



Australian Government

Department of Communications and the Arts

# Appointments to the ABC and SBS Boards— information about the merit-based appointment process

November 2017

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## 1. Preface

This document sets out information about appointments of non-executive Directors to the ABC and SBS boards, including the roles of the Department of Communications and the Arts (the Department), the Department of the Prime Minister and Cabinet (PM&C), the Nomination Panel, the Minister for Communications and the Arts (the Minister), and the Prime Minister. Information in this document relates to the appointment of the Chairpersons and other non-executive Directors to both boards. This document does not address the election of the staff-elected Director to the ABC Board.

## 2. Legislative Framework

The Australian Broadcasting Corporation Act 1983 (ABC Act) and the Special Broadcasting Services Act 1991 (SBS Act) detail the arrangements for the Board of Directors for each national broadcaster, including the merit-based appointment process for non-executive Directors on each board.<sup>1</sup>

### 2.1 Membership of the ABC and SBS Boards

#### 2.1.1 ABC Board

The ABC Board consists of:

- the Managing Director
- the Chairperson
- the staff-elected Director
- not fewer than four nor more than six other non-executive Directors.

The Chairperson and the other non-executive Directors (not including the staff-elected Director) are appointed by the Governor-General and hold office on a part-time basis for a period of up to five years. The Chairperson and non-executive Directors are eligible for re-appointment. The sum of the periods for which a person holds office as either Chairperson or other non-executive Director, or both, must not exceed ten years.

#### 2.1.2 SBS Board

The SBS Board consists of:

- the Managing Director
- the Chairperson
- not fewer than three nor more than seven other non-executive Directors.

The Chairperson and the other non-executive Directors are appointed by the Governor-General and hold office on a part-time basis for a period of up to five years. The Chairperson and non-executive Directors are eligible for re-appointment. The sum of the periods for which a person holds office as either Chairperson or other non-executive Director, or both, must not exceed ten years.

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<sup>1</sup> See Parts II, III and IIIA of the ABC Act, and Parts 2, 3 and 3A of the SBS Act.

## 2.2 Matters for the Minister or Prime Minister

### 2.2.1 ABC Board

Before the Governor-General appoints a person as a non-executive Director on the ABC Board, the Prime Minister (if the appointment is of the Chairperson) or the Minister (if the appointment is not of the Chairperson) must be satisfied that the person is suitable for appointment because of:

- experience in connection with the provision of broadcasting services or in communications or management
- expertise in financial or technical matters
- cultural or other interests relevant to the oversight of a public organisation engaged in the provision of broadcasting services.

### 2.2.2 SBS Board

Before the Governor-General appoints a person as a non-executive Director on the SBS Board, the Minister must have regard to the need to ensure that:

- the Directors collectively possess an appropriate balance of expertise in the areas required to govern the SBS effectively, including an understanding of Australia's multicultural society and the needs and interests of the SBS's culturally diverse audience
- the Directors collectively comprise persons with a diversity of cultural perspectives
- the Directors include a person who the Minister is satisfied, having regard to consultations between the Minister and representatives of industrial organisations representing employees, has an appropriate understanding of the interests of employees
- at least one of the Directors is an Indigenous person.

## 2.3 Merit-based appointment process is mandatory

Except in the case of a re-appointment (see [Section 2.8](#)), a person must not be appointed as a non-executive Director to the ABC or SBS Board by the Governor-General unless a merit-based appointment process in compliance with the ABC and SBS Acts is conducted (see [Section 2.5](#)). This may happen when the term of an existing non-executive Director expires and the person is not eligible for re-appointment due to the length of earlier appointments, or when a decision is made to not re-appoint that person. It may also happen after an unexpected vacancy occurs.

## 2.4 Membership of the Nomination Panel

The Nomination Panel is established under the ABC Act. The Nomination Panel consists of a Chair and a minimum of two, or a maximum of three, other members. The Nomination Panel members are appointed by the Secretary of the Department of the Prime Minister and Cabinet (PM&C). Members are appointed on a part-time basis for terms of up to three years and may be re-appointed. The Secretary of PM&C must give notice on that Department's website of each person appointed to the Nomination Panel.

The current Nomination Panel is comprised of Mr Ted Evans AC (Chair), Ms Anne Fulwood, Dr Sally Pitkin and Ms Helen Williams AO.

