Member ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 9.

52 Mr Gaven Morris, Director, News, Analysis and Investigations, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 49. Also see: p. 44.

53 Mr Jonathan Holmes, Member ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, pp. 10–11. Mr Holmes noted also that that intense pressure was too much for one bureau chief. Also see: Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, pp. 29 and 32–33.

### ***ABC Editorial Policy 1***

3.68 One submitter—Dr Muller—particularly questioned Editorial Policy 1, which combines the positions of MD and editor-in-chief, who has ultimate editorial power and responsibility.<sup>54</sup> Dr Muller argued that combining these two offices is a fundamental weakness in the ABC's editorial structure, as they are inherently conflicted:

Each has different responsibilities and they cannot always be reconciled. The managing director is responsible for the corporate well-being of the organisation, which includes advancing its corporate interests. As a member of the Board, the managing director is bound by Board decisions and cannot act in ways that are inimical to that bond...The editor-in-chief is responsible for producing an independent news service regardless of anyone's corporate interests, including those of his or her own corporation. He or she cannot do this if bound by Board solidarity or inhibited from publishing stories that may damage the corporation's interests when those stories are in the public interest, or open to direct lobbying from fellow members of the Board.<sup>55</sup>

3.69 Dr Muller identified a further problem with combining the offices of MD and editor-in-chief:

As Creighton Burns said when editor of *The Age*: "Managing directors exist to protect editors from boards." That does not mean editors are immune from pressure. Far from it. Politicians and other powerful people try it on every day. What it does mean is that when that pressure is exerted through the board, the managing director acts as a buffer and defender.<sup>56</sup>

3.70 Dr Muller suggested that separating the roles of MD and editor-in-chief could help mitigate the efficacy of complaints as a lever to exert political influence in the ABC:

The editor-in-chief should be a highly qualified journalist and should be made responsible for the news and current affairs service and nothing else. He or she should report to the Board through the managing director. He or she should be given an agreed budget with complete discretion as to how it should be spent, and the unfettered authority to hire, fire and deploy editorial staff.<sup>57</sup>

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54 ABC, 'Editorial Policy', <https://edpols.abc.net.au/policies/1-independence-integrity-and-responsibility/> (accessed 18 March 2019).

55 Dr Denis Muller, *Submission 9*, p. 4. Dr Muller added that one person does not necessarily possess the skills needed for the two roles.

56 Dr Denis Muller, *Submission 9*, p. 4.

57 Dr Denis Muller, *Submission 9*, p. 8

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***Committee view***

3.71 The committee acknowledges that the ABC has a complaints handling process to formally manage editorial complaints from politicians and government. However, the committee heard that this process is not being used as intended, with senior ABC staff routinely handling complaints from politicians and/or their offices.

3.72 The committee considers that the formal process does not differentiate between 'feedback' or complaints. It provides the proper means by which politicians and government are to communicate their dissatisfaction with editorial decision-making in the ABC.

3.73 The committee considers that circumventing the formal process may be a deliberate attempt—of varying degrees—to interfere in the ABC. As noted in chapter four, this political interference has an ongoing and cumulative effect that permeates the corporation with consequent effects.





# Chapter 4

## Allegations of political interference in the ABC

4.1 This chapter examines allegations of political interference, or attempted interference, by the Australian Government over editorial decision-making in the Australian Broadcasting Corporation (ABC), as well as options to strengthen the editorial independence and strength of the ABC (terms of reference (d) and (e), respectively).

### 'Political interference'

4.2 Dr Denis Muller submitted that 'not all political action that bears upon the ABC amounts to interference, even though it often has a decisive effect on the ABC's operations'. The types of action that typically 'touch upon' the ABC are legislative measures, funding, appointments to the ABC Board, and sustained campaigns against editorial content:

It is when those political actions are calculated to undermine the ABC's independence that they become improper. It is they that can be classified as political interference.<sup>1</sup>

4.3 Some submitters commented that federal governments of all persuasions have politically interfered in the ABC since its establishment in 1932.<sup>2</sup> Dr Muller, for example, wrote:

Over the ABC's 86-year history, governments of all political persuasions have used these levers--legislation, funding, board appointments and hostile campaigns--for this improper purpose.

However, the most recent upheaval in which the ABC's managing director and editor-in-chief, Michelle Guthrie, was sacked, and the chair, Justin Milne, subsequently resigned shows the destructive effects this kind of political jobbery can have on the ABC independence as well as its stability.<sup>3</sup>

4.4 According to Dr Muller, political interference can affect either the ABC's operational independence (transmission arrangements, budget management, decisions about corporate strategy, et cetera.) or its editorial independence.<sup>4</sup>

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1 Dr Denis Muller, *Submission 9*, p. 1. Also see: Mr Justin Milne, *Submission 11*, p. 5.

2 For example: Journalism Education and Research Association of Australia, *Submission 5*, pp. 2 and 5; The Australia Institute, *Submission 7*, Attachment 2, p. iv; ABC Alumni Limited, *Submission 8*, pp. 13 and 15.

3 Dr Denis Muller, *Submission 9*, p. 1.

4 Dr Denis Muller, *Submission 9*, p. 2.

## Operational independence

4.5 Submitters and witnesses raised two primary concerns in relation to operational independence: first, the ABC's reliance on the Australian Government for funding; and secondly, the number of efficiency reviews conducted over the past 20 years (16 in total).

### *Funding through government appropriation*

4.6 The ABC submitted that there is an 'inexorable link' between it and the Australian Government, as the majority of ABC funding is delivered through government appropriation.<sup>5</sup> The Journalism Education and Research Association of Australia (JERAA) commented that this funding reliance places the ABC in a 'delicate' position:

The ABC...is in the delicate position that the independence of its operations are protected by its governing Act but it is reliant for funding on a body that it is duty-bound at times to criticize. The proverb "Don't bite the hand that feeds you" is a counsel for self-interested caution; that is hardly the way to encourage fearless journalism but that is the ABC's unenviable lot. Which is why protections of its financial—as well as editorial— independence need to be welded into place. We might wish that all politicians abstained from interfering with the day-to-day running of the broadcaster but that brings to mind another proverb: "If wishes were horses, beggars would ride".<sup>6</sup>

### *Triennial funding cycle*

4.7 Several submitters and witnesses commented on the ABC's triennial funding cycle, which is intended to provide funding predictability and greater planning ability. However, some—such as The Australia Institute (TAI) and Community Public Sector Union (CPSU)—argued that the system has recently become 'unsteady' and is failing to provide the stability necessary for the ABC to maintain efficient operations.<sup>7</sup>

4.8 Mr Jonathan Holmes, Member of ABC Alumni Limited, stated that the triennial funding cycle—instituted by the Hawke Government—was intended to:

...reduce the danger that governments can exert day-to-day pressure on the national broadcaster. It is supposed to give the ABC the ability to plan ahead with some confidence and to remove a weapon which governments

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5 Australian Broadcasting Corporation, *Submission 2*, p. 2.

6 Journalism Education and Research Association of Australia, *Submission 5*, pp. 2–3.

7 The Australia Institute, *Submission 7*, Attachment 2, p. iv; Community and Public Sector Union, *Submission 10*, p. 7.

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can use to threaten the ABC if its coverage of political affairs in particular is not at they would wish.<sup>8</sup>

4.9 The ABC itself commented that the discretionary nature of funding decisions creates two overlapping and potentially detrimental outcomes for the broadcaster:

- The funding amount and timing of such appropriation is unilaterally made by the government of the day.
- The exercise of this financial control may create an environment where perceived or real political influence on the ABC's editorial independence is possible.<sup>9</sup>

4.10 Ms Michelle Guthrie, former Managing Director (MD) of the ABC, noted that 'the triennial funding arrangements have been in place for some time' but that they 'seem to be negotiable'. She particularly referenced significant funding cuts that occurred in 2014 partway through one funding cycle.<sup>10</sup>

#### *Utilisation of the funding lever and Project Jetstream*

4.11 Submitters and witnesses argued that Australian Governments have used funding as a lever to interfere, or attempt to interfere, in the ABC.<sup>11</sup> In this inquiry, much attention focussed on recent events in which it was alleged that the former ABC Chair, Mr Justin Milne, politically interfered or sought to interfere in the ABC because of funding considerations (see chapter three), specifically in relation to a digital transformation project known as Project Jetstream.

4.12 Ms Guthrie told the committee that her initial enthusiasm for this project diminished prior to the announcement of Federal Budget 2018–2019:

The critical time for me...was really around the April-May 2018 decision of the government to reduce our funding from 1 July 2019 by at least \$85 million, on a total basis, and there was an indexation freeze imposed from that date. At that point, I became very concerned to ensure that our priorities were to ensure that we had sufficient funding, and we needed to make some decisions urgently to ensure that we could operate within a reduced funding envelope from 1 July 2019. My view was that it was

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8 Mr Jonathan Holmes, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 10. Also see: Media, Entertainment and Arts Alliance, *Submission 4*, p. 9.

