

**SUBMISSION TO THE DEPARTMENT OF INFRASTRUCTURE, TRANSPORT, REGIONAL DEVELOPMENT,
COMMUNICATIONS AND THE ARTS**

REVIEW OF OPTIONS TO SUPPORT THE INDEPENDENCE OF THE NATIONAL BROADCASTERS

SEPTEMBER 2023

KEY POINTS

- The stability and independence of the Special Broadcasting Service (**SBS**) are critical foundations to the vital role SBS plays in meeting the diverse communications needs of Australians, and its role in supporting a democratic society.
- To a significant degree, the existing legislative arrangements which safeguard the editorial independence of SBS have provided an adequate protective framework. However, there are a number of areas where the ABC and SBS are subject to different levels of oversight in their operations. As part of this review, the SBS operational framework should be harmonised with that of the ABC, to further support SBS's independence and safeguard against any potential political interference.
- While there are established processes regarding funding arrangements and the appointment of SBS Board members, SBS welcomes proposals to further safeguard these processes against political interference. These two aspects of SBS operations and governance are the areas most susceptible to the risk of political interference.
- SBS therefore welcomes the Government's commitment to consider these risks and assess measures to mitigate them.
- In assessing proposals to safeguard SBS's stability and independence, care must be taken to ensure that any additional measures achieve their stated aims, and do not have the unintended consequence of imposing additional regulatory or reporting burdens, or indeed inadvertently impinging on the independence and integrity of SBS.
- In terms of funding certainty, SBS would welcome the formalising of five-year funding arrangements into legislation, together with arrangements to assist in the forward-visibility of funding envelopes and safeguards to protect against any reduction in funding during each quinquennium.
- The certainty provided by five-year funding should also be accompanied by the ability for SBS to seek additional funding within quinquennial terms, given the rapid pace of change in the media sector and within SBS's diverse Australian audiences.
- Certainty and stability are also most effectively assured through the provision of base funding. Whilst terminating funding is appropriate in certain, limited circumstances, it is critical that operational functions are fully supported by base funding.
- With regard to governance arrangements, the existing framework for the appointment of Board members is largely effective, but could be further enhanced to support SBS's governance needs.
- The formalisation of a process through which SBS develops a skills matrix for the selection of new Board members would be a significant and effective enhancement to the existing process, and would ensure the specific governance needs of SBS at any particular time are appropriately communicated and considered.

- Further enhancements relating to selection criteria, and the appointment of Nomination Panel members, are also recommended.

I. INTRODUCTION

SBS appreciates the opportunity to respond to the Review of options to support the national broadcasters' independence (the **Review**) by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. SBS welcomes the Government's commitment to exploring ways to improve funding certainty, and optimise the process for the appointment of Board members, given the critical role that these elements of the overall governance framework play in ensuring SBS is able to effectively and efficiently fulfil its Charter obligations.

SBS's Charter requires it to provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.

A critical part of fulfilling these Charter obligations is SBS's ability to do so free of interference from Government. This independence is safeguarded through a range of legislative and administrative arrangements, ranging from the processes for making Codes of Practice, processes for the handling of editorial complaints and the limiting of circumstances through which Ministers can direct the SBS. Furthermore, it is a duty of the SBS Board under the *Special Broadcasting Service Act 1991* (**SBS Act**) to maintain the independence and integrity of the SBS.

The independence of Australia's national broadcasters (not only from Government, but also from commercial influence) serves as a cornerstone of our democratic society, promoting transparency, accountability, diversity of viewpoints and the availability of accurate and trusted information. It empowers Australians to participate actively in their communities and make informed decisions regarding their participation in the political process. Relevantly, ensuring SBS's independence and integrity is essential in maintaining audience trust in SBS content in the face of misinformation and disinformation.

SBS is the most trusted news brand in Australia¹, and it is reasonable to conclude that the independence of the national broadcasters plays a critical role in building and maintaining that trust. If we view these issues in a global context, trusted and independent media sources are by no means guaranteed, and Australia should be vigilant in protecting the strength and stability of its national broadcasters.

