

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 285

Issued by the Authority of the Minister for Broadband, Communications
and the Digital Economy

Australian Broadcasting Corporation Act 1983

*Australian Broadcasting Corporation (Election of Staff-Elected Director) Regulation
2012*

Purpose

Subsection 83(1) of the *Australian Broadcasting Corporation Act 1983* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 13A(1) of the Act requires the staff-elected Director to be elected in accordance with regulations made under subsection 83(1) of the Act.

The inclusion of a staff-elected Director on the ABC Board will benefit both the management of the ABC and ABC staff members by ensuring that a unique and important insight into the general operation and concerns of ABC staff members is heard by the ABC Board.

The purpose of the regulation is to prescribe how the staff-elected Director is to be elected to the Australian Broadcasting Corporation (ABC) Board. The regulation cover matters such as the notification and method of election; the role of the returning officer; the roll of voters; candidate nominations; ballot papers, scrutineering and the determination of results and disputes.

The Act does not impose any conditions that need to be satisfied before the power to make the Regulation may be exercised.

Section 17 of the *Remuneration Tribunal Act 1973* provides that the Governor-General may make regulations prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act. The *Remuneration Tribunal (Miscellaneous Provisions) Regulations 1976* is made under the *Remuneration Tribunal Act 1973*. The regulation makes a technical amendment to the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 1976* to update the reference to the staff-elected Director.

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA).

The regulation commences on the day after registration on the Federal Register of Legislative Instruments.

Background

Prior to 2006, the membership of the ABC Board included a staff-elected Director. This position was abolished by the previous government in 2006. The government made a commitment during the 2007 election to restore the position of staff-elected Director on the ABC Board.

The *National Broadcasting Legislation Amendment Act 2012* (NBLA Act) received the Royal Assent on 24 July 2012. Schedule 2 of the NBLA Act amended the Act to reinstate the position of the staff-elected Director to the ABC Board.

The Office of Best Practice Regulation has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the amendments have a nil or low impact on business or the economy or individuals.

Statement of compatibility with human rights

This statement of compatibility is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Australian Broadcasting Corporation (Election of Staff-Elected Director) Regulation 2012

This Legislative Instrument 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 Legislative Instrument

The Legislative Instrument prescribes how the ABC staff -elected Director is to be elected to the ABC Board. In 2006, the previous Government abolished the position of the ABC staff-elected Director. The position was reinstated with the passage of the *National Broadcasting Legislation Amendment Act 2012*.

The regulation sets out the procedures involved in elected a person to the position of staff-elected Director on the ABC Board. In particular, the regulation cover matters such as the notification and method of election; the role of the returning officer; the roll of voters; candidate nominations; candidate statements; issuing and receiving ballot papers, scrutineering and the determination of results and disputes.

Human rights implications

This Legislative Instrument does not engage any of the applicable human rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Consultation

The ABC and the Australian Electoral Commission were consulted during the development of the regulation and the views of the ABC and the AEC were taken into account during the drafting of the regulation.

Details of the accompanying regulation are set out in the Attachment.

ATTACHMENT**Details of the Australian Broadcasting Corporation (Election of Staff-Elected Director) Regulation 2012****Part 1 - Preliminary****Section 1 – Name of regulation**

This section provides that the title of the regulation is the *Australian Broadcasting Corporation (Election of Staff-Elected Director) Regulation 2012* (Regulation).

Section 2 – Commencement

This section sets out the date on which the regulation commences. The regulation commences on the day after registration on the Federal Register of Legislative Instruments.

Section 3 – Purpose of regulation

For the purpose of subsection 13A(1) of the Act, Parts 2 to 7 prescribe how the staff-elected Director is to be elected.

Section 4 – Definitions

Section 4 sets out key definitions for the purposes of the Regulation. Some key definitions are explained in more detail below

ABC means the Australian Broadcasting Corporation.

AEC means the Australian Electoral Commission.

Act means the *Australian Broadcasting Corporation Act 1983*.

Part 2 – Notice and method of election**Section 5 – Notice of election**

Section 5 sets out the circumstances in which the Managing Director must notify the AEC that an election of the staff-elected Director is to be held. The Managing Director must provide such notice no later than 28 days after the commencement of this regulation or for subsequent elections, if the position of staff-elected Director becomes vacant, or the Managing Director expects that the position will become vacant within the next six months.

