

This contains colour coded graphs and is best printed in colour.

## **Inquiry into the Competitive Neutrality of the National Broadcasters**

### ***Attaining a level playing field: SBS – commercial***

**The principles of competitive neutrality will always be at risk as long as SBS is permitted to carry commercial advertising.**

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### ***Inquiry into the Competitive Neutrality of the National Broadcasters***

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 'Attaining a level playing field: SBS – commercial' to this Inquiry<sup>1</sup>.

We discuss the topics raised in the 24 April 2018 Inquiry into the Competitive Neutrality of the National Broadcasters *Issues Paper*<sup>2</sup>, specifically in relation to SBS and address that asked at questions 8 to 14, under multiple headings, not in a question and answer form sequence.

Save Our SBS would appreciate an opportunity to meet with the Panel to further discuss these matters.

***Save Our SBS Inc***

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## Executive summary

Below is a list of key points of this submission:-

- The objective of any changes ought to be to improve SBS ensuring competitive neutrality principles are upheld.
- Solid data that SBS is needed in its own right and ought not be further commercialised<sup>3, 4, 5, 6</sup>.
- The current text of the Charter to be retained. There is evidence that SBS does not 'complement and supplement the ABC and commercial broadcasters' to the extent that it used to, that a significant portion of programs are not Charter focused on SBS TV<sup>7, 8</sup> – it being far less 'alterative' now than before in-program advertising commenced in late 2006 impacting on almost half SBS TV content – which is now more of the type expected to be seen on a commercial broadcaster, than a public broadcaster<sup>9</sup>.
- Clear evidence confirming SBS's public announcement on its long term strategy to position itself as Australia's fourth commercial network<sup>10, 11</sup> adopting a commercially aggressive attitude<sup>12</sup>, and SBS's articulated policy to ignore its Charter<sup>13</sup> leading to a more mainstream (commercial) approach compared to earlier years.
- SBS use of public funds to invest in commercially attractive programs, to grow revenue – without risk – resulted in a 123% ad growth since the introduction of in-program advertising (as opposed to when ads were between programs only), compared to a flat growth rate of the commercial sector<sup>14</sup>.
- Public funds used by SBS to purchase programs of the type expected to be seen on commercial TV created an unlevel playing field<sup>15</sup>.
- Claims<sup>16</sup> from the commercial sector, which SBS has denied<sup>17</sup>, that SBS pursued commercial type programs, increasing acquisition costs and SBS should have used public funds to purchase programs that viewers might otherwise not see, that being the role of the public broadcaster. This altered the playing field unfairly in SBS's favour as it chased more eyeballs to gain more dollars from in-program advertising<sup>18</sup>.
- Evidence that advertising itself is the cause and incentive that lead to the 'unfair' advantage and if SBS had no commercial advertising, then the reason to act as described would be removed (and SBS would become more Charter focused)<sup>19, 20</sup>.
- SBS is partly a product of the hand parliament has dealt it.

- Irrespective of the dollar value, evidence that on a point of principle, the SBS hybrid funding model conflicts with competitive neutrality principles solely due to SBS carrying advertising on top of public funding<sup>21</sup>.
- Confirmation that the playing field cannot be corrected without addressing advertising on SBS, that being the root cause of the problem.
- Legislate for one of two options to enable a fairer playing field:
  - 1) cease commercial advertising totally (the fairest option); or
  - 2) revert to the former model of ads between programs only.
- Transitional funding to assist SBS in respect of either option above until the next round of triennial funding and if option 1, SBS to be fully-funded.
- Other legislation be amended (to partly assist upholding competitive neutrality principles) in relation to SBS Governance issues, with a requirement that:
  - The Minutes of the SBS Board (and committees) be published.
  - SBS and Board to 'give regard' to advice from—
    - ACMA who be given investigative powers on Charter related matters; and
    - the Commonwealth Ombudsman who be given investigative powers on matters that relate to duties of the Board; and
    - such matters be published (because the SBS Act immunises SBS and Board from failure to uphold the Charter and Board duties).
  - Certain matters (detailed) be presented in certified financial tables in SBS annual reports.
  - The efficiency provisions of the SBS Act be expanded to include other (non-financial) efficiency measures essential for SBS to fulfil the purpose for which it was established.
  - Certain matters that were shifted to 'guidelines' be placed (back) in the SBS Codes of Practice, and a legislated requirement for SBS to consult the community in developing a socially responsible Codes of Practice considerate of community standards.
- The use of section 11 of the SBS Act for the Minister to give a direction to the SBS Board in respect of the placement of advertisements (option 2 above), in the event that legislative amendments are difficult.

## Preamble

Save Our SBS *supporters & friends of SBS* are amongst the most loyal consumers and friends of SBS anywhere. However, we are not without criticism of the broadcaster particularly the increasing commercialisation of SBS over the past decade.

Any person who has followed Save Our SBS and perused *SaveOurSBS.org* and our other submissions, will find little new in this submission. Our views are well known.

Aside from the Lewis review<sup>22</sup> in 2014 which was a 'closed' study, the last review into SBS was the *ABC SBS Review* in 2008. It was open to any person to make a submission. More than 1,000 consumers of SBS made considered submissions<sup>23</sup>.

By far the majority of submissions about SBS were from fans of SBS. Almost all were highly critical of the then fairly new direction that SBS had embarked on: *in-program advertising*. There were no submissions in favour of SBS's then new but obvious commercialisation policy or of the changed program schedule containing highly commercial-type programs, nor the move to favour English language content with lip service to Charter obligations. Most submissions asked government to legislate to prohibit SBS from interrupting programs for commercial breaks. Many urged government to increase funding for SBS.

No change ever resulted and the commercial arm of SBS has since become more dominant.

Save Our SBS does not support the privatisation of SBS in any form.

Increasing public support for SBS is warranted.

The trigger for this Inquiry does not change our goal to improve SBS and see it re-established as our leading multicultural multilingual broadcaster, envied all over the world – as it was once. For that to occur, changes are needed.

Save Our SBS hopes this Inquiry leads to the outcomes we seek and the betterment of SBS.

## Introduction

According to the Organisation for Economic Co-operation and Development (OECD):-

***competitive neutrality means that state-owned and private businesses compete on a level playing field<sup>24</sup>.***

The Australian Government's *Competitive Neutrality Policy Statement* states:-

***Competitive neutrality requires that government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership<sup>25, 26</sup>.***

The OECD says, it “is essential to use resources effectively within the economy and thus achieve growth and development. . . But how to obtain it in practice, is a much more difficult question”<sup>27</sup>.

In the 1970’s, the now defunct Australian Broadcasting Tribunal (ABT) determined that programming on community broadcasters should be ‘complementary and supplementary’ to commercial broadcasters<sup>28</sup>.

In 1980, Bruce Gyngell, then Managing Director Designate of the Independent and Multicultural Broadcasting Corporation (the fore-runner to SBS) talked of a new multicultural multilingual television channel and said it would “complement and supplement” that seen on existing broadcasters. He was describing a service that was totally alternative to the ABC and commercial broadcasters<sup>29</sup>. His description was consistent with the principles of competitive neutrality and this was 16 years before Australia had published its Commonwealth Competitive Neutrality Policy Statement<sup>30</sup>.

It would seem that if SBS were to satisfy competitive neutrality principles and fulfil the purpose for which it was established, then at the very least it would need to complement and supplement the ABC, community, commercial broadcasters, and subscription services.

If that occurred, SBS would innovate and not appear like a morphed replica of existing mainstream media.

**Due to its commercial outlook, SBS is now less inclined to take risks compared to earlier times when it was relatively commercial free.**

SBS's Chair from 1981 to 1999, Sir Nicholas Shehadie noted in his book *A Life Worth Living*:-

***public broadcaster SBS should be run as a service, not a business***<sup>31</sup>.

Australia is incredibly fortunate to have two public broadcasters, a range of commercial broadcasters, and subscription services.

For many decades, SBS's role was to serve the public, innovating with content that otherwise might be commercially unattractive, complementing and supplementing the ABC and commercial broadcasters. Under this umbrella, SBS would lead the way where other broadcasters did not.