Whilst we welcome an exploration of these issues, and proposals which may improve or refine existing arrangements, careful consideration must be applied to ensure that any changes do not have unintended consequences, inadvertently impinge on the independence of SBS, or impose additional regulatory or reporting burdens.

In this submission, SBS responds to the proposals put forward in the Discussion Paper, and in particular, supports additional arrangements to formalise 5-year funding, alignment of operational independence with the ABC, and enhancements to the process for the appointment of Board members.

II. FUNDING ARRANGEMENTS

SBS welcomes the Government's stated intention to support stable funding arrangements for the national broadcasters, including the recent implementation of 5-year funding terms.

SBS's primary interest is to balance the certainty this approach provides, with appropriate measures to ensure Government and SBS can respond to changing funding requirements within the 5-year cycle. Audience and technology needs and market conditions can evolve quickly in the media sector, so it is

¹ The 2023 Digital News Report: Australia by the Reuters Institute for the Study of Journalism and the University of Canberra News and Media Research Centre found SBS News is the most trusted (equal with ABC News) and least distrusted news brand.

important that flexibility to increase SBS's funding during the term is retained. SBS is also interested to explore possible approaches which would maximise forward visibility of funding envelopes, to assist with responsible and effective strategic and operational planning. These considerations are explored below.

Consultation Question:

1. What potential mechanisms could provide greater certainty to 5-year funding terms?

These could include legislative or non-legislative mechanisms, such as:

- **Amending the ABC and SBS Acts to state that base funding must be provided on a 5-year basis.**
- **Amending the ABC and SBS Acts to allow the Minister to set national broadcaster funding for the next 5 years via a legislative instrument (eg, a Determination).**
- **5-year funding amounts set by another body, such as a new statutory authority or Parliamentary committee.**
- **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 arrangements.**

SBS supports an amendment to the SBS Act to confirm and embed 5-year funding arrangements. This would provide a degree of safeguarding for the 5-year funding term, which at present, has been instituted through the Budget processes.² The inclusion of the 5-year term in legislation would provide an additional layer of certainty for public broadcasters, given there is currently the potential for the term of funding to be reconsidered at each yearly Budget cycle.

Whilst legislation can be amended in future, any such amendment would require the usual Parliamentary scrutiny and oversight, which would afford all parties the opportunity to appropriately review and consider any such proposed change.

The following proposals are not supported:

- Setting funding via legislative instrument – given this would make funding arrangements susceptible to Parliamentary disallowance, such a proposal would create additional uncertainty and risk for SBS funding arrangements. It is not clear that any perceived benefits would outweigh this additional uncertainty and risk.
- Setting funding amounts via statutory authority or Parliamentary Committee – existing arrangements for the setting of funding amounts via established Budgetary processes are preferred. These existing processes ensure thorough and appropriate consideration of funding proposals. It is not clear how this proposal would improve certainty for public broadcasters, and may in fact lead to additional politicisation of funding decisions (impacting on public broadcaster independence).
- Conducting a public review prior to the end of each 5-year funding – SBS is concerned that such a proposal may not create additional useful input into Government decision-making, noting that SBS already engages in a range of consultative processes in the delivery of its services (eg the Languages Services Review public consultation, and the Community Advisory Committee). Considerations relating to the funding of national broadcasters are increasingly complex, and it is not apparent that submitters would have sufficient knowledge of broadcaster technical or operational matters to make informed contributions. We are concerned that this proposal may create an additional layer of process/complexity to funding decisions for both the Government and the public broadcasters, without an offsetting overall benefit to decision-making.

² Similarly, 3-year triennium funding arrangements for the ABC and SBS have operated as a convention rather than as set out in legislation.

2. What ability should the Government of the day have to revise announced funding, for example, to provide additional funding during a 5-year funding term to meet the changing needs of audiences?

As is well recognised, the rate of change within the media sector (in terms of technology, business models, audience preferences, competition and content markets) continues to accelerate. Trends and modes of operation which appeared to be entrenched at one moment, are susceptible to disruption and evolution in previously unforeseen ways. Similarly, new technology, business or audience developments can arise unexpectedly, and create challenges for media organisations which necessitate nimble and flexible responses, including additional investment to meet audience need.

