

Australian content on SBS and related matters

Senate Environment and Communications References Committee:
Inquiry into Australian content on broadcast, radio and streaming services

The impact SBS has had on the Australian film and television community and culture cannot be underestimated.

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Inquiry into Australian content on broadcast, radio and streaming services

Save Our SBS Inc is the peak body for *supporters & friends of SBS* represented in all States and Territories and we welcome this opportunity to present our submission about Australian content on SBS and related matters.

Save Our SBS Inc

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Executive summary

Key points of this submission:-

- A 55% Australian content quota is legislated for commercial free-to-air television.
- No Australian content quota is set for SBS.
- SBS's Charter requires Australian content balanced with a degree of programs in languages other than English (LOTE).
- Excluding news/current affairs and sport, first-run Australian content accounts for about 7% of programs across all SBS television channels.
- Recommended in primetime for the main SBS channel: initially a 30% (later 55%) first run fully-funded Australian content quota (as defined in this submission), balanced with a separate LOTE free-to-air SBS channel so that SBS may present more Charter aligned content.
- Using Australian Bureau of Statistics (ABS) analysis of television production costs, total funding for SBS is grossly inadequate.
- Public funding for Australian content on SBS requires a significant boost.
- The reason for introducing advertising to SBS was to fund Australian content, however, revenues are, and historically have been, insufficient for SBS to adequately commission Australian content above an unacceptably low level.
- Fully-funded Australian content needs to replace advertising or the placement of it.
- Increase the Producer Offset for television drama and documentaries to 40%.
- The economic stimulus from increased Australian production will far exceed the known revenue loss by a factor greater than 6.
- Increased funding to SBS for NITV for Indigenous children's television will assist in closing the gap of the Aboriginal and Torres Strait Islander (ATSI) disadvantage.
- To match other operators, SBS digital services and PODcasts require funding.
- A production pool contribution from the Over The Top (OTT) streaming providers in support of the local industry and SBS is discussed.

SBS television

Currently SBS provides multiple television and radio via free-to-air and internet catch-up services.

First run Australian content¹ on SBS television has been extraordinarily low for years. In 2015 it was around 10%² and by 2017 had dropped to 7%³ of the television schedule. Much of the remainder is imported, a large proportion of which is in English.

Years ago, content on SBS television was also imported. Mostly it was ‘in-language’, in languages other than English (LOTE).

However, the SBS Charter at section 6 of the *Special Broadcasting Service Act 1991* (SBS Act), contains two competing – although with multi-channelling they ought to be complementary – components. One is to “inform, educate and entertain all Australians”; SBS has largely limited this to programs ‘predominantly in English’ (whether imported or Australian made). This is juxtaposed by a Charter requirement that programs must be presented “in their preferred languages”, i.e., in LOTE.

LOTE content is very low or often absent during SBS peak viewing periods.

The Charter talks about multilingual and multicultural services, linguistic and ethnic diversity, and diversity of other cultures in the development of Australian society.

NITV delivers television for Aboriginal and Torres Strait Islander communities which are also discussed in the Charter.

To satisfy the ‘Australian society’ aspects of the Charter, clearly a degree of Australian content is necessary on SBS. However, a quota for Australian content is not dictated and nothing in the SBS Act specifies a level of English language programs or LOTE content either. Both are needed for SBS to meet its Charter obligations.

By comparison, a 55% Australian content quota is required of commercial free-to-air television⁴. With few exceptions Australian content on commercial broadcasters is in English.

To truly fulfil its Charter obligations in the 21st century it would be entirely reasonable to expect, require and fund SBS to broadcast a quota of Australian content while specifying a quota of programs in LOTE (whether imported or local). Both need **not** be on the same channel.

With a fully-funded Australian content quota it would be feasible for SBS to dedicate one of its channels to broadcasting a very high level of Australian content (probably mainly in English).

To balance the two competing parts of the Charter referred to above – Australian programs and LOTE content – another channel could and ought to be established to broadcast a very high proportion of programs in LOTE (most of which might be imported content). Two such channels would satisfy differing components of the Charter.

SBS recommended “a fully-funded Australian content quota for [the] SBS main channel, to deliver more SBS Charter aligned content to the community, and support the Australian screen industry”⁵.

Given the very low LOTE content in primetime across SBS TV networks, an Australian content quota (on one SBS channel) without a high LOTE content (on another SBS channel) would undermine the Charter. One without the other would skew Charter outcomes.

BASIC RECOMMENDATION

- **A fully-funded Australian content quota for the main SBS channel; and**
- **A LOTE channel requirement on another SBS free-to-air channel.**

What is Australian content?

For the purposes of this discussion:-

RECOMMENDED DEFINITION & OBJECTIVE

For SBS, ‘Australian content’ ought to be defined as ‘a program produced under the creative control of Australians’, requiring that SBS broadcast–

- **a very high proportion of Australian drama programs; and**
- **a high proportion of Australian documentary programs; and**
- **a lower proportion of other Australian programs; however**
- **news and sporting programs ought not be included in the quota count.**

The main purpose of arguing in favour of an SBS Australian content quota is to significantly increase Australian drama and documentary content on SBS – to facilitate SBS meeting its Charter obligations – while not ending up with an artificially inflated news and sport presence (passed off as ‘cheaper’ Australian content), thus bypassing the principal purpose.

