

Explanatory Statement

Issued by the authority of the Minister for Communications

Australian Broadcasting Corporation Act 1983

Australian Broadcasting Corporation (Election of Staff-elected Director) Regulations 2023

Authority

The *Australian Broadcasting Corporation Act 1983* (the Act) establishes the Australian Broadcasting Corporation (ABC) and its Board.

Subsection 83(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, 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.

Section 12 of the Act provides that the ABC Board includes a staff-elected Director. Subsection 13A(1) requires this Director to be elected in accordance with the procedures set out in regulations. The *Australian Broadcasting Corporation (Election of Staff-elected Director) Regulation 2012* (2012 Regulation) is due to sunset on 1 April 2024.

The Act does not impose any conditions that need to be satisfied before the power to make the Australian Broadcasting Corporation (Election of Staff-elected Director) Regulations 2023 (the 2023 Regulations) may be exercised.

Purpose

The purpose of the 2023 Regulations is to repeal and replace the 2012 Regulation. The 2023 Regulations largely replicate the 2012 Regulation to prescribe how the staff-elected Director is to be elected to the ABC Board. The instrument provides that an election of the staff-elected Director is generally conducted by the Australian Electoral Commission (AEC), and includes minor updates to centralise the administration of the election process and reduce administrative burdens. For example, eligible voters would be able to ask the AEC, rather than the ABC Managing Director, to view their details on the roll of voters.

Summary

The 2023 Regulations 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.

Under Part 3 of the instrument, a returning officer must be appointed for each election to make decisions relating to the proper conduct of the election. A roll of voters containing the relevant details of each eligible voter for an election must be prepared by the Managing Director and given to the AEC or an approved person under subsection 9(2), and the returning officer.

Nominations for candidates, and acceptance of nominations by the returning officer, are subject to Part 4 of this instrument.

Ballot papers for an election must comply with the requirements under Part 5 and must be dealt with by the returning officer under that Part.

Ballot papers must be counted and scrutineered according to Part 6. Under section 34, a scrutineer may in specified circumstances object to the counting, or otherwise, of a ballot paper. The returning officer must declare the election results in accordance with section 35.

Disputes over the validity of an election may be dealt with under Part 7 of this instrument. The Minister must establish a dispute committee under section 36 for each election. If the Minister refers a notice of dispute to the dispute committee, the committee must conduct an inquiry and report its decision to the Minister under Part 7.

The 2023 Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to the default sunseting requirements and disallowance. The 2023 Regulations commence the day after it is registered in the Federal Register of Legislation.

Details of the instrument are set out in [Attachment A](#).

Consultation

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts initially consulted with the ABC and AEC to determine whether the 2012 Regulation remained fit-for-purpose. Following this, the department worked with both organisations to develop the 2023 Regulations. The 2023 Regulations incorporate the ABC and AEC's views.

No Regulation Impact Analysis was required for the replacement instrument (reference number OIA23-05317).

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment B](#).

Details of the *Australian Broadcasting Corporation (Election of Staff-elected Director) Regulations 2023*

Part 1—Preliminary

Section 1 – Name

Section 1 provides that the title of the instrument is the *Australian Broadcasting Corporation (Election of Staff-elected Director) Regulations 2023* (the proposed Regulations).

Section 2 – Commencement

Section 2 provides for the whole of the instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3– Authority

Section 3 provides that the instrument is made under the *Australian Broadcasting Corporation Act 1983* (the Act).

Section 4 – Schedules

Section 4 provides that each instrument specified in the Schedule is amended or repealed as set out in the applicable item in the Schedule concerned, and that any other item in a Schedule to the instrument has effect according to its terms. There is only 1 Schedule, which repeals the *Australian Broadcasting Corporation (Election of Staff-elected Director) Regulation 2012*.

Section 5 – Purpose of this instrument

Section 5 explains that the instrument is made for the purposes of subsection 13A(1) of the Act and sets out how the staff-elected Director is to be elected.