In addition, changes can occur in relation to the media needs of the diverse First Nations, multicultural and multilingual communities that SBS serves pursuant to its Charter, which necessitate rapid recalibration of the services offered by SBS.

SBS is also exposed to the risk of fluctuating commercial revenue arising from market conditions and regulatory changes (such as increased restrictions on certain categories of advertising) impacting on-platform advertising or other commercial activities.

It is therefore vital that funding arrangements for national broadcasters do not inhibit their ability to redirect funding and seek additional support as needed in order to respond appropriately to changing sector and community conditions.

Accordingly, SBS supports the ability for additional, needs-based funding decisions to be made within the quinquennial term to address additional audience demands, market changes, technology developments or changes in the regulatory environment. The move to 5-year funding, whilst providing additional certainty, has in fact made the need for this kind of flexibility more acute.

In practical terms, this could be effected through a process which ensures the national broadcasters can submit New Policy Proposals (**NPPs**) for consideration each year as part of the Budget cycle. While it is understood that any potential NPP will require Ministerial support to proceed, the opportunity to submit proposals should be made available to the public broadcasters each year as a matter of course.

3. Are there other arrangements that could be put in place to provide greater stability to national broadcaster funding?

SBS would also support arrangements to ensure that any variations to quinquennial funding arrangements do not result in reductions in funding. That is, legislated protection of 5-year funding should set a floor below which SBS's funding cannot be reduced. Negative adjustments to funding within triennial or quinquennial funding cycles undermine the benefits of multiyear funding certainty, are extremely disruptive, and should be prevented.

Whilst SBS supports the confirmation of 5-year funding terms, including via legislative amendment, there are additional considerations which could help enhance the operation of these funding terms for national broadcasters.

In particular, there is scope to improve national broadcasters' forward visibility of funding arrangements in ways that would enhance SBS's ability to plan effectively in the short, medium and long term. Sufficient forward visibility to enable effective future planning is crucial to formation and execution of successful strategic planning.

To this end, SBS supports measures within 5-year funding arrangements to provide a longer runway to funding decisions, ideally reflected in legislation as part of the funding term provisions.

SBS supports a framework which would involve the Government and SBS commencing discussions and engagement of the next quinquennial funding arrangements in year 3 of the 5-year cycle, with a Budget outcome for the next quinquennium in year 4 of the 5-year cycle.

In practical terms, this would mean SBS submitting an estimate of its minimum financial requirements for the next 5-year funding period to the Government during year 3 of the current quinquennium. As part of its evaluation process, the Government would consult with SBS on the submission, including in relation to any proposed increases over and above indexation for additional investments or changes to the SBS cost base.

The subsequent quinquennium funding allocation would be announced the following year as part of the Budget in year 4 of the current quinquennium, being the level of base funding guaranteed for the next five-year funding period.

This approach would provide greater funding certainty for SBS, enabling effective strategy development and forward planning.

- 4. What issues should the Government of the day consider in deciding whether and how to provide or extend non-ongoing funding?**
- a. In what circumstances is the provision of non-ongoing funding most suitable?**
 - b. In what circumstances is the provision of non-ongoing funding least suitable?**

SBS supports the continuation of arrangements whereby funding for general and ongoing functions is through base funding. This is crucial to provide the necessary certainty to enable SBS, for example, to enter into long-term commercial agreements (for services such as transmission and technology services), engage sufficient staffing levels, and generally to deliver critical services.

Terminating measures are appropriate in some circumstances, and SBS supports the utilisation of such arrangements where necessary. For example, where the funding need to be addressed is only short term, or time-limited (such as funding to support a time-limited activity like supporting audiences with information during the pandemic or providing additional information about one-off civic events such as referenda).

Terminating measures are also associated with increased reporting requirements. Whilst SBS supports appropriate transparency and accountability in relation to public funding, the additional compliance burden associated with terminating funding further supports the need for funding for ongoing and long-term needs to be via base funding (which appropriately is also subject to extensive reporting and accountability measures).