The role of SBS as a public broadcaster has gradually changed as a consequence of it being granted the right to carry advertising. In its current hybrid state, SBS remains a public broadcaster increasingly dependant on commercial activities. This has blurred its role.

Save Our SBS members and supporters are very passionate about this and often convey their thoughts.

The quoted text below was extracted from two recent communications to Save Our SBS. These are a representative sample of many others—

***In addition to a desire to eliminate advertising, I joined hoping more high-quality programs from other cultures could be broadcast - the initial reason for setting up SBS!*** (18 February 2018, postcode: 3053)

***When it was first promulgated SBS provided a valuable source of international media and programming . . . The SBS has gone on . . . well outside its original modus operandi, and the absolute kick in the guts is commercial advertising [with] over \$250 million a year of taxpayers funds and still want[s] exposure to excruciating advertising.*** (18 February 2018, postcode: 3104)



SBS is partly a product of the hand the parliament has dealt it; under-funding and cuts may explain its now seemingly over-enthusiastic commercial direction, appearing contrary to the purposes of public broadcasting and testing competitive neutrality principles in a manner foreign to that envisaged. Nothing could be further from the route SBS took in earlier years.

**The majority of public broadcasters in the world that carry advertising limit the placement of ads to between programs only. This is detailed in the *Precedence reverting from public-commercial to public* section in this submission.**

The evidence we submit in this submission provides data demonstrating that SBS is now a shadow of its former self because of its commercially aggressive approach. In our view this needs to be brought to a halt. That said—

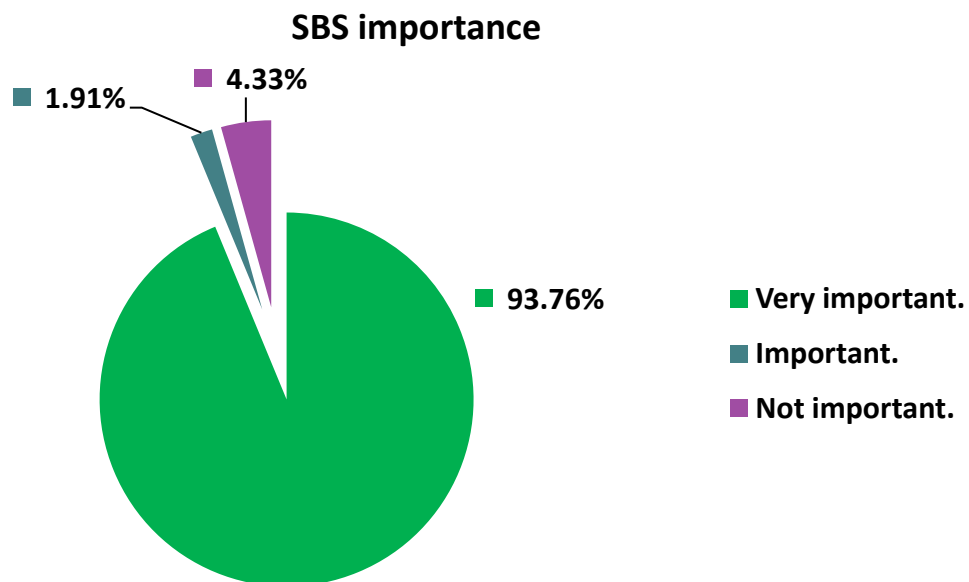
**. . . the institution of SBS is worth upholding and this submission suggests a number of legislative changes that will assist the broadcaster in its future direction consistent with competitive neutrality principles.**

## SBS is needed

While unpacking where SBS has come from and its future direction, the following dot points should be born in mind in respect of SBS's part to compete on a level playing field.

Reliable data<sup>32</sup> from 2017 shows that of 1,176 people surveyed nationally:-

- **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.**
- **94% say that SBS is very important to them.**



*Survey 2017 about SBS*

Furthermore, more recent data from a separate cohort in 2018 of 1249 people who were surveyed nationally, revealed that most thought SBS to be a valuable service (range per SBS outlet/platform: 58% to 88%)<sup>33</sup>.

## Charter

The foundation document outlining the purpose of SBS, why it exists and content required, is contained in the SBS Charter at section 6 of the *Special Broadcasting Service Act 1991* (SBS Act). The Charter does not require amendment.

For many years SBS honoured its foundation document. However, over the past decade or so the broadcaster has increasingly scheduled programs and advertisements that are not Charter focused. This is directly linked to the commercialisation of SBS and a skewing away from competitive neutrality principles.

The *Advertising placement* section of this submission presents solid evidence that shows that SBS is less faithful to its Charter now than before it introduced in-program advertising some 11 years ago<sup>34, 35, 36</sup>. The more SBS decision makers choose to operate in commercial territory, the less risks management takes. That underpins the reasons why SBS is now less Charter focused than previously. This ‘commercialisation danger’ was noted in the Lewis review<sup>37</sup>.

The Charter is a fine document yet over the past decade, SBS has chosen to deviate from it. As a result, there are now two issues that require addressing to set SBS back on track and create a fairer playing field for SBS and the commercial sector:-

- Compliance (identifying obligations, cause of non-compliance and remedies),
- Governance (accountability and remedies).

Both points are detailed in this submission.

Due to shortcomings in varying degrees of the above, SBS is no longer the broadcaster it once was, or that intended.

SBS was established to provide niche content for specific ethnic and other groups that mainstream radio and television broadcasters failed to accommodate.

***... we do from time to time have programs that have absolutely nothing to do with our charter that are broad entertainment programs, to be able to attract a slightly broader audience to then cross-promote our really—***<sup>38</sup> (SBS Managing Director, 2018)

NOTE: This is the full quote as a senator interjected at that moment.

Although not stated above, possibly Mr Ebeid may have been attempting to say that SBS broadcasts programs that have nothing to do with the Charter in order to attract viewers to other programs that are Charter focused.

Regardless, no matter how honourable the reasons, it was never anticipated that SBS create a policy like that described above, that is deliberately off-Charter. This current SBS policy effectively challenges and weakens the purpose of SBS. The Charter ought not be open to deliberately presenting programs that have 'absolutely nothing to do with the Charter'.

An obvious reason to ignore the Charter could be motivated by a desire to increase advertising revenue which may occur by scheduling commercially attractive programs – not the type of content reflected in the Charter.

Program content and selection of advertisements, in fact everything seen, heard or read on SBS on-air or digital, ought to comply with the Charter. If not – why have a Charter?

The Charter describes a broadcaster that would – if it upheld the Charter – complement and supplement other broadcasters.

The Charter specifies at 6(2)(g) that 'SBS take into account the contribution of the ABC and community broadcasters' .

It is odd that the Charter does not require SBS take account of the commercial sector too.

Nevertheless, in the context of the totality of the Charter, it is quite clear SBS was supposed to be special and unique, and therefore different from commercial broadcasters.

There is nothing wrong with the Charter but there is clear evidence that SBS has not been following it. We detail that evidence in this submission.

Given the commercial pressures placed on SBS, there are monetary reasons why the broadcaster may be lured away from its Charter. However, this directly challenges competitive neutrality principles.

Evidentially Charter compliance requires strengthening as non-compliance potentially may undermine competitive neutrality principles with commercial advertising on SBS being the perfect catalyst to facilitate that.

The Charter must be upheld at all times. This is elaborated in the *Advertising placement* and *Governance* sections in this submission.

We make recommendations in this submission to uphold Charter obligations and in respect of a 'fairer playing field for SBS and the commercial sector'.