Section 6 – Simplified outline of this instrument

Section 6 provides a summary of the instrument as an aid to readers.

Section 7 – Definitions

Section 7 provides for the definition of 9 key terms and includes a note reminding readers that there are some terms (including ‘Corporation’ and ‘Managing Director’) that are defined in the Act.

Part 2 – Notice and method of election

Section 8 – Notice of election

Section 8 provides that the Managing Director must notify the AEC if an election is to be held to fill a vacancy in the position of the staff-elected Director, and the timeframe of the notice: 12 months before an expected vacancy and as soon as practicable for an unexpected vacancy (e.g. in circumstances where there has been a resignation prior to the appointee's term expiring).

Section 9 – AEC generally to conduct elections

Subsection 9(1) provides that an election of the staff-elected Director is generally conducted by the AEC.

However, subsection 9(2) provides that if the AEC advises the Managing Director that the AEC is unable to conduct the election, the election is to be conducted by a person approved in writing by the Minister (an approved person). In approving a person under subsection 9(2), the Minister is expected to have regard to the status of the person under the *Privacy Act 1988*, to ensure that person is an entity regulated by that Act. This is because the approved person will receive the roll of voters under subsection 16(2), which will enable them to conduct a fair election.

If the AEC is to conduct the election, subsection 9(3) sets out the information publications requirements that must be met.

If the election is to be conducted by another approved person, subsection 9(4) sets out the information publications requirements that must be met.

Section 10 – Method of election

Section 10 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 11 – Appointment of returning officer

Section 11 provides that the AEC or an approved person (see section 9 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 a person is approved under subsection 9(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 12 – Powers and functions of returning officer

Section 12 explains that the returning officer can make any decisions 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. Decisions directed at ensuring the secrecy of the ballot or preventing/remedying election irregularities may affect a person's rights or interests, and those kinds of decisions fall within the jurisdiction of the dispute committee, established under section 36 of the proposed

Regulations. Under subsection 37(5), the dispute committee may take a written application from a candidate for election setting out the grounds to dispute the validity of an election. Part 7 of the proposed Regulations sets out the notice requirements and procedural requirements for a dispute committee inquiry, including the Minister's discretion to refer a dispute application to the dispute committee for inquiry. This represents a form of merits review.

Section 13 – Eligible voters

Section 13 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, which is consistent with subsection 13A(4) of the Act, and extends to include all employees of the ABC.

Section 14 – Roll of voters to be prepared and forwarded

Subsection 14(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 14(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 14(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 14 is a signpost to direct the reader to subsection 20(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 15 – Returning officer may request further information

Section 15 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. The Managing Director must give the further information to the returning officer (refer subsection 15(2)).

Section 16 – Provision of eligible voter's details on roll of voters

Under paragraph 16(1)(a), an eligible voter may, request the AEC to provide them with their name or address as they appear on the roll of voters. Such requests must be in writing and need to provide an avenue for a voter to check accuracy of the details. The AEC is required to respond to this type of request as soon as practicable (refer paragraph 16(1)(b)).

If the election is to be conducted by an approved person, subsection 16(2) outlines how an eligible voter may request to see their details on the roll of voters.

Under subsection 16(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 request the Managing Director to enter the correct name or address on the roll of voters. This request must be made no later than 8 days before the day on which the ballot closes (refer subsection 16(4)). This timeframe ensures that there is sufficient time to either amend the roll or notify the returning officer to amend the roll, if necessary.

A note accompanying section 16 informs the reader that section 25 sets out when the ballot closes.

Section 17 – Notification of alternate address

If an eligible voter is going to be absent from their usual address during the period the ballot is conducted, they may give written notice (in an approved form) to the Managing Director to send the election material to a different address. The election material will be sent to this new address (refer subsections 17(1) and 17(2)).