## 2.5 Merit-based appointment process

When the Minister notifies the Nomination Panel of a forthcoming vacancy on the ABC Board and/or the SBS Board, the Nomination Panel must conduct a merit-based appointment process in accordance with the ABC and SBS Acts. The Nomination Panel must assess all applicants against the relevant selection criteria on the basis of merit.

Prior to the commencement of an appointment process, the Chair of the Nomination Panel may consult with the Chair of the ABC and/or SBS board on the skills requirements for each board. The Nomination Panel is usually assisted by an external recruitment agency. The Nomination Panel may conduct a single appointment process for two or more appointments.

The functions of the Nomination Panel, as set out in the ABC Act and the SBS Act, include:

- a) to conduct a selection process for each appointment of a non-executive Director to the ABC Board and the SBS Board, with the exception of the staff-elected Director on the ABC Board
- b) to assess all applicants for an appointment against the selection criteria determined by the Minister by legislative instrument and any additional selection criteria notified in writing by the Minister to the Panel in relation to a particular appointment
- c) to assess all applicants for an appointment on the basis of merit
- d) to give a written report:
  - i. if the appointment is for the Chairperson of the ABC—to the Prime Minister and the Minister or
  - ii. if the appointment is not for the Chairperson of the ABC—to the Minister

on the outcome of the selection process that contains a list of at least three candidates who are nominated for an appointment and a comparative assessment of those candidates.

## 2.6 Definition of 'merit'

The ABC and SBS Acts provide that the assessment of applicants for appointment as non-executive Directors is based on merit if:

- an assessment is made of the comparative suitability of the applicants for the duties of that Director, using a competitive selection process
- 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
- the assessment focuses on the capability of the applicants to achieve outcomes related to the duties of that Director
- the assessment is the primary consideration in nominating the candidates for that appointment.

The principle of merit will be interpreted broadly in the merit-based appointment process. Formal qualifications and traditional work experience will form only one element of the Nomination Panel's assessment of an applicant's experience, skills and competencies. Non-traditional activities and career paths may also be recognised and valued as suitable qualifications which contribute to an applicant's overall suitability for appointment.<sup>2</sup>

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<sup>2</sup> *National Broadcasting Legislation Amendment Act 2012*, Explanatory Memorandum, page 8.

## 2.7 Categories of persons not eligible for appointment

Current and former members of Parliament (including the Federal and State Parliaments and the Legislative Assembly of the Australian Capital Territory and Northern Territory) and senior political staff members are not eligible for appointment as a non-executive Director to the ABC Board or the SBS Board while engaged in such positions, or for a period of 12 months beginning on the day the person ceased to hold one of these positions.

The Minister has defined the term ‘former senior political staff member’ by legislative instrument. A copy of the definition is at [Attachment A](#).

## 2.8 Re-appointments

A decision to recommend to the Governor-General that a particular person be re-appointed as a non-executive Director is made at the discretion of the Minister, or the Prime Minister in the case of the Chairperson of the ABC. Where an incumbent is to be recommended for re-appointment, the Minister, or the Prime Minister, will follow Government policy regarding the process for appointments.

Under the ABC and SBS Acts, a merit-based selection process is not required to be conducted by the Nomination Panel for re-appointments of existing non-executive Directors.

## 2.9 Consultation requirements

If the Nomination Panel gives the Prime Minister a report in relation to the appointment of the Chairperson of the ABC, the Prime Minister must consult the Leader of the Opposition in the House of Representatives before recommending the appointment of that person to the Governor-General.

When appointing the non-executive Director to the SBS Board who satisfies the third dot point in [2.2.2](#) above, the Minister must consult with representatives of industrial organisations representing employees before recommending the appointment of the that person to the Governor-General.

# 3. Roles

## 3.1 Role of the Minister

The Minister’s roles include:

- deciding whether to recommend to the Governor-General that an eligible non-executive Director be re-appointed (having regard to the length of earlier terms)
- notifying a non-executive Director whether they will be re-appointed for another term or of the Government’s decision to request the Nomination Panel to conduct a selection process to test the field
- notifying the Nomination Panel of the need to conduct a merit-based selection process when a vacancy arises
- determining selection criteria for the appointment of non-executive Directors to each Board by legislative instrument
- giving written notice to the Nomination Panel of additional selection criteria for a particular appointment (where this is applicable)
- considering the recommendations of the Nomination Panel following the completion of the merit-based appointment process (except in the case of the Chairperson of the ABC)
- being satisfied or having regard to the matters set out in the ABC and SBS Acts (see Sections [2.2.1](#) and [2.2.2](#))

- recommending a person to the Governor-General for appointment (other than the Chairperson of the ABC Board). If the person recommended by the Minister has not been nominated by the Nomination Panel, the Minister must follow the process set out in [Section 4.2](#).

