

2016-2017-2018

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**AUSTRALIAN BROADCASTING CORPORATION AMENDMENT
(APPOINTMENT OF DIRECTORS) BILL 2018**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Storer)

AUSTRALIAN BROADCASTING CORPORATION AMENDMENT (APPOINTMENT OF DIRECTORS) BILL 2018

OUTLINE

The purpose of the Australian Broadcasting Corporation Amendment (Appointment of Directors) Bill 2018 is to strengthen the independence, autonomy, transparency and integrity of the process for appointing non-executive Directors to the Board of the ABC in line with the merit-based arrangements introduced by the *National Broadcasting Legislation Amendment Act 2012*.

Clause 1: Short Title

1. This clause provides for the Bill, when enacted, to be cited as the *Australian Broadcasting Corporation Amendment (Appointment of Directors) Act 2018*.

Clause 2: Commencement

2. This clause provides that the Act will commence on the day after it receives Royal Assent.

Clause 3: Schedules

3. Each Act specified in a Schedule to this Bill is amended or repealed as is set out in the applicable items in the Schedule. Any other item in a Schedule to this Bill has effect according to its terms.

Schedule 1

Schedule 1 to the Bill amends the *Australian Broadcasting Corporation Act 1983* (the Act).

The amendments would require the independent Nomination Panel to publish a list of candidates contained in a report relating to the appointment of an ABC Chairperson or other non-executive director to be published on the internet (**item 2**).

The Bill requires the Prime Minister in the case of the Chairperson of the ABC, or the Minister for Communications and the Arts in the case of the other non-executive directors, to publish the reasons for a proposed appointment, if they intend to ignore the recommendations of the independent Nomination Panel, at least 30 days before the appointment proceeds. (**item 4**)

The reasons must be published on the website of the Department of Communications and the Arts. The opposition leader must be informed in writing and invited to comment within a reasonable period. (**item 4**)

If the opposition leader informs the Prime Minister (in the case of the Chairperson) or the Minister (in the case of other non-executive directors) in writing within the specified period

that he or she does not agree with the appointment, the relevant Minister must cause a statement of reasons, including an assessment of the appointee against the selection criteria set down for the independent Nomination Panel, to be tabled in both Houses of Parliament. **(item 4)**

In that situation, the relevant Minister must not recommend the Governor-General make the appointment until after the end of the 90 day period beginning when the statement was tabled in the second of the Houses. **(item 4)**

Item 1 inserts a definition of “opposition leader” in the Act and item 3 makes a change consequential on the inclusion of that definition.

The stated intention of the National Broadcasting Amendment Bill 2010 was to introduce a “transparent and democratic board appointment process that appoints non-executive directors on merit”.

In recent times, the intention and the spirit of this process have been ignored on at least three occasions, leading to public disquiet about the independence and integrity of the ABC. Three appointees to the ABC Board were not recommended by the Independent Nomination Panel; a fourth was highly rated by the Panel, but then withdrew from the process and was subsequently appointed by the Minister.

The process contained in the Bill is designed to reinforce the independence, transparency integrity and autonomy of the appointment process to rebuild public confidence in the independence of the ABC; to ensure the integrity, value and reputation of the independent Nomination Panel; to ensure the public can be aware of the reasons the Prime Minister or Minister choose to ignore the Panel and in those circumstances to enable the public to be aware of the qualifications of the nominee.

It is a multi-stage, graduated process designed to enhance independence, transparency, multi-partisanship and public confidence.

The latter stages of the process would only be triggered if the government chooses to ignore the nomination of the Panel and if the opposition leader opposed the government’s nominee.

Following tabling of the government’s statement of reasons in both Houses of Parliament it would be open to the Senate to hold an inquiry into the nomination by the relevant committee.

The Bill is consistent with the principles of Westminster government: the ultimate appointment of a non-executive director remains the prerogative of the Governor-General on the recommendation of the Prime Minister or Minister.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Broadcasting Corporation Amendment (Appointment of Directors) Bill 2018

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill strengthens the independence, autonomy, transparency and integrity of the process for appointing non-executive Directors to the Board of the ABC in line with the merit-based arrangements introduced by the *National Broadcasting Legislation Amendment Act 2012*.

Human rights implications

The Bill engages various human rights including the right to privacy, the right to work and the right to freedom of opinion and expression. To the extent that it limits rights such as the right to privacy, by providing for the publication of the names of candidates for ABC board positions, it does so in support of the legitimate objective of supporting the independence of the ABC.

Conclusion

This Bill is compatible with human rights because it promotes the right to freedom of opinion and expression and, to the extent that it limits the right to privacy, it does so in pursuit of a legitimate objective and in the least restrictive way possible.

Senator Tim Storer