



National Broadcasting Legislation Amendment Act 2012

No. 112, 2012

**An Act to amend the law relating to the Australian
Broadcasting Corporation and the Special
Broadcasting Service Corporation, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to the Australian
Broadcasting Corporation and the Special
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purposes**

[Assented to 24 July 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Broadcasting Legislation
Amendment Act 2012*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 July 2012
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	24 November 2012 (see F2012L02226)
3. Schedule 2, item 1	At the same time as the provision(s) covered by table item 2.	24 November 2012
4. Schedule 2, item 2	Immediately after the commencement of the provision(s) covered by table item 2.	24 November 2012
5. Schedule 2, items 3 to 7	At the same time as the provision(s) covered by table item 2.	24 November 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Merit-based appointment of ABC and SBS non-executive Directors

Australian Broadcasting Corporation Act 1983

1 Subsection 3(1)

Insert:

Prime Minister's Department means the Department of the Prime Minister and Cabinet.

2 Subsection 3(1)

Insert:

senior political staff member means a person included in a class of persons specified in an instrument under subsection (3).

3 At the end of section 3

Add:

- (3) The Minister may, by legislative instrument, specify a class of persons for the purposes of the definition of *senior political staff member* in subsection (1).

4 After paragraph 12(1)(a)

Insert:

- (b) the Chairperson; and

5 Paragraph 12(1)(c)

Omit “5”, substitute “4”.

6 Paragraph 12(1)(c)

Omit “7”, substitute “6”.

7 Subsection 12(2)

Omit “paragraph (1)(c)”, substitute “paragraph (1)(b) or (c)”.

8 After subsection 12(2)

Insert:

(2A) The sum of the periods for which a person holds either or both of the following offices must not exceed 10 years:

- (a) an office referred to in paragraph (1)(b);
- (b) an office referred to in paragraph (1)(c).

Example 1: Assume a person holds office as Chairperson for an initial period of 5 years and then holds office as Chairperson for a further period of 5 years.

The person cannot hold office as Chairperson again and cannot hold office as a Director referred to in paragraph (1)(c).

Example 2: Assume a person holds office as a Director referred to in paragraph (1)(c) for a period of 5 years and then holds office as Chairperson for a period of 3 years.

The person may now hold office as Chairperson, or as a Director referred to in paragraph (1)(c), for a maximum period of 2 years.

9 Subsection 12(3)

Omit “to be the Chairperson of the Board and another of the non-executive Directors”.

10 Subsection 12(4)

Omit “, by reason that there is no Chairperson or Deputy Chairperson”, substitute “or of Chairperson, by reason that there is no Deputy Chairperson”.

11 Subsection 12(4)

Omit “5”, substitute “4”.

12 Subsection 12(5)

Repeal the subsection, substitute:

(5) Before the Governor-General appoints a person as a Director referred to in paragraph (1)(b) or (c):

(a) if the appointment is of the Chairperson—the Prime Minister;
or

(b) if the appointment is not of the Chairperson—the Minister;
must be satisfied that the person is suitable for appointment because of:

- (c) having had experience in connection with the provision of broadcasting services or in communications or management; or
 - (d) having expertise in financial or technical matters; or
 - (e) having cultural or other interests relevant to the oversight of a public organisation engaged in the provision of broadcasting services.
- (5A) The following persons are not eligible for appointment as a Director referred to in paragraph (1)(b) or (c):
- (a) a member or former member of the Parliament of the Commonwealth;
 - (b) a member or former member of the Parliament of a State, of the Legislative Assembly for the Australian Capital Territory or of the Legislative Assembly of the Northern Territory;
 - (c) a person who is or was a senior political staff member.
- (5AA) However, so far as subsection (5A) relates to a person who:
- (a) is a former member of a Parliament or a Legislative Assembly referred to in that subsection; or
 - (b) was a senior political staff member;
- that subsection applies only for the period of 12 months beginning on the day the person ceased to be a member of that Parliament or that Legislative Assembly or a senior political staff member.
- (5AB) A person who:
- (a) is a former member of a Parliament or a Legislative Assembly referred to in subsection (5A); or
 - (b) was a senior political staff member;
- must not be appointed as a Director referred to in paragraph (1)(b) or (c) unless, in accordance with Part IIIA, the Nomination Panel has nominated the person for the appointment.
- (5B) Subject to subsections (5C) and (5D), a person must not be appointed as a Director referred to in paragraph (1)(b) or (c) unless Part IIIA is complied with.
- (5C) The Prime Minister may recommend to the Governor-General that a particular person be re-appointed as Chairperson without Part IIIA being complied with.