### 3.2 Role of the Prime Minister

The Prime Minister's roles include:

- deciding whether to recommend to the Governor-General that an eligible Chairperson of the ABC Board be re-appointed (having regard to the length of earlier terms)
- considering the recommendations of the Nomination Panel following the completion of a merit-based appointment process for the position of Chairperson of the ABC Board
- being satisfied of the matters set out in the ABC Act (see sections [2.2.1](#) and [2.7](#))
- recommending a person to the Governor-General for appointment as Chairperson of the ABC Board. If the person recommended by the Prime Minister has not been nominated by the Nomination Panel, the Prime Minister must follow the process set out in [Section 4.1](#).

### 3.3 Role of the Secretary of the Department of the Prime Minister and Cabinet

The Secretary of the Department of the Prime Minister and Cabinet's (PM&C) roles include:

- appointing the members of the Nomination Panel
- placing a notice on PM&C's website of each person appointed to the Nomination Panel.

### 3.4 Role of the Department of Communications and the Arts

The Department is responsible for:

- providing secretariat support to the Nomination Panel by advertising the positions in print and digital media
- maintaining a record of all ABC and SBS board appointments
- seeking the Minister's decision whether to recommend to the Governor-General that a non-executive Director (if eligible, having regard to the length of earlier terms) be re-appointed or request the Nomination Panel conduct a selection process for that position
- including a statement in the Department's annual report about each merit-based appointment process that is completed
- if required, engaging an executive recruitment firm to assist the Nomination Panel.

### 3.5 Role of the Nomination Panel

The Nomination Panel will:

- Upon a request from the Minister, conduct a merit-based appointment process for each new non-executive Director appointment to the ABC and SBS Board (except for the staff-elected Director on the ABC Board) in accordance with the ABC and SBS Acts.
- Publish advertisements inviting written applications from persons seeking to be appointed to the position(s) on the Department's website; and in one or more forms that are readily accessible to potential applicants, for example, on a website other than the Department's website.
- Collect Private Interest Declaration forms from shortlisted candidates and also conduct probity checks through the Australian Securities and Investment Commission and the Australian Financial Security Authority.



- Following its assessment of all applicants, the Nomination Panel is required to provide a written report to the Minister (or to the Prime Minister and the Minister if the appointment is for the Chairperson of the ABC Board) about the merit-based appointment process. The report must nominate at least three candidates for each vacancy and must include a comparative assessment of those candidates against the applicable selection criteria determined and notified by the Minister.

The Minister or the Prime Minister are not bound to recommend to the Governor-General a person nominated by the Panel. However, certain requirements will need to be satisfied if the Minister or Prime Minister seek to appoint someone not nominated by the Panel (see [section 4](#)).

### 3.6 Role of the Governor-General

The Governor-General is responsible for:

- the appointment or re-appointment of non-executive Directors to the ABC and SBS Boards (except for the staff-elected Director on the ABC Board) based on the recommendation of the Minister for Communications and the Arts (or the Prime Minister in the case of the ABC Chairperson).

## 4. Candidate not nominated by the Nomination Panel

### 4.1 Chairperson of the ABC Board

If a person not nominated by the Nomination Panel is appointed by the Governor-General as the Chairperson of the ABC Board, the Prime Minister must table the reasons for that appointment in each House of Parliament no later than 15 sittings days after the appointment was made. The reasons must include an assessment of the person against the selection criteria.