Section 6 – AEC to conduct elections

Section 6 provides that an election for the position of the staff-elected Director is to be conducted by the AEC. In circumstances where the AEC is unable to conduct the

election, for example because it does not have capacity to do so, an alternative person approved in writing by the Minister may conduct the election.

Section 7 – Method of election

Section 7 provides that an election of the staff-elected Director is to be conducted by a secret postal ballot of eligible voters.

Part 3 – Returning officer and roll of voters

Section 8 – Appointment of returning officer

Section 8 provides that the AEC or an alternative person approved by the Minister in writing to conduct the election (see section 6 above) must appoint a returning officer to be responsible for conducting the election, as soon as practicable after the AEC is notified under section 5 or an alternative person is approved under subsection 6(2).

To ensure the independent administration of the election, the returning officer must not be the holder of any office of the ABC or an employee of the ABC.

Section 9 – Powers and functions of returning officer

Section 9 provides in addition to any powers given to the returning officer by this regulation, the returning officer may make any decisions that they consider reasonable and necessary for the proper conduct of the election including decisions to ensure the secrecy of the ballot and prevent or remedy any irregularity in the election.

For example, if the name of a candidate has not been included on the ballot paper and the election material has been distributed to eligible voters, the returning officer could retrieve the election material and reissue new material to eligible voters.

Section 10 – Eligible voters

Section 10 sets out a class of eligible voters for the election of the staff-elected Director. The class of eligible voters includes a person eligible to be a candidate for the election consistent with subsection 13A(4) of the Act and extends to include all employees of the ABC.

It provides that a person is eligible to vote in the election of the staff-elected Director if, on the day on which the Managing Director gives the roll of voters to the returning officer under subsection 11(2), the person:

- is an employee of the ABC,
- performs services for the ABC, under the direction and control of the Managing Director or an employee of the ABC, under a written contract entered into:
 - between the ABC and the relevant person; or

- between the ABC and another person, being a contract that specifies the relevant person as the person who would perform the services under the contract.

Section 11 – Roll of voters to be prepared and forwarded

Subsection 11(1) requires the Managing Director to prepare a roll of voters for an election of the staff-elected Director. The roll of voters must contain the name and last known address of each eligible voter. Subsection 11(3) places an additional requirement on the Managing Director to take reasonable steps to ensure that the address given in the roll of voters for an eligible voter is the eligible voter's postal address rather than his or her work address.

Under subsection 11(2) the Managing Director must give the roll of voters to the returning officer no earlier than 30 days before, and no later than 7 days before, the day on which the nominations for the election open. The legislative note in section 11 is a signpost to direct the reader to subsection 17(1), which specifies when nominations for the election open. It is intended that the Managing Director prepare a new roll of voters before every election to ensure the roll of voters remains accurate. The roll of voters closes on the day the Managing Director gives the roll to the returning officer.

Section 12 – Returning officer may request further information

Section 12 allows the returning officer to request further information from the Managing Director, after receiving the roll of voters, to assist the returning officer to identify an eligible voter. For example, if the same name appears multiple times on the roll of voters, the returning officer could request further information from the Managing Director to check whether the names have been duplicated or whether there are a number of individuals with the same name.

Subsection 12(2) states the Managing Director must give the further information to the returning officer.

Section 13 – Publication of names of eligible voters

Section 13 provides for the publication of the names of eligible voters, and sets out a procedure by which eligible voters can request correction of the roll of voters.

The Managing Director is required to publish the names of all eligible voters on the roll of voters on the ABC's internal website under subsection 13(1). This allows eligible voters the opportunity to check whether their names have been correctly included on the roll of voters.

If an eligible voter has concerns that their address is incorrectly entered on the roll of voters they may ask the Managing Director in writing for a copy of the voter's address, as it appears on the roll under subsection 13(2). The Managing Director is required to respond to this request as soon as practicable (refer subsection 13(3)).

If an eligible voter considers that their name or address has been wrongly omitted from, or incorrectly entered on, the roll of voters, they may ask the Managing Director to enter the correct name or address on the roll of voters under subsection 13(4).