- (5D) The Minister may recommend to the Governor-General that a particular person be re-appointed as a Director referred to in paragraph (1)(c) without Part IIIA being complied with.

13 Subsection 12(6)

Omit “Chairperson,”.

14 At the end of section 12

Add:

- (7) The appointment of a Director referred to in paragraph (1)(b) or (c) is not invalid merely because of a defect or irregularity in relation to the appointment (including a failure to comply with Part IIIA).

15 After Part III

Insert:

**Part IIIA—Merit-based appointment of
non-executive Directors**

**Division 1—Establishment and functions of Nomination
Panel**

24A Establishment

The Nomination Panel is established by this section.

24B Functions

- (1) The Nomination Panel has the following functions:
- (a) to conduct a selection process for each appointment of a Director referred to in paragraph 12(1)(b) or (c);
 - (b) to assess all applicants for the appointment against the selection criteria determined under subsection 24W(1) and any additional selection criteria notified under subsection 24W(2);
 - (c) to assess all applicants for the appointment on the basis of merit;
 - (d) to give a written report:

- (i) if the appointment is of the Chairperson—to the Prime Minister and the Minister; or
 - (ii) if the appointment is not of the Chairperson—to the Minister;
- on the outcome of the selection process that contains a list of at least 3 candidates who are nominated for the appointment and a comparative assessment of those candidates;
- (e) other functions that are conferred on it by, or under, this Act;
 - (f) other functions that are conferred on it by, or under, the *Special Broadcasting Service Act 1991*.
- (2) For the purposes of paragraph (1)(c), the assessment of applicants for appointment as a Director referred to in paragraph 12(1)(b) or (c) is based on merit if:
- (a) an assessment is made of the comparative suitability of the applicants for the duties of that Director, using a competitive selection process; and
 - (b) the assessment is based on the relationship between the applicants' experience, skills and competencies and the experience, skills and competencies genuinely required for the duties of that Director; and
 - (c) the assessment focuses on the capability of the applicants to achieve outcomes related to the duties of that Director; and
 - (d) the assessment is the primary consideration in nominating the candidates for that appointment.

Advertising appointments

- (3) The Nomination Panel must invite written applications by persons seeking to be appointed as a Director referred to in paragraph 12(1)(b) or (c) by advertisements published:
- (a) in either or both of the following:
 - (i) a newspaper circulating generally throughout Australia;
 - (ii) for each State, the Australian Capital Territory and the Northern Territory—a newspaper circulating generally in that State or Territory; and
 - (b) on the Department's website.

One selection process for 2 or more appointments

- (4) The Nomination Panel may conduct one selection process for 2 or more of the following appointments (including any combination of them):
- (a) an appointment of the Chairperson;
 - (b) an appointment of a Director referred to in paragraph 12(1)(c);
 - (c) an appointment of the Chairperson under the *Special Broadcasting Service Act 1991*;
 - (d) an appointment of a non-executive Director referred to in paragraph 8(b) of the *Special Broadcasting Service Act 1991*.