9 Australian Broadcasting Corporation, *Submission 2*, p. 2.

10 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 37. Also see: Ms Sinddy Ealy, ABC Section Secretary, Community and Public Sector Union, *Committee Hansard*, 5 March 2019, p. 60, who remarked on the shifting goalposts mid-triennium.

11 For example: Journalism Education and Research Association of Australia, *Submission 5*, p. 2; Dr Denis Muller, *Submission 9*, p. 7.

extremely unlikely, if not impossible, that this government would fund a project of any significant capital requirement.<sup>12</sup>

4.13 However, Ms Guthrie indicated that Mr Milne remained optimistic:

I received a text from Mr Milne saying: "I reckon we put this behind us and stick to our current plan. It's the big prize we want not the little one." I understood Mr Milne to be referring to the half a billion dollars for Jetstream as the 'big prize'.<sup>13</sup>

4.14 Shortly afterward, Ms Guthrie said that she had a telephone conversation with Mr Milne during which he allegedly linked ABC funding to a need to please the government (15 June). Ms Guthrie reported Mr Milne as stating:

"Malcolm hates Probyn and you have to shoot him...Andrew is a problem, we need to deal with this and get rid of him. You are putting the future of the ABC at risk as we are asking the Government for half a billion dollars for Jetstream...We won't get it by annoying the Government".<sup>14</sup>

4.15 Mr Milne rejected this version of events and also that his conduct as ABC Chair had been affected by funding considerations.<sup>15</sup> He acknowledged having met the Prime Minister and Minister for Communications and the Arts (Minister) early on 15 June to discuss Project Jetstream but denied that the Prime Minister attempted to exert any influence over the ABC in relation to Mr Andrew Probyn:

Did he ever suggest to me that anybody should be sacked, that they should be got rid of, that they should be punished or demoted? No. He never ever required anything of me like that. He never suggested anything like that to me, by implication or otherwise.<sup>16</sup>

4.16 Mr Milne described his telephone conversation with Ms Guthrie as a 'robust' and 'professional' disagreement about funding for the ABC.<sup>17</sup> In contrast, Ms Guthrie considered the conversation to have been 'aggressive and harassing'.<sup>18</sup>

4.17 Mr Joseph Gersh, ABC Board Director, later spoke with Mr Milne about the telephone conversation. His evidence was that the conversation principally concerned

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12 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 41. Also see: Ms Michelle Guthrie, *Submission 12*, p. 8.

13 Ms Michelle Guthrie, *Submission 12*, p. 8.

14 Ms Michelle Guthrie, *Submission 12*, p. 7. Also see: Ms Michelle Guthrie, answers to question on notice, 15 June 2018, received 10 January 2019.

15 Mr Justin Milne, *Submission 11*, pp. 5 and 10. Also see: Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, pp. 10–11.

16 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 9.

17 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 10.

18 Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 36. Also see: chapter three where Ms Guthrie commented on the personal effect of this conversation.

journalistic accuracy—rather than funding concerns—and that Mr Milne appeared reluctant to be involved in that managerial issue:

What he said to me was that there were concerns that were expressed because the thought in government was that it wasn't so much that the point was made; it was that it was transmitted as fact, as news, not as opinion...he didn't propose to me that he intended to take some action as a consequence of it.<sup>19</sup>

*Issues associated with uncertain funding for the ABC*

4.18 As indicated above, submitters and witnesses expressed concern about the stability of ABC funding, with specific issues—such as implications for employment and the broadcaster's ability to produce high-quality public interest journalism—identified in information provided to the committee.<sup>20</sup> As noted by Mr David Anderson, Acting MD of the ABC, 'the reduction of funding effectively requires a reduction in services at some point'.<sup>21</sup>

4.19 JERAA, ABC Alumni Limited and Media, Entertainment and Arts Alliance (MEAA) submitted that recent funding cuts and freezes (estimated at over \$600 million, 2014–2022) have placed significant pressure on the ABC.<sup>22</sup> According to MEAA, 'the ABC was better funded in the 1980s than it is today' and does not compare favourably with international counterparts. Graph 4.1 provides a global comparison.<sup>23</sup>

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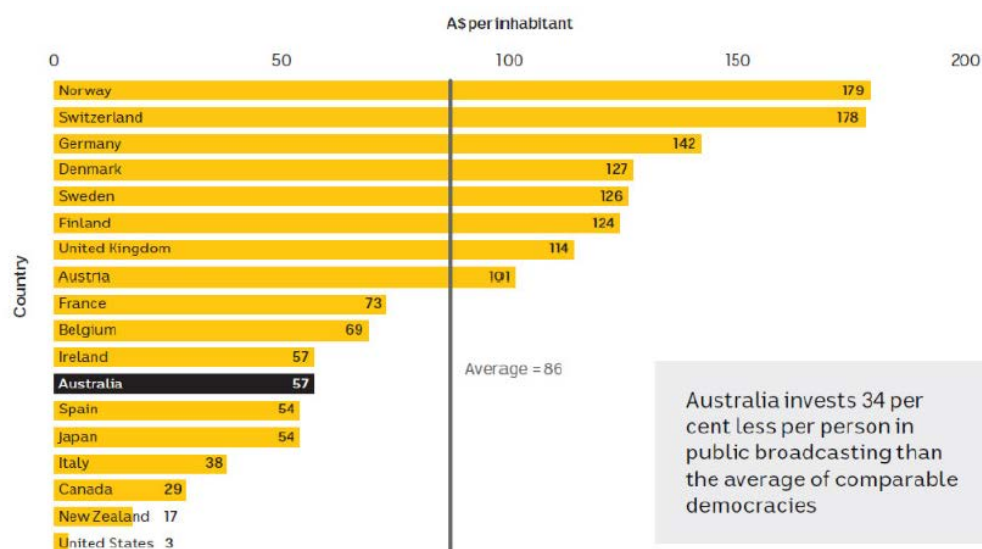
19 Mr Joseph Gersh, Director, Australian Broadcasting Corporation, *Committee Hansard*, Canberra, 30 November 2018, p. 50.

20 For example: Media, Entertainment and Arts Alliance, *Submission 4*, pp. 6–7; Journalism Research and Education Association of Australia, *Submission 5*, pp. 3–4; Professor Matthew Ricketson, Former President, Journalism Education and Research Association of Australia, *Committee Hansard*, Sydney, 6 March 2019, p. 22.

21 Mr David Anderson, Acting Managing Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 33. Also see: Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 37.

22 Professor Matthew Ricketson, Former President, Journalism Education and Research Association of Australia, *Committee Hansard*, Sydney, 6 March 2019, p. 22.

23 Media, Entertainment and Arts Alliance, *Submission 4*, p. 8. Also see: Journalism Research and Education Association of Australia, *Submission 5*, p. 3; ABC Alumni Limited, *Submission 8*, p. 20; Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 23.

**Graph 4.1: Per capita funding for public broadcasters, 2014**

Source: Nordicity analysis of the annual reports of public broadcasters.

\* Excludes any commercial revenue earned by public broadcasters

Note: Australia includes ABC and SBS combined

Bar chart of per capita funding for public broadcasters, 2014. It shows that at \$57 per person Australia invests 34 per cent less in public broadcasting than \$86, the average of comparable democracies led by Norway at \$179, Switzerland at \$178 and Germany at \$142.

Source: *Media, Entertainment and Arts Alliance, Submission 4, p. 8.*

### *Support and options for funding reform*

4.20 Submitters and witnesses overwhelmingly supported reform of the ABC funding model. The broadcaster itself argued that this is necessary to ensure prosecution of the ABC Charter and to strengthen the ABC's independence:

In order to ensure the ABC's statutory role is carried out and independence not only safeguarded but seen to be safeguarded, it is essential that the Commonwealth guarantee stable and sufficient funding for the national broadcaster. This will ensure that the ABC is not under threat of capricious or arbitrary political decisions that may influence or be perceived to influence ABC editorial or management decisions.<sup>24</sup>

4.21 Submissions and evidence focussed on the desirable outcomes of a new funding model—namely, the need to guarantee a minimum level of funding for the broadcaster over the medium (rather than short) term. The ABC, for example, submitted that there are two key elements to funding reform:

- a level of funding sufficient to allow the ABC to meet its obligations, including indexation settings that reflect rising industry costs; and

24 Australian Broadcasting Corporation, *Submission 2*, p. 2.

- funding set a number of years in advance, both to protect against actual or perceived political interference, and to provide the ABC with the ability to plan for the future.<sup>25</sup>

4.22 Dr Kirstin Ferguson, Deputy Chair and Acting Chair of the ABC, added:

The greater certainty we can have, the greater confidence we can give the Australian public that funding isn't a matter that's on our minds as the ABC undertakes its duties.<sup>26</sup>

