

ABC submission on options to support the independence of the national broadcasters

August 2023



ABC submission to the Australian Government’s review of options to support the independence of the national broadcasters

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1. Introduction

The Australian Broadcasting Corporation (ABC) welcomes the opportunity to respond to the discussion paper “Review of options to support the independence of the national broadcasters” issued by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

The ABC is Australia’s national public broadcaster and most trusted source for news and information.¹ It plays a significant role in fostering an informed and engaged citizenry, which is the cornerstone of a healthy Australian democracy. The ABC’s ability to play this important democratic role is underpinned by its independence from political, business and other interests. That independence is enshrined as a foundational principle in the ABC Charter, set out in Section 6 of the *Australian Broadcasting Corporation Act 1983* (“ABC Act”) and supported by other mechanisms in that Act. Acting as benchmark for high-quality editorial standards, the ABC contributes to a more impartial and pluralistic news environment. This builds societal knowledge so that Australians can participate in well-informed democratic debates.² As such, the public value of the ABC’s high-quality, independent news services has increased in recent years in the face of rising misinformation and disinformation, and declining trust in democratic institutions.³

In addition to informing Australians and encouraging democratic debates, the ABC Act requires the Corporation to provide media services that contribute to a sense of national identity and reflect the cultural diversity of the Australian community by telling Australian stories. As a major investor in Australian audiovisual content, the ABC makes vital contributions to the country’s media production industry.⁴

The ABC’s ability to make significant democratic, cultural, educational and economic contributions to Australian society is dependent upon its editorial, operational and financial independence. For this reason, the ABC Act establishes the ABC as a statutory authority with a funding and governance model designed to safeguard its independence.

¹ Park S, McGuinness K, Fisher C, Lee J, McCallum K, Cai X, Chatskin M, Mardjianto L and Yao P (2023) *Digital News Report: Australia 2023*. Canberra, News and Media Research Centre, University of Canberra.

² Cushion S (2018) “Public Service Media Contribution to Democracy: news, editorial standards and informed citizenship”.

³ Park S, et al (2023). *Digital News Report: Australia 2023*. Canberra: News and Media Research Centre, University of Canberra.

⁴ For example, “across 2017–18 to 2019–20, the 256 productions externally commissioned by the ABC contributed \$584 million in value add to the Australian economy. Over that time, workers were employed in more than 7,000 FTE roles, with 0.4 indirect FTE roles supported for every 1 direct FTE role.” Deloitte Access Economics (2021) “Economic contribution of screen productions commissioned by the ABC”.

The mechanisms for protecting public media's independence in Australia are not as extensive as those in a number of other countries.⁵ While the ABC does not propose the adoption of wholly different funding and governance mechanisms, some of which may introduce fresh difficulties, this review provides an important opportunity to increase the robustness of the mechanisms safeguarding the independence of Australia's public media services at a time when polarisation is weakening democracy.⁶

2. The importance of safeguarding independence

Ensuring independence from government and economic influence is central to the institution of public service media. It is a critical feature that distinguishes public media organisations from propaganda-oriented state media services.

Its origins lie in the formation of the British Broadcasting Corporation (BBC) following the 1926 General Strike in the UK, during which then UK Chancellor Winston Churchill lobbied heavily to assume responsibility for the BBC in order to shape the public's opinion of the strike. Following this experience, Sir John Reith, the BBC's first Director-General, concluded that the only way to protect the BBC's ability to ensure free access to accurate and impartial news and quality entertainment was through funding and governance arrangements that protected the BBC's independence by ringfencing it from undue political and economic powers.⁷ The need to protect broadcast from state control became even more apparent during and after World War II, when totalitarian governments exploited radio and later television as propaganda tools. More recently, governments have used social media as propaganda tools to spread disinformation and influence public sentiments. The Varieties of Democracy Institute has noted that "disinformation and political polarisation may be serious threats to democracy and democratic resilience".⁸

In Australia, as in Canada and in most western and northern European countries, broadcasting was established based on principles that provided some degree of protection from state and market pressures.