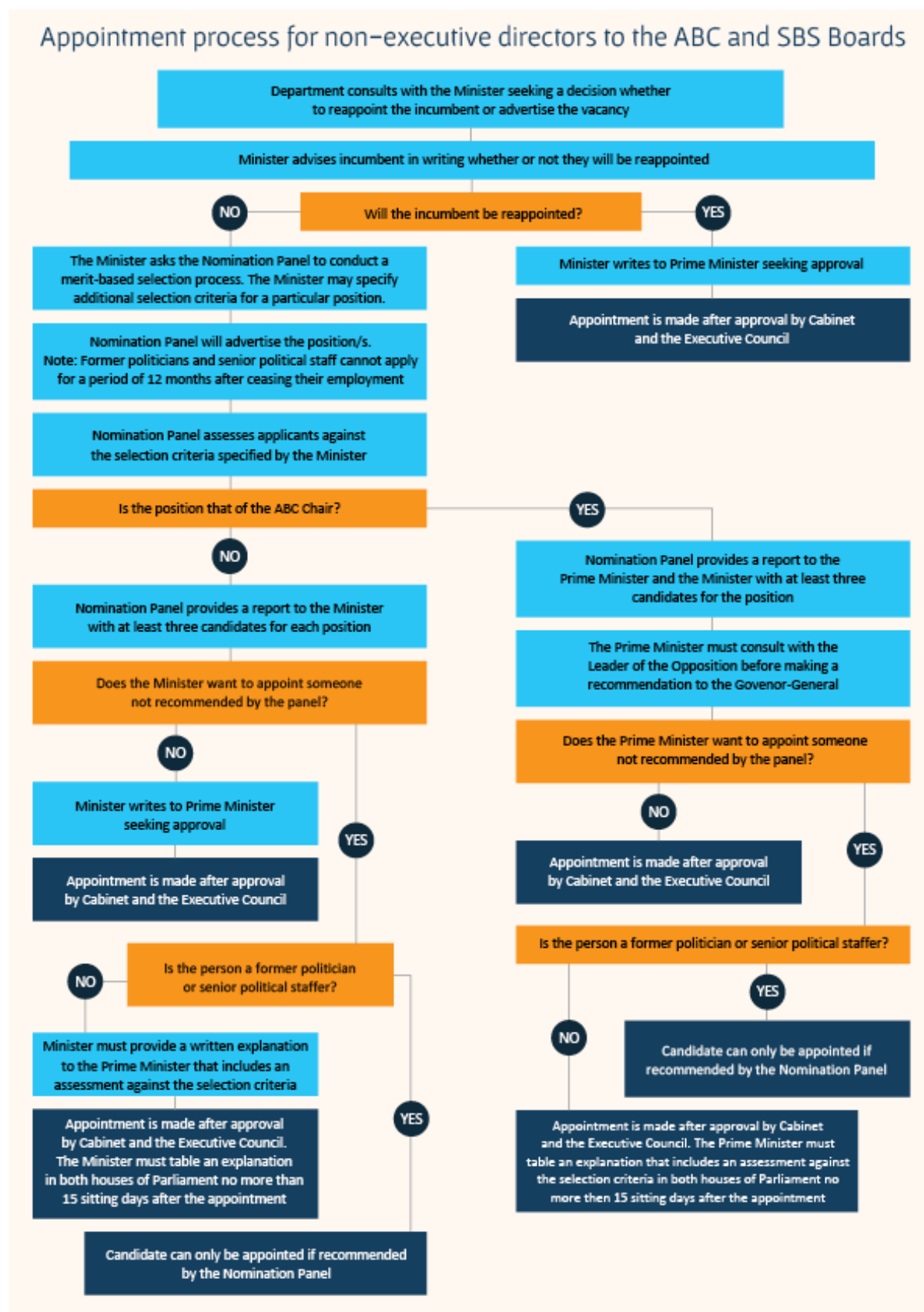
Under section 12 (5AB) of the ABC Act, a former politician or former senior political staff member can only be appointed as the Chairperson of the ABC Board if they have been nominated by the Nomination Panel through the statutory merit-based appointment process.

### 4.2 Non-executive Director other than Chairperson of the ABC Board

If the Minister wants to recommend to the Governor-General that a person who has not been nominated by the Nomination Panel be appointed as a non-executive Director on the ABC or SBS Board, the Minister must give written notice to the Prime Minister with the name of the person and the reasons for the decision. If that person is appointed by the Governor-General, the Minister must table the reasons for that appointment in each House of Parliament no later than 15 sittings days after the appointment is made. The reasons must include an assessment of the person against the selection criteria.

Under section 12 (5AB) of the ABC Act and section 17 (2AB) of the SBS Act a former politician or senior political staff member can only be appointed as a non-executive Director if they have been nominated by the Nomination Panel through the statutory merit-based appointment process.