4.23 JERAA agreed that the funding level needs to maintain 'the "independence and integrity of the Corporation" into the future', as well as support the ABC's technological competitiveness in a dynamic environment. Although the Charter was amended in 2013 to include the provision of digital media services (paragraph (6)(1)(ba)), Professor Matthew Ricketson noted that no ongoing funding was provided to cover this additional function.<sup>27</sup>

4.24 Mr William Browne from TAI emphasised the need for the budget to restore recent funding cuts: 'all the funding cuts that have been visited upon the ABC since the 2014 budget must be reversed'. Combined with deferring an indexation freeze due to commence on 1 July 2019, he estimated that this would require \$494.3 million over the forward estimates.<sup>28</sup>

4.25 Mr Roderick Campbell, also from TAI, argued that reinstating this funding for the ABC would restore its health and enable the broadcaster to prepare for the future:

Restoring it will allow the ABC to maximise the opportunities in an evolving world and do things such as support world-leading news and journalism throughout the process of digital disruption; create Australian-made content, as streaming services increasingly take over aspects of broadcasting; extend the soft diplomatic efforts of Australia throughout our region, at a crucial time in the Asia-Pacific; maintain ABC's critical role in emergency broadcasting, in relation to bushfires, floods, cyclones et cetera, which is especially important at a time of climate

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25 Australian Broadcasting Corporation, *Submission 2*, pp. 2–3. Also see: Dr Denis Muller, *Submission 9*, p. 8.

26 Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney 5 March 2019, p. 14.

27 Journalism Education and Research Association of Australia, *Submission 5*, p. 2; Professor Matthew Ricketson, Former President, Journalism Education and Research Association of Australia, *Committee Hansard*, Sydney, 6 March 2019, p. 22.

28 Mr William Brown, Researcher, The Australia Institute, *Committee Hansard*, Sydney, 6 March 2019, p. 1.

change; and allow the ABC to spread its reach throughout regional Australia, breaking down the current Sydney-centric model.<sup>29</sup>

4.26 TAI and Dr Muller submitted that the Australian Government must retain the ability to determine ABC funding as part of the federal budget,<sup>30</sup> while many submitters and witnesses—such as the CPSU—suggested that the triennial funding cycle should be extended to five years (quinquennial funding):

This affords the ABC sufficient time to implement operational changes and reinvest efficiencies back into ABC content making and capital. Given the current funding arrangement is only a convention, the ABC would still be able to make additional funding requests over the five years if it saw fit, and the government of the day would still be able to increase ABC funding including tied funding for special projects, if it saw fit to do so. The ABC would however maintain certainty for its base funding for the five years.<sup>31</sup>

4.27 Mr Quentin Dempster from ABC Alumni Limited argued that, in exchange for quinquennial funding, the ABC should be held to account on its plans through a process of Charter review, as occurs with the British Broadcasting Corporation in the United Kingdom.<sup>32</sup>

4.28 However, other witnesses were less supportive of the notion of Charter review:

- Dr Muller expressed some doubt as to whether a review would be meritorious, as the Charter 'is written in very broad terms and is grounded in pretty enduring principles';<sup>33</sup>
- Ms Reynolds was also hesitant to propose a Charter review in the current climate of funding cutbacks and attacks on the broadcaster;<sup>34</sup> and

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29 Mr Roderick Campbell, Research Director, The Australia Institute, *Committee Hansard*, Sydney, 6 March 2019, pp. 1–2. Also see: Dr Alexandra Wake, President, Journalism Education and Research Association of Australia, *Committee Hansard*, Sydney, 6 March 2019, p. 22.

30 The Australia Institute, *Submission 7*, Attachment 2, p. v; Dr Denis Muller, *Submission 9*, p. 8.

31 Community and Public Sector Union, *Submission 10*, p. 7. Also see: ABC Friends National, *Submission 3*, p. 7; Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 14; Mr Roderick Campbell, Research Director, The Australia Institute, *Committee Hansard*, Sydney, 6 March 2019, p. 3.

32 Mr Quentin Dempster, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 13.

33 Dr Denis Muller, Senior Research Fellow, Centre for Advancing Journalism, University of Melbourne, *Committee Hansard*, Sydney, 6 March 2019, p. 21.

34 Ms Margaret Reynolds, President, ABC Friends National, *Committee Hansard*, Sydney, 6 March 2019, p. 28.



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- Professor Ricketson cautioned that, while the principle of Charter review is attractive, it could become prey to those who would game the system, thereby creating further instability.<sup>35</sup>

4.29 Several submitters argued that, regardless of the model, there needs to be greater transparency and wider engagement in the funding process. TAI suggested that there ought to be greater public consultation,<sup>36</sup> while MEAA considered that the budget process would be improved by engaging independent expert advisers:

The strong preference of ABC employees would be to engage independent advisers to assist government to assess triennial appropriations against relevant ABC business plans and strategies. If this could be facilitated, the triennial allocation would be protected, but subjected to ordinary audit processes to ensure diligence in expenditure of public funds.<sup>37</sup>

#### *Committee view*

4.30 The ABC relies upon government appropriations for the majority of its funding and, as shown in information provided to the inquiry, the ABC funding model has experienced what might be described as fluctuations in recent years. In the committee's view, governments must be able to retain control of budgets but this control does create a risk of political interference in the ABC.

4.31 The committee finds that the government's control over ABC funding—particularly for innovative projects, such as in the area of digital transformation—featured prominently in Mr Milne's thoughts and actions.

4.32 The committee considers that the Coalition Government has been complicit in the events of 2018 and beyond, by using funding as a lever to exert political influence in the ABC. If funding had been less penurious and more stable, this would have better supported the ABC to carry out its Charter functions and plan for the future.

4.33 The committee agrees that the much loved and respected public broadcaster should have adequate and stable funding to conduct its legislated functions now and into the future.

4.34 The committee acknowledges that a new funding model for the ABC based on a quinquennial cycle with provision for indexation and innovation in accordance with the broadcaster's functions as set out in section 6 of the *Australian Broadcasting Corporation Act 1983* is an option worthy of serious consideration. However, the committee acknowledges that even this funding model would not preclude the

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35 Professor Matthew Ricketson, Former President, Journalism Education and Research Association of Australia, *Committee Hansard*, Sydney, 6 March 2019, p. 21.

36 The Australia Institute, *Submission 7*, p. 4. Also see: Community and Public Sector Union, *Submission 10*, p. 7.

37 Media, Entertainment and Arts Alliance, *Submission 4*, p. 9.

government from cutting the ABC's budget without notice at any point over the quinquennium.

## **Recommendation 6**

**4.35 The committee recommends that the Australian Government acknowledge the benefit and desirability of stable funding for the Australian Broadcasting Corporation, not only for Australian Broadcasting Corporation planning purposes but also as a guard against political interference, and commit to stable funding for the Australian Broadcasting Corporation over each budget cycle.**

### *Inquiries and reviews of the ABC*

4.36 Some submitters referred to the large number of inquiries and/or efficiency reviews affecting the ABC within the last two decades.<sup>38</sup> MEAA questioned the justification for these reviews, submitting that there is no evidence that the ABC Board has failed to ensure efficient operation of the ABC (a duty set out in paragraph 8(1)(a) of the *Australian Broadcasting Corporation Act 1983* (ABC Act)).<sup>39</sup>

4.37 Submitters particularly focussed on the independent inquiry into the competitive neutrality of the national broadcasters (term of reference (d)(i)), which was announced by the Australian Government in 2018.<sup>40</sup>

### *Inquiry into the competitive neutrality of the national broadcasters*

4.38 On 12 December 2018, the Minister released the final report in which the panel found:

The Commonwealth's Competitive Neutrality Policy (CNP) is focussed on government trading corporations and its relevance to the National Broadcasters is more limited...the National Broadcasters are established and funded to provide free services. So long as they operate within their statutory Charters they are operating in the public interest...this Inquiry considers the National Broadcasters are not causing significant competitive distortions beyond the public interest.<sup>41</sup>

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38 For example: Media, Entertainment and Arts Alliance, *Submission 4*, p. 9; Journalism Education and Research Association of Australia, *Submission 5*, p. 3.

39 Media, Entertainment and Arts Alliance, *Submission 4*, p. 6.

40 The Hon Mitch Fifield, Minister for Communications and the Arts, 'Inquiry into the competitive neutrality of Australia's national broadcasters', *Media release*, 28 March 2018, <https://www.minister.communications.gov.au/minister/mitch-fifield/news/inquiry-competitive-neutrality-australias-national-broadcasters> (accessed 18 March 2019).

41 R. Kerr, J. Flynn and S. Levy AO, *Inquiry into the Competitive Neutrality of the National Broadcasters—report by the Expert Panel*, September 2018, p. 11, <https://www.communications.gov.au/documents/inquiry-competitive-neutrality-national-broadcasters-report-expert-panel> (accessed 18 March 2019). Also see: ABC, 'Inquiry into the competitive neutrality of the national broadcasters', <https://www.communications.gov.au/have-your-say/inquiry-competitive-neutrality-national-broadcasters> (accessed 18 March 2019).

