

Review of options to support the independence of the national media organisations

SUBMISSION BY ABC FRIENDS

About ABC Friends

ABC Friends was established in 1976 in response to funding cuts to the ABC made by the then federal government. Our purpose is to represent the community interest in defending and promoting the vital role of the ABC as an independent national public media organisation that is essential for a healthy democracy. ABC Friends is not aligned with any political party. Our organisation has grown in numbers and strength over the last several decades, with more than 73,000 members and supporters in every state and territory.

Summary of recommendations

FUNDING

1. ABC Friends strongly supports reform of the ABC funding model and recommends that the following measures be adopted through amendments to the ABC Act:
 - i. The Act should be amended to provide base funding for a 5 year term, indexed to the CPI, as set out by the Minister at the commencement of each funding cycle.
 - ii. The amendments should guarantee that announced funding cannot be reduced without further amendments to the Act. There should, however, be capacity to increase funding at any stage in a 5 year cycle, either as an addition to the operating grant or as non-ongoing funding.
 - iii. Amendments to the Act should include a public review before the end of each 5-year funding period, to help inform funding decisions for the following 5 years. The review should include a call for public submissions.
 - iv. The public review should be completed at least three months before the end of the funding term and draw on a report by the ABC on its performance over the previous five years along with a detailed plan and budget for the coming 5 years, including advice on how any additional funds allocated above the base grant were spent and whether those funds should be extended. The resulting report and recommendations should be published within 30 days of presentation to the Minister.
2. The ABC's base funding should, at a minimum, be indexed to the CPI rather than the Department of Finance Wage and Cost Index.

GOVERNANCE

3. The ABC Act should be amended to improve transparency of decision-making, oblige Ministers to abide by the legislation, and place more public pressure on Ministers if they attempt to bypass the process.

4. Members or former members of Commonwealth or State/Territory Parliaments, senior political staff members and persons who are employed by, or otherwise engaged with, organisations that could be seen to operate in direct competition with the ABC, should not be eligible for appointment as directors for a period of 2 years since they ceased to hold those positions.
 5. The Minister should be required to make a selection to the ABC board from a shortlist put forward by the Nomination Panel. To guard against political appointees, it should not be possible for the Minister to ignore the recommendations of the Nomination Panel.
 6. The ABC Act should be amended to include the following process for appointments to the ABC board:
 - The Nomination Panel advertises the vacant position/s and makes the selection criteria available for all applicants.
 - The NP provides a shortlist of 3 names for each vacancy and demonstrates how each candidate meets the selection criteria.
 - The option for the Minister to ignore the NP's recommendations should be removed.
 - If the Minister does not make a selection from the shortlist, the selection process will re-commence.
 - Reappointment of an existing Board member should require a recommendation by the NP but need not be re-advertised.
 7. The Opposition Leader should be given the Nomination Panel's recommended list of candidates and invited to comment on the candidates well before the Prime Minister selects a preferred candidate. In the event that the Prime Minister chooses not to select a candidate from the list, the selection process should re-commence, consistent with our recommendation for selecting board directors.
 8. The ABC Act should be amended to include the selection criteria for appointments to the Nomination Panel and to list the exclusions that also apply to board directors. Vacancies for the Nomination Panel should be advertised, along with the selection criteria for each position. Members of the Nomination Panel should serve for a maximum 3 year term. The membership of the panel should not be subject to ministerial direction. Each appointee to the Nomination Panel should be required to declare any potential conflict of interest before taking up their position.
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1. Introduction

ABC Friends welcomes this review and the government's commitment to strengthen the independence of Australia's national media organisations. Concern about the ABC's independence is one of the top two issues that our members and supporters have raised with us consistently in recent years.

There is a perception that the ABC's impartiality has been undermined through party political appointments to the ABC Board and a concern that constant funding cuts – and a fear of further cuts – has diluted the ABC's willingness to take on tough issues. Government attempts to interfere in ABC management and editorial matter have added to these impressions. Whether real or perceived, such concerns undermine trust in the national public broadcaster at the very time when fake news and conspiracy theories are rife and confidence in mainstream media has been shaken.