A request under subsection 13(4) must be made in writing to the Managing Director no later than eight days before the day on which the ballot closes. This ensures that the Managing Director has sufficient time to either amend the roll or notify the returning officer to amend the roll, if necessary. The approach taken by the Managing Director will depend on whether the Managing Director considers that the roll should be updated and whether the roll of voters has closed.

The legislative note in section 13 informs the reader that section 22 sets out when the ballot closes.

Section 14 – Notification of alternative address

Subsection 14(1) provides that if an eligible voter will be absent from their usual address during the period the ballot is conducted, the voter may give written notice to the Managing Director to send the election material to a different address. The election material will be sent to this new address.

Subsection 14(2) sets out minimum requirements for the written notice to the Managing Director.

Subsections 14(3) and (4) provide the Managing Director must notify the returning officer of the voter's alternative address immediately and the returning officer is required to update the roll of voters to include the voter's alternative address.

Section 15 – Alteration of roll

Section 15 provides for alteration of the roll of voters, both before and after the roll has closed.

Subsection 15(1) provides the Managing Director may amend the roll of voter, before the roll of voters closes, as necessary to maintain the accuracy of the roll.

If, after the roll of voters has closed but no later than 7 days before the ballot for an election closes, the Managing Director considers that the name and address of an eligible voter needs to be amended on the roll, the Managing Director must notify the returning officer immediately.

If the returning officer receives a notice from the Managing Director under subsection 15(2) the returning officer must amend the roll accordingly and issue or reissue election material to the eligible voter, as soon as possible, but no later than 5 days before the close of the ballot.

Part 4 – Nominations and candidates’ statements

Section 16 – Notice of invitation for nominations

Section 16 provides that the returning officer must publish a notice inviting nominations for candidates for the election of the staff-elected Director as soon as practicable after the returning officer is appointed and before nominations open.

Subsection 16(1) requires the returning officer to publish the notice by placing the notice on the ABC’s internal website or sending the notice by electronic means to each person who is eligible to be a candidate for election.

A legislative note in section 16 informs the reader that subsection 13A(2) of the Act sets out who is eligible to be a candidate for election and hold office as the staff-elected Director.

Subsection 16(3) sets out minimum information that must be contained in a notice published under subsection 16(1). The notice must:

- state that an election is to be conducted by the returning officer for the position of staff-elected Director of the ABC;
- invite nominations for election from persons who are eligible to be candidates, and hold office, as the staff-elected Director under subsection 13A (2) of the Act;
- state the time and date for the opening and closing of nominations;
- state the time and date for the opening and closing of the ballot for the election;
- specify where nomination forms may be obtained;
- specify where and how nominations forms must be lodged; and
- state the latest date and time by which nominations may be withdrawn.

The notice may also specify other information or documents that may or must be submitted with the nomination.

Section 17 – Lodgement of nominations

Section 17 sets out a procedure for the lodgement of nominations by candidates for the election to the position of staff-elected Director. A person wanting to nominate as a candidate for the election must lodge their nomination with the returning officer before 12pm on the 28th day after the nominations open.

For example, if nominations opened on the 2 August 2013 candidates would be required to lodge their nomination by midday on 30 August 2013. If 30 August 2013 were a Saturday, Sunday or public holiday, subsection 17(3) would apply and allow the candidate to lodge their nomination on the next business day.

Section 18 – Candidates’ statements

Each candidate may give the returning officer a statement in support of their candidature. The statement could include a biography, a summary of skills and future

priorities for the ABC. The statement must not exceed 200 words. If a candidate does not provide a statement, the returning officer must advise eligible voters of this fact in the publication of candidates' statements (refer to subsection 18(7)).

The returning officer must publish the candidates' statements, no later than seven days after the close of nominations, by placing the statements on the ABC internal website or sending the statements directly to each eligible voter by electronic means, such as email (refer to subsection 18(3)).

However, the returning officer has the discretion under subsection 18(4) to refuse to publish a candidate's statement if the statement does not comply with subsection 18(2) or the returning officer believes the statement is false or misleading in a material particular, or may be defamatory. Subsection 18(4) is not intended to affect any right that the returning officer, or another person involved in the publishing of candidates' statements, may have at common law, such as the defence of qualified privilege to an action in defamation.