Selection process creates another appointment

- (5) If:
- (a) under subsection (3), the Nomination Panel invites applications by persons seeking to be appointed as Chairperson (whether or not it also invites applications by persons seeking to be appointed as a Director referred to in paragraph 12(1)(c)); and
 - (b) as a result of the selection process, a Director referred to in paragraph 12(1)(c) is appointed as the Chairperson (allowing another appointment (the *new appointment*) of a Director referred to in that paragraph to be made);
- then:
- (c) the Panel is not required to conduct another selection process for the new appointment; and
 - (d) if the Panel does not do so—paragraphs (1)(b), (c) and (d) of this section apply in relation to the new appointment as if:
 - (i) the unsuccessful applicants (other than a Director referred to in paragraph 12(1)(c)) for the appointment as Chairperson were applicants for the new appointment; and
 - (ii) if the Panel also invited applications by persons seeking to be appointed as a Director referred to in paragraph 12(1)(c)—the unsuccessful applicants for the appointment were applicants for the new appointment.

24C Nomination Panel not subject to direction

The Nomination Panel is not subject to direction by or on behalf of the Government of the Commonwealth.

24D Nomination Panel has privileges and immunities of the Crown

The Nomination Panel has the privileges and immunities of the Crown in right of the Commonwealth.

Division 2—Constitution and membership of Nomination Panel

24E Membership

The Nomination Panel consists of the following members:

- (a) the Chair of the Nomination Panel;
- (b) at least 2, and not more than 3, other members.

24F Appointment of members

- (1) A member of the Nomination Panel is to be appointed by the Secretary of the Prime Minister's Department by written instrument.

Note: A member of the Nomination Panel may be reappointed: see the *Acts Interpretation Act 1901*.

- (2) A member holds office on a part-time basis.
- (3) A member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (4) The Secretary of the Prime Minister's Department must give notice on the Prime Minister's Department's website of each person appointed to the Nomination Panel.

24G Acting appointments

- (1) The Secretary of the Prime Minister's Department may, by written instrument, appoint a member of the Nomination Panel to act as the Chair:

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) The Secretary of the Prime Minister's Department may, by written instrument, appoint a person to act as a member (other than as Chair):
- (a) during a vacancy in the office of such a member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when such a member is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

24H Remuneration

- (1) A member of the Nomination Panel is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) A member of the Nomination Panel is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

24J Leave

- (1) The Secretary of the Prime Minister's Department may grant the Chair leave of absence on the terms and conditions that the Secretary of the Prime Minister's Department determines.
- (2) The Chair may grant leave of absence to any other member on the terms and conditions that the Chair determines.

24K Disclosure of interests to the Secretary of the Prime Minister's Department

A member of the Nomination Panel must give written notice to the Secretary of the Prime Minister's Department of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

24L Disclosure of interests to the Nomination Panel

- (1) A member of the Nomination Panel who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Nomination Panel must disclose the nature of the interest to a meeting of the Nomination Panel.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting.

24M Resignation

- (1) A member of the Nomination Panel may resign his or her appointment by giving the Secretary of the Prime Minister's Department a written resignation.
- (2) The resignation takes effect on the day it is received by the Secretary of the Prime Minister's Department or, if a later day is specified in the resignation, on that later day.

24N Termination of appointment

- (1) The Secretary of the Prime Minister's Department may terminate the appointment of a member of the Nomination Panel for misbehaviour or physical or mental incapacity.
- (2) The Secretary of the Prime Minister's Department may terminate the appointment of a member of the Nomination Panel if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Nomination Panel; or
 - (c) the member fails, without reasonable excuse, to comply with section 24K or 24L (disclosure of interests).

24P Other terms and conditions

A member of the Nomination Panel holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Secretary of the Prime Minister's Department.

Division 3—Meetings of Nomination Panel

24Q Holding of meetings

- (1) The Nomination Panel is to hold such meetings as are necessary for the performance of its functions.
- (2) The Chair may convene a meeting at any time.

24R Presiding at meetings

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the members present must appoint one of themselves to preside.

24S Quorum

At a meeting of the Nomination Panel, 3 members constitute a quorum.