4.39 Submitters agreed that the CNP is of limited application to the ABC. As explained by TAI, 'competitive neutrality relates to participants in markets in which goods and services are bought and sold', a situation that largely does not apply to the ABC.<sup>42</sup>

4.40 MEAA argued that the competitive neutrality review had been supported by commercial broadcasters with vested interests: 'these broadcasters appeared to believe that the ABC should not directly compete and take audience share from them', particularly in relation to digital services. However, like the review panel, MEAA did not consider it improper for the ABC to provide online content:

It would be absurd if the national broadcasters were constrained from making use of the technological tools that encourage public access to their platforms. There is simply no public utility in doing so.<sup>43</sup>

4.41 More broadly, MEAA contended that 'the frequency of inquiries and the tenor of the (current) Government's legislative efforts are components of a strategy to wrong-foot, undermine and criticise the corporation'.<sup>44</sup> ABC Friends National similarly submitted that 'there is a disturbing campaign to undermine [the broadcaster's] traditional role':

Recent intimidation and clear attempts to politicize the ABC is counter-productive to ensuring a continuing strong ABC presence and voice in this country and overseas, and allowing it to both fulfil its part in ensuring the democratic principle of 'the community's right to know', and also in meeting the ABC's other Charter requirements over all areas of public broadcasting.<sup>45</sup>

#### *Latest efficiency review*

4.42 The Department of Communications and the Arts has recently conducted the *National Broadcasters Efficiency Review* to help inform the next triennial funding cycle for the ABC (to commence from 1 July 2019).<sup>46</sup>

4.43 On 4 March 2019, Mr Anderson received the review report, which has not yet been publicly released.<sup>47</sup> According to media reports, the review commented that

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42 The Australia Institute, *Submission 7*, p. 2 and Attachment 1. Also see: ABC Friends National, *Submission 3*, pp. 3 and 7.

43 Media, Entertainment and Arts Alliance, *Submission 4*, p. 8.

44 Media, Entertainment and Arts Alliance, *Submission 4*, p. 5.

45 ABC Friends National, *Submission 3*, p. 5. Also see: p. 4.

46 Department of Communications and the Arts, 'National Broadcasters Efficiency Review', <https://www.communications.gov.au/what-we-do/television/national-broadcasters-efficiency-review> (accessed 18 March 2019).

some content—such as the *ABC Life* program—is not core to the ABC's Charter responsibilities.<sup>48</sup>

4.44 The committee notes the terms of reference for the efficiency review expressly excluded editorial policies from the scope of the review, which are the responsibility of the ABC Board and ABC Leadership Team.<sup>49</sup>

#### *Committee view*

4.45 The committee does not support reviews of the ABC where the underlying purpose is to undermine the corporation, as appears to have been the case with the competitive neutrality review. The committee encourages the Australian Government to institute only those reviews which have a clearly defined and legitimate purpose.

### **Editorial independence**

4.46 Dr Muller defined 'editorial independence' as 'the freedom to publish or broadcast, without fear or favour, material that has the character of news'. He submitted that this material often 'upsets people with a vested interest in the matter, and very often these people wield power'. Dr Muller argued:

If editorial independence is to be preserved, editors and journalists making decisions about what to publish must be free to do so without being cowed by potential blowback from these vested interests, or by the desire to do some vested interest a favour.<sup>50</sup>

4.47 The Walkley Foundation for Journalism (Walkley Foundation) and JERAA both noted the role of public interest journalism 'in scrutinizing institutions and people in positions of power and authority', which JERAA described as 'vital for the health of Australia's democracy'.<sup>51</sup> The Walkley Foundation submitted:

This work is crucial public interest journalism and can only be generated through a supportive governance and management which adheres to the

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47 Mr David Anderson, Acting Managing Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 38; Mr David Anderson, Acting Managing Director, Australian Broadcasting Corporation, *Estimates Hansard*, Sydney, 6 March 2019, p. 4.

48 Jennifer Duke and Fergus Hunter, 'Efficiency review questions the focus of ABC and SBS on lifestyle and food content', *The Age*, 5 March 2019, <https://www.theage.com.au/business/companies/efficiency-review-questions-the-focus-of-abc-and-sbs-on-lifestyle-and-food-content-20190305-p511u7.html> (accessed 18 March 2019).

49 Mr David Anderson, Acting Managing Director, Australian Broadcasting Corporation, *Estimates Hansard*, Sydney, 6 March 2019, pp. 4–5.

50 Dr Denis Muller, *Submission 9*, p. 2. Dr Muller noted that the essentials of editorial independence are captured in Fairfax's Charter of Editorial Independence.

51 Journalism Education and Research Association of Australia, *Submission 5*, p. 3.

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ABC Act's Section 8 (Duties of the Board) to safeguard the ABC's independence.<sup>52</sup>

### ***Legislated editorial independence***

4.48 The ABC Act provides for the independence of the ABC, which the broadcaster submitted enables 'a strong foundation upon which the ABC has built an editorial framework' (see chapter three).<sup>53</sup> In its view, these 'have stood the ABC in good stead in protecting it from any real or perceived external editorial influence'.<sup>54</sup>

4.49 Notwithstanding this legislated editorial independence, submitters and witnesses argued that Australian Governments have interfered, or attempted to interfere, in editorial matters at the ABC (term of reference (d)). In the context of this inquiry, submissions and evidence referred especially to editorial complaints made throughout 2018.

### ***Alleged political interference in editorial matters (2018)***

4.50 Submitters and witnesses discussed three specific incidents involving ABC journalists, Ms Emma Alberici and Mr Andrew Probyn, and a proposed programming change on triple j's *Hottest 100* program.

#### *Events concerning Ms Alberici*

4.51 On 14 February 2018, the Office of the Prime Minister (PMO) made a written complaint to Mr Gaven Morris, Director of News, Analysis and Investigations at the ABC, about an article and in-depth analysis of corporate tax authored by Ms Alberici. The complaint raised a number of editorial concerns.<sup>55</sup> The ABC Leadership Team was already reviewing the article and analysis when the PMO complaint was received.<sup>56</sup>

4.52 Sometime over the next few days, Mr Morris received a telephone call from Mr Milne. Although Mr Milne appeared to know that the article 'would potentially upset people in the political process', he did not suggest terminating Ms Alberici's

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52 The Walkley Foundation for Journalism, *Submission 1*, p. 2.

53 The ABC's editorial framework includes Editorial Policies, Editorial Guidance and a Code of Practice: ABC, 'Editorial Policies', <https://about.abc.net.au/how-the-abc-is-run/what-guides-us/abc-editorial-standards/editorial-policies/> (accessed 18 March 2019).

54 Australian Broadcasting Corporation, *Submission 2*, p. 2. Also see: Mr Justin Milne, *Submission 11*, p. 6.

55 Department of Communications and the Arts, Inquiry into allegations relating to the Australian Broadcasting Corporation, *Tabled Paper*, 15 October 2018, p. 4.

56 Ms Michelle Guthrie, *Submission 12*, p. 6; Mr Gaven Morris, Director, News, Analysis and Investigations, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, pp. 44–45, who said that he had first received a telephone call from the Office of the Prime Minister.

employment. Mr Morris stated that he was never involved in any such conversations, including in relation to Mr Probyn.<sup>57</sup>

4.53 On 7 May 2018, the PMO made another written complaint to Mr Morris about Ms Alberici, this time in relation to her coverage on the *ABC News* program of the Australian Government's Innovation Policy. The complaint alleged a breach of the ABC Charter through various errors of fact and omission.<sup>58</sup>

4.54 Ms Guthrie submitted that, over a period of months, Mr Milne increasingly pressured her to terminate Ms Alberici's employment because of the two complaints:

In the period from approximately April to May 2018, Mr Milne told me that Emma Alberici, ABC Chief Economics Correspondent, should be "fired". This was repeated to me by Mr Milne on multiple occasions, including in email, WhatsApp messages, on the phone and in person.<sup>59</sup>

4.55 Ms Guthrie provided more detail regarding the former Chair's response to the second complaint from PMO in an email dated 8 May 2018. Ms Guthrie reported Mr Milne's response, as follows:

"After two glasses of red—of course there's an agenda. They fricken hate her. She keeps sticking it to them with a clear bias against them. We clear her as ok. We r [sic] tarred with her brush. I just think its's [sic] simple. Get rid of her. My view is we need to save the corporation not Emma. There is no g'tee [sic] they will not win the next election".<sup>60</sup>

4.56 Mr Milne denied pressuring Ms Guthrie to terminate Ms Alberici's employment because of the PMO complaints. He emphasised that ABC management was responsible for such decisions and argued that the 8 May email was not an attempt to influence matters:

The purpose of this email was to express my opinion to Ms Guthrie about ongoing issues with Emma Alberici's reporting. It was not a direction to Ms Guthrie to terminate Emma Alberici and it certainly was not the result of any influence or attempted influence by any politician or government body.<sup>61</sup>

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57 Mr Gaven Morris, Director, News, Analysis and Investigations, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 45.