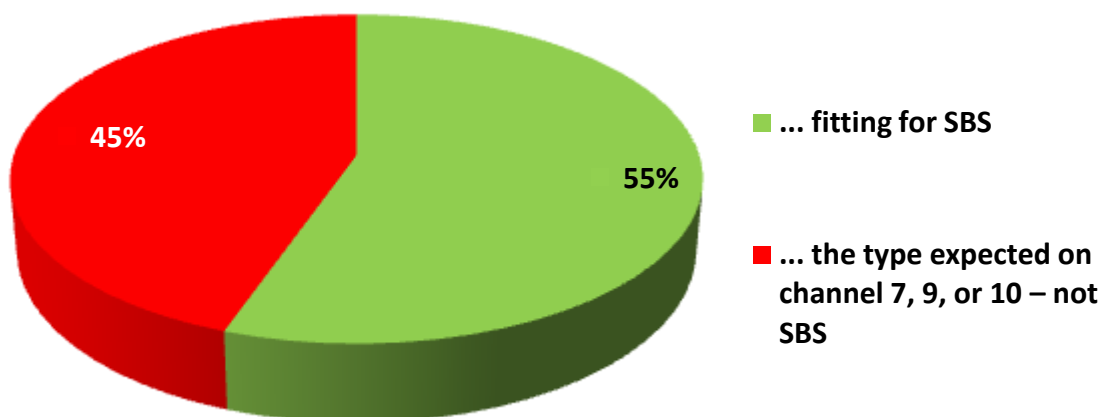
## Programming impacts on competitive neutrality principles

In the nation wide 2018 survey of 1249 people, questions were asked about content screened on SBS 'in recent years'. The text of the SBS Charter was provided to all survey participants which was open to anyone with internet access.

One purpose of the survey was to identify programs on SBS that were suitable for SBS reflective of its Charter, or were not suitable for SBS – that would be expected on commercial television.

The extent to which SBS has programs that are commercially attractive or not, can be summarised as follows:-

### Programs and movies on SBS evaluated as...



*Programs on SBS survey 2018*

Survey participants were invited to provide names of programs seen on SBS that were either– *'fitting for SBS'* (one question), or *'of the type expected on channel 7, 9, or 10 – not SBS'* (in another question). The published graph (above) is a representation of the 14 pages of data extrapolated in answer to the two questions<sup>39</sup>.

**There have been claims<sup>40</sup>, notably from the free-to-air commercial television sector, that SBS used public funds to purchase commercially attractive content; programs that ordinarily would be expected on commercial TV and are not SBS Charter focused. It is claimed that the purchase of such programs with public funds gives SBS an unfair advantage over commercial operators because commercial broadcasters are at a greater risk if a program fails than is SBS as the commercial sector does not have access to a 71% government backing (to absorb any failure) whereas SBS does, and that reduces SBS's risk significantly (compared to commercial TV).**

It is also claimed that SBS outbid commercial television for content.

***The Nine Network was recently outbid by SBS for commercially significant food-related content that it would have shown on its 9Life channel at no cost to the Australian public. This content will add to SBS's suite of largely American cooking shows shown on its Food Network service and which do not contribute to its charter<sup>41</sup>.***

If the any of the claims above were true in part or whole that would assist SBS in growing its advertising revenue with little or no risk and aid rapid advertising growth for SBS.

Irrespective of the dollars in this matter, that outlined above would appear to constitute an unlevel playing field and therefore contravene competitive neutrality principles.

However, SBS's Managing Director, Mr Ebeid, has denied such.

***Recent accusations that SBS has outbid commercial operators for content, some of which have 10 times our budget, are simply untrue and fanciful<sup>42</sup>.***

Save Our SBS cannot verify who outbid whom.

The size of ones budget is not the issue when testing the principle.

The advantage or disadvantage of the public or commercial broadcaster is affected by the extent of public or private monies in the investment (i.e., content) determining the risk taken and likely return from advertising dollars. In the instance cited, it is safe to say the investment was predominantly paid for, if not totally, from public funds.

Regardless, competing for advertising – which SBS does – will of itself drive up programming costs especially when 45% of SBS programs (see graph on previous page) are of the content type expected to be seen on commercial TV<sup>43</sup>.

Unlike its earlier years and according to the SBS annual reports, SBS now has the same advertisers as the commercial sector<sup>44</sup>. This alone somewhat detracts from SBS being seen as a 'special' broadcaster when even the ads are the same<sup>45</sup>.

Free TV urges that SBS be required to deliver on its Charter, and cease–

***competing even more directly for advertising and driving up the cost of commercially viable programming***<sup>46</sup>.

It goes without saying that SBS ought to be using public funds to purchase Charter focused content, programs that otherwise would not be available to viewers, as such would be a waste of public funds.

The notion that some or all of the above claims occurred to a greater or lesser extent as a valid means to increase advertising revenues to (later) purchase, or attract viewers to, Charter related content in other parts of the schedule, would not ameliorate failure to uphold a principle – in this case that of competitive neutrality.

In discussing the high (45%) proportion of programs on SBS that viewers said were '*of the type expected on channel 7, 9, or 10 – not SBS*', it is useful to examine a class of programs that were **not** on SBS, but should have been, arguably instead of that 45% portion cited.

The Charter obligates that as far as practicable programs on SBS be "in their preferred languages". Although SBS Radio very successfully achieves this with its 'in-language' – *languages other than English* (LOTE) – programs, SBS television does not. SBS TV used to before SBS ramped up its commercial side.

Since 2013, Save Our SBS has discussed with SBS the notion of SBS creating a channel specifically in LOTE. We requested that one of the HD channels be used for that purpose. However, despite an almost total wipe-out of LOTE content from primetime, SBS has not created a LOTE channel and instead saw fit to place VICELAND on their then spare HD channel, in addition to the VICELAND SD channel, which carries the same program.

Before NITV, the Food Network and VICELAND, up to 66% of primetime was made up of quality imported LOTE content<sup>47, 48, 49</sup>. Now in primetime, LOTE has been replaced mainly by English language American and some British Anglocentric content. With few exceptions<sup>50</sup> SBS all but avoids 100% LOTE programs during the prime 8:30pm time slot. LOTE content has been mainly relegated to off-peak daytime or late night<sup>51</sup>.

**With nearly half of all Australians born overseas<sup>52</sup>, 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, 1176 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 LOTE<sup>53</sup>.

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

SBS states its [primary] channel is programmed for “broad, general appeal”<sup>54, 55</sup>, while VICELAND is for a younger audience, ‘foodies’ turn to The Food Network, and Indigenous programming is on NITV. The content across the SBS channels is largely in English especially during peak viewing. 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 Demand<sup>56</sup> nor were they subscribed to the SBS World Movies pay channel. Their only option is free-to-air.

Since the closure of the SBS World Movies channel<sup>57</sup>, there is no LOTE linear TV service. With 59% of TV viewing (higher in older ages) watched on free-to-air<sup>58</sup>, there is good reason for SBS to create a LOTE free-to-air channel and not consign LOTE content primarily to On Demand, possibly discriminating against older, ethnic, and interested Anglo demographics.

As a drawcard, imagine an evening of imported (subtitled) LOTE content – movies and TV programs – with a regular mid-evening program aiding conversational English too, bridging the gap for those from culturally and linguistically diverse (CALD) backgrounds. This fits with the Government’s social cohesion policy<sup>59, 60</sup>. Currently migrants are not catered for in this manner nor are Anglo-Australians benefiting from the life of other cultures – in *their* languages – in primetime. SBS is well positioned for this but refuses.

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

Effectively SBS has chosen not to observe the ‘programs in preferred languages’ and ‘multilingual’ Charter requirements in primetime to the extent it did prior to the introduction of in-program advertising in late 2006.

Predicably, LOTE content in primetime would rate far less than English language content and therefore fail to attract the advertising dollars SBS seeks.

This is an example of advertising working against a core component of SBS: its “**principal function**”, its *raison d’être*, as set out in its Charter.



## Mainstream

For many decades SBS was ‘special’ (as its name states), different, and distinctive. There was no other broadcaster anywhere in the world like it. However that all changed soon after late 2006 when SBS reinterpreted the law to disrupt programs with commercial breaks (mimicking the commercial television ‘look’). That is the origin of SBS adopting a commercially aggressive approach<sup>61</sup> and transition from alternative to mainstream<sup>62</sup>.