24T Voting at meetings

- (1) At a meeting of the Nomination Panel, a question is decided by a majority of the votes of members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

24U Conduct of meetings

The Nomination Panel may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

24V Minutes

The Nomination Panel must keep minutes of its meetings.

Division 4—Role of Minister and Prime Minister etc.

24W Selection criteria

- (1) The Minister must, by legislative instrument, determine selection criteria for the appointment of a Director referred to in paragraph 12(1)(b) or (c).
- (2) The Minister may, in relation to a particular such appointment, give a written notice to the Nomination Panel of additional selection criteria for that appointment.
- (3) A notice under subsection (2) is not a legislative instrument.

24X Consultation, and selection of candidate not nominated by Nomination Panel

Chairperson

- (1) If the Nomination Panel gives the Prime Minister a report under paragraph 24B(1)(d) in relation to the appointment of the Chairperson, the Prime Minister must consult the Leader of the Opposition in the House of Representatives before recommending to the Governor-General the person to be appointed as Chairperson.
- (2) If a person not nominated by the Nomination Panel is appointed as Chairperson, the Prime Minister must table the reasons for that appointment in each House of the Parliament no later than 15 sitting days of that House after that appointment is made. Those reasons must include an assessment of that person against the selection criteria.

Other non-executive Directors

- (3) If:
 - (a) the Nomination Panel gives the Minister a report under paragraph 24B(1)(d) in relation to the appointment of a Director referred to in paragraph 12(1)(c); and
 - (b) the Minister considers that a person not nominated by the Nomination Panel should be appointed;the Minister must give the Prime Minister a written notice that:
 - (c) specifies the name of that person; and
 - (d) sets out the Minister's reasons for preferring that person.
- (4) If that person is so appointed, the Minister must table the reasons for that appointment in each House of the Parliament no later than 15 sitting days of that House after that appointment is made. Those reasons must include an assessment of that person against the selection criteria.

24Y Department's annual report

The Department's annual report for a financial year must include a statement in relation to each selection process for the appointment

of a Director referred to in paragraph 12(1)(b) or (c) that was completed in that financial year.

16 Paragraph 68(1)(b)

After “Act”, insert “(other than Part IIIA)”.

17 Application and transitional

- (1) The amendments made by items 7, 12 and 14 apply in relation to appointments made after the commencement of those items.
- (2) Subject to subitem (3), the amendment made by item 8 applies in relation to appointments made before, on or after the commencement of that item (including because of subitem (4)).
- (3) For the person holding the position of Chairperson under the *Australian Broadcasting Corporation Act 1983* immediately before the commencement of this item, any period occurring before that commencement for which both of the following applied:
 - (a) the person held an office referred to in paragraph 12(1)(c) of that Act;
 - (b) the person was not the Chairperson under that Act;is to be disregarded for the purposes of subsection 12(2A) of that Act (as inserted by this Act).
- (4) The person holding the position of Chairperson under the *Australian Broadcasting Corporation Act 1983* immediately before the commencement of this item is taken, on the commencement of this item, to have been appointed by the Governor-General under section 12 of that Act as the Director referred to in paragraph 12(1)(b) of that Act:
 - (a) for the balance of the person’s term of appointment that remained immediately before the commencement of this item; and
 - (b) on the same terms and conditions as applied to the person immediately before the commencement of this item.
- (5) Subitem (4) does not prevent those terms and conditions being varied after the commencement of this item.
- (6) The amendments made by this Schedule do not affect the validity of an appointment of a person as a Director referred to in paragraph 12(1)(c)

of the *Australian Broadcasting Corporation Act 1983* that was made before the commencement of this item.

Special Broadcasting Service Act 1991

18 Section 3

Insert:

Nomination Panel means the Nomination Panel established under section 24A of the *Australian Broadcasting Corporation Act 1983*.

19 After paragraph 8(a)

Insert:

(aa) the Chairperson; and

20 Paragraph 8(b)

Omit “4”, substitute “3”.