58 Department of Communications and the Arts, Inquiry into allegations relating to the Australian Broadcasting Corporation, *Tabled Paper*, 15 October 2018, p. 4.

59 Ms Michelle Guthrie, *Submission 12*, p. 6.

60 Ms Michelle Guthrie, *Submission 12*, p. 6.

61 Mr Justin Milne, *Submission 11*, p. 5. Also see: Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 17.

4.57 Mr Milne added that chairmen are aware that their role is not to provide directions but their experience enables them to 'be used as a sounding board': 'So those conversations were more in the sort of 'sounding board' type of area'.<sup>62</sup>

4.58 Mr Milne argued that the 8 May email had also been taken out of context to imply that he had proposed terminating the journalist's employment, which was not the case:

Over the course of a couple of months, the future of Ms Alberici was discussed mostly by management, and every now and again me or the board would be looped into this question. That email...was sent on the evening of 8 May. On the morning of 8 May, Ms Guthrie wrote to me and said words to the effect of, 'We've got another problem with Emma.' I said: 'What are we doing about Emma? I thought you were going to offer her...external career development opportunities.' And she replied, 'We are.' So that very morning she confirmed to me that management was still actively considering the future of Emma Alberici. By taking my email out of context, it looks like I had a brain snap and went, 'Oh, we should get rid of Emma,' but that's completely and utterly not the case. This was part of a conversation where my input was being sought, but my input was not the fundamental input by any means; the fundamental input was the managing director's input.<sup>63</sup>

4.59 In contrast, Ms Guthrie argued that the 8 May email was an extremely inappropriate attempt to compromise editorial independence because of a government view.<sup>64</sup> Dr Muller agreed that, if the former Chair had sought to terminate a journalist's employment because the government "hated" them, this would constitute a serious assault on the editorial independence of the ABC:

In a liberal democracy such as Australia, there is a necessary tension between media organisations and governments. This has its roots in what has come to be called the Fourth Estate function of the media: the function of holding others in power to account. A media organisation that sacks, or threatens to sack, a journalist because he or she is disliked by the Government, abandons its Fourth Estate function. In doing so, it breaches the trust that society places in it to perform the functions expected of the media in a liberal democracy.<sup>65</sup>

4.60 Dr Jane Connors, ABC Board Director, considered that the 8 May email was 'most inappropriate' and indicated that it should have been investigated well before the events of September 2018:

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62 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 20.

63 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, pp. 11–12. Also see: p. 18.

64 Ms Michelle Guthrie, *Submission 12*, p. 6; Ms Michelle Guthrie, *Committee Hansard*, Canberra, 30 November 2018, p. 30.

65 Dr Denis Muller, *Submission 9*, p. 3.

I did wonder what the context was for the entire exchange between the two of them, given we were provided with an excerpt. I was very clear that was a matter that needed to be dealt with. I did wonder very much why it had taken 4½ months for the managing director to surface that email. I wasn't sure that, for the editor-in-chief and a very highly paid CEO of a public broadcaster, it had been appropriate to keep that kind of email to herself and then bring it out at the very last moment.<sup>66</sup>

*Events concerning triple j's Hottest 100*

4.61 About October 2017, following extensive audience research and consultation, triple j management recommended to the former MD that the date of its Hottest 100 music countdown be changed from Australia Day.<sup>67</sup>

4.62 Ms Guthrie submitted that the ABC Board supported the proposal, except for Mr Milne who 'told us we were making a huge mistake'.<sup>68</sup> According to her submission, the former Chair had attempted to influence management's decision:

What I did not know at the time was Mr Milne had intervened with triple j staff directly and without prior consultation to me. He did not disclose this to me or, as far as I am aware, to other members of the Board. It was not until about August 2018 that I learned of this intervention when I had a conversation with Mr Michael Mason, ABC Director for Regional and Local...He told me Mr Milne spoke with triple j staff in or around November 2017 directly...telling staff that they should not change the date because "Malcolm will go ballistic".<sup>69</sup>

4.63 Mr Milne stated that he had not 'the slightest memory' of any meeting with triple j staff (without Ms Guthrie being present) and had never uttered the phrase 'Malcolm will go ballistic':

**Mr Milne:** I didn't have any real contact with Triple J staff. Any contact I had with Triple J was via [Michael] Mason.

**Senator KENEALLY:** Did you tell Michael Mason that 'Malcolm will go ballistic'?

**Mr Milne:** No.

**Senator KENEALLY:** Did you ever use that phrase in front of Ms Guthrie—that 'Malcolm will go ballistic'?

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66 Dr Jane Connors, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, 30 November 2018, p. 62.

67 Department of Communications and the Arts, Inquiry into allegations relating to the Australian Broadcasting Corporation, *Tabled Paper*, 15 October 2018, p. 5.

68 Ms Michelle Guthrie, *Submission 12*, p. 4. Also see: Dr Jane Connors, Board Director, Australian Broadcasting Corporation, *Committee Hansard*, 30 November 2018, p. 62.

69 Ms Michelle Guthrie, *Submission 12*, pp. 4–5.



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**Mr Milne:** Not to the best of my memory.<sup>70</sup>

4.64 Mr Ollie Wards, Content Director for triple j at the ABC, gave evidence that, in October 2017, he had attended a meeting with Mr Milne, Ms Guthrie, Mr Mason and Mr Chris Scaddan, ABC Head of Music. Mr Wards related part of the conversation, as follows:

[Mr Milne] explained to us that he knew the extent of triple j's consultations and all the research we had done, but he said that the decision on whether we would move the Hottest 100 off Australia Day or not was a decision that was well beyond the scale of just triple j...Justin was talking about a book that he was reading to do with social change, and that book describes how activists who get in front of public mood can end up—and these are the words he used—'getting burnt at the stake' and that we wouldn't want to be...burnt at the stake...He made a phone gesture with his hand and...said: 'Malcolm will call me and tell me I'm crazy'.<sup>71</sup>

4.65 Mr Wards stated that he was directed to 'come up with some spin' and 'to take one for the team', so that there was no impact on government funding:

The chairman said that he knew it would be tough and there'd be some blowback. There were words to the effect: 'You'd better take this one for the team.' There was going to be a pitch for funding for a project called Jetstream, and moving the Hottest 100 would be too controversial at that stage...as Michael, Chris and I left the room, we were discussing it. I remember saying, 'Isn't this an editorial decision?' We went away from that meeting feeling like the decision had been made and that there was nothing we could do.<sup>72</sup>

4.66 Mr Matthew Peacock, former Staff-Elected Director of the ABC Board and now ABC Alumni Limited representative, confirmed that Mr Milne had linked ABC funding with not antagonising the Australian Government during a board meeting where the Hottest 100 matter was discussed:

Mr Milne expressed the view that we should not antagonise the government with this decision because we were hopeful to get money to face the digital revolution that's hitting all media.<sup>73</sup>

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70 Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 13. Also see: p. 12.

71 Mr Ollie Wards, Content Director, triple j, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, pp. 25–26. Also see: Mr Justin Milne, *Committee Hansard*, Canberra, 30 November 2018, p. 12, where he recalled this meeting as the only one he had with triple j staff.

72 Mr Ollie Wards, Content Director, triple j, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 26.

73 Mr Matt Peacock, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 12.

4.67 Dr Ferguson's evidence was that she had questioned why the ABC Board should be involved in a management decision:

I did not see this as a board decision. I saw no compelling reason at all as to why we should override management. I thought it was a slippery slope to start discussing these kinds of things in relation to government concerns. I remember saying, 'Leave triple j alone'.<sup>74</sup>

#### *Events concerning Mr Probyn*

4.68 On 25 May 2018, *ABC News* aired a report by Mr Probyn, in which it was stated that the Prime Minister had chosen the date for the 28 July federal by-elections. The PMO and Minister made written complaints to the ABC about this statement, prompting an investigation by ABC's Audience and Consumer Affairs unit.<sup>75</sup>

4.69 As noted above, Mr Mason discussed this matter with Mr Milne and had 'welcomed the opportunity for [Mr Milne] to provide me with direct feedback'. Mr Morris stated that he did not feel pressured to please Mr Milne, who did not raise the issue of how Mr Probyn's reporting might impact Project Jetstream. However:

There's no doubt that he thought that some of these issues would make the government unhappy, but that was blatantly obvious to me; he wasn't telling me anything that was news to me.<sup>76</sup>

4.70 The CPSU highlighted that political interference, and the perceived need not to upset the ABC's funding body, does not just affect the broadcaster's news journalism and editorial. Its submission referred especially to industrial relations matters. Ms Sinddy Ealy, ABC Section Secretary, commented:

There isn't going to be a big neon light flashing when independence is compromised. Independence is compromised one increment at a time. It's each individual decision, and then you get to a point where you look at the sum of all parts.<sup>77</sup>

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74 Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 40. Also see: Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 40.