Save Our SBS supports local news and sports programs on SBS however that is a topic for another discussion.

For SBS, we do not recommend a points system⁶ as is used in the content quota standard for commercial television under the *Broadcasting Services Act 1992* (BS Act).

The need for Australian content on SBS

SBS’s Charter obligates it “reflect Australia’s multicultural society”. That requirement dictates that a level of Australian content is required. That this is a “principal function” of the Charter strongly implies that the actual level ought to be high or very high.

Since its inception SBS has consistently pointed its objective to ‘increasing social cohesion’ and this is stated in its Corporate Plan⁷. Australians telling our stories about our experiences and our diverse culture is a strong means to achieve the stated requirements.

However, in respect of SBS television and despite its obligations, one may be forgiven for thinking that Australians view the world through English or American eyes; that their cultures are ours. This contradiction is largely a consequence of inadequate funding and apparently Anglo-oriented decision makers in SBS preferring high UK and USA content.

SBS’s principal function – to reflect Australian society and its objective to increase social cohesion – cannot be achieved without Australian content.

Australians like to see Australia and those that live here – our diverse culture – on screen.

When we portray our lives, we enrich and reaffirm or question our values and our culture. All this helps build a cohesive and inclusive society. As such, an investment in Australian productions on SBS would be an investment in the future of a socially inclusive and cohesive society.

A LOTE channel to balance Charter obligations

In addition to Australian content, the Charter obligates that as far as practicable programs be “in their preferred languages”. Although SBS Radio very successfully achieves this with its ‘in-language’ programs, SBS television does not.

A large portion of SBS viewers yearn for SBS to re-introduce a channel with a high LOTE content. This could be in addition to existing SBS channels.

With nearly half of all Australians born overseas⁸, it is absurd that SBS does not devote an entire free-to-air television channel to LOTE programming. Such is well within SBS’s remit and a “principal function” of its Charter.

In 2017 over a one-week period, 1,176 SBS viewers from all Australian states and territories participated in a comprehensive national study answering some 47 questions about SBS. The study found that the two most wanted television programs on SBS in peak viewing periods were foreign language movies (subtitled) 77%, and foreign language series (subtitled) 58%. Some 71% of those surveyed said they wanted SBS to establish a new free-to-air channel in which a very high proportion of primetime and other programs would be exclusively or predominantly in LOTE⁹.

LOTE via SBS On Demand fails to fill the void of a fully-fledged LOTE free-to-air channel.

SBS states its [main] channel is programmed for “broad, general appeal”¹⁰, while VICELAND is for a younger audience, ‘foodies’ turn to The Food Network, and Indigenous programming is on NITV. The content is largely in English especially during peak viewing. Imported news in LOTE is relegated to morning TV¹¹. Occasionally another LOTE program appears in the schedule. However, audiences seeking general LOTE television content in peak viewing are more or less ignored on SBS free-to-air compared to former years.

Many of these viewers do not and will not use SBS On Demand¹² nor were they subscribed to the SBS World Movies pay channel. Their only option is free-to-air.

Since the closure of the World Movies channel¹³, there is no LOTE liner TV service. With 59% of TV viewing (higher in older ages) watched on free-to-air¹⁴, there is good reason for SBS to create a LOTE free-to-air channel and not relegate LOTE content primarily to On Demand, possibly discriminating against older, ethnic, and interested Anglo demographics.

In 2016, the ABC’s *4 Corners* program broadcast Marcel Mettelsiefen’s documentary titled *Children on the Frontline: Escape from Aleppo*¹⁵. It was in LOTE. Arguably and by comparison, this type of program – all in LOTE – may once have been on SBS. However, with

few exceptions¹⁶ SBS all but avoids 100% LOTE programs during the prime 8:30pm time slot. That fact is a fundamental departure of the principle upon which SBS was established. This basic multilingual principle of the Charter cannot be abdicated from free-to-air and passed off as if to apply primarily to online only, especially given Australia's multilingual makeup.

Clearly there is a need for an SBS LOTE free-to-air television channel.

Now with the advent of multi-channelling, it is incongruous that no such channel exists on Australia's national multicultural/multilingual broadcaster.

Indigenous children's TV

A simple scan of the Australian media landscape will reveal that children's television of, for, and by Australia's First Peoples younger generation, is very low. A dramatic boost in funds earmarked for NITV is overdue. NITV is the obvious choice to develop Indigenous children's TV.

Funding NITV will assist it in creating entertaining and educational children's and youth content. This will help in closing the gap of the Aboriginal and Torres Strait Islander (ATSI) disadvantage; such being a broad policy of government¹⁷.

The Royal Commission into Aboriginal Deaths in Custody recommended that ATSI media organisations should receive adequate funding, where necessary, in recognition of the importance of their function¹⁸. Such would require increased funding directed to NITV, as it is such media. Additional monies ought to be appropriated to SBS for this purpose.

Children need stories to anchor, nourish and direct them. To be effective these stories need to have meaning to the child. The children of Australia's First Peoples need stories of Indigenous culture. Australia's First Peoples in the past obtained education from dreaming or creation stories. These oral myths contain stories about ethics, country, tool use, food sources, survival, healing, punishment, a sense of belonging, trade and travel. It is imperative with the loss of many languages already, that the remaining stories about Country are sensitively recorded now before more creation stories are lost. Investment in broadcasting and continuing the oral tradition is vital. Many children, teenagers and their parents are dealing with displacement and despair. A failure to reflect all aspects of Australia and the failure to invest properly in television for children is a loss for us all.