In circumstances where the returning officer has refused to publish a candidate's statement because it is false or misleading, or may be defamatory, the returning officer must notify the candidate in writing and give the candidate a reasonable opportunity to provide a replacement statement within two business days. For example, if the nominee has submitted their nomination on 30 August 2013 at 12pm and the returning officer notifies the nominee on 2 August 2013 at 10:30am that he/she is refusing to publish the candidate's statement on the grounds that the statement is misleading the nominee has until the 4 August 2013 at 10:30am to provide a replacement statement.

Candidates' statements must be published in the same order as the order of candidates on the ballot paper determined under section 23.

Section 19 – Acceptance of nominations

Subsection 19(1) provides that the returning officer is required to accept a nomination of a person as a candidate in an election of the staff-elected Director if the requirements under paragraph 19 (1) (a) to (e) are met.

Subsection 19(2) states that if a nomination does not contain the information required under paragraph 19(1)(c) the returning officer must notify the nominee, if practicable and give the nominee seven days to meet the requirement, if this is not practicable the returning officer can reject the nomination.

For example, if a nominee lodges a nomination which complies with paragraphs 19(1) (a) to (e) but fails to meet a requirement under 19(1) (c), such as, one of the six eligible voters who endorsed the nomination failed to sign the nomination. The returning officer must notify the nominee (if practicable) and give the nominee seven days to get the eligible voter's signature and resubmit the completed nomination.

Section 20 – Withdrawal of nominations

Section 20 provides that a nominee may withdraw their nomination as a candidate in an election of the staff-elected Director by following the processes outlined in subsection 20(1) and (2).

Subsection 20(3) provides that an eligible voter cannot withdraw their endorsement of a nominee once the nomination has been lodged. However, an eligible voter could withdraw their endorsement of a nominee prior to the lodgement of the nominee's nomination.

Section 21– Procedure on closure of nominations

Section 21 outlines the procedure implemented by the returning officer and Managing Director once the nominations have closed.

Section 21(2) provides that if no nominations are received or accepted by the returning officer, the returning officer must give the Managing Director written notice that the election will not take place. On receipt of a notice, the Managing Director must arrange for another election to be conducted as soon as practicable. Factors relevant to the timing of the subsequent election may include: the availability of the AEC or alternative provider and the likelihood of receiving nominations.

Section 21(1) provides that if only one nominee is accepted by the returning officer as a candidate for election, the returning officer must declare the candidate elected, give the Managing Director written notice of the name of the person elected and publish a copy of the notice on the internal website of the ABC.

If the returning officer accepts more than one nominee as a candidate for the election, the returning officer must conduct a ballot of the candidates in accordance with Part 5 (refer subsection 21(4)).

Part 5 - Ballot

Section 22 – Opening and closing of ballot

Section 22 sets out the timing requirements for when the ballot for the election of the staff-elected Director opens and closes. The provision also provides that ballots received before the ballot opens and after the ballot closes must not be counted in the election.

Section 23 – Ballot papers

Subsection 23(1) provides the ballot paper for the election of the staff-elected Director must:

- be in the form approved by the returning officer;
- specify the names of the candidates for election in the order determined through a lot drawn by the returning officer specified under subsection 23(3);

- state the date on which the ballot opens and the date and time on which the ballot closes; and
- include instructions on how to complete the ballot paper.

The ballot paper must not contain any information about the candidates other than their names (refer subsection 23(2)) and the returning officer must authenticate each ballot paper before the ballot paper is distributed to an eligible voter (refer subsection 23 (5)). The process of authentication could include initialling the ballot paper, a water mark or another form of authenticating mark.

Subsection 23(3) requires the returning officer to determine the order of candidate's names on the ballot paper by a lot drawn by the returning officer. The returning officer must give eligible voters notice of the time and place for the lot to be drawn in order to give the eligible voters a reasonable opportunity to attend the draw (refer subsection 23(4)).

Section 24 – Printing and distribution of election material

Subsection 24(1) sets out a procedure for the printing and distribution of election material. It provides that the returning officer must send the following election material in a sealed envelope to each eligible voter:

- the ballot paper;
- an envelope to contain the ballot paper, bearing a declaration in the form approved by the returning officer. The declaration could take the form of requiring the voter to declare that they are the eligible voter named on the envelope, that they have voted on the ballot paper contained in the envelope and have not previously voted in this election;
- a reply paid envelope addressed to the private mail box to be used for the return of ballot papers; and
- a copy of each candidate's statement (if provided), unless the returning officer has rejected the statement.

