2004-2005-2006

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN BROADCASTING CORPORATION
AMENDMENT BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Hon. Helen Coonan, Minister for Communications, Information Technology and the Arts)
The Australian Broadcasting Corporation Amendment Bill 2006 (the Bill) amends the Australian Broadcasting Corporation Act 1983 (the ABC Act) to abolish the staff-elected Director and deputy staff-elected Director positions.

The Bill addresses an ongoing tension relating to the position of staff-elected Director. A potential conflict exists between the duties of the staff-elected Director under paragraph 23(1)(a) of the Commonwealth Authorities and Companies Act 1997 to act in good faith in the best interests of the ABC, and the appointment of that Director via election by ABC staff. The election method creates a risk that a staff-elected Director will be expected by the constituents who elect him or her to place the interests of staff ahead of the interests of the ABC as a whole where they are in conflict.

The difficulties associated with such a position were recognised in the June 2003 ‘Review of the Corporate Governance of Statutory Authorities and Office Holders’ (the Uhrig Review) at pages 98 and 99. That Review concluded: ‘The Review does not support representational appointments to governing boards as representational appointments can fail to produce independent and objective views. There is the potential for these appointments to be primarily concerned with the interests of those they represent, rather than the success of the entity they are responsible for governing.’

The Bill resolves these issues by abolishing the staff-elected Director position.

FINANCIAL IMPACT STATEMENT

The Bill is not expected to have a significant financial impact on Commonwealth expenditure or revenue.
NOTES ON CLAUSES

Clause 1 - Short title

Clause 1 provides for the citation of the *Australian Broadcasting Corporation Amendment Act 2006* (the Act).

Clause 2 - Commencement

Clause 2 of the Bill provides that the Act commences on the later of:

(a) 15 June 2006 (the end of the term of office of the current staff-elected Director); and

(b) the day after Royal Assent.

Clause 3 - Schedule(s)

Clause 3 gives formal effect to the amendments and other items set out in Schedule 1.
Schedule 1 - Amendments

Australian Broadcasting Corporation Act 1983

ITEMS 1 – 2 (Subsection 12(1))

Subsection 12(1) of the ABC Act provides that the ABC Board consists of:

(a) a Managing Director;
(b) a staff-elected Director; and
(c) not less than 5 nor more than 7 other Directors.

Items 1 – 2 remove provision for a staff-elected Director on the ABC Board.

ITEM 3 (Subsection 12(4))

Subsection 12(4) validates acts of the Board during certain periods where board vacancies exist, including:

- a vacancy in the staff-elected Director position; and
- a 6 month period where the number of directors referred to in paragraph 12(1)(c) falls below 5.

Item 3 removes reference to the position of the staff-elected Director.

ITEM 4 (Subsection 12(4A))

Subsection 12(4A) validates actions of the Board while it includes a staff-elected Director or deputy staff-elected Director whose election is invalidated by a defect or irregularity.

Item 4 repeals the subsection.

ITEM 5 (Sections 13A and 13B)

Sections 13A and 13B prescribe details about the offices of staff-elected Director and deputy staff-elected Director.

Item 5 provides that sections 13A and 13B are repealed.
ITEM 6 (Subsection 17(1A))

Subsection 17(1A) deals with the requirement of the *Commonwealth Authorities and Companies Act 1997* for the disclosure of interests by the staff-elected Director. This subsection is rendered redundant by the abolition of the position of staff-elected Director.

**Item 6** provides for the repeal of the subsection.

ITEM 7 (Subparagraph 18(2)(a)(ii))

**Item 7** is a technical amendment consequent upon the repeal of paragraph 18(2)(aa) by **Item 8**.

ITEM 8 (Paragraph 18(2)(aa))

Paragraph 18(2)(aa) sets out circumstances in which a staff-elected Director may be removed. This paragraph is rendered redundant by the abolition of the position of staff-elected Director.

**Item 8** provides for the repeal of the paragraph.

ITEM 9 (Subsection 18(3))

Subsection 18(3) deals with circumstances under which a staff-elected Director may be removed from office. This subsection is rendered redundant by the abolition of the position of staff-elected Director.

**Item 9** provides for the repeal of the subsection.

ITEM 10 (Subsection 21(7))

Section 21 deals with acting Directors, and subsection 21(7) provides that it does not apply to staff-elected Directors. This subsection is rendered redundant by the abolition of the position of staff-elected Director.

**Item 10** provides for the repeal of the subsection.

ITEM 11 (Cessation of staff-elected Director and deputy)

**Item 11** is intended to avoid any doubt about the effect of the abolition of the offices of staff-elected Director and deputy staff-elected Director. It provides that if there is a person holding either of those offices when items 2 and 5 commence, that person ceases to hold the office on commencement of the relevant item.