In the case of Australia's national broadcasters, editorial, operational and financial independence is secured through legislation, in particular the ABC Act and the *Special Broadcasting Service Act 1991* ("SBS Act"), which constitute the two broadcasters as independent statutory corporations. Section 6(2) of the ABC Act requires the ABC to take account of "the responsibility of the Corporation as the provider of an independent national broadcasting service" and Section 79A establishes that the ABC must be expressly free to "determine to what extent and in what manner political matter or controversial matter will be broadcast".

⁵ EBU (2017) "Funding Principles for PSM".

⁶ The Economist Intelligence Unit (2023) "Democracy Index 2022 Frontline democracy and the battle for Ukraine".

⁷ BBC (2023) "The History of the BBC", <https://www.bbc.com/historyofthebbc/research/john-reith/british-broadcasting-company/> and <https://www.bbc.co.uk/historyofthebbc/research/editorial-independence/general-strike/>.

⁸ Papada E, Altman D, Angiolillo F, Gastaldi L, Köhler T, Lundstedt M, Natsika N, Nord M, Sato Y, Wiebrecht F, and Lindberg SI (2023) "Defiance in the Face of Autocratization. Democracy Report 2023". University of Gothenburg: Varieties of Democracy Institute (V-Dem Institute).

To protect the ABC's independence, the Corporation was set up as a self-regulating entity, primarily accountable to the ABC Board. It is the duty of the ABC Board to "maintain the independence and integrity" of the Corporation that it oversees.⁹ The ABC Board is further responsible for the Corporation acting with utmost accountability by performing "efficiently and with the maximum benefit to the people of Australia".¹⁰ The appointment of non-executive directors to the ABC Board is based on a merit-based procedure coordinated by an independent Nomination Panel. Correspondingly, the powers of the Government to direct the actions of the ABC and the Nomination Panel are limited.¹¹

Experience suggests that the two most significant means for potentially undermining the actual or perceived independence of Australia's public media services are through constraining or manipulating funding, which can disrupt or destabilise an organisation, and by manipulating governance arrangements through Board appointments.

The ABC is funded by direct government appropriation and the level of its funding is determined by a decision of the Government of the day. At the same time, the Corporation functions as an accountability institution whose role includes scrutiny of governments. Any arbitrary or sudden reduction in funding risks being seen as an attempt to undermine the Corporation's independence. The only significant protections against sudden budget reductions are convention and public opinion.

In the case of Board appointments under the merit-based appointment process, the Minister for Communications — or, in the case of the appointment of the ABC Chair, the Prime Minister — is not obliged to recommend a candidate shortlisted by the independent Nomination Panel to the Governor-General for appointment. This creates the possibility of politically motivated appointments to the ABC's governing body.

The ABC believes that options to enhance the funding mechanism and governance arrangements exist and welcomes the opportunity to propose additional safeguards that can help protect its independence from political interference and pressure.

The ABC considers two categories for potential improvements in this submission:

- Reform options to ensure greater funding certainty.
- Reform options to strengthen the independence of the ABC Board.

3. Reform options

3.1. Enhancing the ABC's financial independence

The ABC is primarily funded from direct government appropriations. Since this funding arrangement generates neither costs for fee collection nor for evasion management, it can be considered significantly more cost-effective than models based on the collection of a

⁹ ABC Act, s 8(1)(b)

¹⁰ ABC Act, s 8(1)(a)

¹¹ ABC Act, s 24C and s 78

licence fee, a household levy, a levy on taxable income, VAT or other commercial taxes.¹² At the same time, it carries a greater risk of the Corporation being perceived as subject to the influence of the government that is determining its funding — or of governments potentially seeking to use control of funding as a means of influencing the ABC’s editorial direction.

To safeguard the ABC’s independence, there is considerable value in ensuring that its funding levels cannot be suddenly or arbitrarily reduced.

