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TO the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

SECURING PUBLIC FUNDING TO SUPPORT SBS INDEPENDENCE

a submission

by
Save Our SBS Inc

to the

REVIEW OF OPTIONS TO SUPPORT THE INDEPENDENCE OF THE NATIONAL BROADCASTERS¹

31 August 2023

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REVIEW OBJECTIVES

1. To ensure that the ABC and SBS have Funding Security
2. To ensure the independence of the ABC and SBS Boards

Reform of both funding and governance arrangements should aim to provide greater certainty that a potentially future hostile government cannot reduce promised funding to the ABC or SBS during a funding cycle.

The current ability of a government to interfere in the ABC and SBS board appointments and funding diminishes the capacity of those organisations to provide their mandated services, during a 5-year funding cycle.

Why Save Our SBS supports the Review Objectives

Serious risks are created by inaction

- The serious negative consequences of government inaction regarding funding certainty and governance independence have been thoroughly researched and documented in Australia and in other countries.
- Lack of funding security impacts directly the capacity of SBS to fulfil its legislated objectives.
- Lack of independence from government interference in funding and governance has serious consequences for the institution itself and for Australia's democracy generally.

Risks created by funding uncertainty and political interference in SBS governance

- **Politicisation** of appointments can undermine the performance of important institutions; actual or perceived politicisation can compromise the independence of key institutions.
- Political appointments can **create a culture of patronage**.
- Ministerial discretion without transparency creates **suspicion and distrust**².

What the Albanese Labor government has done to address these objectives

- **Changed the funding model** from a three year cycle to five years.
- **Returned annual inflation indexing**.
- **Instigated this review** into the ABC and SBS funding and independence via the Department.

What overseas governments have done to address these objectives

There should be no reason why the Australian Government cannot replicate the achievements of other countries. The governments of the **UK, Canada** and **New Zealand** have taken comprehensive and effective measures to address funding uncertainty and institutional independence. Among other things, they have:

- **Established a Governance Code** that clearly sets out the recruitment process (UK)
- The appointments system is **overseen by an independent Public Appointments Commissioner** (UK)
- Senior public **appointments are advertised**, with **selection criteria** and the appointments **process published** (Canada)
- **Appointments are advertised and assessed by relevant department** (NZ)
- **Departments seek applications from other agencies** (NZ)

Review objective 1

PROVIDE GREATER CERTAINTY FOR ANNOUNCED FUNDING

Under the current funding arrangements for the ABC and SBS, announced funding is not protected by legislation or any other framework. Successive governments have relied on convention to maintain funding at the level announced over the course of the funding period, whether for 3-year terms or 5-year terms (*‘Review of options to support the independence of the national broadcasters. Public consultation paper July 2023’*).

Save Our SBS believes that the current arrangements regarding funding remain open to political interference which, particularly in the case of a government hostile to SBS, could prevent it from carrying out the functions and delivering the services specified under the *Special Broadcasting Service Act 1991* (SBS Act). Save Our SBS therefore believes reforms are required.

Save Our SBS recommends the following reforms:

1. **Key reforms must be legislated** to achieve greater certainty of 5-year funding terms and disempower politically-motivated interference by a Prime Minister or a Minister.
2. **Legislate 5-year funding terms.** Amend the SBS Act to state that base funding must be provided on a 5-year basis.
3. **Legislate for a neutral body to set funding amounts.** Amend the SBS Act to provide for the Minister to determine SBS funding for the next 5-years via a legislative instrument (for example, a Determination Instrument) with the 5-year funding amounts to be set by a politically non-aligned body, such as a new statutory authority or Parliamentary committee.
4. **Legislate for a public review prior to the end of each 5-year funding period**, with submissions considered by government to help inform the next 5-year funding arrangements³.

5. **Legislate for a non-compulsory ‘emergency’ or ‘special’ funding review after three years** that can be instituted under specific conditions:
 - a. if SBS requests a one-off, non-ongoing funding in addition to its announced five-year funding;
 - b. if exceptional financial circumstances arise (for example, a natural emergency or an emergency military situation) – subject to the following:
 - i. **For a government to cut funding it must publish financial evidence and justification** in claiming that a reduction to announced funding is necessary for the final two years of the funding cycle;
 - ii. The government’s evidence for its **claim for a reduction in announced funding must be audited** by a reputable and politically unaligned body;
 - iii. **Legislation must be in place which prohibits political interference by a minister in the above auditing processes.**

Review objective 2

ENSURE THE INDEPENDENCE OF THE ABC AND SBS BOARDS

Democracy and governmental effectiveness are undermined whenever the public has grounds to suspect that ministers make decisions in secret and/or fail to justify decisions that override expert advice, side-step established processes or appear not to have been made in the national interest.

The current situation described below regarding determining appointment selection criteria, short-listing of nominations and a final choice of candidates for SBS board positions, **can and often has resulted in the erosion of public trust in a Government and Australia’s system of government.**

- Australian governments use a variety of processes to select and appoint candidates to various boards. However, **existing selection processes lack transparency.**
- **Formal recommendations for appointments can be overruled** or disregarded by a prime minister or a minister who can do so without public knowledge or scrutiny.
- When **political influence of this kind is made known, Australians’ trust in our parliamentary system and democracy is diminished** or lost.