Provisions for terminating measures should also be framed in such a way that they cannot be construed as equivalent to a direction on content or operations to the ABC or SBS.

SBS would also support consideration of measures to ensure that, where a funding need is proven to be ongoing, any terminating funding can be incorporated into base funding at the earliest opportunity. One option may be to ensure that terminating funding is automatically incorporated into base funding as part of the next Budget cycle (with exceptions for truly time-limited funding arrangements).

III. FRAMEWORK FOR THE APPOINTMENT OF MEMBERS OF THE SBS BOARD

SBS is broadly supportive of the existing framework for the appointment of SBS Board members, but wishes to outline a range of possible adjustments which could enhance the process and deliver additional benefits to SBS governance arrangements.

5. Section 24X of the ABC Act requires the Prime Minister to consult with the Leader of the Opposition before recommending a candidate for the appointment to the position of the ABC Chair. Do you think the requirement under section 24X allows for effective consultation to occur? If not, what changes could be made to improve this consultation process?

Not applicable to SBS.

6. The ABC and SBS Acts, including the Ministerial Determinations, require the respective boards to be made up of members with certain skills, backgrounds, and experiences.

- **Are the eligibility and selection criteria requirements too narrow or too broad?**
- **What knowledge and experiences should be included in the selection criteria for appointments to the ABC and SBS boards?**

SBS strongly supports the ongoing inclusion in the appointment process of minimum eligibility criteria. It is crucial that appointees to the SBS Board possess the skills and experience necessary to enable them to fulfill their roles and meaningfully assist SBS in fulfilling its Charter obligations.

In addition to the existing eligibility criteria, SBS has developed a skills matrix in the context of recent Board vacancies, reflecting the particular needs of SBS at that point in time (and taking into account the mix of skills and expertise already present on the SBS Board). This is a valuable input to the Nomination Panel, and can supplement the guidance already present in the instrument made under SBS Act to ensure a more detailed consideration of the skills mix required can be undertaken.

There is scope to formalise this process, for example by setting a formal pathway for the SBS Board to develop the skills matrix, and for this to be provided by the SBS Chair to the Minister and Chair of the Nomination Panel no later than 6 months prior to a vacancy arising.

We believe there is also scope to improve the selection criteria through the inclusion of additional criteria relating to certain diversity, equity and inclusion measures, such as gender, cultural background and geographic representation. As Australia's multicultural and Indigenous broadcaster, with a distinct Charter to deliver multilingual and multicultural media services, SBS has an inherent focus on diversity and inclusion within our organisation and across our content and services. A framework that assists to maintain diversity at the Board level will buttress SBS's ongoing ability to tell stories that ensure a diversity of voices can be heard, and which connects with all Australians.

The addition of a criterion requiring expertise in digital media would also be a significant improvement, given the growing role and influence of digital media in the sector and the particular skill-set required to govern SBS through the associated challenges and opportunities. SBS has been recognised for its growing and evolving multilingual digital services, exemplifying its innovative culture and strategy. Prioritising digital expertise at the Board level will support this ongoing trajectory.

7. Should individuals and organisations be formally consulted as part of the appointment process? Which ones, and why?

Other than input from the organisations themselves (discussed below), it is unclear whether additional formal consultation requirements would provide additional benefit beyond the existing processes. A focus on ensuring selection criteria are appropriately formulated, and the above addition of a formal process for incorporating a skills matrix to be provided by the respective Chairs of each public broadcaster, should be the priority.

8. Should the ABC and SBS Chairs have a formal role in the appointments process, such as developing the selection criteria, advising on desired skills and experience of board appointments, or be consulted on potential appointments?

SBS strongly supports inclusion of formal roles for the SBS Chair and Managing Director. Their ability to reliably inform the Nomination Panel and Government regarding the contemporary governance needs of SBS means such inclusion could greatly improve process outcomes and reduce the risk of unintended outcomes.

The Chair and Managing Director's involvement should extend throughout the process as a whole, including through the development of selection criteria, the development of a skills matrix and through to consultation on longlists or potential appointments. It is appropriate that the Chair also receive advance notification of the preferred candidate for appointment from the Minister.