Our submission focuses on the ABC, although most of our comments and recommendations are also relevant to SBS. We address the two issues set out in the consultation paper: how best to provide certainty for ABC funding and how to strengthen governance arrangements to guard against political interference. The quantum of funding for the ABC has been excluded from the review but we would argue that the level of funding has a direct effect on the ABC's capacity to do its job as an independent public media organisation accessible to all Australians.

In preparing this submission ABC Friends conducted a survey that was answered by 1538 members and supporters. A summary of their responses is included at Appendix 1. We have also drawn on international experience and a number of reports and enquiries.ⁱ

2. Principles underpinning funding and governance decisions

Decisions about the ABC's funding and governance should be guided by a set of principles that underscore the ABC's responsibility to produce high quality content accessible to all Australians regardless of where they live. This submission is predicated on four principles:

- Funding and governance arrangements should aim to promote public trust and confidence in the ABC as a public media organisation fully independent of government and commercial interests.
- There should be a high level of transparency and integrity in the appointment processes for the Chair and the Board, with all appointments made on merit against clear and public selection criteria.
- Levels of minimum funding should be committed on a multi-year (at least 5 yearly) basis to enable the ABC to undertake medium range planning and insulate it from threats of cuts. There should be sufficient flexibility to provide additional funding if the need for such increases arises during a 5 year term.
- There should be clarity about the ABC's governance arrangements to help address public confusion about the respective roles of the ABC board, management, other government instrumentalities, and relevant advisory bodies.

3. Funding security

Triennial funding commenced in 1989, to provide greater certainty for the ABC's planning processes. However, as a senior official from the Department of Finance said in 1997 when describing the ABC's triennial arrangements:

“ ... government will sit down and think three years out what the appropriate level of funding might be and then commit to that funding for that period. There is no legal contract and there is not a multi-year appropriation but there is a compact or understanding between the

executive government and the agency about the level of funding that can be reasonably expected over a three-year period.ⁱⁱ

That compact was broken in 2014 when ABC funding was cut drastically after assurances that no cuts were planned.

The introduction of five year funding in the 2023 budget enabled the ABC to develop a five year plan and placed funding outside the electoral cycle. But under the current arrangements, announced funding is not protected beyond a single financial year. It is appropriated in each annual budget.

We know from recent experience how easy it is to revoke funding commitments if they have no legal force. Previous coalition governments reduced the ABC's funding allocation on several occasions and suspended indexation for three years. Those measures had serious consequences for the ABC's programming and services. It is essential, therefore, that the government take all possible steps to protect the ABC's funding during each five year funding term.

ABC Friends strongly supports reform of the ABC funding model for two reasons.

First, secure funding will enable the ABC to plan over a longer time frame and to implement its plans with confidence. Many reviews into the ABC have emphasised the importance of secure long term funding, noting that a complex media business must plan carefully to assess and respond to long term audience and industry trends, make major investments in technology and staff, and enter into multi-year contracts. Sudden changes to funding are not only disruptive; they also create inefficiencies. Secure funding would improve efficiencies in the ABC's operations.

Second, a model that guarantees minimum base funding over 5 years will help protect the ABC's independence. Australia needs an independent ABC, where staff can do their jobs without being uneasy that offending government might result in funding cuts. The decision by the federal government to introduce 5 year funding terms and roll some terminating grants into the ABC's operating grant has provided funding certainty after many years of instability. However, without additional protections, there is always the possibility that more cuts will occur, resulting in timid reporting if journalists or management fear that offence to government will result in attacks to the ABC's independence and funding.

As the ABC stated in its submission to a Senate enquiry into allegations of political interference in the ABC:

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 media organisation. 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 decisionsⁱⁱⁱ.

A guaranteed legislated minimum level of funding for the ABC over five years will give practical effect to the government's commitment to five year funding. It will not undermine the government's ability to set budgets as those decisions will be made at the commencement of each funding term.

4. Funding mechanisms

The consultation paper lists a number of mechanisms that would provide greater certainty to 5-year funding terms. Drawing on those options ABC Friends recommends that the following measures be adopted through amendments to the ABC Act:

- i. The Act should be amended to provide base funding for a 5 year term, indexed to the CPI, as set out by the Minister at the commencement of each funding cycle.