21 Paragraph 8(b)

Omit “8”, substitute “7 other”.

22 Subsection 17(2)

Omit “In appointing a person as a non-executive Director, the Governor-General”, substitute “Before the Governor-General appoints a person as a non-executive Director, the Minister”.

23 Paragraph 17(2)(c)

Omit “Governor-General”, substitute “Minister”.

24 After subsection 17(2)

Insert:

- (2A) The following persons are not eligible for appointment as a non-executive Director referred to in paragraph 8(aa) or (b):
- (a) a member or former member of the Parliament of the Commonwealth;
 - (b) a member or former member of the Parliament of a State, of the Legislative Assembly for the Australian Capital Territory or of the Legislative Assembly of the Northern Territory;

(c) a person who is or was a senior political staff member (within the meaning of the *Australian Broadcasting Corporation Act 1983*).

(2AA) However, so far as subsection (2A) relates to a person who:

- (a) is a former member of a Parliament or a Legislative Assembly referred to in that subsection; or
- (b) was a senior political staff member (within the meaning of the *Australian Broadcasting Corporation Act 1983*);

that subsection applies only for the period of 12 months beginning on the day the person ceased to be a member of that Parliament or that Legislative Assembly or a senior political staff member (within the meaning of that Act).

(2AB) A person who:

- (a) is a former member of a Parliament or a Legislative Assembly referred to in subsection (2A); or
- (b) was a senior political staff member (within the meaning of the *Australian Broadcasting Corporation Act 1983*);

must not be appointed as a non-executive Director referred to in paragraph 8(aa) or (b) unless, in accordance with Part 3A, the Nomination Panel has nominated the person for the appointment.

(2B) Subject to subsection (2C), a person must not be appointed as a non-executive Director referred to in paragraph 8(aa) or (b) unless Part 3A is complied with.

(2C) The Minister may recommend to the Governor-General that a particular person be re-appointed as a non-executive Director referred to in paragraph 8(aa) or (b) without Part 3A being complied with.

25 At the end of subsection 17(3)

Add “(including a failure to comply with Part 3A)”.

26 At the end of section 18

Add:

- (3) The sum of the periods for which a person holds either or both of the following offices must not exceed 10 years:
 - (a) an office referred to in paragraph 8(aa);

(b) an office referred to in paragraph 8(b).

Example 1: Assume a person holds office as Chairperson for an initial period of 5 years and then holds office as Chairperson for a further period of 5 years.

The person cannot hold office as Chairperson again and cannot hold office as a Director referred to in paragraph 8(b).

Example 2: Assume a person holds office as a Director referred to in paragraph 8(b) for a period of 5 years and then holds office as Chairperson for a period of 3 years.

The person may now hold office as Chairperson, or as a Director referred to in paragraph 8(b), for a maximum period of 2 years.

27 Subsection 21(1)

Omit “to be the Chairperson of the Board and another of the non-executive Directors”.

Note: The heading to section 21 is altered by omitting “**Chairperson and**”.

28 Subsection 21(2)

Omit “Chairperson,” (first occurring).

29 After Part 3

Insert:

Part 3A—Merit-based appointment of non-executive Directors

43 Functions of Nomination Panel

- (1) The functions of the Nomination Panel include:
- (a) to conduct a selection process for each appointment of a non-executive Director referred to in paragraph 8(aa) or (b); and
 - (b) to assess all applicants for the appointment against the selection criteria determined under subsection 43A(1) and any additional selection criteria notified under subsection 43A(2); and
 - (c) to assess all applicants for the appointment on the basis of merit; and

- (d) to give a written report to the Minister on the outcome of the selection process that contains a list of at least 3 candidates who are nominated for the appointment and a comparative assessment of those candidates.
- (2) For the purposes of paragraph (1)(c), the assessment of applicants for appointment as a non-executive Director referred to in paragraph 8(aa) or (b) is based on merit if:
- (a) an assessment is made of the comparative suitability of the applicants for the duties of that Director, using a competitive selection process; and
 - (b) the assessment is based on the relationship between the applicants' experience, skills and competencies and the experience, skills and competencies genuinely required for the duties of that Director; and
 - (c) the assessment focuses on the capability of the applicants to achieve outcomes related to the duties of that Director; and
 - (d) the assessment is the primary consideration in nominating the candidates for that appointment.