The Managing Director must notify the returning officer of the voter's alternate address immediately, and the returning officer must update the roll of voters to include the voter's alternate address and advise when the roll has been updated:

- for an election being conducted by the AEC – the AEC; or
- for an election being conducted by an approved person – the approved person.

Section 18 – Alteration of roll

Subsection 18(1) provides that the Managing Director may alter the roll of voters as necessary, before the roll closes, to maintain the roll's accuracy.

If the Managing Director considers that the name and address of an eligible voter needs to be amended on the roll up to 7 days before the roll closes, the Managing Director must notify the returning officer in writing immediately (refer subsection 18(2)).

Once the returning officer receives such a notice, they must:

- amend the roll accordingly;
- advise when the roll of voters has been so amended to the AEC, or the approved person under subsection 9(2); and
- and issue or reissue election material to the eligible voter, as soon as possible before the close of the ballot (refer subsection 18(3)).

Part 4 – Nominations and candidates' statements

Section 19 – Notice of invitation for nominations

Section 19 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 19(3) sets out minimum information that must be contained in a notice published under subsection 19(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 day for the opening and closing of nominations;
- state the time and day 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 day 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 20 – Lodgement of nominations

Section 20 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.

Section 21 – 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 subsection 21(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 subsection 21(3)).

However, the returning officer has the discretion under subsection 21(4) to refuse to publish a candidate’s statement if the statement does not comply with subsection 21(2) or the returning officer believes the statement is false or misleading in a material particular, or may be defamatory. Subsection 21(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. While subsection 21(4) may affect a person’s rights or interests, there is no merits review as the cost of providing for this would significantly outweigh the benefits and the decision is considered to have a relatively limited impact on the person, noting that the person can resubmit a statement for publication.

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 2 business days.

Candidates' statements must be published in the same order as the order of candidates on the ballot paper determined under section 26 (refer subsection 21(6)).

Section 22 – Acceptance of nominations

Subsection 22(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 paragraphs 22(1)(a) to (d) are satisfied.

If a nomination does not contain the information required under paragraph 22(1)(c), the returning officer must notify the nominee, and if practicable, give the nominee 7 days to meet the requirement. If this is not practicable the returning officer can reject the nomination (refer subsection 22(2)).

Section 23 – Withdrawal of nominations

Section 23 provides that a nominee may withdraw their nomination in an election of the staff-elected Director by following the processes outlined in subsections 23(1) and (2). Additionally, the person that witnesses a notice under paragraph 23(2)(b) does not need to be the same person that witnesses the nominee signing their nomination under paragraph 22(1)(d).

Subsection 23(3) provides that an eligible voter cannot withdraw their endorsement of a candidate 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 24 – Procedure on closure of nominations

If only 1 nominee is accepted by the returning officer as a candidate for election, the returning officer must declare the candidate elected, and give written notice to the Managing Director of the name of the person elected and place a copy of the notice on the internal website of the ABC (refer subsection 24(1)).

However, 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 and on receipt of such a notice, another election must be arranged as soon as practicable (refer subsections 24(2) and (3)).

If more than 1 nominee as a candidate for the election is received, the returning officer must conduct a ballot of the candidates in accordance with Part 5 (refer subsection 24(4)).

Part 5 – Ballot

Section 25 – Opening and closing of ballot

This section deals with the timing requirements for when the ballot for the election of the staff-elected Director opens and closes. It also provides that ballots received before the ballot opens and after the ballot closes must not be counted in the election.

Section 26 – Ballot papers

Subsection 26(1) specifies details about the ballot paper, its form and ordering for the names of the candidates (determined through a lot drawn and eligible voters can attend the draw (refer subsections 26(3) and (4)), the day on which the ballot opens and the day and time on which the ballot closes; and 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 26(2)) and the returning officer must authenticate each ballot paper before the ballot paper is distributed to an eligible voter (refer subsection 26(5)). The process of authentication could include initialling the ballot paper, a water mark or another form of authenticating mark. Electronic elections are not permitted in the instrument.