- ii. The amendments should guarantee that announced funding cannot be reduced without further amendments to the Act. There should, however, be capacity to increase funding at any stage in a 5 year cycle, either as an addition to the operating grant or as non-ongoing funding.

Under this arrangement the minimum funding allocation would be protected, subject to standard audit processes to ensure diligence in expenditure of public funds.

- iii. Amendments to the Act should include a public review before the end of each 5-year funding period, to help inform funding decisions for the following 5 years. The review would include a call for public submissions.

A public review has considerable benefits. It would give Australians from diverse backgrounds and regions an opportunity to contribute their views on the role of the ABC. It would broaden public understanding of the complex role played by the ABC in the contemporary media environment and promote communication between the ABC and the communities it serves. A public review would educate the public on the funding needs of our public media organisations, help ensure that funding decisions were based on evidence of actual need, improve transparency in the budget process and reduce the possibility of unsubstantiated cuts.

- iv. The public review should be completed at least three months before the end of the funding term and draw on a report by the ABC on its performance over the previous five years along with a detailed plan and budget for the coming 5 years, including advice on how any additional funds allocated above the base grant were spent and whether those funds should be extended. The resulting report and recommendations should be published within 30 days of presentation to the Minister.
- v. The review could be conducted by a separate statutory body operating at arms length from government to reduce the potential for political interference. However, a new body as flagged in the consultation paper, would require its own secretariat, with additional costs and bureaucracy. Alternatively, the Secretary of the department or an independent advisor or panel nominated by the Minister could conduct the review.

5. Other arrangements to provide greater stability to ABC funding

ABC Friends welcomed the government's decision to restore indexation which was frozen from 2019-22. But the formula used to calculate indexation for the ABC will not keep pace with inflation, because it is based on the Department of Finance's Wage and Cost Index (WCI), which falls below the CPI, which is in turn less than inflation in the communications sector.

For example, indexation for the ABC was set at 2.3% for 2023-24 whereas the RBA has forecast a CPI increase of 3.5% and the ABC's wage bill is expected to increase by 4%. After years of funding cuts, the shortfall (which will accumulate over 5 years) will have an especially deleterious effect on the ABC. This year, it contributed to cuts to 120 jobs.

To make matters worse, the ABC competes for the services of independent producers with streaming giants like Netflix. It is thus exposed directly to private-sector wage and cost increases in a way that many Commonwealth departments and entities are not. Once the government introduces minimum quotas of Australian content for streamers the competition for Australian production crews can be expected to increase, along with the price.

If the ABC budget does not keep pace with inflation, more programs and services will be lost. There will be less Australian content, less investigative journalism and fewer opportunities for the ABC to reflect the diversity of Australians' stories.

We therefore recommend that the ABC's base funding be indexed, at a minimum, to the CPI rather than the Department of Finance Wage and Cost Index.

6. Non-ongoing funding

Non-ongoing funding is most useful when funding is needed for short term or one-off projects. For example, it may be used for capital purchases, for research projects or where there is a need to respond to special circumstances such as the COVID emergency.

There is a clear argument that the ABC's transition to a Digital First strategy should be supported by a one-off grant rather than eating into its depleted operating grant. The establishment of, or upgrades to, communications infrastructure should also be supported by non-ongoing grants, especially given that large parts of Australia have limited or no access to the ABC and changes to technology have the potential to further reduce access.

Non-ongoing funding should not be used for ongoing staff or related costs. The Enhanced News Gathering program is one such example. Originally established by the Gillard government, it was incorporated into the operating budget in 2023. The ABC was required to employ many staff, mostly in regional Australia, to meet the conditions of the grant. Those staff were employed by the ABC's news division. Every three years saw uncertainty about the program's future, creating anxiety for staff and the regions where the program operated. Had the ENG been discontinued, the loss of jobs and programs would have caused serious disruption.

Non-ongoing funding should not be used to tie government expenditure to ABC programming, because that undermines the ABC's independence.

7. ABC independence and governance

For a public media organisation, independence is paramount. Democracy requires that citizens have access to accurate information about what is happening. It cannot function properly if citizens are ignorant or misinformed. An independent public media organisation, free from political, commercial or other interests, is essential for effective public interest journalism.

At a time when conspiracy theories have begun to infiltrate mainstream discourse, the role of a public broadcaster that can be relied on to present the facts has never been more important.