Whilst SBS acknowledges that the final decision on appointments remains with the Minister, there is the potential to bolster the process by drawing on the operational and strategic expertise of the SBS Chair and Managing Director.

9. Should selection criteria be established for appointments to the Nomination Panel?

The development and publication of selection criteria for the appointment of Nomination Panel members would be a valuable improvement to the existing process. The Nomination Panel plays a critically important role in ensuring the governance needs of SBS are met, through assessing SBS's needs and the ability of candidates to meet such needs. Improvements to the process for their appointment, by ensuring that they possess the appropriate expertise and experience to effectively match the needs of SBS to the field of potential candidates, could help ensure robust process outcomes.

At present, the Nomination Panel is formed via direct Ministerial appointment, which has the potential to itself be politicised. Further to the inclusion of selection criteria, it would be appropriate to transition to a formal selection process for the panel (for example, advertising vacancies and conducting interviews and a competitive process).

This approach would provide greater transparency over the Nomination Panel and in turn reduce potential for politicisation of the panel membership.

10. What could be included in the selection criteria? And why?

The existing criteria which apply to the appointment of Board members provide an appropriate starting point for the Nomination Panel. There is scope to improve the selection criteria applying to both the Nomination Panel and Board processes through the inclusion of selected diversity, equity and inclusion measures and expertise/experience in broadcasting, content and/or digital media (as outlined above).

11. Is the Nomination Panel an effective method for identifying potential candidates for appointment to the ABC and SBS Boards? If not, why not?

The Nomination Panel is an important component of the overall appointments process and since its inception has generally been an effective method for identifying suitable potential candidates for the SBS Board. As set out above, there is scope to refine and enhance the role and composition of the

Panel, to further elevate its potential to deliver high-value outcomes which reflect the particular needs of SBS.

Notwithstanding this, SBS would support the retention of a limited Ministerial discretion to appoint candidates outside of the Nomination Panel process in certain circumstances, and according to specified criteria. This would be to address situations where a candidate of clear and defined merit is identified outside of the selection process (however, the strong emphasis on the Nomination Panel process should remain).

12. Should the functions of the Nomination Panel be expanded or narrowed? If so, how?

Based on recent experience, SBS has developed a range of potential improvements to the Nomination Panel process, which are set out below. These are intended to optimise the ability of the Panel and the process to identify and appoint Board members whose skills and experience are closely matched to the unique and specific governance needs of SBS, and to address a number of inefficiencies/frictions in the current process.

The following improvements should be incorporated:

- The talent search and selection process should commence at least six months prior to the known conclusion of a Board member's term;
- The SBS Chair to share the skills matrix with the Nomination Panel Chair and the Minister to assist in their process.
- The Nomination Panel Chair should meet with the SBS Chair and Managing Director to discuss the preferred Board skills and composition requirements. Meetings may involve the recruitment firm involved to align criteria and confirm context;
- The Panel Chair may also benefit from discussing SBS's governance needs with the SBS Director of Corporate Affairs who performs the Company Secretary equivalent functions for the organisation;
- Consultation with SBS should occur as part of the longlisting process to permit identification of any concerns, or actual or perceived conflict of interest issues;
- Shortlisted candidates should be provided with SBS Board meeting dates for the upcoming 12 months to ensure they can commit to the times proposed;
- Following Government decision-making processes (including Cabinet and Governor-General), the Minister should give the SBS Chair prior notification of the appointment, preferably at least 48 hours prior to any public announcement, to allow for communications and induction planning.

These are proposals which would materially enhance the existing process without substantially altering the overall and underlying structures and safeguards in place. They would assist in ensuring the process is structured and focused around delivering highly qualified, effective and appropriate appointments and ease the incorporation of new appointees into the organisation.

13. Are there other options for strengthening the governance arrangements of the national broadcasters that have not been contemplated in this paper? What are they? How would they support stability, independence and accountability?

Nil comment.