RECOMMENDATION

A public broadcasters children's television fund be setup for financing children's programs.

Quotas

For SBS television to truly meet its Charter obligations in contemporary Australia and in the age of multi-channelling, ideally SBS would have–

- one channel with a significant proportion of Australian content, all of which would be fully-funded and free from advertisements; and
- another SBS channel programmed predominantly in LOTE (without in-program commercial break disruptions); and
- a third channel focussed on Indigenous issues; and
- multiple other services, including on-line, as needed to build an inclusive cohesive society.

Financing the above ideal would be very costly.

In 2012 the *Convergence Review* recommended a 27.5% Australian content quota for SBS's main channel¹⁹. In 2017, SBS suggested 30% in peak viewing periods²⁰, for the main channel²¹. The rationale for a 27.5% quota (instead of the 55% quota requirement of the free-to-air commercial networks) was in recognition that SBS must, by the nature of its Charter, also import programs to satisfy its multilingual (LOTE) obligations.

However, much of the research and preparation for the *Convergence Review* began at a time when SBS effectively had one full time channel²² and SBS-TWO coming into its own with imported news in LOTE morning and all afternoon, and up to 66% of primetime made up of quality imported LOTE programs^{23, 24}. NITV did not commence under the auspices of SBS until after the *Review*. The Food Network and VICELAND were even later. In the review period with fewer channels, SBS had more LOTE content in peak viewing than now.

The need to devote a free-to-air LOTE channel is now greater than ever before.

Whilst there is a need to drastically increase Australian content, there is also a need to significantly boost LOTE programming on free-to-air primetime on SBS.

While SBS has expanded its free-to-air service, it has simultaneously reduced the time devoted to LOTE content in primetime, 6pm to 12midnight.

Now with multi-channelling, it is possible to fulfil both aspects of the Charter – high Australian content, and high LOTE content – on different channels.

Save Our SBS therefore advises the following as a bare minimum to improve Charter outcomes in a meaningful way (Save Our SBS commentary in brackets):-

ANNUAL PROGRAM QUOTA RECOMMENDATIONS FOR SBS

- | | |
|---|---|
| 1) SBS-TV – the main SBS channel: | In primetime 30%* minimum fully-funded first run ‘Australian content’ as defined herein ^{>} , and over a period of time expanding to 55% (presumably most of which would be in English as determined by SBS).
* excluding news/current affairs and sport
> predominantly drama and documentaries |
| 2) LOTE-TV – another SBS channel: | In primetime 85%# minimum LOTE ⁻ content, with not less than 65%^ at all other times (presumably most of which would be foreign language imported programs as determined by SBS).
excluding news and sport programs in LOTE
- all LOTE content to be subtitled in English
^ including news and sport programs in LOTE |
| 3) NITV – existing SBS channel: | Fully-funded increased Indigenous children’s content. |
| 4) Other SBS free-to-air channels: | No quotas specified (determined by SBS). |
| 5) SBS On Demand: | A reflection of that above (determined by SBS). |

Primetime is 6pm to 12midnight. 30% is 1.8 hours, and 55% is 3.3 hours of primetime.

An alternative to regulating a quota of Australian content would be to legislate a specified portion of monies appropriated to SBS be invested in commissioning Australian content.

There is no Australian content quota requirement, nor a financial obligation placed on the Over The Top (OTT) services (Netflix, etc) to fund any Australian content. Other nations set content quotas and/or require financial ‘industry’ input to advance their cultural identity and enhance local film and television industries. In Europe the local minimum content quota for the OTT services is 30% and higher in some European countries like in France where it is 60%²⁵. As mentioned earlier, for Australian commercial free-to-air television it is 55%.

A set percentage content quota for a linear broadcaster converts to a known number of transmission hours for that quota. However, if a set percentage of Australian content were required of an OTT, the actual hours of Australian content for each non-linear OTT would be highly variable according to the changing size of the OTT library. Nevertheless, scope exists for each OTT to contribute to the Australian film and television industry via a set financial spend (a percentage of program costs invested in local production) and/or contributing to an industry-wide production pool (see the *Funding* section of this submission).

Tax offsets

SBS does not pay tax but the production houses from whom SBS commissions content do.

MINIMUM RECOMMENDATION

Increase the Producer Offset for television drama and documentaries to 40% (from the current 20%).

In 2015, Screen Producers Australia (SPA) commissioned a joint report with the Australian Subscription Television & Radio Association (ASTRA) provided by PwC. As a result of this analysis, SPA reported that: “doubling the Producer Offset from 20% to 40% would cost the Commonwealth a maximum of \$15.5 million in foregone tax revenue, but would generate an additional \$119.4 million in economic activity, making the overall economy better off by more than \$103 million”²⁶.

A 40% Producer Offset for television would:-

1. match the level already provided for feature films;
2. increase Australian screen content;
3. lead to a stronger Australian television production sector, and new television production jobs;
4. reduce filtering and assessment of projects to a single process undertaken by the commissioning broadcaster.

SBS also supports increasing the Producer Offset for television drama and documentaries to 40%²⁷.

Whilst a 40% tax offset would achieve the four points above, an even greater level of screen content – that being the principal purpose – could be achieved if a modified version of the original 10BA (150% tax concession) were re-introduced applicable to all productions screened, irrespective of the medium.