Section 27 – Printing and distribution of election material

Subsection 27(1) sets out a procedure for the printing and distribution of election material.

The returning officer is responsible for sending election material to the eligible voter's address as listed on the roll by prepaid post. The envelope containing the election material must bear printed instructions on what occurs if the material is not delivered to the addressee.

Section 28 – Replacement election material

Section 28 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 2 circumstances as set out in subsection 28(2):

- a written application has been received from an eligible voter, stating the eligible voter's full name and address, reasons for the application, a signed declaration that the eligible voter has not voted in the election; 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 28(3)).

Section 29 – Receipt of completed ballot papers

Section 29 outlines the process for returning ballot papers and specifies who can collect returned ballot papers.

Part 6 – Counting and scrutiny of ballot papers

Section 30 – Appointment of scrutineers

Section 30 provides that each candidate can appoint 1 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.

A scrutineer cannot be a candidate (refer subsection 30(2)) and there is a process for how scrutineers are appointed (refer subsection 30(3)).

Section 31 – Conduct of scrutineers

Section 31 provides clarity as to the functions and powers of scrutineers.

By subsection 31(1), a scrutineer is authorised to observe the preliminary scrutiny of declaration envelopes (refer section 32) and the counting of the ballot papers (refer section 33).

A scrutineer may countersign any seal, or place the scrutineer's own seal on any receptacle used for completed ballot papers (refer subsection 31(2)).

Additionally, 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 (refer subsection 31(3)).

A scrutineer is not permitted to engage in any of 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 (refer subsection 31(4)).

If a scrutineer does engage in the conduct specified in subsection 31(4), the returning officer may exclude the scrutineer from the counting and scrutiny of the ballot papers (refer subsection 31(5)). While subsection 31(5) may technically affect a person's (the scrutineer's) rights or interests, no merits review of the returning officer's decision is provided for, because the decision would operate for such a short period of time that its effect would be spent by the time a review was undertaken. In other words, there would not be any appropriate remedy that could be conferred by a merits reviewing body.

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 31(6)).

Section 32 – Preliminary scrutiny of declaration envelopes

Section 32 specifies the process used by the returning officer to conduct a preliminary scrutiny of declaration envelopes, to ensure that only 1 vote is counted for each voter, and the circumstances in which the returning officer must disregard voters' ballot papers.

Preliminary scrutiny may commence before the ballot closes (refer subsection 32(2)).

Subsection 32(3) provides that the returning officer must not count a voter's ballot paper if:

- the voter did not complete the declaration envelope; or
- the voter is not an eligible voter; or
- the returning officer is unable to find the voter on the roll of voters.

Subsection 32(4) provides where a voter has returned more than 1 ballot paper, the returning officer must not count any of the ballot papers returned by the voter. This rule is directed at ensuring the integrity of the voting process by preventing irregularities in voting.

If a ballot paper is not counted because of the rule under subsections 32(3) or (4), the returning officer must undertake the process outlined under subsection 32(5).

Section 33 – Counting of ballot papers

Section 33 sets out the requirements for preliminary handling of ballot papers, counting of ballot papers and how to deal with informal votes.

Subsection 33(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.

Subsection 33(2) specifies the types of informal votes which must not be counted.

Subsections 33(3) to (8) sets out the process for counting votes by using an optional standard preferential system. Such systems give 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.

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 1 candidate obtains an absolute majority of votes (refer subsection 33(5)).

Subsection 33(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 2 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 33(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 33(8)).

Election material must be kept after the counting of ballot papers (refer subsection 33(9)).

Section 34 – Objections to ballot papers

During the scrutiny process a scrutineer may object in the following circumstances:

- where a ballot paper is counted by the returning officer, but the scrutineer considers that the counting of the ballot paper under is precluded by either section 32 or 33;
- a ballot paper is not counted by the returning officer on the basis that section 32 or 33 precludes the ballot paper being counted, but the scrutineer considers that the counting of the ballot paper is not so precluded.