IV. ADDITIONAL CONSIDERATIONS TO SUPPORT THE INDEPENDENCE OF SBS

At present there are a number of differences in the legislative frameworks applicable to the SBS and the ABC, with the latter having slightly more operational independence from Government. As part of this review, SBS recommends that these frameworks be harmonised so that SBS enjoys the same level of operational independence as the ABC, to further safeguard its independence.

Over its almost 50 years of operations, SBS has demonstrated its capacity to operate efficiently and effectively in delivering its valued services to audiences across Australia. There is no evident justification or policy rationale for differentiating the levels of independence in the operational frameworks of the ABC and SBS.

Directions from the Minister & Application of Government Policy Orders

As a general rule, the independence of both SBS and the ABC is protected by legislative restrictions on the ability of the Minister to direct the broadcasters in relation to the content they broadcast or distribute online. This means that, for example, the broadcasters can publish stories that appropriately hold power to account, without interference from the Government of the day.

However in relation to operational matters, the ABC enjoys greater protection from Ministerial direction than SBS. Amendments to the SBS Act should be made so that SBS enjoys the same protection from Ministerial direction as the ABC. There are sound policy grounds for this legislative harmonisation.

At present, both the ABC and SBS are only subject to direction by the Minister on the broadcast or provision of content in very limited circumstances, when it is in the national interest.³ The 'national interest' test means that this direction power cannot be used by the Minister to give day-to-day editorial directions to the public broadcasters.

However, the SBS Board is also subject to Ministerial direction on any non-content or scheduling matter relating to the performance of its functions, if it appears to the Minister to be necessary in the public interest.⁴ There are no comparable powers of direction in relation to the ABC – instead section 78(6) of the *Australian Broadcasting Corporation Act 1983 (ABC Act)* stipulates that: *except as provided by this section, or as expressly provided by a provision of another Act, the Corporation is not subject to direction by or on behalf of the Government of the Commonwealth.* This reflects a differentiation in the current levels of operational independence between the two public broadcasters which is not justified on sound policy grounds.

Similarly, section 13(2) of the SBS Act stipulates that the provisions of the *Public Governance, Performance and Accountability Act 2013* (which deals with the application of government policy to corporate Commonwealth entities) applies in relation to the SBS. The ABC is explicitly excluded from these provisions via subsection 78(7) of the ABC Act. This is a further example of differentiation in the current levels of operational independence between the two public broadcasters.

As part of this review and to enhance SBS's independence and align with the ABC, sections 11-13 of the SBS Act should be reviewed and amended to replicate the provisions of section 78 of the ABC Act (though retention of the languages provision at subsection 12(3) of the SBS Act, which provides for the Minister to specify languages in which material subject to a direction must be broadcast, should be retained in any redraft).

This will reduce the capacity for non-content directions from Government, and remove SBS from the scope of Government Policy Orders. Section 8(2) of the ABC Act could then be mirrored in the SBS Act to ensure the SBS Board is required to give consideration to Government policy statements, which is an appropriate threshold for an independent public broadcaster.

³ Subsections 78 (1) and (3A) ABC Act and subsections 12(1) and (4A) SBS Act which, among other things, provide that the particulars of, and the reasons for, the direction are to be laid before each House of the Parliament within a set period.

⁴ Section 11, SBS Act

Removal of Board members

There are a range of provisions in section 27 of the SBS Act relating to the removal of non-Executive Directors from the SBS Board which are not aligned with the provisions of the ABC Act. The provisions in section 27 of the SBS Act provide a Minister with more scope to intervene in the operation of the SBS Board than is provided through the ABC Act, through provisions relating to unsatisfactory performance.

This capability to more easily replace the Board under the SBS Act based on the Minister's opinion of their performance (rather than established factors such as bankruptcy, misbehaviour or absenteeism) poses a risk in relation to stability and independence.

This should be addressed through amendments to the SBS Act to ensure consistency with the provisions of the ABC Act.