Tax concessions under 10BA were gradually reduced over many years until it was replaced by the Producer Offset in 2007. 10BA ended in 2009.

A plethora of Australian content was produced from 1981 under 10BA. That is no longer the case.

The problem with 10BA was that there was no requirement to have the production screened²⁸. A modified version of 10BA (with a very high tax concession) could address that in determining a concession rate. Screened productions stimulate the economy.

The fact remains, if government is genuine about enabling the Australian film and television and industries to flourish, a very much higher tax offset/concession is required than currently is the case.

Funding

Regardless of whether or not an Australian content quota is set for the OTT outlets, foreign OTTs will continue to benefit overseas companies and shareholders. Given the wide fluctuating variance of library hours in regulating a set percentage content quota for the OTTs (see earlier discussion), it would not be unreasonable if the OTTs were required to contribute a set amount to a 'production pool' from which Australian productions may be commissioned. Such ought to be seriously considered and could be part of their contribution to Australian society and our television industry.

In an agreement between the Canadian government and Netflix, the OTT will invest US\$400,000,000 over five years in original Canadian productions²⁹. The Canadian Netflix production arrangement will be ongoing. Netflix and the public broadcaster, the Canadian Broadcasting Corporation (CBC) have worked on co-productions. The Creative Canada POLICY FRAMEWORK³⁰ of the Canadian government set the structure to support local Canadian production and the POLICY will ultimately benefit Canadians.

There is no similar Australian policy but in the right framework, a government policy brokered with the OTT outlets could establish a funding production pool for local production directly or indirectly remunerating SBS commissioned content.

Historically, Screen Australia notionally allocated 40% of its *broadcast program* for SBS projects^{31, 32}. A policy of a guaranteed set quota would be helpful.

Other countries fund their film and television industries via levies, such as taking a fraction of the cost of a cinema ticket, video or game sale, to raise funds to distribute for investment in local production^{33, 34}. There may be merit in examining such an approach for Australia.

Australian quotas – and LOTE quotas – ought to be specified by legislation, and all Australian content commissioned or produced by SBS, needs to be fully-funded.

RECOMMENDATION

Australian content on SBS ought to be fully-funded from—

- **government appropriations; and**
- **Screen Australia, and possibly a public broadcasters children's television fund; and potentially**
- **a production pool financed by the OTTs, and small levies from cinema ticket sales, etc.**

What does 'fully-funded' mean?

Fully-funded content means that all the costs incurred to make or acquire an Australian program are fully paid for from the public purse.

Costs

Drama is the most expensive form of television to produce. Research undertaken by the Australian Bureau of Statistics (ABS) found that the average cost of Australian made drama in 2015-16 was \$645,700 per hour³⁵.

Based on ABS figures, if SBS were to fill 30% of its airtime with first run Australian drama on its main channel, the cost would be some \$1,696,899,600 per year³⁶.

Save Our SBS understands that SBS have commissioned programs below the ABS averages.

If the only source of financing Australian content were from advertising revenues, then the average cost of first run Australian content across all genres (including news/current affairs and sport) in 2016-17 would have been \$42,782 per hour. This is calculated from the total Australian first run 24-hour content across of all genres on SBS, VICELAND, NITV, and the Food Network in the SBS Annual Report 2017³⁷ totalling 2,176 hours 10 minutes 22 seconds, and the SBS advertising revenue of \$93.1m in FY16/17 (see Option 1 in the *Advertising* section of this submission). If news/current affairs and sport were removed from this equation, then the average cost per hour of all other first run Australian content on SBS (612 hours 01 minutes 26 seconds) would have been \$152,118 per hour.

It should be pointed out that these are averages and that drama programs are the most expensive to make and would be far greater than the hourly costs above. The SBS Annual Report 2017 informs that Australian drama accounts for about 2% of the SBS schedule.

This submission argues that local drama ought to be significantly increased on SBS.

Financing productions from base government funding (appropriations) and other sources, e.g., Screen Australia, and state/territory film funding bodies, may not be considered in the dollar figures above.

Nevertheless, the cost of the proposed fully-funded Australian content quota, with the emphasis on drama, of this submission and increased funding for NITV children's television would be significantly higher than at present.

It is unclear if SBS has reciprocal arrangements to sell commissioned content to the overseas broadcasters and distributors from whom SBS obtains imported content. If not, it ought to.

Imported content is one-tenth to one-fifteenth cheaper than local content³⁸ (SBS Managing Director, 2017).

Therefore, the cost of a LOTE channel could be funded by usual government appropriations with very limited advertising strictly restricted to before and after programs only – on that LOTE channel – like SBS used to be (see Option 2 in the *Advertising* section).

Advertising

Before advertising was legislated for SBS in 1991, it was permitted under Ministerial discretion only which rarely occurred. The Minister exercised his discretion before the 1991 legislation, in a quasi-trial period, to see how SBS would present advertising and gauge public reaction. In the trial period, SBS screened advertisements before and after programs (top and tail) only. Programs were not disrupted for commercial breaks and this presentation style appeared to calm public objection to advertising on the public broadcaster.

The stated principle in the debate for legislating advertising was to enable SBS to make more Australian content.

Many years later, multiple commercial breaks interrupt all programs in the same style and presentation as commercial television and Australian content remains very low.