As a principle, the Corporation’s funding should be, at a minimum, maintained in real terms. This would protect the ABC against perceptions that the independence of its editorial positions may be adversely impacted by government funding decisions.

There is also considerable benefit in ensuring that decisions about ABC funding occur outside of the electoral cycle so that they are not directly affected by the promotion of policy priorities that occurs during elections or the adjustment of policy priorities following a change in government.

3.1.1. Legislating the duration of funding for national broadcasters

To better protect the national public broadcasters from undue political interference, particularly at times of elections, the Australian Government implemented an extension of the funding cycle from three to five years, which came into effect on 1 July 2023.¹³ The ABC welcomes this decision, as a five-year funding term provides improved long-term financial planning stability. To leverage this change, the ABC further replaced its existing strategy with a new Five-Year Plan covering the period of the new funding cycle (2023 to 2028) so that the best capital and operational decisions are made in line with its strategic priorities.¹⁴

However, the duration of the ABC’s funding term — whether triennial or quinquennial — is a matter of convention and is not guaranteed by legislation. While a rare occurrence, there are no safeguards that prevent a government willing to depart from the convention from reducing the Corporation’s funding part-way through the established cycle.¹⁵ Such an exercise of financial control may undermine the ABC’s ability to fulfil its statutory functions and create an environment where perceived or real political influence on its editorial independence is possible.

To provide certainty, the ABC proposes that the duration of its funding be set by legislation.

Further, to protect against the possibility of destabilising funding cuts within a multi-year funding term, the legislation should specify that a government cannot reduce the level of the

¹² For example, the BBC spent £136.5 million on collecting the licence fee in 2022-23. BBC (2023) “BBC Television Licence Fee Trust Statement for the Year Ending 31 March 2023”, <https://www.tvlicensing.co.uk/about/bbc-trust-statement-AB21>.

¹³ The Hon Minister Rowland (May 2023) “Budget 2023-24: Connecting, informing and protecting”, Media Release, <https://minister.infrastructure.gov.au/rowland/media-release/budget-2023-24-connecting-informing-and-protecting-australians>.

¹⁴ ABC (May 2023) “2023 Federal Budget response – ABC Welcomes Five-Year Funding”, Media Release: <https://about.abc.net.au/press-releases/2023-federal-budget-response-abc-welcomes-five-year-funding/>.

¹⁵ The ABC’s funding was cut within the triennium in 1996/97 and 2014/15.

ABC's base operational funding below the level set at the start of the funding period without seeking the approval of Parliament.

This mechanism would encourage accountability and transparency on behalf of the executive Government, while also stabilising ABC funding so that the Corporation can confidently deliver on its Charter and Five-Year Plan.

Alternatively, if it is not possible to legislate the base level of ABC funding in this way, it is nevertheless important that any decision to reduce funding to the public broadcasters be subjected to scrutiny. This could be achieved by requiring the Communications Minister to table an explanatory statement in Parliament when any such decision is made and for that explanation to be immediately referred to a Senate References Committee for investigation into the rationale and impact of the decision.

3.1.2. Enabling planning certainty across funding cycles

From the ABC's perspective, the length of a funding term makes less of a difference to its long-term investment and planning security than the length of the future certainty. For example, under a five-year funding term, the ABC's ability to plan effectively is significantly reduced in year four and particularly year five of the quinquennium, as the Corporation is unable to say whether it will receive the same level of funding in the next funding cycle and must thus plan on the basis of the shorter funding horizon.

The ABC proposes the introduction of a process under which its funding level beyond the end of the current funding period is determined and communicated before the end of the period. Specifically, the Corporation proposes that its funding requirements be reviewed in Year 3 of a five-year funding cycle and announced no later than the beginning of Year 4. A possible process would be:

1. During Year 3 of the quinquennium, the ABC submits an estimate of its minimum financial requirements for the next five-year funding (and planning) period to the Government. As part of its evaluation process, the Government consults with the ABC on these funding estimates to allow the Corporation to make the case for strategic investments or rising costs.
2. At the beginning of Year 4 of the quinquennium, the Government announces the outcome of its assessment, that is the level of base funding guaranteed for the next five-year funding period. This timely announcement will enable a more forward-looking and needs-based planning for the ABC.