75 Department of Communications and the Arts, Inquiry into allegations relating to the Australian Broadcasting Corporation, *Tabled Paper*, 15 October 2018, p. 5. This complaint formed the background to the telephone conversation of 15 June.

76 Mr Gaven Morris, Director, News, Analysis and Investigations, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 46. Mr Morris commented that he had the impression Mr Milne had spoken to someone in government.

77 Ms Sinddy Ealy, ABC Section Secretary, Community and Public Sector Union, *Committee Hansard*, Sydney, 5 March 2019, p. 56. Also see: Community and Public Sector Union, *Submission 10*, p. 4.

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*Committee view*

4.71 Editorial independence is a measure of transparency and accountability. The committee agrees with The Walkley Foundation that the ABC's governance framework must safeguard the corporation's independence in order to achieve these important outcomes, and to prevent actual or perceived political interference.

4.72 While the ABC has confidence in its editorial framework, the committee heard that politicians have attempted informally to influence the ABC (see chapter three) and, in 2018, the former ABC Chair informally prosecuted the Australian Government's agenda in his interactions with the ABC Leadership Team.

4.73 In the circumstances, the committee considers that the ABC's editorial framework should be reviewed to ensure that it establishes clear policies and procedures for ABC staff who interact with politicians and/or their offices. This should include a strong statement on the importance of maintaining the corporation's independence at all levels within the ABC.

***Ongoing effects of political interference***

4.74 Submitters and witnesses argued that political interference can have an ongoing effect and influence in the ABC. Dr Muller argued that, since the 1970s, the ABC has been in a relentless struggle to assert its independence. He submitted that this struggle has worn down successive ABC chairs and senior managers, and created a culture that encourages a 'pre-emptive buckle'.<sup>78</sup>

*Alleged culture among ABC Staff*

4.75 Information to the inquiry particularly focussed on impacts from the use of the funding lever on staff culture. For example, ABC Alumni Limited submitted:

The strain of treading a line between the Charter requirements...and making do with increasingly less funding, combined with the need for consequent staffing losses and diminished resources for program-making, have taken a heavy toll. Such an environment can breed timidity because of the apparently well-founded fear that giving offence to government might result in further assaults on the ABC's independence, funding and functions.<sup>79</sup>

4.76 MEAA submitted that editorial complaints from politicians have placed pressure upon ABC management (see chapter three also) which has produced:

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78 Dr Denis Muller, *Submission 9*, p. 6. He noted that the triple J Hottest 100 was a classic example of the pre-emptive buckle.

79 ABC Alumni Limited, *Submission 8*, p. 19. Also see: Media, Entertainment and Arts Alliance, *Submission 4*, p. 9; Journalism Research and Education Association of Australia, *Submission 5*, p. 3; Mr David Anderson, Acting Managing Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 37.

...considerable anxiety within senior editorial ranks about how to present stories in a manner that would not be viewed critically by the government and others...members have witnessed ongoing second-guessing about clearing scripts and airing stories that, notwithstanding the objective soundness of the story, will be perceived by critics as tendentious and one-sided.<sup>80</sup>

4.77 JERAA added:

Journalists are unlikely to admit to self-censorship in a bid to mollify the government but it would be a brave journalist at the ABC right now who did much that might anger a Federal Coalition MP.<sup>81</sup>

4.78 JERAA referred to a *Four Corners* interview (see chapter three) in which it submitted neither the former Chair nor the former MD had expressed unequivocally the importance of resisting editorial pressure from the Australian Government:

That an unequivocal expression of the ABC's independence was not uppermost in the minds of either the chair or the managing director speaks volumes about the wearing effect on ABC executives and staff of years of relentless complaining, carping and browbeating by politicians.<sup>82</sup>

*Pressure from management*

4.79 Some submitters and witnesses expressed concern that political interference, or attempted interference, arises within managerial ranks, rather than from politicians, government or the established complaints process.

4.80 Mr Campbell from TAI described an occasion on which he argued that ABC reporting was influenced by a government agency: Ms Sarah Dingle's report on the Murray-Darling Basin in a documentary on the *Background Briefing* program.<sup>83</sup>

4.81 Dr Muller also related a personal anecdote on self-censorship at the ABC:

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80 Media, Entertainment and Arts Alliance, *Submission 4*, p. 3. Also see: Journalism Education and Research Association of Australia, *Submission 5*, p. 3; Eryk Bagshaw, 'Kevin Rudd unloads on ABC 'self-censorship'', *Canberra Times*, 9 January 2019, <https://www.canberratimes.com.au/politics/federal/kevin-rudd-unloads-on-abc-self-censorship-20190109-p50qcj.html> (accessed 18 March 2019).

81 Journalism Education and Research Association of Australia, *Submission 5*, pp. 3–4. Also see: Dr Jane Connors, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 23, who said she has not heard any complaints of political interference from ABC staff.

82 Journalism Education and Research Association of Australia, *Submission 5*, p. 3.

83 Mr Roderick Campbell, Research Director, The Australia Institute, *Committee Hansard*, Sydney, 6 March 2019, pp. 3–4. Also see: Mr Alan Sunderland, Editorial Director, Australian Broadcasting Corporation, *Committee Hansard*, 6 March 2019, p. 9, who responded that the editorial complaint had been dealt with by Audience and Consumer Affairs.

In the midst of the Barnaby Joyce and Vikki Campion revelations, the ABC emailed me, inviting me to write a comment piece on Joyce's decision to accept a reported \$150,000 for giving Channel Seven an interview about his relationship with Campion...

Shortly after I filed the piece, I had a further email from the ABC asking if I would agree to having the intro deleted. By way of explanation I was told that 'Things were a bit delicate with the government at the moment.' I refused to have the intro deleted and withdrew the story, sending it instead to *The Conversation* from which it was picked up by *The Age*—published by them, as you can see—and later by a magazine that circulates among public servants. It was a sobering experience. It brought home to me just how covered the ABC has become in the face of the government's relentless attacks.<sup>84</sup>

### *Response from the ABC*

4.82 Dr Ferguson expressed 'deep concern' with regard to the alleged culture among ABC staff:

Independence should not come at any price...I would hope that, from the board down, we set the culture from the top—that we are reiterating on a daily basis that, first and foremost, journalism requires you to shine a light where people might not want you to shine a light and that, regardless of any threats or funding threats that might come as a result of that, we need to continue to do what we do best at the ABC, which is report on stories and do that as brilliantly as we do.<sup>85</sup>

4.83 Similarly, according to Mr Mason, ABC journalists are encouraged to report all stories that might be of public interest:

The advice I give to all of our journalists is: 'Do your hardest. Go your worst.' We are there to hold public officials to account, and I want our journalists to pursue that with all the vigour they have. I don't care whether it's a politician from this side or that side...If there is a story to be done in the public interest on something in the administration of their powerful roles that should be reported.<sup>86</sup>

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84 Dr Denis Muller, Senior Research Fellow, Centre for Advancing Journalism, University of Melbourne, *Committee Hansard*, Sydney, 6 March 2019, p. 18. Also see: Dr Denis Muller, 'Why money shouldn't talk', *The Age*, 1 June 2018, p. 18; Dr Denis Muller, 'Michelle Guthrie's stint at ABC helm had a key weakness: she failed to back the journalists', *Mumbrella*, 24 September 2018, <https://mumbrella.com.au/michelle-guthries-stint-at-abc-helm-had-a-key-weakness-she-failed-to-back-the-journalists-542509> (accessed 18 March 2019).

85 Dr Kirstin Ferguson, Deputy Chair and Acting Chair, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 11.

86 Mr Gaven Morris, Director, News, Analysis and Investigations, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 48.

4.84 Mr Anderson questioned whether there has been any political interference among ABC Staff: 'I don't see any evidence that there has been'.<sup>87</sup> This accords with Ms Donny Walford's evidence to the committee:

I've taken pride in walking around this organisation—regionally, locally and in different states—and none of the journos or even the staff have ever reported to me their concerns about political interference. I think a good measure of culture is that they can talk openly and honestly to this board and board members, but they hadn't raised it and neither had the previous managing director.<sup>88</sup>

4.85 Mr Paul Murphy, Chief Executive Officer of MEAA, was not able to explain how the ABC Board or ABC MD could form a view that the broadcaster's staff did not feel political pressure:

There is no question, from our consultations with our members or for anyone observing the history of comments directed towards the ABC and its journalists in recent years by the government, that of course there is political pressure being brought to bear.<sup>89</sup>

4.86 Ms Ealy from CPSU affirmed that 'you [don't] need to scratch too far beneath the surface to see [the pressure staff are under]'.<sup>90</sup> Dr Connors and Mr Peacock agreed that this political pressure is evident, with the latter stating that while he was on the ABC Board:

There was an atmosphere in the staff of massive pressure, and I think it's fatuous to say that the board was unaware of these pressures.<sup>91</sup>

### *Committee view*

4.87 The committee acknowledges that Australian Governments have a long history of political interference in the ABC through the use of various levers, most especially the funding lever. It is reasonable to conclude that this interference has both short and long-term impacts on ABC Staff, neither of which may be clear to casual observers. However, the ABC Board and the ABC Leadership Team are not casual observers.