There are three options that address advertising in this submission.

Option 1 discussion

Advertising revenues fluctuate and with each new network or platform, total commercial revenue has grown. SBS annual reports for “rendering of services”, i.e., revenue from: advertising and sponsorship, pay TV subscriptions, production services, (in some years Commonwealth TV Black Spot program), in FY16/17 was \$106.719m³⁹ of which \$93.1m may be attributed to advertising and sponsorship revenues⁴⁰. Commissioned programs – at cost in 2017 was \$97.8m⁴¹. SBS do not report network or platform breakdowns of ad revenues.

Nevertheless, it is clear that SBS advertising revenues are grossly inadequate to sustain commissioning anything like the quotas proposed.

Revenue raised by SBS from advertising falls far short of that required to adequately make Australian content consistent with the obligations that the Charter imposes on SBS to “inform, educate and entertain all Australians” and “reflect Australia’s multicultural society”.

However, there is no community appetite to increase advertising on SBS.

Not only did the commercial broadcasters lobby against increased advertising on SBS⁴² but there was massive objection from SBS viewers to a Bill to double the hourly advertising limit in 2015⁴³. 62,000 petitioners opposed that Bill⁴⁴, and in 2017, 10,000 viewers’ directly emailed politicians also opposing a similar Bill⁴⁵. Both Bills failed to become law. The government has since dropped the policy to raise the hourly SBS advertising limit⁴⁶ and discharged the Bill from the Notice Paper⁴⁷. No one wants more advertising on SBS.

Since advertising was introduced in 1991, SBS has directed all advertising revenue to program making and the commissioning of programs from independent Australian filmmakers⁴⁸ (SBS Managing Director, 2006).

In 1988, *The Review of National Broadcasting Policy* recommended that SBS be opened to commercial advertising to enable it to commission major local quality productions^{49, 50}. It was then estimated that if SBS had obtained an extra \$73.04m – slightly more than double its then budget – it would then have been able to make Australian programs to the same level as for commercial television⁵¹. In December 1991, SBS was corporatised and advertising introduced as the means to fund Australian content^{52, 53, 54, 55, 56} with government appropriations guaranteeing all other aspects of SBS’s operation⁵⁷. Initial advertising revenue was low and grew to \$19m by 1999⁵⁸.

Interestingly, the 1991 Hansard notes scepticism from major advertising agencies, that—
advertising ‘will never cover the [full] cost of local production’⁵⁹.

Many years later, it is safe to say, those forecasts have proved true.

Given that advertising was introduced to SBS for the funding of Australian content, yet advertising revenues have consistently been insufficient to adequately fulfil that purpose, it is now time that Australian content was fully-funded, and as a logical step – based on the principle for which advertising was introduced – cease all advertising on SBS.

OPTION 1: REPEAL SECTIONS 45 & 45A OF THE SBS ACT WITH THE TEXT BELOW IN A NEW SECTION 45B

SBS shall not transmit commercial advertisements on any of its services.

Option 2 discussion

In three separate studies^{60, 61, 62} of three different cohorts of SBS viewers nationally (2008 n=1,733; 2013 n=2,044; 2017 n=1,176), totalling 4,953 viewers, 96.70% (in 2013) and 94.24% (in 2017) said that—

in-program commercial breaks [on SBS] are an impediment to the viewing experience.

Additionally, 76.80% (in 2013) and 76.65% (in 2017) thought that—

SBS is now subject to commercial influence or interference.

Furthermore, 96.30% (in 2008), 93.40% (in 2013) and 91.60% (in 2017) viewers said it was—

important or very important to remove in-program commercial breaks on SBS.

SBS is now up against the OTTs, the ABC, and other outlets who do not disrupt programs.

Clearly there is a strong desire and need to remove in-program commercial intrusion on the nation’s public broadcaster. In an age of multi-channelling it is unthinkable that such is not the case on at least one – if not all – of the SBS channels. In 2017, 77.5% of SBS viewers⁶³ said they wanted that to occur on a LOTE channel if one were created.

Of the 4,953 SBS viewers studied, upon reading the Charter, 72.60% (in 2008), 72.10% (in 2013) and 72.74% (in 2017) said—

***SBS is less faithful to the Charter since it introduced in-program advertising*^{64, 65, 66}.**

The replication findings of the three different cohorts is not surprising considering the Department of Communications (the Lewis review) linked advertising with–

risks to the amount of Charter-related content . . .

shifting the focus from viewer to advertiser creating–

***. . . a greater pressure on SBS management to consider the trade-off of delivering on commercial expectations, against delivering those functions described in the SBS Charter*⁶⁷.**

Such is also consistent with a BBC study of public broadcasters carried out by McKinsey and Co in 19 countries, including Australia, which concluded–

***dependence on advertising has led inexorably to a more populist and less distinctive schedule*⁶⁸.**

Prior to late 2006, advertising was limited to between programs only on SBS, except in sport.

The change in policy – to insert multiple commercial breaks in every program – did not see the expected increase in Australian content⁶⁹.