This approach would significantly improve the ABC's financial planning certainty and enable the Corporation to manage its budget more flexibly as required for running a sophisticated media business in an environment that is shaped by rapid technological developments, changing market dynamics and rising costs.

As above, the ABC proposes that this process be codified in legislation.

3.1.3. Enacting legislation for a minimum base funding amount with the option for top-up funding for special projects

Ensuring stable funding levels for the ABC over the duration of a funding period should not preclude the possibility of a government providing additional funds to allow the Corporation

to establish new services not considered within the quinquennial funding discussions in order to respond to changing public needs, media market dynamics, media consumption patterns and technology developments.

The ABC should have the ability to apply for and access top-up funding for special projects throughout the quinquennium. The Corporation envisages that such proposals for additional funding would be handled through standard budget processes and would take the form of New Program Proposals (NPPs).

The ABC notes that an example of such a “top-up option” was the Enhanced Newsgathering program, which was first funded via an NPP in the 2013–14 Federal Budget to strengthen the Corporation’s public-interest journalism, particularly in regional Australia.

3.1.4. Formalising the process of converting non-ongoing funding for special programs into ongoing funding to improve operational independence

While the Enhanced Newsgathering program was a demonstrably effective initiative to counteract the growing number of local news deserts, it was funded on a terminating basis for ten years and was only rolled into the ABC’s ongoing appropriation in the 2023–24 Federal Budget. As a consequence, in three successive triennia, the ABC faced uncertainty about whether the initiative would continue to be funded and, as a result, the prospect of making staff cuts if it were not.

Furthermore, having Enhanced Newsgathering be subject to renewal in this way risked creating a perception that it was subject to government approval of the ABC’s editorial performance.

This experience demonstrated the risks to operational effectiveness arising from terminating funding for major initiatives. The ABC’s ability to plan and sustain investments in special programs is impaired by the fact that the level and continuation of their funding depend on the Government of the day, its overall policy priorities and budget strategy.

As a result, the ABC proposes that, where additional out-of-cycle funding has been provided for specific programs that deliver a public policy outcome and will continue to do so, there should be a default presumption that the program should become part of the ABC’s funding base in the next funding cycle, rather than continue to be handled as a lapsing program for which renewal must be sought.

3.2. Enabling independent governance of the ABC

To increase the transparency of appointments of non-executive directors to the ABC Board, the ABC Act was amended in 2012 to introduce a merit-based appointment process. In addition to ensuring that appointment decisions are based on objective selection criteria, the merit-based appointment process further seeks to ensure that non-executive directors have the professional skills and experiences required to lead and manage a public media organisation. An independent Nomination Panel was established to conduct the selection process.

The independent Nomination Panel and the merit-based appointment process have improved transparency, thereby strengthening public perceptions of the ABC Board and the

Corporation. Nonetheless, the ABC believes that there are ways to improve their effectiveness.

The merit-based appointment process is grounded in the principle that the decision to appoint members of the ABC Board will ultimately lie with the Minister for Communications — or, in the case of the appointment of the ABC Chair, the Prime Minister. The ABC accepts this principle. However, it believes that the process can be strengthened.

3.2.1. Addressing skills and representation gaps within the ABC Board

The criteria that the Nomination Panel applies when considering applicants for the role of non-executive director are set out in the Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013. That Determination specifies high levels of competency requirements that are broadly suitable for a media organisation.

However, this review provides an opportunity to broaden the criteria to better equip the Board with the breadth of skills and experiences needed to lead and manage the ABC during a period of transition within the media industry.

The ABC would welcome a more explicit definition of the competencies required as a non-executive director of the ABC Board. In addition to the existing minimum requirements for certain skills, this definition could include that a person is suitable for appointment if they can demonstrate at least one of the following mandatory competencies:

- Knowledge and experience in digital and online media services, particularly the content and platforms preferred by younger Australians
- Practical experience in the audio industry, video industry and/or journalism
- Content of an educational nature.