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87 Mr David Anderson, Acting Managing Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 35.

88 Ms Donny Walford, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 22.

89 Mr Paul Murphy, Chief Executive Officer, Media, Entertainment and Arts Alliance, *Committee Hansard*, Sydney, 5 March 2019, p. 54.

90 Ms Sinddy Ealy, ABC Section Secretary, Community and Public Sector Union, *Committee Hansard*, Sydney, 5 March 2019, p. 57.

91 Mr Matt Peacock, Member, ABC Alumni Limited, *Committee Hansard*, Sydney, 6 March 2019, p. 11. Also see: Dr Jane Connors, ABC Board Director, Australian Broadcasting Corporation, *Committee Hansard*, Sydney, 5 March 2019, p. 10, who said that funding cuts have had a very profound effect on ABC Staff.

4.88 The committee believes that political interference or the prospect of political interference, and all that that entails, is experienced to varying degrees throughout the ABC. The ABC Board and Acting MD confidently asserted that independence is a demonstrated priority for the ABC but the committee heard that this message is either not reaching ABC Staff or is being treated with little regard in the besieged workplace.

### **Concluding comments**

4.89 Recent and unprecedented events in the ABC have raised questions about the Australian Government's interference and attempted interference in the public broadcaster whose independence was enshrined in legislation more than 85 years ago.

4.90 While Australians have considerable trust in the ABC, this trust is not blind. Should Australian Governments continue to undermine and erode the independence and integrity of the corporation, the ABC's status as a trusted institution will be significantly diminished.

4.91 In this report, the committee has highlighted some areas in which the ABC's governance framework could and should be strengthened. The committee presents its findings and conclusions to the Senate.

**Senator Sarah Hanson-Young**  
**Chair**  
**Senator for South Australia**





## **Australian Greens' additional comments**

1.1 In addition to the existing recommendations from the committee, the Australian Greens offer the following recommendations to further strengthen the independence of the ABC.

### **Recommendations**

1.2 **That the Australian Government:**

- **fully restore the \$340 million cut from the ABC since 2014;**
- **ensure government funding for overseas broadcasting is assigned to the ABC;**
- **transition from triennial to quinquennial (five yearly) funding cycles;**
- **appoint a second staff-elected Director to the Board;**
- **require the government to consult with leaders of other non-government parties about the outcome of the Nomination Panel; and**
- **have an independent body, rather than the Secretary of the Department of the Prime Minister and Cabinet, appoint members to the Nomination Panel.**

**Senator Sarah Hanson-Young**  
**Chair**  
**Senator for South Australia**



# **Government Senators' dissenting report**

## **Introduction**

1.1 Following media reporting of events at the ABC in September 2018, many non-government members and senators alleged political interference in the ABC by the Government, the former Prime Minister, and the Minister for Communications.

1.2 The five month Senate inquiry, including three days of public hearings, has found no evidence of a single incident of political interference in the ABC by the Government, the former Prime Minister, or the Minister for Communications.

1.3 The Committee's own report vindicates the Government with the finding that "the former ABC Chair acted in what he thought was the best interests of the ABC and that he acted at his own behest without direct intervention from the Australian Government."<sup>1</sup>

1.4 The Minister for Communications and the former Prime Minister have consistently stated there has been no political interference and the Government has always respected the independence of the ABC. The evidence supports this.

1.5 The Government supported the establishment of this inquiry, because it would provide a forum for the vindication of the position of the former Prime Minister, the Minister, and the Government.

## **Allegations of political interference in the ABC**

1.6 Government Senators strongly reject the contention in the majority report that political interference is experienced to varying degrees throughout the ABC.

1.7 The inquiry found no evidence of political interference by the Government or the former Prime Minister.

1.8 Not one director gave evidence that there was Government interference, that they were put under pressure by the Government, or that they had been contacted by the former Prime Minister or Government Ministers to seek to influence the ABC in operational, staffing, or editorial matters.

1.9 In fact, during the hearing on 5 March 2019, in response to Senator Keneally's questioning, Board members provided the following responses:

Dr Guthrie: "I was not aware of any political interference or question of independence of the ABC from Mr Milne."

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1 See paragraph 4.33.

Mrs Georgie Somerset: "I was not aware of pressure being placed regarding political interference or the independence."

Dr Jane Connors: "It seemed quite professional to me, and I was not aware of any pressure around political interference."

Ms Donny Walford: "Not once did Ms Guthrie talk about political interference nor the independence of the ABC. In actual fact, the first time I heard her talk about that was after her termination".

Mr Gersh: "...there is no decision that I've made that has been influenced by my perception that the government may or may not be happy or unhappy with the consequence of that decision, nor have I been spoken to by government and pressured in any way at all, one way or the other, on a decision that I've made in connection with the ABC."

1.10 Government Senators also note that during the hearing, the acting Chair of the ABC Board, Dr Kirstin Ferguson, unequivocally stated "Australians do trust the ABC because it is free from political interference."

1.11 This accords with the findings of the Secretary of the Department of Communications and the Arts, Mr Mike Mrdak's, report, dated 11 October 2018, into allegations relating to the ABC, which found no basis to support suggestions that the former Prime Minister or Government Ministers applied pressure to seek to influence the employment of ABC journalists nor interfere in the application of the ABC's editorial policies.

1.12 Both the former Chair and the former MD advised Mr Mrdak's inquiry "there was no request or suggestion by the former Prime Minister or any Government Minister to terminate the employment of a journalist or ABC staff member."

1.13 Claims that there have been attacks on the ABC have not been substantiated by the inquiry.

1.14 Government Senators acknowledge that members of the Government have from time to time made complaints about ABC coverage or operational decisions. Any Member of Parliament and any member of the community is perfectly within their rights to raise issues with any media organisation. Part of the way that a free, open and democratic press operates is that the press should be free to go about their business and report, but equally, citizens, including Members of Parliament, should have the freedom to raise issues when it comes to questions of fact in media reporting. This does not constitute an "attack."

1.15 Government Senators note that minor funding adjustments do not represent an attack or interference. Under the Liberal National Coalition, the ABC has continued to receive over \$1 billion in funding each year. The level of funding being provided is increasing year on year which means that in a rapidly changing media environment, the ABC has greater funding certainty than any other media organisation in the nation.

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1.16 The majority report erroneously states that ABC funding has experienced "fluctuations" which have all "been in the nature of reductions."

1.17 Government Senators note the inquiry has not demonstrated that there was partisanship or politics in the appointment of directors. All appointments were in full accordance with the legislation.

1.18 Allegations that the Government has opted out of or circumvented the appointment process are false.

1.19 Even the majority report acknowledges that 'there might be circumstances in which it is necessary and/or desirable for a Minister or Prime Minister to appoint non-executive directors to the ABC Board'.

1.20 And as noted by the acting Chair of the ABC Board in the hearing on 5 March, "...we all nominated ourselves without any connection with anyone in parliament...So while each of us have slightly different variations on why we are here, we have all gone through the same process."

1.21 The ABC Board appointment process is robust. Democratically elected governments are appropriately placed to make appointments to government boards because they are directly accountable to citizens through elections. The responsibility to make decisions in relation to appointments to government boards cannot be contracted out to non-government members, panels and committees.

### **Definition of 'consult' in the *Australian Broadcasting Corporation Act 1983***

1.22 Coalition Senators do not consider it is necessary to define the term 'consult' in the *Australian Broadcasting Corporation Act 1983*.

1.23 Consultation does not mean that consulted parties must agree to a proposition, which is what Labor and Greens Senators really mean when they argue for "genuine consultation." Government Senators note that the current legislation laying out the ABC Board appointment process was devised and legislated by Labor. If Labor Senators are unhappy with the legislated process, they should look to their predecessors, who established this process.

### **Selection criteria for the appointment of non-executive directors**

1.24 Coalition Senators do not consider that the current selection criteria requires amendment. The current criteria already specifies the relevant areas of experience and knowledge required. This includes knowledge/experience in the media industry; business or financial management; corporate governance; and cultural industry or policy. These capture the range of critical skills for non-executive directors of a large and complex entity receiving over \$1 billion of taxpayer's money each year.