In their submission in 2018 to the *economic and cultural value of Australian content on broadcast, radio and streaming services* inquiry, FreeTV said:

***This trend [of 'SBS directly competing with commercial free-to-air TV to acquire content with commercial appeal'] is accelerating as SBS, in particular, has launched or expanded its Viceland and Food Network channels. The content being shown on Viceland and Food Network is mainstream content that is sourced mainly from SBS's American affiliate... As it seeks to gain audiences for its advertising, SBS has also been broadcasting other mainstream commercial content such as repeats of American movies. Feature films broadcast on SBS in the past year include Aliens, Kill Bill, Pulp Fiction and Star Trek<sup>63</sup>.***

The *Programs on SBS survey 2018* (referred to earlier), not only found 45% of programs on SBS were of the type expected on commercial broadcasters, but –

***70% said SBS currently has insufficient niche programming compared to more than 10 years ago<sup>64</sup>.***

By any measure, the evidence supports the assertion that SBS has become more mainstream and more commercially oriented to the detriment of delivering on its Charter. For SBS to be more mainstream – or less alternative – must by definition, threaten the public – commercial playing field and therefore the principles of competitive neutrality.

A one-week nation wide survey conducted in 2017 of SBS viewers in every State and Territory found that only 3.5% of the 1176 viewers studied thought that VICELAND was “appropriate” for SBS, and of the Food Network 68.23% said it was “a misuse of public resources and - - tokenistic to multiculturalism particularly when showing cuisine of non-Anglo nations where the programs are in English”<sup>65</sup>. Most programs are in English.

More than 1,500 comments were received appearing in appendices to the 2017 survey. There were comments critical of too much American or British content on SBS and too little foreign language programs.

In 2017, 65.3% (35.7% + 29.6%) of those studied said that ‘SBS had become more mainstream than compared to 10+ years earlier’, 20.5% were undecided and 14.2% (8.9% + 5.3%) said it was now less mainstream<sup>66</sup>.

A comparable finding was found in 2013 of 2,044 SBS viewers.

The two quotes below are a representative sample of that conveyed in the comments of the 2013 study group:-

***There are too many English-language programs in prime-time and the programming is becoming increasingly mainstream which is not why SBS was created***<sup>67</sup> (2013, postcode: 3058).

***SBS is becoming less & less an alternative to mainstream TV & this is very disheartening***<sup>68</sup> (2013, postcode: 2089).

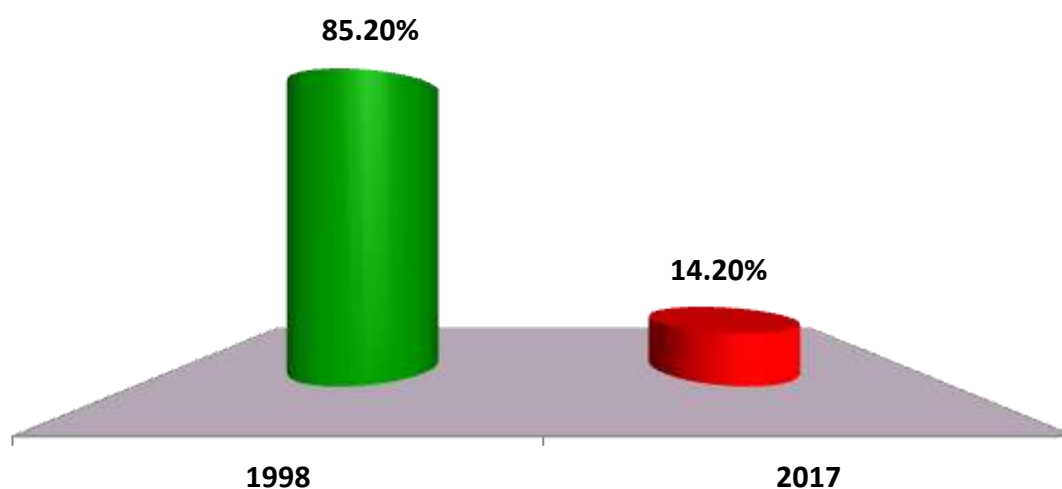
Before SBS commenced in-program advertising just over a decade ago (in late 2006), the broadcaster prided itself on being an “alternative” to mainstream media. The 1998-99 SBS Annual Report<sup>69</sup> reflected on this as quoted below:-

***The latest [1998] study, in the final months of 1998, shows that SBS has further improved its favourable image and continues to be seen as a valued alternative to other free-to-air networks. The survey found:***

- ***87.6% agreed that “It is important that SBS be available to provide an alternative to the commercial stations.”***
- ***76.7% agreed that “It is important that SBS be available to provide an alternative to ABC Television.”***
- ***85.2% agreed that “SBS has types of programs you would not see on other TV stations.”***
- ***62.4% agreed that “SBS has better coverage of overseas news than other TV stations.”***
- ***75.7% agreed that they “find value in SBS”.***

Extrapolating the data of the two different research groups for the two different cohorts over two time periods (1998 and 2017), it may be said with a high degree of confidence that SBS has become more similar to the ABC and commercial television in 2017 than it was in 1998. SBS is now much less of an alternative to the ABC and commercial television than 20 years ago. The “alternativeness”<sup>70</sup> of these two time periods is reflected in the graph below.

### Measure of alternativeness of SBS compared to ABC and commercial TV



Data extrapolated from the 1998-99 SBS Annual Report and Survey 2017 about SBS

The shift from “alternative” to “mainstream” follows the transition from SBS being relatively non-commercial (advertisements between program only), to it adopting a very commercial format. This is when SBS began to alter the public – commercial playing field.

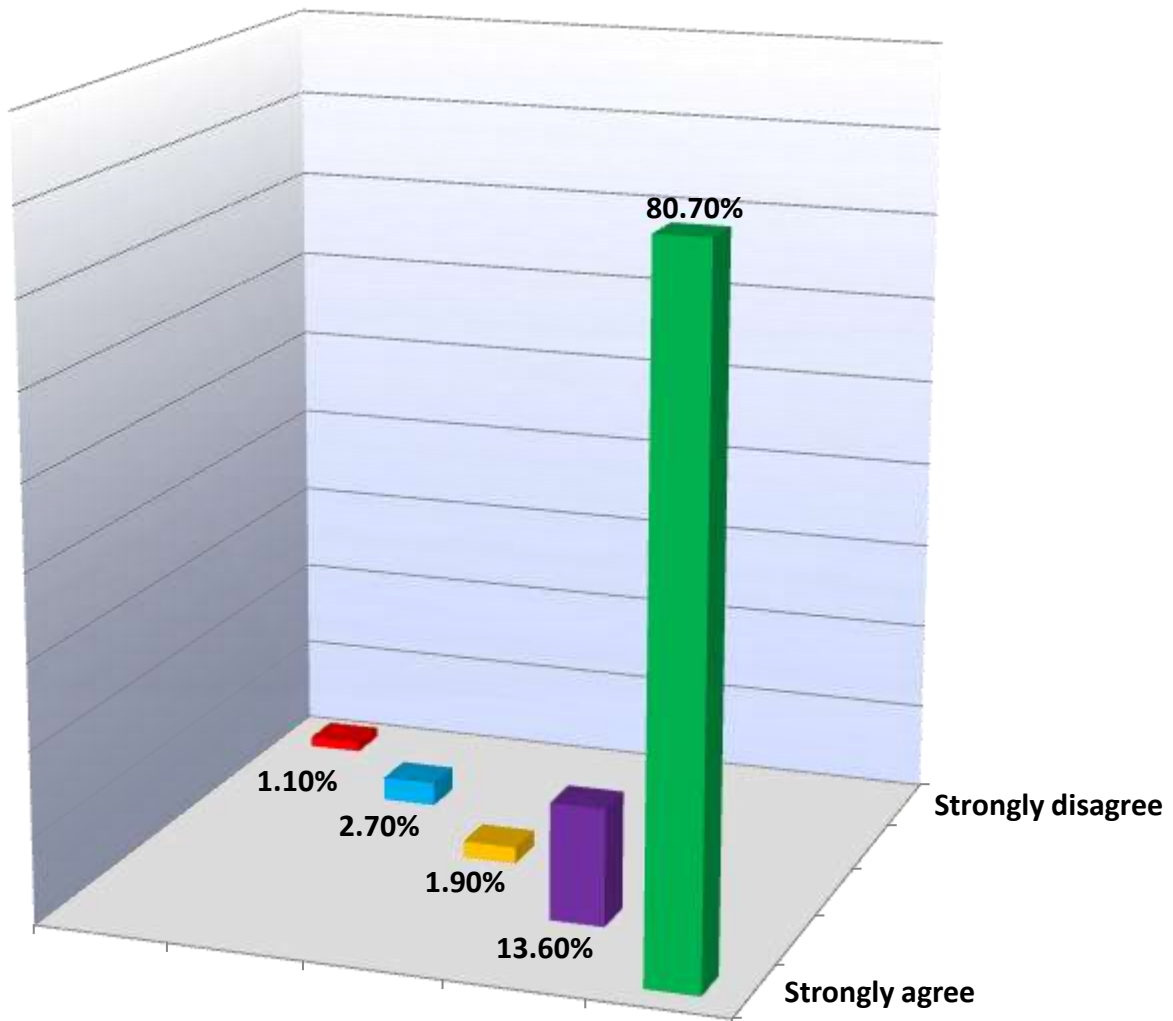
There is clear evidence of a direct link to the introduction of in-program advertising in late 2006 (numerous commercial break disruptions in every program) and SBS adopting a more mainstream approach, thus thwarting the public commercial balance.

