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Committee Secretary
Senate Standing Committees on Environment and Communications
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**Submission to the Committee on the
Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013**

Save Our SBS Inc reviewed the *Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013* for the sections that deal with SBS only.

We support the appointment of an Indigenous Director to the SBS Board, and the general notion that what SBS does on their broadcast services (free-to-air) it ought to be able to do on their digital media services (on-line). However, we have serious concerns at **47** (Advertising and sponsorship—digital media services), which disregards ongoing community concerns on SBS advertising matters by allowing SBS digital to carry advertising however without the constraints that apply to SBS advertising on free-to-air services - and without any consumer complaint provisions for on-line advertising matters. **47** would effectively allow SBS to side step ACMA on advertising matters on-line.

Our review of the SBS sections in the Bill is detailed below.

Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013

15 is okay.

16 is okay.

17 is okay.

36 is okay.

37 is okay.

38 may be **problematic** at s3A(c) and (d).

SBS radio and television is streamed, however (c) would exclude that from being subject to the provision of 38.

39 is okay.

40 may be **problematic**.

Instead of requiring the free-to-air SBS Charter requirements at s6(2)(g) and (h) be carried over to on-line and digital services programs, 40 excludes and therefore effectively exempts that in digital release programs only. As a consequence, should a program be 'played' on SBS digital media services *only* - unlike free-to-air - SBS's on-line and digital services would not be required to be "diverse" nor "reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression" beyond the generality of the other Charter provisions.

41 is okay.

42 is okay.

43 is okay.

44 is okay.

45 is okay.

46 is okay.

47 is **not** okay.

Under 47, SBS could run an unlimited number of advertisements on its digital media outlets. Whilst this might not be of concern for small ads around text on static web pages, it will be a problem for consumers of SBS online radio and TV programs, the 'on-demand' services. Unlike broadcast services (at s45 of the SBS Act), there will be no time nor placement restrictions of advertising in programs on digital media services, such as those streamed over the internet. Under 47, SBS would be permitted to stream a TV program on-line with a greater duration of advertisements and more disruptions than does commercial TV. This directly opposes ongoing community concerns of SBS advertising (disruptive in-program breaks etc). Through legislation, this would take SBS digital closer to commercial broadcasting than SBS broadcast services.

Furthermore, there is no complaints mechanism under 47, such as requiring that on-line advertising be subject to a Code of Practice. The Bill has transposed a deficiency of the (existing) SBS Act to 47. That deficiency allowed SBS to remove from their Codes the criteria for the placement of advertising within programs (natural program breaks) with the advent of in-program advertising in late 2006, effectively preventing ACMA from considering complaints in that matter. SBS was able to do that as s45(4) and (5) of the SBS Act places a requirement on the Board to develop advertising guidelines but no obligation to include those in their Codes. ACMA only has jurisdiction over Codes, not guidelines. 47 provides that advertising on SBS's digital media services fall under guidelines developed by the SBS Board (no community consultation is required). Instead of repeating the deficiency in the Act, it would have made better sense if the Bill had required that SBS include in its Codes any advertising guidelines of the Board. (Pre-2006 SBS did that voluntarily).

Due to the Bill not requiring that advertising guidelines fall under the SBS Codes of Practice, there is no consequence if SBS fail to adhere to their own advertising guidelines. However, whilst the SBS Act provides for guidelines on the kinds and placement of advertising, the Bill only requires the Board address the kinds of advertising on digital media services. Both ought to be included.

As long as the SBS advertising guidelines are not required to form part of the Codes, the SBS audience will have no avenue, no right to lodge a formal complaint to SBS under the Codes and ACMA will be prevented from investigating or resolving such consumer concerns. The obvious solution would be to require that all advertising guidelines be included in the SBS Codes of Practice. Far from addressing convergence concerns, 47 does the opposite.

Despite the above, a far better approach would have been if the Bill had restricted SBS from interrupting any programs for advertisements on all SBS services. That would address the increasing community concerns in this matter.

48 is okay.

Steve Aujard
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Save Our SBS Inc