In cases where there is an objection, subsection 34(2) provides that the returning officer must decide whether to count or not count the ballot paper, and endorse the returning officer's decision. Ultimately, the decision of the returning officer to count or not count the ballot comes within the jurisdiction of the dispute committee (established under section 36). The committee is empowered to inquire these decisions of the returning officer and this represents a form of merits review. Please refer to subsection 38(5).

Section 35 – Declaration of results

Subsection 35(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 35(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 36 – Dispute committee

Section 36 provides for the Minister to establish, by written instrument, a dispute committee, which must be established no later than 14 days before the opening of a ballot. The instrument is not legislative. The Committee must be comprised of 3 members and 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 37 – Application to dispute committee

Section 37 provides that a candidate at an election may dispute the validity of the election by written notice to the returning officer. Subsection 37(2) provides that the notice must:

- set out the grounds relied on to dispute the validity of the election.;
- 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 35(2) is placed on the ABC's internal website.

The candidate must also 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 37(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 37(4) and (5)).

Section 38 – Inquiry by dispute committee

Subsection 38(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 38(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 38(3)). However, the committee is still required to afford due process, natural justice and procedural fairness to all parties of the dispute.

Subsection 38(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 38(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 38(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 38(6)). The decision of the majority of the committee members is the decision of the committee (refer subsection 38(7)).

Section 39 – Report on dispute committee's decision

Subsection 39(1) provides that the dispute committee must give a written report to the Minister and the Managing Director, not later than 7 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 40 – Effect of dispute committee's decision

Section 40 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 41 – Irregularities in conduct of election

Section 41 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 41(2) provides that if the dispute committee for an election has reasonable grounds to believe there has been an irregularity in the conduct of the election, the committee may declare the election to be void. However, subsection 41(3) provides that the committee cannot declare an election to be void only for the reason that there is an irregularity that did not affect the result of the election; or an error or defect in an instrument, notice, statement or other document made under this instrument; or an illegal action, other than bribery or corruption or attempted bribery or corruption.

There are constraints that will apply to the committee's declaration, and once a declaration has been made, the Managing Director is required under subsection 41(4) to make arrangements for another election to be conducted. Further, the declaration of an election as void would be the product of a comprehensive process of inquiry, involving resources and a range of persons and submissions, and it would be time-consuming and very costly to repeat on review. If review of the committee's declaration was undertaken, the nature of the review process would arguably be changed from the normal adjudicative decision-making process, to a greatly expanded and time-consuming one.

Subsection 41(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 these Regulations; 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.

Part 8 – Application, saving and transitional provisions

Section 42 – Saving provision

Section 42 is a savings provision and provides that despite the repeal of the 2012 Regulation (by Schedule 1 to the 2023 Regulations), the 2012 Regulation continues to apply in relation to an election for which a written notice of the election had been given to the AEC under section 5 of the 2012 Regulation prior to the commencement of the 2023 Regulations.

Schedule 1

This Schedule repeals the *Australian Broadcasting Corporation (Election of Staff-elected Director) Regulation 2012* in full.

Statement of Compatibility with Human Rights

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

Australian Broadcasting Corporation (Election of Staff-elected Director) Regulations 2023

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

Overview of the legislative instrument

Section 12 of the *Australian Broadcasting Corporation Act 1983* (the Act) provides that the Australian Broadcasting Corporation (ABC) Board includes a staff-elected Director. Subsection 13A(1) requires this Director to be elected in accordance with the procedures set out in regulations. The *Australian Broadcasting Corporation (Election of Staff-elected Director) Regulation 2012* (2012 Regulation) is due to sunset on 1 April 2024.