**It is absolutely impossible to correct any issues of Charter compliance and the principles of competitive neutrality without addressing advertising on SBS – and very specifically the placement of ads to away from programs.**

In 2013, 80.7% of 2,044 viewers from all States and Territories said that–

***advertising ought to have no place on SBS but should be left to commercial broadcasters instead***<sup>71</sup>.

**Viewers who agree or disagree with the statement above:**

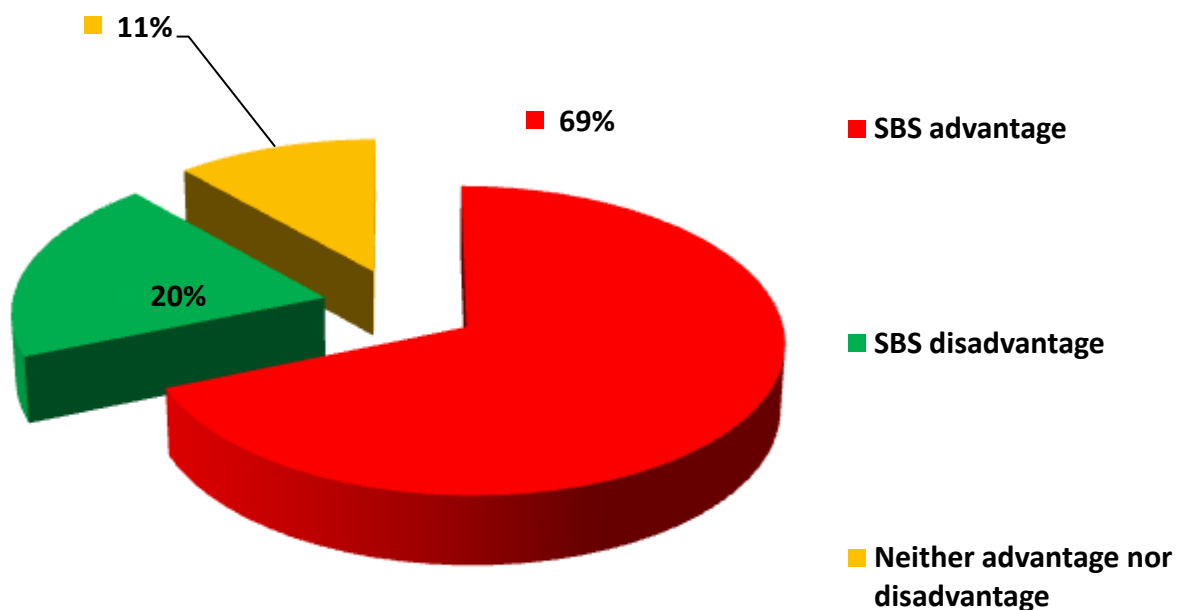


*A study of 2044 viewers of SBS television on advertising, Charter, relevance and other matters (2013)*

The above graph indicates that public broadcaster SBS ought not delve into commercial territory, that viewers understand that advertising is necessary for commercial television but do not accept it for SBS.

Not only did 81% of 2044 viewers studied in all States and Territories in 2013 believe that advertising ought to be the exclusive territory of the commercial sector, but 69% of a different cohort of 1249 people surveyed nationally in 2018 said that SBS has a competitive advantage over commercial broadcasters purely by the fact that SBS carries advertising (on top of it being largely publicly funded)<sup>72</sup>.

**Measure of competitive advantage/disadvantage principle:  
SBS/commercial sector - given SBS has advertising on top of public funding**



*Programs on SBS survey 2018*

**This finding does not suggest that viewers favour or want advertising on SBS. They do not<sup>73, 74, 75</sup>. The graph above is a comment on the hybrid funding model for SBS.**

The 2018 study indicates that the average reasonable person thought, in principle, there can be no level playing field while a public broadcaster has advertising *because* it is publicly funded too, whereas commercial broadcasters must largely rely on advertising revenues alone.

**This goes to the core of the principle regardless of the dollars involved.**

## SBS: Australia’s 4<sup>th</sup> commercial TV network by stealth

The first public admission by SBS that it had formed a commercially aggressive strategy to directly compete with the commercial sector, was in January 2007 when *B&T*<sup>76</sup> quoted Richard Finlayson, then head of SBS’s commercial arm, that the broadcaster was out–

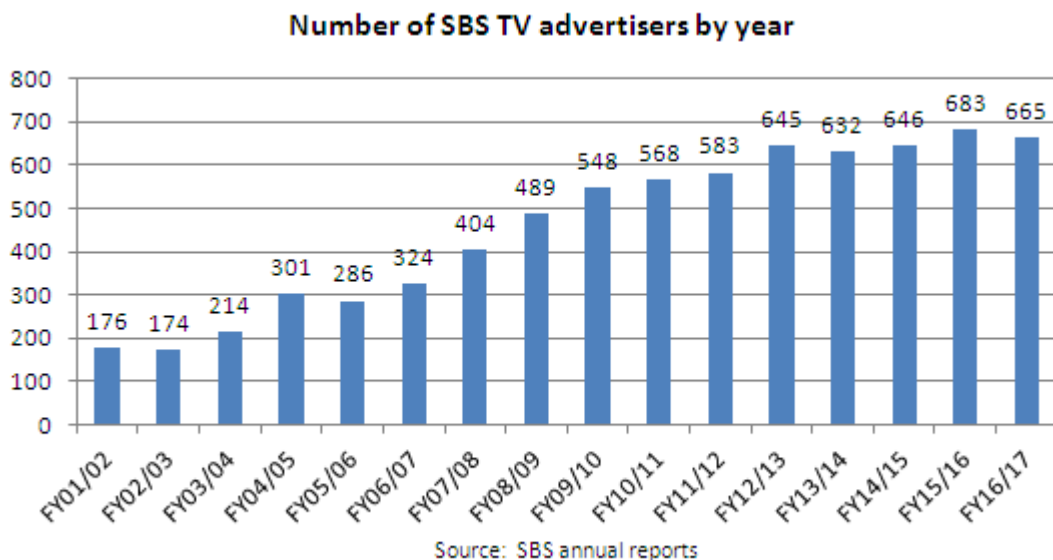
***... to position SBS as Australia’s fourth commercial network. Our long-term agenda is that we do not want people to just think about the three commercial networks but SBS as well. We are now taking a more aggressive approach to communicating our message and particularly with building our relationships with key media***<sup>77</sup>.

SBS re-confirmed this strategy a month later with Finlayson telling the *Australian Financial Review* that–

***In the past SBS has been reluctant to carry some ads, such as hard-hitting, in-your-face retails ads. That’s changing***<sup>78</sup>.