The unlegislated policy change – to interrupt every program for advertisements – was and remains the subject of massive community concern and objection:

***. . . it would be unlikely that any audience would welcome any changes or the introduction of advertising of this type*⁷⁰ (SBS Managing Director, 2006).**

In 2007 many thousands of viewers petitioned against the change⁷¹ with thousands also emailing politicians seeking more funding for SBS and an amendment in the law to end disruptions into programs on SBS-TV⁷². Additionally, more than one-thousand people made considered public submissions to the Department of Broadband Communications & Digital Economy in the *ABC SBS Review*. Of those that commented on SBS only, almost all asked government to legislate to prohibit SBS interrupting programs for commercial breaks⁷³. In 2010, more than 15,400 people had directly asked their MPs and Senators to free SBS from advertising and to amend the legislation accordingly⁷⁴. The nation-wide surveys of SBS viewers in 2008, 2013, and 2017 all recorded strong opposition to in-program advertising by SBS^{75, 76, 77}. The issue has not ameliorated.

Upon the introduction of in-program advertisements the then Shadow Minister said, it–

serves to erode the fundamental tenets of public broadcasting⁷⁸,

and later the Minister said, it amounted to–

reinterpreting the clause in the Act that refers to ‘natural program breaks’⁷⁹.

Although section 45(2)(a) of the SBS Act provides for SBS to broadcast advertisements “**before programs commence, after programs end or during natural program breaks**” the Act does not define ‘natural program breaks’ but when the Act was passed, the definition was understood. It was self-explanatory, articulated by the legislators consistent with community expectations^{80, 81, 82}.

In 2008, SBS provided evidence to a Senate Committee that it had ‘forced’ about 6,000 commercial breaks over a 12-month period⁸³ – where no natural break existed – into programs delivered in unbroken format, e.g., in movies, BBC, and other programs from non-commercial broadcasters. This blunt practice is ongoing and apparent to most viewers.

Repeatedly viewers of SBS have overwhelmingly said–

most in-program advertising breaks [on SBS] look forced or artificially contrived and it would be misleading to describe these as natural program breaks^{84, 85}

(91.7% of 2,044 SBS viewers in 2013, and 91.0% of 1,176 SBS viewers in 2017).

In the 1991 Bill that legislated advertising on SBS, the Government and Opposition (House of Representatives, Senate, and Committees) all agreed on the same meaning of natural program breaks AND that advertisements would only ever be between programs – not in them – except in sport⁸⁶. The relevant text from the Hansard is quoted below:-

- ***half-time in a soccer match ... in effect what will happen is that advertising will top and tail programs***⁸⁷ (Mr SMITH Liberal).
- ***natural program breaks, one would think that it is not too difficult to identify ... clearly the half-time break in football and other sporting programs is a fairly common occurrence. The topping and tailing of programs so that good quality films are not massacred by advertisements is something that most people will readily identify with and recognise the breach of very quickly***⁸⁸ (Sen ALSTON Liberal).
- ***natural program breaks will be so unobtrusive on audiences as to be almost undetectable***⁸⁹ (Sen COLLINS Labor).
- ***advertisement–at the beginning and the end of the sponsored program. In that way the viewers were not disturbed and were not constantly interrupted, as is the case on some of the commercial television programs***⁹⁰ (Mr LEE Labor).

- ***let us not try to get the advertising revenue that will make the SBS another commercial channel. If we do, again, that will change its character, and I do not think that is really what we are about***⁹¹ (Mr SINCLAIR National).

Considering all the evidence, if a definition had been placed into the Act, arguably it could have been that below which we **urge** should the parliament ignore options 1 and 3 deciding to retain advertising on SBS (regardless of if there is a change in Australian content).

OPTION 2: INSERT THE TEXT BELOW INTO SECTION 3 OF THE SBS ACT

natural program breaks means the break that occurs between the end of one program and the start of the next program, and the natural-break-in-play of a sporting event where audiences miss none of the play, for example, half time in a soccer match.

SBS data points to a drop in advertising revenues of 44%⁹² to 64%^{93, 94, 95} under this model. However, the economic stimulus of increased fully-funded Australian production could potentially outweigh any drop in advertising revenues. This option removes the loophole exploited by SBS since late 2006 to interrupt all programs for commercial breaks, mimicking commercial TV. The proposed definition is consistent with former and current community expectations of what a 'natural program break' actually means and should mean for SBS.

Option 2 is compliant with the principle articulated by the legislators in their understanding and intention that advertisements would be positioned before or after programs only, except in sport on SBS.

Option 3 discussion

A third option is that described by 95.69% of SBS viewers nationally, 'in the event that in-program advertising remains on SBS: limit the number of commercial breaks to **not more than one in every program** (as well as the break between programs)⁹⁶. This 'modernising' approach would retain a high degree⁹⁷ of SBS own source funding while addressing viewer concerns regarding the number and frequency of disruptive in-program breaks.

OPTION 3: REPEAL SECTION 45(2)(a) OF THE SBS ACT WITH THE TEXT BELOW

that run during periods before programs commence, after programs end and in not more one commercial break during a program; and

SBS a facilitator of Australian content: a former model

SBS independent (SBSi) operated as a commissioning house for SBS⁹⁸. It was abolished by SBS with the introduction of in-program advertising just over a decade ago.

In adopting a more commercial outlook, the broadcaster believed it would be able to commission more content with more direct influence in the commissioned content than had occurred through SBSi.

The principal function of SBSi was to commission independently produced content from local film and television makers, which reflected Australia's cultural diversity and it made a significant contribution to the mainstream representation of cultural diversity in Australia. Content was consistent with SBS's Charter.