The *Australian Broadcasting Corporation (Election of Staff-elected Director) Regulations 2023* (2023 Regulations) repeal and replace the 2012 Regulation. The legislative instrument replicates the 2012 Regulation to prescribe how the staff-elected Director is elected to the ABC Board. Additionally, it provides that an election of the staff-elected Director is generally conducted by the Australian Electoral Commission (AEC), and includes minor updates to centralise the administration of the election process and reduce administrative burdens. For example, eligible voters can ask the AEC, rather than the ABC Managing Director, to view their details on the roll of voters.

The 2023 Regulations 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.

Under Part 3 of the instrument, a returning officer must be appointed for each election to make decisions relating to the proper conduct of the election. A roll of voters containing the relevant details of each eligible voter for an election must be prepared by the Managing Director and given to the AEC or a person approved in writing by the Minister, and the returning officer under Part 3.

Nominations for candidates, and acceptance of nominations by the returning officer, are subject to Part 4 of this instrument.

Ballot papers for an election must comply with the requirements under Part 5 and must be dealt with by the returning officer under that Part.

Ballot papers must be counted and scrutineered according to Part 6. Under section 34, a scrutineer may in specified circumstances object to the counting, or otherwise, of a ballot paper. The returning officer must declare the election results in accordance with section 35.

Disputes over the validity of an election may be dealt with under Part 7 of this instrument. The Minister must establish a dispute committee under section 36 for each election. If the Minister refers a notice of dispute to the dispute committee, the committee must conduct an inquiry and report its decision to the Minister under Part 7.

Human rights implications

The legislative instrument engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* (the ICCPR). Article 17 of the ICCPR provides that:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

An interference with the right to privacy includes collecting, using, storing, disclosing or publishing personal information. Under the 2023 Regulations, section 14 provides that the ABC Managing Director must prepare a roll of eligible voters for an election of the staff-elected Director, and give this roll to the:

- AEC, or the person approved in writing by the Minister under subsection 9(2) of the 2023 Regulations; and
- the returning officer for the election

A person is an eligible voter if they are an employee of the ABC, or if they are engaged to perform services for the ABC under the direction and control of the ABC Managing Director (i.e. contracted personnel) (refer section 13). The roll itself is required to contain the name and last known address of each eligible voter, and an eligible voter can request for their registered details to be amended if not accurate (refer sections 14 and 16).

The 2023 Regulations also provide that the ABC Managing Director, the AEC or the person approved by the Minister under subsection 9(2) can collect, record and publish personal information about the nominees (candidates) for the staff-elected Director position on the ABC Board (refer Part 4).

The right to privacy, however, may be limited in circumstances where interfering with the right is authorised by law and is not arbitrary. In order for the interference with privacy not to be 'arbitrary', the interference must be in accordance with the provisions, aims and objectives of the ICCPR, and should be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity.

Without the ability to publish the candidates' names and related statements, an open election could not be fairly or reasonably conducted. Also, without a central roll of voters (list of persons eligible to vote and their mailing address), it would not be possible to ensure that all persons entitled to vote, receive a ballot and opportunity to vote; the roll also assists minimise voter irregularities and advances the integrity of elections.

Both the ABC and the AEC are subject to *Privacy Act 1988* (Privacy Act). Where the Minister appoints a person under subsection 9(2) to conduct an election, the Minister is

expected to have regard to the status of the person under the Privacy Act, to ensure that they are an entity regulated by that Act. The AEC and the person approved by the Minister under subsection 9(2) may only use the roll information for the purposes of conducting an election under the 2023 Regulations and performing functions specified in the 2023 Regulations. The ABC, who holds the information in connection with its employment activities, uses the information contained in the roll for election (and other connected purposes).

Conclusion

The instrument is compatible with human rights. To the extent that the measures in the 2023 Regulations may limit the right to privacy, they are lawful and non-arbitrary. Additionally, any impacts are reasonable, necessary and proportionate.