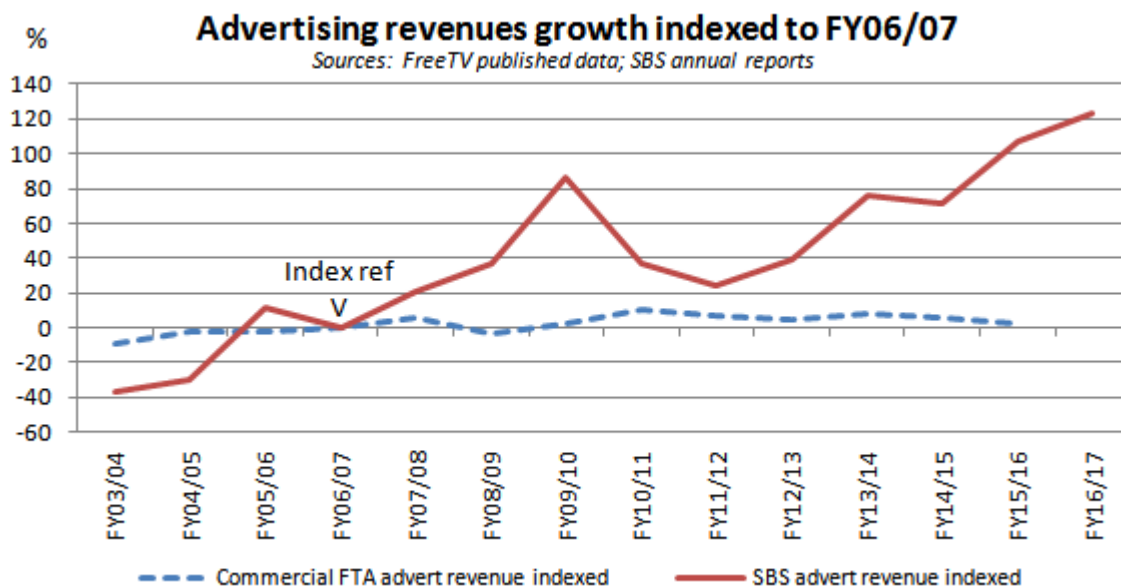
The commercially aggressive approach of SBS and willingness to accept almost any type of advertisement, provided legal and regulatory requirements are met, caused the broadcaster to accept an array of advertisements that are not Charter compliant. The SBS Act does not provide for that, nor should it. Ads are supposed to comply with the Charter.

This strategy has seen a dramatic increase in SBS TV advertisers since FY06/07 and the introduction of in-program advertising.



## Advertising growth

Since SBS introduced in-program advertising in FY06/07, the number of advertisers has increased by **65%** with SBS now having the same advertisers as seen on commercial free-to-air (FTA) television, and SBS total revenues from advertising on all of its platforms grew by **123%**<sup>79</sup>. This is shown on the graph below and the rate of growth from SBS ad revenues far exceeds the fairly flat growth rate of the commercial FTA for the same period<sup>80</sup>. SBS ad revenues saw a transient spike every 4<sup>th</sup> year due to the FIFA World Cup.



The graph illustrates the impact of in-program advertising on SBS and a fairly aggressive commercialisation policy which has tipped the previous relatively level playing field (prior to 2005 when SBS and commercial FTA tracked quite closely), into one that now is no longer level.

The flat commercial FTA rate versus the extreme ad growth for SBS where SBS bears no risk for that growth (as it is 71% government backed – via appropriations) seems contrary to competitive neutrality principles, given that the commercial FTA ‘risk all’ for a mere flat rate.

The test here is that of a principle – not to be confused with the total dollars of SBS or the commercial FTA. If SBS had not had access to public funds for which it purchased content that in turn accelerated SBS ad growth levels, then the principle would have been upheld.

**The obvious solution for SBS and the commercial sector to compete fairly is to return SBS to its pre-2006 state (ads between programs only), or prohibit ads on SBS totally.**

## Advertising placement

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. Under this model SBS remained like that of a healthy public broadcaster. Programming did not really encroach into the commercial broadcasters' territory.

Prior to on-screen watermarks, it was always possible to tell if a television set was tuned to SBS because SBS programming looked inherently different from the ABC and commercial television. That is no longer the case. Since the introduction of in-program advertising a little more than a decade ago, SBS presents itself – advertisements and programs – like a commercial broadcaster. More than a decade ago the advertisements on SBS were unique. Now, even 85% or more<sup>81</sup> of the ads are the same as commercial TV.

It has been said: But 'SBS . . . [has] . . . only five minutes an hour of ads, compared with 15 minutes for the commercial networks'<sup>82</sup> (SBS MD, 2018). This statement creates a false impression of what actually occurs on-air.

Under section 45(3) of the SBS Act, promotions are exempted from being counted as advertising on SBS. Off-air transmission logs<sup>83</sup> reveal that as a consequence of this exemption, typically SBS television averaged more than 9 minutes of commercial-like interruptions hourly. This is not far off the 13 minutes of commercial breaks (ads and promos<sup>84</sup>) seen on commercial free-to-air stations. This sheds light on why audiences believe SBS looks about as commercial as channels, 7, 9 and 10.

**From the viewer perspective, SBS appears to have about the same degree of commercial intrusion as the commercial networks.**

Before late-2006, there were no interruptions on SBS TV.

SBS's re-interpretation of the law – to position commercial breaks in every program – means it now competes even more directly for advertising dollars than when ads were between programs only (because the value of an in-program advertisement is significantly higher than if an ad were between programs).

The mechanism for correcting this imbalance is detailed in the discussion that follows.



**There are two options that address the placement of advertising in this submission.**

## **Option 1 discussion**

Advertising revenues fluctuate and with each new network or platform, total commercial revenue has grown.

Section 45(2)(b) of the SBS Act limits advertisements to 5 minutes per hour. However, SBS TV broadcasts a total of 20 minutes per hour in aggregation of its four networks: the SBS primary channel, VICELAND, The Food Network, and NITV (4 networks x 5 minutes per network = 20 minutes total), plus advertising on various SBS internet platforms and apps.

**Without any change in legislation, SBS pushed competitive neutrality principles and translated a 5 minute hourly advertising limit set by the SBS Act, into 20 minutes per hour simply by adding more TV channels.**

Not only did the commercial broadcasters lobby against increased advertising on SBS<sup>85</sup> but there was massive objection from SBS viewers to a Bill to double the hourly advertising limit in 2015<sup>86</sup>. 62,000 petitioners opposed that Bill<sup>87</sup>, and in 2017, 10,000 viewers' directly emailed politicians also opposing a similar Bill<sup>88</sup>. Both Bills failed to become law. The Government has since dropped the policy to raise the hourly SBS advertising limit<sup>89, 90</sup>. No one wants more advertising and it appears contrary to competitive neutrality principles.

In 1988, *The Review of National Broadcasting Policy* recommended that SBS be opened to commercial advertising<sup>91, 92</sup>. In December 1991, SBS was corporatised and advertising introduced<sup>93, 94, 95, 96, 97</sup> with government appropriations guaranteed to continue<sup>98</sup>.

The 1991 Hansard noted scepticism from major advertising agencies, that–

**advertising ‘will never cover the cost of local production’<sup>99</sup>.**

With advertising revenues growing 123% since FY06/07, evidence of a measurable increase in first run Australian content<sup>100</sup> on SBS is lacking<sup>101</sup>.

Australian content on SBS now accounts for only 7%<sup>102</sup> of its schedule with the balance being largely imported (often American) commercially attractive predominantly English language content. This is not how SBS was, nor envisaged or supposed to be.

**Given that ad revenues have consistently been insufficient to adequately fund Australian content, and SBS now chases eyeballs with mainstream content to**

further increase its ad revenues which in turn increases commercially viable programming costs<sup>103</sup> undermining competitive neutrality principles, it is time SBS was fully-funded from the public purse (which SBS formally publicly requests<sup>104, 105</sup>), and as a logical step cease all advertising on SBS.

**RECOMMENDATION 1: option 1**

Fully-fund SBS and legislate that–

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

**Option 1 allows SBS to focus on its important role, enabling content not driven by ratings, hence removing the reason to exploit an unfair advantage<sup>106</sup>.**

## Option 2 discussion

Option 2 retains advertisements, positioned respectful of that intend by the legislators.

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*** (section 45(2)(a) SBS Act)

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 limiting advertisements to between programs and half time in sport such as in a soccer match only<sup>107, 108, 109</sup>. SBS followed that understanding until late 2006.