Advertising appointments

- (3) The Nomination Panel must invite written applications by persons seeking to be appointed as a non-executive Director referred to in paragraph 8(aa) or (b) by advertisements published:
- (a) in either or both of the following:
 - (i) a newspaper circulating generally throughout Australia;
 - (ii) for each State, the Australian Capital Territory and the Northern Territory—a newspaper circulating generally in that State or Territory; and
 - (b) on the Department's website.

Selection process creates another appointment

- (4) If:
- (a) under subsection (3), the Nomination Panel invites applications by persons seeking to be appointed as Chairperson (whether or not it also invites applications by persons seeking to be appointed as a non-executive Director referred to in paragraph 8(b)); and

(b) as a result of the selection process, a non-executive Director referred to in paragraph 8(b) is appointed as the Chairperson (allowing another appointment (the *new appointment*) of a Director referred to in that paragraph to be made);

then:

- (c) the Panel is not required to conduct another selection process for the new appointment; and
- (d) if the Panel does not do so—paragraphs (1)(b), (c) and (d) of this section apply in relation to the new appointment as if:
 - (i) the unsuccessful applicants (other than a non-executive Director referred to in paragraph 8(b)) for the appointment as Chairperson were applicants for the new appointment; and
 - (ii) if the Panel also invited applications by persons seeking to be appointed as a non-executive Director referred to in paragraph 8(b)—the unsuccessful applicants for the appointment were applicants for the new appointment.

43A Selection criteria

- (1) The Minister must, by legislative instrument, determine selection criteria for the appointment of a non-executive Director referred to in paragraph 8(aa) or (b).
- (2) The Minister may, in relation to a particular such appointment, give a written notice to the Nomination Panel of additional selection criteria for that appointment.
- (3) A notice under subsection (2) is not a legislative instrument.

43B Consultation, and selection of candidate not nominated by Nomination Panel

- (1) If:
 - (a) the Nomination Panel gives the Minister a report under paragraph 43(1)(d) in relation to the appointment of a non-executive Director referred to in paragraph 8(aa) or (b); and
 - (b) the Minister considers that a person not nominated by the Nomination Panel should be appointed;the Minister must give the Prime Minister a written notice that:

- (c) specifies the name of that person; and
 - (d) sets out the Minister's reasons for preferring that person.
- (2) If that person is so appointed, the Minister must table the reasons for that appointment in each House of the Parliament no later than 15 sitting days of that House after that appointment is made. Those reasons must include an assessment of that person against the selection criteria.

43C Department's annual report

The Department's annual report for a financial year must include a statement in relation to each selection process for the appointment of a non-executive Director that was completed in that financial year.

30 Application and transitional

- (1) The amendments made by items 24 and 25 apply in relation to appointments made after the commencement of those items.
- (2) Subject to subitem (3), the amendment made by item 26 applies in relation to appointments made before, on or after the commencement of that item (including because of subitem (4)).
- (3) For the person holding the position of Chairperson under the *Special Broadcasting Service Act 1991* immediately before the commencement of this item, any period occurring before that commencement for which both of the following applied:
 - (a) the person held an office referred to in paragraph 8(b) of that Act;
 - (b) the person was not the Chairperson under that Act;is to be disregarded for the purposes of subsection 18(3) of that Act (as inserted by this Act).
- (4) The person holding the position of Chairperson under the *Special Broadcasting Service Act 1991* immediately before the commencement of this item is taken, on the commencement of this item, to have been appointed by the Governor-General under section 17 of that Act as the Director referred to in paragraph 8(aa) of that Act:

- (a) for the balance of the person's term of appointment that remained immediately before the commencement of this item; and
 - (b) on the same terms and conditions as applied to the person immediately before the commencement of this item.
- (5) Subitem (4) does not prevent those terms and conditions being varied after the commencement of this item.
- (6) The amendments made by this Schedule do not affect the validity of an appointment of a person as a non-executive Director referred to in paragraph 8(b) of the *Special Broadcasting Service Act 1991* that was made before the commencement of this item.