From 1994 and the following 12 years, SBSi commissioned over 800 feature films, short films, documentaries, and television series, including comedy, lifestyle, drama and documentary series from independent Australian filmmakers, many of whom came from non-English speaking and Indigenous backgrounds. SBSi titles won more than 450 national and international awards⁹⁹.

SBSi was responsible for and co-funded many Australian great cinema release movies, benefiting first television rights with repeats for SBS.

Productions such as *After Mabo*, *Australian Rules*, *Beneath Clouds*, *Bran Nue Dae*, *Jewboy*, *Mallboy*, *Nijinsky*, *Ten Canoes*, and *Wilfred*^{100, 101} to name a few, might never have been made if it were not for SBSi.

Many Australian movies that had international acclaim and won prestigious awards would not exist if it were not for SBSi.

Floating Life (Fu sheng) and *La Spagnola* were two ground-breaking films co-financed through SBSi and spoken in LOTE^{102, 103}.

La Spagnola, commissioned by SBSi, was a one of the Australian Film Commission's Million Dollar Movies Accord¹⁰⁴. It was one of five films made under this initiative and was the most successful in sales. Spoken in Spanish and subtitled in English, it was nominated for eleven AFI awards¹⁰⁵ and sold to multiple territories by Fortissimo¹⁰⁶, one of the most prestigious international sales agents at that time.

One of the motivating factors in financing *La Spagnola* was that Spanish is the second most spoken language in the world¹⁰⁷.

Floating Life (Fu sheng) was in English, Cantonese and German with English subtitles^{108, 109}.

Funds were appropriated for SBSi and this helped foster the Australian film and television industry. When SBSi put its name to a production, it not only caused other potential producers to 'come on board', but at times meant SBS benefited financially.

During its history, hundreds of independent film makers and television producers were paid for their work because of SBSi. In the decade since SBSi was closed, a fraction of that number have been fortunate enough to gain financially from the current arrangement. The current model does not appear to value independent film makers. Various production houses are the current revolving beneficiaries.

Consideration to a fully-funded SBSi type unit within SBS ought to be fully investigated.

The cultural worth of Australian productions on SBS: drawing on the past to develop the future

SBS was once seen internationally as a distinguished broadcaster committed to cutting-edge television. It was bold and brave in commissioning works by inexperienced and early career filmmakers mainly from non-English speaking and Indigenous backgrounds.

Meeting a Charter obligation to use "innovative forms of expression", SBS provided a vehicle with which to foster and build the grassroots for the industry by supporting fresh and new talent. Programs such as *Eat Carpet*¹¹⁰, in an hour-long episode may have had up to a dozen short films shot by amateur directors or film students¹¹¹. SBS no longer favours short films.

Partnering with organisations like the Australian Film Commission and Film Financing Corporation, SBS fostered new talent through low budget feature films initiatives: documentaries, short films and animations.

For example, *Harvie Krumpet* was one such animation that went on to win the Oscar Award for best animation¹¹².

Contemporary series like *The Mosque Next Door* and *Sunshine* told stories of communities; Australian communities bringing their lot to the entire nation. While *Go Back To Where You Came From* presented the struggle of arriving in, and becoming an Australian. All of these

programs help to build an inclusive, socially cohesive society with each unique community gaining a better understanding of the other.

SBS is a significant cultural institution whose role promotes Australia through its commissioned work both locally and in the global film and television markets.

Over the years SBS has been responsible for fostering new talent and multicultural programs that have helped to give Australia international recognition assisting filmmakers, producers, directors, actors, writers, engineers, technicians, crew members, and others.

The impact SBS has had on the Australian film and television community and culture cannot be underestimated.

It was our premiere cultural institution for film and television in building and reflecting the nation's psyche; it needs to be so once again. In 2018 and beyond, this requires investment in local talent and greater risk taking with increased Australian content that is fully-funded.

The digital space, radio, streaming and PODcasts

In 2012 SBS altered the method by which SBS Radio determines the program grid¹¹³. Since then, time made available to any particular language is based on Census data of languages spoken in the community and the needs of one language over another. Save Our SBS supports this methodology^{114, 115}.

An issue facing SBS was how to allocate time to some 70 languages within a limited and set number of total hours available across the AM and FM networks in an SBS Radio transmission day. Linking language selection to Census data, assists scheduling under the constraints of a specified number of transmission hours. However, by virtue of the maths, some languages will always miss out following analysis of the Census data.

If SBS were funded in the digital radio space, it would be able to expand the total number of languages – to include those that fail to fit into the AM-FM radio schedule grid – so those languages may only stream live or be heard via Play On Demand (POD casts).

The alternative, to increase SBS AM and FM stations remains a technical challenge in a tight spectrum environment. Splitting DAB channels may be an option.

The downloading of PODcasts is a growing means of listening to radio programs, especially amongst younger audiences.

Radio documentaries – in English and LOTE – are an area that SBS could develop if it were funded for this purpose.

Radio documentaries are another means in which SBS may assist in building a socially cohesive and inclusive society.

The preservation and expansion of various Indigenous languages on radio (via live streaming and POD) is an area that SBS could engage in, with increased funds.

Radio documentaries that inform educate and reflect the lives of disabled communities is another area that SBS could build (via live streaming and POD) if funds were increased.

SBS is financially disadvantaged compared to other PODcasters. However, increased funding would certainly overcome that by enabling SBS to produce more radio PODcasts.