Reporting on corporate plans

Under the ABC Act, the ABC is required to prepare and give a corporate plan to the Minister for Communications and the Minister for Finance, as well as an annual plan to the Minister for Communications, addressing certain matters (see sections 35, 46 of the PGPA Act; sections 31B, 80 of the ABC Act). However, that plan is not required to comply with the requirement in section 35(3) of the PGPA Act to set out how activities of the ABC will contribute to the Government's key priorities and objectives set out in a published statement (section 31B(2) of the ABC Act).

SBS is required to provide annual reports and corporate plans in accordance with the PGPA Act (section 48 of the SBS Act), but is not exempt from the requirement in section 35(3) of the PGPA Act in respect of its corporate plan.

SBS should be afforded the same exemption as the ABC in relation to section 35(3) of the PGPA Act.

V. CONCLUSION

Given the increasing value and importance of the independence of national broadcasters (particularly in the context of threats such as misinformation and disinformation), it is sensible and timely to review and consider administrative, funding and legislative arrangements which support that independence.

Robust frameworks which minimise the risk of interference will ultimately benefit Australian audiences, given the importance of stability and independence in ensuring the delivery of a rich and diverse array of Charter-led content and services.

Whilst there are extensive arrangements already in place to protect national broadcaster independence, there remains the potential for interference and instability arising from the two major intersection points with Government decision-making – funding and Board appointments. It is therefore appropriate to refine and enhance the legislative and administrative framework which applies to these two areas.

There are also risks associated with the disparity that currently exists in the levels of operational independence applicable to the ABC and SBS. These arrangements should be harmonised as part of this Review, to ensure that SBS operates with the same level of independence as the ABC.

This submission has identified a number of enhancements to strengthen existing protections, and we would welcome further consultation with Government as it considers possible next steps in this Review, to ensure that any proposals are appropriately formulated and to avoid unintended consequences.

APPENDIX – SBS RESPONSES TO CONSULTATION QUESTIONS

CONSULTATION QUESTIONS	SBS RESPONSES
<p>1. What potential mechanisms could provide greater certainty to 5-year funding terms?</p> <p>These could include legislative or non-legislative mechanisms, such as:</p> <ul style="list-style-type: none"> • Amending the ABC and SBS Acts to state that base funding must be provided on a 5-year basis. • Amending the ABC and SBS Acts to allow the Minister to set national broadcaster funding for the next 5 years via a legislative instrument (e.g. a Determination). • 5-year funding amounts set by another body, such as a new statutory authority or Parliamentary committee. • 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 arrangements. 	<p>Support for inclusion of 5-year funding terms in the SBS Act. Could also include parameters or process for the Minister to guide funding decisions (eg, consultation with SBS).</p> <p>Do not support setting funding via legislative instrument.</p> <p>Do not support funding amounts set by statutory authority or Parliamentary Committee.</p> <p>Do not support public review.</p> <p>Support measures within 5-year funding arrangements to provide a longer runway to funding decisions.</p>
<p>2. What ability should the government of the day have to revise announced funding, for example, to provide additional funding during a 5-year funding term to meet the changing needs of audiences?</p>	<p>Support ability for additional funding decisions to be made within the quinquennial term to address additional audience needs, market changes, technology developments or changes in regulatory environment affecting revenue potential.</p> <p>Support a process to ensure SBS can make NPPs each budget process.</p> <p>The need for additional funding consideration within cycle has been made more acute by the move to 5-year terms and the increasing rate of change within the media industry.</p> <p>Safeguards should be considered to ensure that funding decisions within 5-year terms are limited to increases to funding overall (not decreases).</p>