As Michelle Bachelet, the UN High Commissioner for Human Rights said:

"Sound, independent media, empowered to investigate issues and cite critical views, are key to ensuring that governance and institutions are transparent and accountable. We cannot participate fully in decision-making, or in democracy, if we are inadequately informed about events."

If the independence of our public media organisations is undermined, public trust will be weakened.

The European Broadcasting Union has identified independence as one of the key governance principles for public service media along with accountability, transparency and sustainability. The EBU has also identified independence as one of public media's core values, along with universality, excellence, diversity, accountability and innovation:

"Editorial and institutional independence from political and economic powers is crucial in maintaining audience trust, and structural independence is an essential pre-requisite for achieving that."^{iv}

In recent years, perceived and actual political influence over appointments of the ABC Chair and board have created doubt about the ABC's independence. The problem reached its nadir in 2018 when the then Managing Director was sacked unceremoniously and the Chair was accused of interfering in the ABC's operations. It led to a Senate enquiry which noted that:

“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.”^v

As noted in the introduction, our members feel strongly about ABC independence. 98% of respondents to our survey agreed that the government should introduce measures to strengthen the ABC’s independence.

8. Appointments to the ABC board

ABC Friends supports Section III of the ABC Act which sets out the process for selecting and appointing the ABC Chair and board. The aim of this section is to minimise interference in appointments by a Minister or Prime Minister – to prevent the appointments of mates and political appointees. But in recent years, the process was breached on several occasions: Ministers and the Prime Minister ignored candidates recommended by the Nomination Panel, casting doubt on the integrity of the process.

We therefore recommend that the ABC Act be amended to improve the transparency of decision-making, oblige Ministers to abide by the legislation, and place more public pressure on Ministers if they attempt to bypass the process.

8.1. Skills, backgrounds and experiences of board directors

The eligibility and selection criteria requirements are stated fairly broadly in the Act, giving the Nomination Panel necessary flexibility in making appointments. Where possible, the board should have a diversity of members drawn from across Australia. To help address this issue, the Nomination Panel should be encouraged to consider the composition of the existing board and consult the ABC Chair during the nomination process.

The ABC Act states that members or former members of Commonwealth or State/Territory Parliaments and senior political staff members should not be eligible for appointment as directors for a period of 12 months since they ceased to hold those positions. We recommend that this period be extended to 2 years.

We also recommend that persons who are employed by, or otherwise engaged with, organisations that could be seen to operate in direct competition with the ABC also be declared ineligible for appointment for 2 years since they ceased to hold those positions. This would include persons who:

- are engaged (as owners, shareholders, directors, officers, partners or otherwise), directly or indirectly, in the operation of a broadcasting undertaking;
- have any pecuniary or proprietary interest in a broadcasting undertaking; or
- are principally engaged in the production or distribution of program material that is primarily intended for use by a broadcasting undertaking.^{vi}

An existing director should also be declared ineligible if they do not satisfy these stipulations.

8.2. Process for selection of board directors

The Minister should be required to make a selection to the board from a shortlist put forward by the Nomination Panel. To guard against political appointees, it should not be possible for the Minister to ignore the recommendations of the Nomination Panel.

We therefore recommend that the the ABC Act be amended to include the following process:

- The Nomination Panel advertises the vacant position/s and makes the selection criteria available for all applicants.

- The NP provides a shortlist of 3 names for each vacancy and demonstrates how each candidate meets the selection criteria.
- The option for the Minister to ignore the NP’s recommendations should be removed.
- If the Minister does not make a selection from the shortlist, the selection process will re-commence.
- Reappointment of an existing Board member should require a recommendation by the NP but need not be re-advertised.

9. Consultation with the Leader of the Opposition

We support the provision in the Act that requires the Prime Minister to consult with the Leader of the Opposition before recommending a candidate for the appointment to the position of the ABC Chair. This clause reflects the desirability of making a bipartisan appointment, but to work effectively it should be given more than lip-service. The leader of the Opposition was informed of the most recent appointment one hour before the appointment was announced: the Prime Minister complied with the legislation – but not in good faith.

We also note that the previous Prime Minister ignored the advice of the Nomination Panel in selecting the Chair, leading to the perception that the appointment was a “Captain’s Pick.”