However, between 13 January 2006 and 9 August 2006 inclusive, there were 152 pages of correspondence spread over 16 occasions between SBS and Mr Bret Walker SC on the question as to if SBS would be in breach of the SBS Act by broadcasting advertisements within TV programs. This included a 17-page opinion provided on 31 January 2006, a 7-page supplementary opinion on 16 March 2006, a 3-page further supplementary opinion on 28 April 2006, and a 3-page opinion on 9 August 2006. These opinions have never been tested in a court.

On 1 June 2006 and before all the legal correspondence had concluded, SBS announced their intention to place advertisements within programs anyway, the same as commercial TV<sup>110</sup>.

**Competitive neutrality principles were not considered against the impact of SBS stepping up their commercial side and the introduction of in-program advertising with commercial breaks interrupting all programs.**

Arguments around natural program breaks and intent of the legislators have been conveniently ignored by SBS in their pursuit of tipping the public-commercial playing field.

In 2008, SBS provided evidence to a Senate Committee that it had ‘forced’ about 6,000 commercial breaks over a 12-month period<sup>111</sup> – 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.

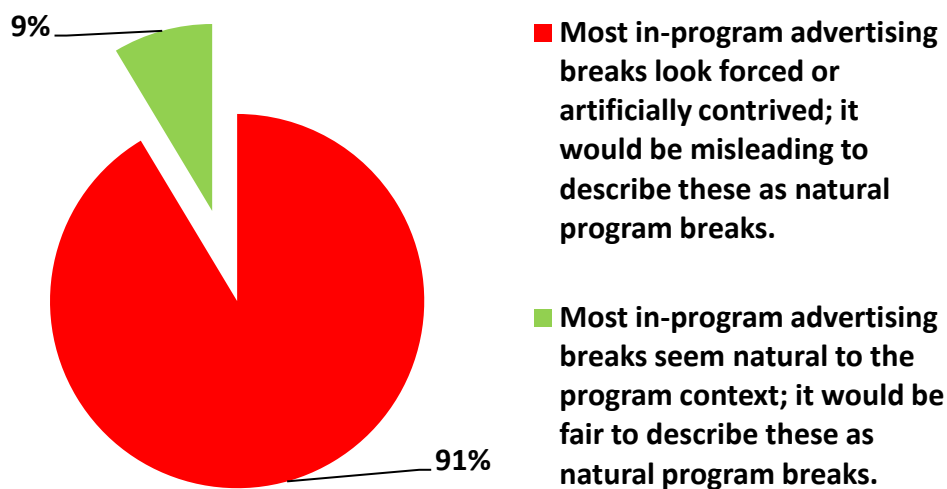
The phrase “natural program breaks” intended to limit the placement of advertisements is now disregarded by SBS so much so, that even a ‘forced’ break in a program is deemed by SBS to be ‘natural’ – when clearly it is not.

In two separate studies of two different cohorts, viewers of SBS 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***<sup>112, 113</sup>,

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

**Natural program breaks assessment**



The chart is an amalgam of the averages for the data shown in two studies: *A study of 2044 viewers of SBS television on advertising, Charter, relevance and other matters* (2013); and *Survey 2017 about SBS*

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 the natural half-time break in sport<sup>114</sup>. The relevant text (ignored by SBS today) 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***<sup>115</sup> (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***<sup>116</sup> (Sen ALSTON Liberal).
- ***natural program breaks will be so unobtrusive on audiences as to be almost undetectable***<sup>117</sup> (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***<sup>118</sup> (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***<sup>119</sup> (Mr SINCLAIR National).

Considering all the evidence, if a definition had been placed into the Act, for SBS arguably it could have been that below:-

*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.

The intention of the legislators described above was honoured by SBS until late 2006. However, after SBS discovered a loophole in the law in 2006 that exploit has been used to insert in-program commercial breaks into all programs.

SBS would have been less able to, consciously or unconsciously, challenge competitive neutrality principles if a definition of “natural program breaks” were in the SBS Act that reflected the text cited from the Hansard and summarised in the yellow box above.

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

***serves to erode the fundamental tenets of public broadcasting***<sup>120</sup>,

and later the Minister said, it amounted to–

***reinterpreting the clause in the Act that refers to ‘natural program breaks’***<sup>121</sup>.

In three separate studies<sup>122, 123, 124</sup> over three different years of three different cohorts of SBS viewers nationally (2008 n=1,733; 2013 n=2,044; 2017 n=1,176), totalling 4953 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 over the top (OTT) streaming services (e.g., Netflix), the ABC, and other outlets who do not disrupt programs.

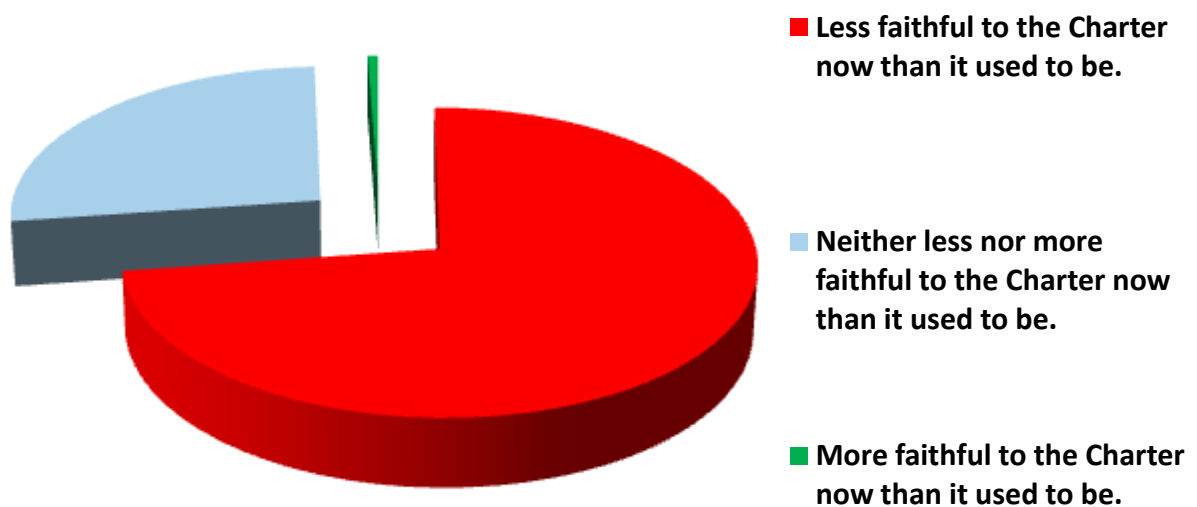
It is very clear from thousands of published comments<sup>125, 126, 127</sup> that there is a strong desire on the part of the public – and for the creation of a fairer playing field – to remove in-program commercial intrusion on the nation’s public broadcaster.

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 viewers<sup>128</sup> said they wanted that to occur on a ‘languages other than English’ (LOTE) channel if SBS created one. SBS appear inclined to do neither.

Of the 4953 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<sup>129, 130, 131</sup>.***



The chart is an amalgam of the data averages from three studies:- *One Minute Survey* (2008); *A study of 2044 viewers of SBS television on advertising, Charter, relevance and other matters* (2013); and *Survey 2017 about SBS*

The move away from the Charter is but a casualty caused by SBS aggressively competing with the commercial sector and using significant public funds to do so. This outcome and unfair advantage, in SBS's favour, may not exist if SBS did not have in-program ads.

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<sup>132</sup>.***

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<sup>133</sup>.***

The 2006 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<sup>134</sup>*** (SBS Managing Director, 2006).

In 2007 many thousands of viewers petitioned against the change<sup>135</sup> with thousands also emailing politicians seeking more funding for SBS and an amendment in the law to end disruptions into programs on SBS-TV<sup>136</sup>. 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 breaks<sup>137</sup>. In 2010, more than 15,400 people had directly asked their MPs and Senators to free SBS from advertising and to amend the legislation accordingly<sup>138</sup>. The nationwide surveys of SBS viewers in 2008, 2013, and 2017 all recorded strong opposition to in-program advertising by SBS<sup>139</sup>, <sup>140</sup>, <sup>141</sup>. The issue has not ameliorated.