Save Our SBS believes that to protect SBS from political interference, **reforms are required.**

Save Our SBS recommends the following reforms:

1. **Legislate to create separate nomination panels for the ABC and for SBS.** The current nominations panel makes board position recommendations for both the ABC and SBS, although each public broadcaster has a different mandate.
2. **Legislate for an accountable and transparent process - including consulting with advocacy bodies such as Save Our SBS, other bodies, and peak multicultural organisations, to:**
 - a. **form a nominations panel** and determine **the criteria it uses** to make appointment recommendations;
 - b. **ensure that the reasons why appointees have been selected for board positions are published** in clear, plain language in the mainstream and community language media.

3. **Legislate to prohibit over-riding recommendations or selections by a prime minister, minister, or any person or group under a minister's direction (including any 'senior political staff member' or the Secretary of the Prime Minister & Cabinet) from being appointed to or making appointments to, a nominations panel, or for a board position short list made by an SBS nominations panel⁴.**
4. **Candidates for board positions to be selected from a list compiled by a reputable and politically non-aligned independent recruitment agency** (for an example of how an institution, the Administrative Affairs Tribunal, has been subject to political bias refer to Endnotes ⁵ and ⁶).
5. **The criteria used by such a recruitment agency for assessing, short-listing and selecting candidates must be published** and open to discussion in public and parliamentary forums well before candidate selection takes place (for example, three months before board appointments are made).
6. **Candidates for SBS board appointments must demonstrate that they can bring skills, knowledge and experience in the field of multicultural media communications**, which will be of benefit to SBS.
7. **Candidates for appointments to the SBS board must be able to demonstrate their active commitment to the Nolan Principles:** selflessness, integrity, objectivity and accountability, openness, honesty and leadership⁷.
8. **Mandate at least one staff-elected appointment to the SBS Board** (as is required of the ABC).
9. **Mandate that a minimum of 50% of SBS Board members and the proposed SBS Nominations Panel comprise people from a Non-English-Speaking Background (NESB) or Culturally And Linguistically Diverse (CALD) community**, and who have actively participated in sustained activity within an NESB and/or CALD community and/or organisation. (NOTE: This excludes the current mandated positions for an indigenous representative).

PUBLICATION

<https://www.infrastructure.gov.au>

<https://saveoursbs.org/archives/8106>

<https://saveoursbs.org/wp-content/uploads/2023/08/securing-public-funding-to-support-sbs-independence.pdf>

ENDNOTES

¹ *Review of options to support the national broadcasters' independence*, DITRDCA - 2023

<https://www.infrastructure.gov.au/have-your-say/review-options-support-national-broadcasters-independence>

² Under federal criminal law, there are three main offences that relate to misuse of public office.

Bribery can be punished by up to 10 years in prison but requires proof that the official acted dishonestly and with the intention of abusing their power.

Fraud can also be punished by up to 10 years in prison but requires proof of deception.

Abuse of public office – intentionally and dishonestly using information/influence/conduct to benefit/harm someone – can attract 5 years in prison, but again requires proving intentions. (*A New Politics*, the Grattan Institute - July 2022)

<https://grattan.edu.au/wp-content/uploads/2022/07/New-politics-A-better-process-for-public-appointments.pdf>

³ **The UK** has a particularly sophisticated system for making public appointments. Ministers in the UK retain the power to make public appointments, but these are made in accordance with long-established merit-based principles (the 'Nolan Principles') and a **Governance Code that clearly sets out the recruitment process**.

The UK's **appointments system is overseen by an independent Public Appointments Commissioner**, who also audits compliance with the code.⁹¹ This process ensures that candidates must go through a merit-based process before being selected by the minister. Consequently, the UK has very low rates of politicised appointments.⁹²

Canada has a central system where **senior public appointments are advertised, and the selection criteria and appointments process are published**. Final appointments are also subject to parliamentary scrutiny.⁹³ Some Canadian provinces have gone further. In Nova Scotia, for example, legislative committees have the power to veto ministerial appointments.⁹⁴

The **New Zealand** process involves greater transparency but no additional oversight. **Appointments are advertised by the relevant department. Departments assess applicants and seek additional politically unaligned advice.** (*A New Politics*, the Grattan Institute - July 2022)

⁴ **'Senior political staff member'** has been defined by legislative instrument (Attachment A) *Australian Broadcasting Corporation (Definition of senior political staff member) Instrument 2014* – see pages 11-12 at:

<https://www.infrastructure.gov.au/sites/default/files/appointment-to-abc-and-sbs-board--information-about-the-appointment-process.docx>

⁵ **The Administrative Appeals Tribunal (AAT)** is an independent expert body that plays a critical role in government accountability and access to justice. Members of the public can ask the AAT to review a government decision that affects them. The independence of the AAT is therefore critical to upholding public trust and confidence in government decision-making. (*A New Politics*, the Grattan Institute - July 2022)

⁶ **As an example of how governments can and do politicise institutions**, there are currently 320 members of the AAT. Of these 70, or 22 per cent, have been found to have direct political affiliation. Documents obtained through FOI requests show on at least one occasion that after the Attorney-General's department received the AAT President's recommendations, the Attorney-General's office recommended 19 additional appointments. 10 of these recommendations (53 per cent) had a direct political affiliation with the governing party of the day and 3 had other personal connections to that party. (*A New Politics*, the Grattan Institute - July 2022)

⁷ **The Nolan Principles** <https://www.good-governance.org.uk/publications/insights/the-nolan-principles> define the ethical standards that should apply to people in public office.

- **Selflessness:** Holders of public office should act solely in terms of the public interest.
- **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity:** Holders of public office must act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** Holders of public office are accountable to the public for their decisions and actions, and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** Holders of public office should be truthful.
- **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.