We therefore recommend that:

- The Opposition Leader be given the Nomination Panel’s recommended list of candidates and invited to comment on the candidates well before the Prime Minister selects a preferred candidate.
- In the event that the Prime Minister chooses not to select a candidate from the list, the selection process should re-commence, consistent with our recommendation for selecting board directors (see 4.6).

10. Strengthening the Nomination Panel

In principle the Nomination Panel is an effective method for identifying potential candidates for appointment to the ABC board, but its processes can be circumvented far too easily. In recommending the following process we have drawn on the findings of a report by the Grattan Institute^{vii}.

- The Act should be amended to include selection criteria for appointments to the Nomination Panel and to list the exclusions that also apply to board directors.
- Vacancies for the Nomination Panel should be advertised, along with the selection criteria for each position.
- Members should serve for a maximum 3 year term.
- The membership of the panel should not be subject to ministerial direction.
- Each appointee should be required to declare any potential conflict of interest before taking up their position.

The Nomination Panel could be strengthened by the inclusion of the relevant departmental Secretary and/or the Australian Public Service Commissioner.

Final comments

The media in Australia and other countries is experiencing a period of profound and difficult change to which public media organisations are not immune. The pressure to respond to budgetary, political and

other external pressures is intense. The recommendations in this submission are the minimum steps needed to guarantee the ABC's future as an independent public broadcaster that delivers high quality, accessible journalism and entertainment.

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Appendix : ABC FRIENDS Survey 2023

Respondents: 1538

GOVERNANCE	Yes	%	No	%	Don't Know
Do you think the government should introduce measures to strengthen the ABC's independence?	1504	97.79%	25	1.63%	0.59%
The ABC Act requires the Prime Minister to consult with the Leader of the Opposition before recommending a candidate as the ABC Chair. Do you think that requirement allows for effective consultation to occur?	683	44.41%	794	51.63%	3.97%
Do you think appointments to the ABC board have been fair, transparent and based on merit?	266	17.30%	1134	73.73%	8.97%
Should selection criteria be established for appointments to the Nomination Panel?	1473	95.77%	40	2.60%	1.63%
Should the Government be required to recommend a candidate put forward by the Nomination Panel?	1270	82.57%	234	15.21%	2.21%
If the Government does not accept the recommendations of the Nomination Panel, should there be a new selection process?	1224	79.58%	246	15.99%	4.42%

FUNDING

Should the government be able to reduce funding during a 5 year term?	26	1.69%	1503	97.72%	0.59%
Should the government be able to increase funding during a 5 year term?	1449	94.21%	78	5.07%	0.72%

What funding mechanisms should the government introduce to improve funding certainty:

Legislation to guarantee 5-year funding terms	1224	79.58%
Legislation to set base funding for 5 years	650	42.26%
Set up an independent body to determine 5 year funding	761	49.48%
Set up a Parliamentary committee to determine funding	178	11.57%
Consult the public to help inform the next 5 year funding	674	43.82%

Endnotes

- ⁱ Includes a report by the Grattan Institute, two Senate enquiries, selected overseas practices in public media governance and funding, the UN Centre for Human Rights “Paris Principles”, recent amendments to the appointments process for the Australian Human Rights Commission and the Attorney General’s Department Policy & Guidelines Appointments to the Australian Human Rights Commission, 2022
- ⁱⁱ Evidence to House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform, Inquiry into federal road funding, 26 June 1997 cited in APH Library “Funding the Australian Broadcasting Corporation”, 2019, Dr Tyson Wils
Social Policy
- ⁱⁱⁱ The Australian Broadcasting Corporation, Submission 2, p. 2. to the Senate Environment and Communications References Committee, “Allegations of political interference in the Australian Broadcasting Corporation”, 2019
- ^{iv} Governance and independence of public service media, European Audiovisual Observatory, Strasbourg, 2022
- ^v Report of the Senate Environment and Communications References Committee into Allegations of political interference in the Australian Broadcasting Corporation, 2019
- ^{vi} Canadian Public Broadcasting Act
- ^{vii} Danielle Wood, Kate Griffiths, and Anika Stobart “New politics: A better process for public appointments, Grattan Institute