The returning officer is responsible for sending election material to the eligible voter's address as listed on the roll or the alternative address as requested under section 14 by prepaid post.

Subsection 24(3) stipulates that the envelope containing the election material must bear printed instructions on what occurs if the material is not delivered to the addressee.

Section 25 – Replacement election material

Section 25 provides that an eligible voter may apply to the returning officer for replacement election material if the eligible voter did not receive the election material or the election material received has been lost, damaged or destroyed.

The returning officer will send replacement election material to the eligible voter in the following circumstances:

- they have received an application from the eligible voter which is in writing, states the eligible voter's full name and address, sets out reasons for the application, contains a signed declaration that the eligible voter has not voted in the election and where the election material has been lost, damaged or destroyed evidence of this occurrence, if practicable, accompanies the application; and
- the returning officer is satisfied the information contained in the eligible voter's application is correct.

If replacement election material is sent to the eligible voter the returning officer must make a record (refer subsection 25(3)).

Section 26 – Receipt of completed ballot papers

Section 26 outlines the process for returning ballot papers and specifies who can collect returned ballot papers.

Part 6 – Counting and scrutiny of ballot papers

Section 27 – Appointment of scrutineers

Section 27 provides that each candidate can appoint one person as a scrutineer for the election of the staff-elected Director. A scrutineer's role is to represent the candidate's interests in the election.

Subsection 27(2) provides that a scrutineer cannot be a candidate.

Subsection 27(3) outlines how scrutineers are appointed.

Section 28 – Conduct of scrutineers

Section 28 is intended to provide clarity as to the functions and powers of scrutineers.

Subsection 28(1) provides that a scrutineer may observe the preliminary scrutiny of declaration envelopes (refer section 29) and the counting of the ballot papers (refer section 30).

Subsection 28(2) provides that a scrutineer may countersign any seal, or place the scrutineer's own seal on any receptacle used for completed ballot papers. For example, the scrutineer could countersign the receptacle used to hold completed ballots after they are taken from the private mail box.

Subsection 28(3) provides that a scrutineer may bring to the attention of the returning officer any alleged irregularity in relation to:

- the issue of election papers;
- a decision by the returning officer to count, or not to count, a ballot paper; or
- the counting of votes.

Subsection 28(4) provides that a scrutineer must not engage in the following conduct:

- interrupt the counting and scrutiny of ballot papers without lawful reason – a lawful reason could include interrupting the scrutiny to inform the returning officer that an informal vote has been included in the count;
- disclose any knowledge acquired during scrutiny about the vote of a particular voter;
- fail to comply with any lawful request made by the returning officer;
- touch any election material; or
- act in a way that interferes with the proper conduct of the ballot.

If a scrutineer does engage in the conduct specified in subsection 28(4), the returning officer may exclude the scrutineer from the counting and scrutiny of the ballot papers (refer subsection 28(5)).

The returning officer must not delay any part of the preliminary scrutiny of declaration envelopes or counting of ballot papers solely because a scrutineer could not attend (refer subsection 28(6)).

Section 29 – Preliminary scrutiny of declaration envelopes

Section 29 specifies the process used by the returning officer to conduct a preliminary scrutiny of declaration envelopes, to ensure that only one vote is counted for each voter, and the circumstances in which the returning officer must disregard voters' ballot papers.

Subsection 29(2) provides that the preliminary scrutiny may commence before the ballot closes.

Subsection 29(4) provides where a voter has returned more than one ballot paper, the returning officer must count only one of the voter's ballot papers and must decide which ballot paper to count before opening the declaration envelope. Subsection 29(4) is intended to apply as follows: if the returning officer has received two declaration envelopes from a voter, and neither envelope has been opened, the returning officer must decide before opening the envelopes which of the received ballot papers is to be counted. If, however, the returning officer has already counted a vote from the voter and it subsequently comes to his/her attention that the voter has returned more than one declaration envelope, the returning officer must disregard the ballot paper contained in the second or later declaration envelope(s).

If the returning officer decides not to count a voter's ballot paper they must undertake the process outlined under subsection 29(5).