## 5. Flowchart: The appointment process



## 5.1 The Appointment Process Flowchart in words

- 1) As the term of a Board member reaches its expiry date, the Department consults the Minister about whether to re-appoint the incumbent board member or advertise the vacancy.
  - a) If the Minister decides to re-appoint a Board member, the Minister writes to the Prime Minister to seek approval. The re-appointment is made after approval by Cabinet and the Governor-General.
  - b) If the Minister seeks to advertise the position—see 2).
- 2) If the Minister decides not to re-appoint a Board member, the Minister will write to the Nomination Panel request that it conduct a merit-based selection process. The Minister may specify additional selection criteria.
- 3) The Nomination Panel advertises the position/s.
- 4) The Nomination Panel assesses the applications received against the statutory selection criteria (and any criteria specified by the Minister). This will include interviewing short-listed candidates.
- 5) The Nomination Panel provides a report to the Minister with at least three candidates for each position (if the position is for the ABC Chair the report is provided to the Prime Minister—see 7).
- 6) The Minister considers the report.
  - a) If the Minister decides to appoint someone recommended by the Nomination Panel, the Minister writes to the Prime Minister to seek approval. The appointment is made after approval by Cabinet and the Governor-General.
  - b) If the Minister decides to appoint someone not recommended by the Nomination Panel, the Minister writes to the Prime Minister to seek approval and must provide a written explanation for the decision that includes an assessment of the candidate against the selection criteria. The appointment is made after approval by Cabinet and the Governor-General. The Minister must table an explanation for the appointment in both Houses of Parliament no more than 15 sitting days after the appointment is made.
- 7) The Prime Minister considers the report, if the position is for the ABC Chair.
  - a) If the Prime Minister decides to appoint someone recommended by the Nomination Panel, the Prime Minister consults with the Leader of the Opposition about the proposed appointment. The appointment is made after approval by the Governor-General.
  - b) If the Prime Minister decides to appoint someone not recommended by the Nomination Panel, the Prime Minister consults with the Leader of the Opposition about the proposed appointment. The appointment is made after approval by the Governor-General. The Prime Minister must table an explanation for the appointment in both Houses of Parliament no more than 15 sitting days after the appointment is made.

## Attachment A

Commonwealth of Australia

*Australian Broadcasting Corporation Act 1983*

### Australian Broadcasting Corporation (Definition of senior political staff member) Instrument 2014

I, MALCOLM BLIGH TURNBULL, Minister for Communications, make this instrument under subsection 3(3) of the *Australian Broadcasting Corporation Act 1983*.

Dated 29 January 2014

MALCOLM TURNBULL

Minister for Communications

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#### 1. Name of instrument

This legislative instrument is the Australian Broadcasting Corporation (Definition of senior political staff member) Instrument 2014.

#### 2. Commencement

This legislative instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

#### 3. Definitions

**Legislature of a Territory** means:

- a) the Legislative Assembly for the Australian Capital Territory; or
- b) the Legislative Assembly of the Northern Territory.

**Minister** means a Minister of State for a State or a Territory.

## 4. Specified classes of persons

The following classes of persons are specified for the purpose of defining a senior political staff member:

### 4.1 Class A—Federal

- (a) A person employed under the Members of Parliament (Staff) Act 1984 (Cth) and who occupies a position in the “senior staff” classification as defined by the Commonwealth Members of Parliament Staff Enterprise Agreement 2012-2015 made under the *Fair Work Act 2009*.

### 4.2 Class B—State or Territory

- (a) A person employed in a senior position by or on behalf of a member of a State Parliament or a Legislature of a Territory to primarily provide advice about policy matters, the communication of policy matters to the public, and/or parliamentary matters.
- (b) Without limiting paragraph 4.2(a), a person is deemed to be employed in a senior position if the position is known by one of the following designations:
  - (i) Chief of Staff;
  - (ii) Deputy Chief of Staff;
  - (iii) Principal Adviser (however described);
  - (iv) Senior Adviser (however described);
  - (v) Senior Media Adviser (however described);
  - (vi) Specialist Adviser (however described).
- (c) For the purpose of subsection 4.2, examples of advice about policy matters include:
  - (i) developing policy proposals for the consideration of the member;
  - (ii) analysing policy proposals and making recommendations to the member;
  - (iii) participating in policy discussions with or on behalf of the member;
  - (iv) where the member is a Minister, working with public sector employees to implement policies.