<p>3. Are there other arrangements that could be put in place to provide greater stability to national broadcaster funding?</p>	<p>Support measures to improve forward visibility of funding, ideally reflected in legislation. Government and SBS should commence discussions in year 3 of the 5-year cycle, with a Budget outcome for the next quinquennium in year 4 of the 5-year cycle.</p>
<p>4. What issues should the government of the day consider in deciding whether and how to provide or extend non-ongoing funding?</p> <ul style="list-style-type: none"> • In what circumstances is the provision of non-ongoing funding most suitable? • In what circumstances is the provision of non-ongoing funding least suitable? 	<p>Support preference for base funding. Funding for general and ongoing functions should not be terminating.</p> <p>Terminating measures are appropriate in some circumstances (where the need is only short term or time limited – such as for coverage of a one-off event) but gives rise to onerous reporting requirements.</p> <p>It is important that terminating measures can be rolled into base at the earliest opportunity. One option would be to ensure that terminating funding is automatically rolled into base at the next available opportunity (with exceptions for truly time-limited needs).</p> <p>Whilst respecting Budget processes, it is important that the process for seeking additional terminating funding mid-cycle is not unduly onerous.</p> <p>As above, there must be a guaranteed ability to seek additional funding each Budget within 5-year terms.</p>
<p>5. Section 24X of the ABC Act requires the Prime Minister to consult with the Leader of the Opposition before recommending a candidate for the appointment to the position of the ABC Chair. Do you think the requirement under section 24X allows for effective consultation to occur? If not, what changes could be made to improve this consultation process?</p>	<p>Not applicable to SBS.</p>
<p>6. The ABC and SBS Acts, including the Ministerial Determinations, require the respective boards to be made up of members with certain skills, backgrounds, and experiences.</p> <ul style="list-style-type: none"> • Are the eligibility and selection criteria requirements too narrow or too broad? • What knowledge and experiences should be included in the selection criteria for appointments to the ABC and SBS boards? 	<p>Support minimum eligibility criteria.</p> <p>Note SBS has also provided preferred skills matrices to Government in the past and would also support minimum requirements for financial literacy and skillsets of specific relevance to SBS (such as digital media, IT, commercial media, community engagement). Provision of a skills matrix should be formalised (ie, SBS provides to Minister 6 months prior to vacancy arising and this is shared with the Nomination Panel).</p> <p>As set out above, SBS also supports increased diversity criteria.</p>

7. Should individuals and organisations be formally consulted as part of the appointment process? Which ones, and why?	Do not support additional consultation requirements.
8. Should the ABC and SBS Chairs have a formal role in the appointments process, such as developing the selection criteria, advising on desired skills and experience of board appointments, or be consulted on potential appointments?	Support formal role for both Chair and Managing Director throughout the process, including selection criteria, required skills and longlist/potential appointments.
9. Should selection criteria be established for appointments to the Nomination Panel?	Support adoption of selection criteria (with addition of experience in digital media). Also support advertising vacancies and a formal selection process for appointment to the Panel.
10. What could be included in the selection criteria? And why?	Support adoption of same selection criteria as those that apply to Board appointments (with addition of experience in digital media). Diversity, equity and inclusion considerations should apply.
11. Is the Nomination Panel an effective method for identifying potential candidates for appointment to the ABC and SBS boards? If not, why not?	Support Nomination Panel as an effective method for identifying potential candidates. Support retention of Ministerial discretion to appoint outside of the Nomination Panel in limited circumstances and according to specified criteria (eg, where a candidate of defined merit missed the selection process).
12. Should the functions of the Nomination Panel be expanded or narrowed? If so, how?	Support select amendments to the process, including: Search process to commence 6 months prior to the known conclusion of a Board member's term. Nomination Panel Chair meeting with SBS Chair and Managing Director to discuss preferred board skills and composition requirements. Meetings may involve the recruitment firm involved to align criteria and confirm context. Panel Chair may also benefit from discussing SBS's governance needs with the SBS Company Secretary (Director of Corporate Affairs). Shortlisted candidates should be provided with SBS Board meeting dates for the coming 12 months to ensure they can commit to the times proposed. Following Government decision-making processes (including Cabinet and Governor-General), the Minister should give the SBS Chair reasonable prior notification of the choice of appointment, at least 48 hours prior to public announcement.

13. Are there other options for strengthening the governance arrangements of the national broadcasters that have not been contemplated in this paper? What are they? How would they support stability, independence and accountability?

To enhance the independence of SBS, changes should be made to the SBS Act to ensure that SBS has the same level of operational independence as the ABC on matters such as Ministerial directions on non-content matters, and application of Government Policy Orders. There is no rationale for the disparity in operational independence that currently exists between the two public broadcasters.