Schedule 2—ABC staff-elected Director

Australian Broadcasting Corporation Act 1983

1 Before paragraph 12(1)(c)

Insert:

(ba) the staff-elected Director; and

2 Subsection 12(4)

Omit “or of Chairperson”, substitute “, of Chairperson or of staff-elected Director”.

3 After subsection 12(4)

Insert:

(4A) If an election of a person as the staff-elected Director is invalid because of a defect or irregularity in connection with that election, the performance of the functions, or the exercise of the powers, of the Board is not affected by anything done, or omitted to be done, by or in relation to that person while he or she purported to be, or to act as, the staff-elected Director.

4 After section 13

Insert:

13A Staff-elected Director

(1) Subject to this section, the staff-elected Director must be elected in accordance with the regulations.

Note: As a member of the Board, the staff-elected Director is a director of a Commonwealth authority for the purposes of the *Commonwealth Authorities and Companies Act 1997*: see the definition of *director* in section 5 of that Act.

Eligibility for election

(2) A person is eligible to be a candidate for election, and to hold office, as the staff-elected Director if:

- (a) the person is an employee of the Corporation who, by the terms of his or her employment, is required to devote at least 22 hours a week to the duties of that employment; or
- (b) the person (the *relevant person*) performs services for the Corporation, under the direction and control of the Managing Director or an employee of the Corporation, under:
 - (i) a written contract entered into between the Corporation and the relevant person; or
 - (ii) a written contract entered into between the Corporation and a person other than the relevant person, being a contract that specified the relevant person as the person who would perform the services under the contract.

Effect of candidate ceasing to be eligible after nomination

- (3) If a person who has been nominated as a candidate for election as the staff-elected Director ceases to be eligible to be such a candidate after having been nominated and before the day on which the election takes place:
 - (a) if there are 2 or more other eligible candidates—the election must be held as if the person were not a candidate; or
 - (b) if there is only one other eligible candidate—the other candidate must be declared to be elected; or
 - (c) if there is no other eligible candidate—fresh invitations must be issued for the nomination of candidates.

Candidate may vote at election

- (4) A person who is eligible to be a candidate for election as the staff-elected Director is eligible to vote at the election.

Period of office

- (5) Subject to sections 16 and 18, the person who is the staff-elected Director holds office on a part-time basis for a period of 5 years starting:
 - (a) if, on the day on which the person is declared to be elected, the person already holds office as the staff-elected Director because of a previous election—on the day after the day on which that person would, but for having been re-elected, cease to hold office; or

- (b) if, on the day on which the person is declared to be elected, another person holds office as the staff-elected Director because of a previous election—on the day after the day on which the other person ceases to hold office; or
 - (c) in any other case—on the day on which the person is declared to be elected.
- (6) A person who has been elected as the staff-elected Director at 2 elections is not eligible for election at any other election of the staff-elected Director.

5 After paragraph 18(2)(a)

Insert:

- (aa) the staff-elected Director ceases to be eligible to hold office as the staff-elected Director; or

6 At the end of section 21

Add:

- (7) In this section, *non-executive Director* does not include the staff-elected Director.

7 Application

Subsection 13A(6) of the *Australian Broadcasting Corporation Act 1983*, as inserted by this Act, applies in relation to persons elected as the staff-elected Director under that Act before or after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 30 September 2010
Senate on 24 November 2010]*

(180/10)

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