1.25 The current criteria ensures the Board has the requisite skills and knowledge required to discharge its duties.

1.26 It is also noteworthy that witnesses and submitters were unwilling and unable to outline exactly how changes could be made without unintended consequences.

### **Appointment of the Nomination Panel**

1.27 The appointment of the Nomination Panel is already arms-length from Government.

1.28 Government Senators do not accept the implication that the members of the Nomination Panel appointed since 2013 have not been independent. This is an unfair reflection on the panel members.

### **Tabling of reasons**

1.29 Government Senators note that the legislated process for appointments to the ABC Board already requires the Prime Minister and Minister to table a statement of reasons in the Parliament, where a person is appointed to the Board who has not been recommended by the Panel.

1.30 This requirement already facilitates transparency and parliamentary scrutiny. The Government has complied fully with this requirement on each and every occasion the Act has required it.

### **Appointment of an additional staff-elected director**

1.31 Labor and Greens Senators presented no evidence to demonstrate how the composition of the ABC Board would be improved with the appointment of a second Staff-Elected Director.

### **ABC funding model**

1.32 As outlined earlier, the level of funding being provided to the ABC is increasing year on year which means that in a rapidly changing media environment, the ABC has greater funding certainty than any other media organisation in the nation.

1.33 The \$1 billion in funding provided to the ABC each year represents a substantial investment of public funds and the primary Commonwealth contribution to civic journalism. This funding level ensures that the ABC is able to provide television, radio and digital media services in line with its Charter.

1.34 Government Senators also note there is absolutely no evidence to support the statement in the majority report that the Coalition Government has been complicit in the events of 2018 and beyond by using funding as a lever to exert political interference in the ABC.

### **Summary**

1.35 Government Senators understand the importance of a strong and independent ABC which makes a significant contribution to civic journalism in Australia.

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1.36 This Government has always supported and respected the ABC's legislated independence. That is why the Government's appointments to the ABC Board have always been made in accordance with the ABC's legislation.

1.37 The community deserves to be told the truth, especially since the process for ABC Board appointments was designed and legislated by Labor when last in government.

1.38 The Coalition Government has followed Labor's legislated process and has made each and every one of its ABC Board appointments in full compliance to the letter of the law. Labor has in the past appointed a former Labor pollster, a former Labor Premier and former Labor staff. This Coalition Government has not made and will not make any political appointments to the ABC Board.

1.39 As with ABC Board vacancies, the ABC's Act requires an independent Nomination Panel process to be initiated when there is a vacancy for the position of Chair. The independent panel makes recommendations, and if a person is appointed other than through panel nomination, the Government acts transparently by tabling a statement in the Parliament explaining the reasons for the decision.

1.40 The Government initiated this process last year and Korn Ferry was engaged by the Department of Communications and the Arts to assist the panel. Korn Ferry is a well-known global executive recruitment agency. Neither the Minister nor the Government had any involvement in this decision.

1.41 The Governor-General recently approved the appointment of Ms Ita Buttrose as the next Chair of the ABC.

1.42 Ms Buttrose is an exceptionally qualified candidate with a comprehensive background in the media industry. As well as being 2013 Australian of the Year, Ms Buttrose is a member of the Australian Media Hall of Fame, founded Cleo Magazine, was Editor of The Australian Women's Weekly, Editor in-Chief of the Daily Telegraph, Sunday Telegraph and The Sun-Herald and has worked for all the commercial television broadcasters. Ms Buttrose has also served on the board of News Ltd, on the Advisory Board of the Australian Women Chamber of Commerce & Industry and as Director and board members for a range of charities including the National Breast Cancer Centre Advisory Network, The Smith Family and Alzheimer's Australia. Australians know and trust Ita Buttrose.

1.43 The Government has followed the legislated process for recommending this appointment, including considering the report of the independent Nomination Panel and consulting with the Leader of the Opposition.

1.44 Under the Liberal National Coalition, the ABC has continued to receive over \$1 billion in funding each year. The level of funding being provided is increasing year on year which means that in a rapidly changing media environment, the ABC has greater funding certainty than any other media organisation in the nation.

1.45 The Coalition also has a very clear policy regarding the ownership of the ABC. It is and will remain a public broadcaster. It will never be privatised nor sold.

### **Conclusion**

1.46 The Minister for Communications, in his statement to the Senate of 15 October 2018, addressed the allegations of political interference in the ABC that had been made and argued "all these claims are without basis."

1.47 This inquiry has demonstrated that the Minister's statement was correct.

**Senator Jonathon Duniam**  
**Deputy Chair**  
**Senator for Tasmania**



# Appendix 1

## Submissions, tabled documents, additional information and answers to questions on notice

### Submissions

- 1 The Walkley Foundation for Journalism
- 2 Australian Broadcasting Corporation
- 3 ABC Friends National
- 4 Media, Entertainment and Arts Alliance
- 5 Journalism Education and Research Association of Australia
- 6 Australia/Israel & Jewish Affairs Council
- 7 The Australia Institute
- 8 ABC Alumni Limited
- 8.1 Supplementary to Submission 8
- 8.2 Correction to Supplementary Submission 8
- 9 Dr Denis Muller, Centre for Advancing Journalism
- 10 Commonwealth and Public Sector Union
- 11 Mr Justin Milne
- 12 Ms Michelle Guthrie
- 13 Mr Sean Farrelly

### Tabled documents

- Dr Jane Connors – Opening statement (public hearing, Canberra, 30 November 2018)
- The Australia Institute – Internal email from Murray-Darling Basin Authority regarding ABC Background Briefing (public hearing, Sydney, 6 March 2019)
- The Australia Institute – First complaint from Murray-Darling Basin Authority regarding ABC Background Briefing (public hearing, Sydney, 6 March 2019)
- The Australia Institute – Second complaint from Murray-Darling Basin Authority regarding ABC Background Briefing (public hearing, Sydney, 6 March 2019)
- Dr Denis Muller – Media article 'Why money shouldn't talk', *The Age*, 1 June 2018 (public hearing, Sydney, 6 March 2019)

**Additional information**

- ABC Alumni – Additional information regarding the ABC Advisory Council, received following public hearing, Sydney, 6 March 2019

**Answers to questions on notice**

- Mr Justin Milne – Answers to questions taken on notice, public hearing, Canberra, 30 November 2018 (received 12 December 2018)
- Ms Michelle Guthrie – Answer to question taken on notice, public hearing, Canberra, 30 November 2018 (received 10 January 2019)
- Australian Broadcasting Corporation – Answers to questions taken on notice, public hearing, Sydney, 6 March 2019 (received 21 March 2019)
- Australian Broadcasting Corporation – Answers to questions taken on notice, public hearing, Sydney, 6 March 2019 (received 22 March 2019)

# **Appendix 2**

## **Public hearings**

*Friday, 30 November 2018 – Canberra*

**Mr Justin Milne – Private capacity**

**Ms Michelle Guthrie – Private capacity**

**Australian Broadcasting Corporation**

Mr Joseph Gersh, Director, ABC Board

Ms Donny Walford, Director, ABC Board

Dr Jane Connors, Staff-Elected Director, ABC Board

*Tuesday, 5 March 2019 – Sydney*

**Australian Broadcasting Corporation**

Dr Kirstin Ferguson, Acting Chair and Deputy Chair, ABC Board

Dr Vanessa Guthrie, Non-Executive Director, ABC Board

Mrs Georgina Somerset, Director, ABC Board

Ms Donny Walford, Director, ABC Board

Mr Joseph Gersh, Director, ABC Board

Dr Jane Connors, Board Member, ABC Board

**Mr Ollie Wards**, triple j Content Director, Australian Broadcasting Corporation  
– **via teleconference**

**Australian Broadcasting Corporation**

Mr David Anderson, Acting Managing Director

**Australian Broadcasting Corporation**

Mr Gaven Morris, Director News, Analysis and Investigations

**Media, Entertainment and Arts Alliance**

Mr Paul Murphy, Chief Executive

Mr Matthew Chesher, Director, Legal and Policy

**Commonwealth and Public Sector Union**

Ms Sindy Ealy, ABC Section Secretary

**Professor Andrew Podger – Private capacity – via teleconference**

*Wednesday, 6 March 2019 – Sydney*

**The Australia Institute**

Mr Rod Campbell, Research Director  
Mr Bill Browne, Researcher

**ABC Alumni Limited**

Mr Jonathan Holmes, Member  
Mr Quentin Dempster, Member – via teleconference  
Ms Helen Grasswill, Director  
Mr Matthew Peacock, Director

**Dr Denis Muller, Senior Research Fellow, Centre for Advancing Journalism,  
University of Melbourne**

**Journalism Education and Research Association of Australia**

Dr Alexandra Wake, President and Senior Lecturer at RMIT University  
Professor Matthew Ricketson, Former President

**ABC Friends National**

Ms Margaret Reynolds, National President