Section 30 – Counting of ballot papers

Removal of declaration section

Subsection 30(1) provides that the returning officer must remove the declaration made by the voter from the declaration envelope before opening the declaration envelope to count a ballot paper so the voter can no longer be identified.

Informal votes not to be counted

Subsection 30(2) specifies the types of informal votes which must not be counted.

Counting of votes

Subsections 30(3) to (8) sets out the process for counting vote by using an optional standard preferential system.

An optional standard preferential system gives greater flexibility to voters by allowing voters to either indicate their preference for the candidate of their first choice or mark a preference for all or some of the remaining candidates on the ballot paper.

A candidate will be elected as the staff-elected Director when he/she obtains an absolute majority of all votes counted (50% plus 1) (refer subsection 30(3)). If, after first preference votes have been counted no candidate has an absolute majority, the returning officer must exclude the candidate with the fewest number of first preference votes and distribute the excluded candidate's second preference votes to the remaining candidates, while discarding any ballot papers that do not show a second preference (refer to subsection 30(4)).

If after this process a candidate has an absolute majority of votes then the returning officer must declare the candidate to be elected. If no candidate has an absolute majority of votes, the returning officer will continue the above process until one candidate obtains an absolute majority of votes (refer subsection 30(5)).

Subsection 30(6) provides that if an excluded candidate's preference is for another excluded candidate, the returning officer must distribute the vote to the voter's next preference on their ballot (that is, a candidate which is still in the running to be elected as the staff-elected Director).

If two or more candidates receive the same number of votes, the returning officer must conduct a draw of lots and declare the candidate whose name is drawn first to be elected (refer subsection 30(7)).

The returning officer is required to give eligible voters reasonable notice of the time and place for the lot to be drawn. This will give the candidates and eligible voters the opportunity to attend the draw (refer subsection 30(8)).

Election material to be kept

Subsection 30(9) sets out how election material is to be kept after the counting of ballot papers.

Section 31 – Objectives to ballot papers

During the scrutiny process a scrutineer may object to the returning officer's decision to count or not to count a ballot paper under section 29 or 30. If a scrutineer objects the returning officer must reconsider their decision and decide whether to count or not count a ballot paper. Once the returning officer has made their decision they must

endorse their decision. No further objections may be made regarding their second decision.

Section 32 – Declaration of results

Subsection 32(1) provides that as soon as practicable after the ballot has closed, the returning officer is required to publish information mentioned in subsection 32(2) by giving written information to the Managing Director and either, placing information on the ABC's internal website or sending the information to each eligible voter by electronic means.

Subsection 32(2) sets out the type of information that needs to be covered, including detailed information about participation and the final result.

Part 7 – Disputes and irregularities

Section 33 – Dispute committee

Section 33 provides for the Minister to establish a dispute committee, which must be established no later than 14 days before the opening of a ballot. The Minister is required to appoint three people to be members of the committee. The returning officer for the election is not eligible to be appointed as a member of the dispute committee. In circumstances where the AEC or alternative provider is conducting the election, the Minister could consider whether the AEC or the different provider has suitably qualified people to be appointed as members of the dispute committee.

Section 34 – Application to dispute committee

Section 34 provides that a candidate at an election may dispute the validity of the election by written notice to the returning officer.

Subsection 34 (2) provides that the notice must:

- set out the grounds relied on to dispute the validity of the election. For example, timing requirements in the Regulations were not complied with resulting in ballot papers not being counted;
- be signed by the candidate giving the notice; and
- be given to the returning officer no later than 14 days after information mentioned in subsection 32(2) is placed on the ABC's internal website.

The candidate is also obligated to give a copy of the notice to the person declared to have been elected as the staff-elected Director, as soon as practicable, under subsection 34(3)).

It is the responsibility of the returning officer to forward the notice to the Minister. The Minister must refer the notice to the established dispute committee, unless the Minister considers the notice to be frivolous or vexatious (refer to subsections 34(4) and (5)).

Section 35 – Inquiry by dispute committee

Subsection 35(1) provides that if the Minister refers a notice to the dispute committee disputing the validity of an election, the committee must inquire into the validity of the election. If reasonably practicable, the committee must conclude the inquiry no later than 30 days after the Minister refers the notice to the committee (refer subsection 35(2)). It is intended that an inquiry should take no longer than 30 days to be concluded.

