

Non-government Senators Dissenting Report

1.1 Non-government Senators are deeply concerned that the Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015 stands in direct contradiction to the Prime Minister's promise, given on the night before the 2013 federal election, that there would be 'no cuts to education, no cuts to health, no change to pensions, no change to the GST and no cuts to the ABC or SBS'.¹ Non-government Senators are persuaded that the bill is little more than a legislative mechanism to break that promise.

1.2 The 2014–15 budget included cuts to SBS of \$53.7 million. This bill seeks to make up for \$28.5 million of these cuts. Whether the bill passes or not, there can be no dispute that the government has broken its promise of no cuts to SBS.

1.3 In its submission to the inquiry, SBS admitted that the subject of this bill equates to a budget cut at the hands of the Abbott Government:

As a result of the Lewis Efficiency Study, Minister Turnbull announced further cuts to SBS's funding in November 2014. Of the **cuts**, \$25.2 million was based on back office efficiencies that SBS was already working towards. A further \$28.5 million was predicated on successful legislative amendment to the SBS Act, which would provide SBS with additional advertising and sponsorship flexibility and allow SBS to deliver this portion of the funding cut via a modest annual revenue increase. The total finding cut of \$53.7 million over five years from 2014–15 has already been reflected in forward estimates.²

1.4 While FECCA supported the Bill, Ms Eugenia Grammatikakis outlined the conflict this presented:

We have found ourselves between a rock and a hard place given the current situation. On principle FECCA would not wish to see increased advertising on SBS; however, we are concerned that if this bill does pass or does not pass it could mean cuts to programs, to services and to opportunities to invest in additional initiatives that we believe could benefit our multicultural and multilingual Australian community.³

1.5 This bill is an attempt by the Government to make the Parliament complicit in the breaking of a clear promise from the Prime Minister to the Australian people that there would be no cuts to SBS. Non-government Senators will have no part in this.

1.6 Non-government Senators note the majority conclusion fails to reflect the concerns raised by witnesses and outlined in the body of the same report.

1 This concrete commitment was made on the night before the election in an interview with Anton Enus on SBS World News.

2 SBS, *Submission 7*, p. 2.

3 Ms Eugenia Grammatikakis, Senior Deputy Chair, Federation of Ethnic Communities' Councils of Australia, *Committee Hansard*, 18 May 2015, p. 1.

1.7 Free TV and Save our SBS contended that the passage of this bill would equate to the creation of a fourth commercial television network by stealth.

1.8 The committee also heard that the Bill would mean advertising on SBS during prime time could equal or exceed that allowed on commercial networks:

It is important to note that when moving from five minutes in prime time to 10 minutes in prime time the restriction on commercial free-to-air broadcasters is 13 minutes of prime time. But that 13 minutes includes promos and station IDs, whereas the 10 minutes for the SBS does not. It means that in terms of what you would see if you were a viewer, flicking from one channel to another, you are not going to see anything different. It is going to look exactly the same.⁴

1.9 Witnesses voiced concerns that an effective doubling of the amount of advertising permitted on SBS during prime time hours could lead SBS to neglect its charter obligations and commission programming of a more commercial nature in order to attract ratings and advertising dollars.

SBS will be significantly diverted from its primary function: its charter prescribed by section 6 of the SBS Act. That evidence is reputable both local and international research that cannot be disputed. Even the Lewis review said, 'there will be greater pressure on SBS management to consider the trade-off of delivering on commercial expectations, against delivering those functions described in the SBS charter'.⁵

1.10 Save our SBS also raised concerns with the treatment of product placement:

In a discussion about product placement the explanatory memorandum to the bill states the guidelines would be included in the SBS Codes of Practice. The department's writ also said the same: the product placement guidelines would be included in the SBS Codes of Practice. However, the bill has been so poorly drafted that it places no such requirement on SBS to include any aspect of product placement in the SBS codes. The bill merely requires that the SBS board develop and publish their guidelines about product placement.

If the rules on product placement are not in the SBS codes of practice, any guidelines become a meaningless document in a dispute lodged to the industry regulator, the Australian Communications and Media Authority—for example, where a viewer wishes to pursue a breach by SBS of the product placement guidelines.⁶

1.11 Free TV testified that the passage of the Bill represented a threat to commercial broadcasters' revenues:

Free TV is strongly opposed to the bill because it enables SBS to make up cuts in government funding by competing with commercial free-to-air

4 Ms Julie Flynn, Chief Executive Office, Free TV, *Committee Hansard*, 18 May 2015, p. 21.

5 Mr Steve Aujard, President, Save our SBS Inc, *Committee Hansard*, 18 May 2015, p. 9.

6 Mr Steve Aujard, President, Save our SBS Inc, *Committee Hansard*, 18 May 2015, p. 10.

broadcasters for revenue from a finite advertising pie. It is wrong in principle for privately funded broadcasters to have to subsidise a government funded broadcaster.⁷

1.12 Free TV also contended that this loss of revenue could have a negative impact on the Australian screen industry if declining revenues force broadcasters to make difficult budgetary decisions:

In practice, it will potentially have a serious impact on our broadcasters' ability to continue to fund expensive Australian content.⁸

1.13 Non-government Senators note there is significant disagreement between unreleased Government/SBS modelling that predicts a return to SBS of \$28.5 million (equivalent to the SBS budget cut) should this bill pass, and Free TV modelling that predicts a return of \$148 million over four years.

1.14 Non-government Senators also note that stakeholder consultation has been insufficient:

There had been some conversations, but we certainly had not been consulted on the likely proposal and we certainly had not been asked about the impact on us as key stakeholders.⁹

1.15 Non-government Senators have been persuaded that the risks to SBS charter obligations, editorial independence, the Australian screen industry and commercial network revenues are significant if the Bill is to pass.

Recommendation 1

1.16 That the Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015 not be passed.

Senator Anne Urquhart
Deputy Chair
Labor Senator for Tasmania

Senator the Hon Lisa Singh
Labor Senator for Tasmania

Senator Scott Ludlam
Australian Greens Senator for Western Australia

7 Ms Julie Flynn, Chief Executive Office, Free TV, *Committee Hansard*, 18 May 2015, p. 19.

8 Ms Julie Flynn, Chief Executive Office, Free TV, *Committee Hansard*, 18 May 2015, p. 19.

9 Ms Bridget Fair, Head of Regulatory and Business Affairs, Seven Network, *Committee Hansard*, 18 May 2015, p.20.