In addition to these competencies, it would be desirable if a proportion of Board directors demonstrably possessed knowledge or experience of Australia's diverse communities, including directors of Indigenous heritage, from a culturally and/or linguistically diverse background, living with a disability and/or from lower socio-economic backgrounds.

These additional competency requirements could be enabled through legislative change or amendment to the Determination.

3.2.2. Increasing the involvement of the Chair and Managing Director in the merit-based appointment process

Another mechanism to ensure the ABC Board has an appropriate mix of skills and can function effectively is to formalise the involvement of both the Chair and Managing Director in the merit-based appointment process. The Nomination Panel is not obliged to understand the needs of the ABC Board of the day, including gaps in its capabilities or the mix of Board members' skills. Panel members are often unable to answer candidates' questions about the many duties of the Board. While in practice, the Panel can consult informally with the ABC Chair, Board members and Managing Director, there is no obligation to do so.

This could be addressed by modifying the appointment process to require the Nomination Panel to complete a Board skills assessment aided by the Chair of the Board and the Managing Director and give that assessment due weight alongside the published selection criteria when considering applications. For example, the ABC's company secretary could

coordinate the creation of a skills matrix identifying the competencies, skills and experience of non-executive directors to assist in the process of new appointments.

The ABC suggests that such a mechanism should require consultation with both the ABC Chair and Managing Director as each of these officeholders would likely provide a different perspective on the skills and experiences needed within the Board.

3.2.3. Formalising that the start of the appointment process for a Board member begins six months prior to the occurrence of a vacancy

The process of selecting new ABC Board directors can take many months. If it is commenced only on or shortly before the departure of a Board member, the ABC can be left with a reduced Board for an extended period.

While the ABC Board has not been inquorate at any time, the simultaneous or consecutive loss of multiple Board directors have meant that its numbers have on occasion been reduced significantly. This has a consequent effect on the advice and oversight that the Board can provide to the Corporation.

From the ABC's perspective, the reason for this is less the difficulty of finding qualified candidates than the lengthy appointment process.¹⁶ To avoid this difficulty and improve the efficiency of the appointment process, the Corporation proposes that the ABC Act be modified to require the Minister to initiate the appointment process six months prior to the expiration of the term of each non-executive director whose term the Minister does not intend to extend.

3.2.4. Making appointments of non-shortlisted persons exceptional

While the final decision to appoint ABC Board members lies with the Minister — or, in the case of the appointment of the ABC Chair, the Prime Minister — the intention of the merit-based appointment process is that they will generally select new non-executive directors from the shortlist provided by the Nomination Panel. Appointing directors who have not been identified through that process should be rare and reflect exceptional circumstances. The reality has been otherwise, and it is appropriate to strengthen the scrutiny that accompanies any decision to appoint non-executive directors from outside of the process.

Currently, when the Minister or Prime Minister has decided to appoint a candidate not shortlisted by the Nomination Panel, they are required to table the reasons for their decision in each House of the Parliament within 15 sitting days and include an assessment of their chosen appointee against the current selection criteria.¹⁷

The ABC proposes that this obligation be strengthened by requiring the Minister to furnish the Nomination Panel with sufficient information to conduct an assessment of their preferred appointee against the selection criteria, and to include the outcomes of the Nomination Panel's assessment when tabling their reasons for the decision to appoint.

This would preserve the ability of the Minister or Prime Minister to appoint the person they believe is best suited to the ABC Board while ensuring all candidates are assessed by the Nomination Panel against the selection criteria.

¹⁶ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2023) "Information about the merit-based appointment process—Appointments to the ABC and SBS boards", https://www.infrastructure.gov.au/sites/default/files/documents/information-about-merit-based-selection-process-appointments-to-abc-and-sbs-boards-july_2023_003.pdf.

¹⁷ ABC Act, ss 24X(2) and 24X(4).