In carrying out its inquiry the committee is not bound by the rules of evidence and may inform itself in any manner the committee considers appropriate (refer subsection 35(3)). However, the committee is still required to afford due process, natural justice and procedural fairness to all parties of the dispute.

Subsection 35(4) provides that the committee must give the following persons an opportunity to make submissions or give evidence to the committee:

- the candidate disputing the validity of the election;
- the candidate declared to be elected at the election;
- the returning officer for the election; and
- any other person that the committee considers should be given the opportunity to make submissions or give evidence, such as other candidates and scrutineers.

Subsection 35(5) provides a list of activities the committee can perform during the inquiry. However, this list is not exhaustive. In particular the committee can:

- inquiry into the identity of voters at the election;
- inquire into whether a decision by the returning officer to count, or not count, a ballot paper was a proper decision; and
- grant leave to person mentioned in subsection 35(4) to inspect and make copies of: the roll of voters, any applications for replacement election material, and any other document used at or in relation to the election.

After the completion of the inquiry the committee must either confirm the election of the candidate declared by the returning officer to have been elected or declare a different candidate to be elected to be the staff-elected Director (refer subsection 35(6)). The decision of the majority of the committee members is the decision of the committee (refer subsection 35(7)).

Section 36 – Report on committee’s decision

Subsection 36(1) provides that the dispute committee must give a written report to the Minister and the Managing Director, not later than seven days after the dispute committee completes an inquiry. The report must set out the committee’s decision, the findings of the committee and the reasons for the findings.

In addition, the committee is required to publish a copy of its report on the ABC’s internal website or send a copy to each eligible voter by electronic means, no later than 30 days after it completes its inquiry. The purpose of distributing the report is to

ensure that all voters are informed of the outcome of the inquiry and reasons for the dispute committee's decision.

Section 37 – Effect of committee's decision

Section 37 sets out the effect of the committee's decision. If the dispute committee confirms the candidate declared by the returning officer to have been elected as the staff-elected Director, or declares a different candidate to be elected as the staff-elected Director, then that person is taken to be elected as the staff-elected Director.

Section 38 – Irregularities in conduct of election

Section 38 provides that the returning officer (before a candidate is declared elected) or the dispute committee may declare the election to be void, if they have reasonable grounds to believe there has been an irregularity in the conduct of the election. For example: tampering with votes or the secure mail box used to collect votes, or a scrutineer has attempted to bribe the returning officer. Subsection 38(4) provides that if an election is declared void, the Managing Director must make arrangements for another election to be conducted.

Subsection 38(3) provides that the returning officer and the dispute committee must not declare an election to be void if the only reason for declaring the election void is based on:

- an irregularity that did not affect the outcome of the election;
- an error or defect in an instrument, notice, statement or other document made under this Regulation; or
- an illegal action, other than bribery or corruption or attempted bribery or corruption, unless it is likely that the result of the election was affected by the action and it would be just to declare the election void.

For example, subsection 38(3) could apply in a situation where the returning officer or the dispute committee had reason to believe that a small percentage of election material containing ballot papers was not delivered to eligible voters. In these circumstances, the returning officer or the dispute committee must not declare the election to be void if the outcome of the election would not have been affected had the additional votes been received.

Part 8 – Consequential amendment and repeal

Section 39 – Consequential amendment

Section 39 provides that Schedule 1 of the Regulation amends the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 1976*. This is a technical amendment to update a reference (see Schedule 1 below).

Section 40 – Repeal

Section 40 repeals the 1991 *Australian Broadcasting Corporation (Election of staff-elected Director) Regulations*. The 1991 regulations have been impliedly repealed,

along with the former section under which they were made, but section 40 is intended to put this beyond doubt. Section 40 ceases to have effect on the day after this Regulation commences as if repealed by another legislative instrument.

Schedule 1 – Consequential amendment

Item 1 – Schedule 2, item 2

The previous position of the ABC staff-elected Director was abolished in 2006. On the 24 July 2012, the *National Broadcasting Legislation Amendment Act 2012* was passed which amended the membership of the ABC Board, by re-instating the position of the ABC staff-elected Director. As a consequence of this amendment, item 2 of Schedule 2 of the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 1976* was amended to refer to the new provision under the Act.