RECOMMENDATION

Increased funding ought to be made available to SBS to expand its digital radio, streaming and PODcasts so it may increase the number of community language radio programs and develop radio documentaries in English and LOTE.

SBS is needed

The most recent data¹¹⁶ available, shows that of 1,176 people surveyed nationally in 2017:-

- **94% say that SBS is very important to them.**
- **87% would be very concerned if SBS were merged with another broadcaster.**
- **94% want the Australian government to invest a significantly greater portion of funding in SBS as security in a socially cohesive multicultural society.**

Conclusion

Without a doubt SBS is needed, and plays an important role in the diversity of Australia's media landscape. Despite this, SBS remains **the** one broadcaster with the least income.

Governments may boast of SBS, but the truth is it has never been funded to the level necessary to perform all the functions expected of it or carry out services to the full extent that consumers want, need, and expect – for which the entire community would benefit.

By any measure SBS is very, very underfunded.

Based on ABS findings for the average production costs of Australian television drama and current SBS advertising revenues, income from advertising is about 1/20th of that required if SBS were to schedule 30% first run Australian drama, and far short of that needed for SBS to achieve half the Australian content regulated for commercial free-to-air television.

The 1988 idea, that SBS should be permitted to carry advertising – in order to make Australian content to the **same** level as commercial television – has never come to fruition. On current forecasts, it never will. Advertising appears not to be the dream once envisaged. The menace of disruptive commercial breaks has failed to bring benefits to the level sought. It is time this destructive practice and questionable funding model for a public broadcaster was overturned.

It may be easy to forget that SBS is a public broadcaster. It ought to be seen as such.

The only means by which SBS will ever achieve even a moderate increase in Australian content is if the commissioning of such content is fully-funded from the public purse in place of advertising as outlined, via option 1, 2 or 3 in the *Advertising* section of this submission.

Additionally, to achieve more Charter aligned content, a quota of Australian and LOTE content on separate SBS channels is strongly recommended as submitted.

The role of SBS in furthering Indigenous children's television, SBS PODcasts, commissioning and acquiring TV content are all worthy of full support. These require funding at significantly greater levels than currently apply.

To do nothing ought not be a choice.

Parliamentarians need to take note of how strongly SBS is cherished, its intrinsic value, its contribution, and potential – *if only it were fully-funded* – to foster our multicultural and linguistic identities, build and maintain a cohesive society without the contentious reliance on advertising apparent over the past 11 years especially.

APPENDIX 1

Terms of Reference

Senate Environment and Communications References Committee:

*Inquiry into Australian content on broadcast, radio and streaming services*¹¹⁷.

TERMS OF REFERENCE

The economic and cultural value of Australian content on broadcast, radio and streaming services, with particular reference to:

- a) the current state and operation of the market for Australian television and music industry, including competition issues relating to the relative market power of producers and broadcasters for traditional, streaming and catch up viewing;
- b) the contribution the Australian television and music industries make to the economy;
- c) the value and importance of:
 - i. local content requirements for television, radio and streaming services in Australia, and
 - ii. Australian children's television and children's content;
- d) related inquiries including:
 - i. recent international reviews and reports, in particular, from the United Kingdom and Canada, and
 - ii. submissions made to:
 - A) the House of Representatives Standing Committee on Communications and the Arts inquiry into factors contributing to the growth and sustainability of the Australian film and television industry; and
 - (B) the Australian and Children's Content Review, undertaken by the Department of Communications and the Arts, the Australian Communications and Media Authority and Screen Australia; and
- e) any other related matters.

Notes & References:

This submission may be published at:-

<https://saveoursbs.org/wp-content/uploads/2018/02/Australian-content-on-SBS-and-related-matters.pdf>

¹ Unless indicated, Australian content refers to first run Australian drama, documentaries and other genres, excluding news and sport.

² Evidence of SBS Managing Director, Mr Michael Ebeid to Senate Estimates (Environment and Communications Legislation Committee), Parliament of Australia, Canberra, 24 February 2015, page 72, Mr Ebeid: "only about 10 per cent of our schedule is Australian content", <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F1ecd1680-d38d-414e-8d96-1b0268357cc3%2F0006%22>

³ SBS, *Annual Report 2017*, page 119, 120, 121 [SBS 2.7% + VICELAND 1.4% + NITV 2.2% + FOOD NETWORK 0.92% = 7.22% = 1.7 hours per day], http://media.sbs.com.au/home/upload_media/site_20_rand_224099426_sbs_annual_report_2017.pdf

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and via On Demand <https://www.sbs.com.au/yourlanguage/video/672841283513/Adam-Looking-For-Eve-Germany-S1-Ep1>

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- ⁹³ Based on SBS answers to Senate Questions on Notice (referenced in the two following endnotes below) and calculated as follows:-
- In 2008: $\$29.39m/\$50.2m \times 100 = 58\%$ potential loss calculated by SBS if advertisements were screened between programs only versus in them.
 - In 2008: $\$35.72/\$50.2m \times 100 = 71\%$ potential loss calculated by SBS if advertisements were screened between programs only versus in them.
 - In 2010: $\$36m/\$56m \times 100 = 64\%$ potential loss calculated by SBS if advertisements were screened between programs only versus in them.
- Therefore $58\% + 71\% + 64\% = 193\% / 3 = 64\%$ average potential loss.
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