Prior to late 2006, when advertisements were outside programs, the viewer was the client of SBS and SBS considered the needs of their client, the viewer, over and above that of an advertiser. However, when SBS began to disrupt all television programs for advertisements, the client of SBS became the advertiser, and hence SBS began to compete with commercial TV. Viewers of a commercial broadcasting transaction are a commodity, a product, to be on-sold to the advertising client. This is a point of difference between the commercial operation that SBS has adopted, and a true public service broadcaster where the client would otherwise be the viewer. SBS now has an audience for sale but without risk due to public funds as back-up. This helps to further explain why there is no longer a level playing field between SBS and commercial free-to-air broadcasters.

We recommend option 2 below in circumstances where the parliament **insists** on SBS raising some revenue from advertising.

**RECOMMENDATION 1: option 2**

Legislate that–

***Advertisements, sponsorship announcements and other non-program matter shall not be transmitted in or during a program on any SBS service.***

This option upholds first principles by removing the loophole exploited by SBS since late 2006 to interrupt all programs for commercial breaks, mimicking commercial TV.

**Option 2 would permit SBS to transmit advertisements before or after programs only on its broadcast and streaming services, and display advertisements on its web pages and apps. Programs would not be disrupted for commercial breaks on any platform.**

Without question, this option would bring SBS closer to that intended by the legislators while safeguard against ignoring competitive neutrality principles because the



ratings-advertising-dollar incentive – currently available to SBS – would be significantly reduced and therefore SBS would not chase commercially attractive programs to the extent that it has.

SBS would focus on content that audiences are currently denied, better fulfilling its public broadcasting role.

Options 2 may tend to attract advertisers who support SBS for its inherent value – what it stands for – rather than those seeking a higher return from ratings.

**However, option 1 most likely would be more effective than option 2 in ensuring competitive neutrality principles are adhered to.**

## Use of section 11 of the SBS Act

Whilst it would be preferable to bring about recommendations via legislation, some recommendations may still proceed by regulation under section 11 of the SBS Act which provides for the Minister to give a direction to the SBS Board. The Minister is prohibited from interfering in programming decisions.

***The Minister must not give a direction in relation to the content or scheduling of programs to be broadcast*** (Section 11(3) SBS Act).

Commercials are not program and therefore do not fall under the limitations imposed under section 11. The television industry refers to a commercial as “non program matter”<sup>142</sup>.

A change in the placement of commercial breaks could be done without legislative change by the Minister issuing a direction under section 11 of the SBS Act, noting such direction would refer to the placement of “non program matter” (i.e., advertisements and promos), not the scheduling of programs, thus a lawful use of section 11.

For example, under section 11, the Minister may direct the SBS Board that:-

**On SBS broadcast and streaming services, the transmission of non-program matter shall be limited to before or after a program.**

As a consequence of the ongoing dire commercial practices at SBS, Save Our SBS advises RECOMMENDATION 1 (option 1 or 2) take effect in law on the first day in 2019. If that is not possible, we **urge** the Minister exercise his discretion under section 11 of the Act, citing the boxed text immediately preceding this paragraph, effective 1 January 2019.

## Funding

In the event that SBS were no longer permitted to carry commercial advertising (RECOMMENDATION 1: option 1) or the placement of advertising was limited strictly to before and after programs only, not during them (RECOMMENDATION 1: option 2), SBS's own source income would be affected.

SBS data points to a drop in advertising revenues of 44%<sup>143</sup> to 64%<sup>144, 145, 146</sup> under RECOMMENDATION 1: option 2.

Whatever the option, it would be reasonable to expect government provide transitional funding to help SBS through to the next round of triennial funding when funding could be stabilised, and if RECOMMENDATION 1: option 1, SBS to be fully-funded.

Public funding (appropriations) for SBS is on a triennial basis. The next round is due to be announced in the May 2019 Budget.

**In submissions by SBS in 2017 and 2018, the broadcaster urged that Australian content on SBS be fully-funded<sup>147, 148</sup>. If that occurred, there would be no point in SBS having any advertising.**

It has been suggested that an investment by the Australian government in funding first run Australian content on SBS would stimulate the economy to a greater extent than that invested. However, there are no recent formal studies on this but according to a May 2006 statement issued by SBS 'every dollar spent by SBS [from government appropriations] generated three times that amount in Australian film and television productions with more employment in the industry and a greater range of programs'<sup>149</sup>. This stimulus and the resulting increased productivity is reason alone for government to fully-fund SBS in lieu of advertising.

## Precedence reverting from public-commercial to public

Broadcasting in Australia grew up like a combination of the European and American models.

The American model being commercial, while the European was public.

For many years, most European countries had no commercial broadcasters. In addition to public funding, some European countries permitted advertising on their public broadcaster.

When SBS transitioned from non-commercial to public/commercial in 1991, the hybrid model was based on public broadcasters in Europe with limited advertising.

However, unlike Australia, there were no private-commercial broadcasters in those countries.

The public broadcaster in Austria, ORF, screened advertisements once per day only in a half-hour TV show format. However, on the few other European public broadcasters that carried advertising, ads were mainly limited to between programs only,<sup>150,151</sup>. That format was adopted by SBS (until SBS discovered a loophole in the law in 2006).

Since the 1990s, the laws of some European countries have disallowed television advertising<sup>152</sup> or in prime-time viewing<sup>153, 154, 155</sup>. In recent years, various European parliaments have banned advertising totally on their public broadcasters<sup>156, 157, 158</sup> separating public and private-commercial broadcasters. This change was necessary to create a level playing field for the emerging private-commercial broadcasters who rely on advertising revenues without access to public funds.

In 2009 the French government introduced provisions to eliminate the sale of advertising on its public broadcaster, France Télévision. The first 'ad ban' stage was for primetime only, with a second stage planned subsequently to cover all broadcast hours. The stated reason was to 're-emphasise the public service role of France TV, programming not driven by ratings'<sup>159</sup>.

After review in 2015 the Ministry of Culture and Communication announced the ad ban would continue and was driven by a desire to 'not disrupt or destabilise the private broadcasting sector'<sup>160</sup>.

During the 2015 review, stakeholders, the French public, producers, and private-commercial broadcasters opposed any possible re-introduction of advertising to France's public broadcaster<sup>161</sup>.

It was argued that if advertising were re-introduced to the French public broadcaster it would re-create an–

***unfair advantage to the public broadcaster and further disadvantage private broadcasters***<sup>162</sup>.

It appears the abolition of advertising (at least in primetime) re-established a level playing field between France's public broadcaster and the commercial broadcasting sector<sup>163</sup>.

The Spanish Parliament legislated for the total removal of advertising on its public broadcasters, RNE in 1993 and TVE in 2010<sup>164</sup>.

The public broadcasters in Sweden, Norway and Denmark no longer have advertising<sup>165</sup> while Germany's public broadcasters, ARD and ZDS, only place ads between programs as do other European public broadcasters that carry advertising, MTV Hungary, TVP Poland, RÚV Iceland (except for one break only per very costly local drama program) otherwise only between programs. Most European countries prohibit ads on public broadcasters in primetime, although some allow advertising in daytime between programs only<sup>166</sup>.

**In Europe, it is the private-commercial broadcasters who interrupt programs for ad breaks. In the main and to ensure fair competition, public broadcasters do not. Nor should SBS.**

Noting the clearer distinction of public from commercial, in 2010 the European Parliament issued a statement on the "*co-existence of public and commercial broadcasters*" supporting the 'dual system' (where some broadcasters are public and some are private-commercial) saying that system ensured a "*diverse range of programming*" that contributed to "*media pluralism, cultural and linguistic diversity*" as well as "*freedom of expression*". The statement said, "*a strong, viable and well-funded public service broadcasting is part of this. In a well functioning dual system, the public service broadcasters (PSB) can raise the standards in the market*"<sup>167</sup>.

Although there are some hybrid public/commercial broadcasters the world over, **most limit the placement of advertising greatly – to between programs only**. Some – in Canada, New Zealand, and the UK are the exception.

The European experience could be applied to Australia as reason to legislate that SBS be returned to a non-commercial, or less commercially focused public broadcaster under RECOMMENDATION 1: option 1 or 2, as the strongest means to re-establish fairer competition between SBS and the commercial sector.

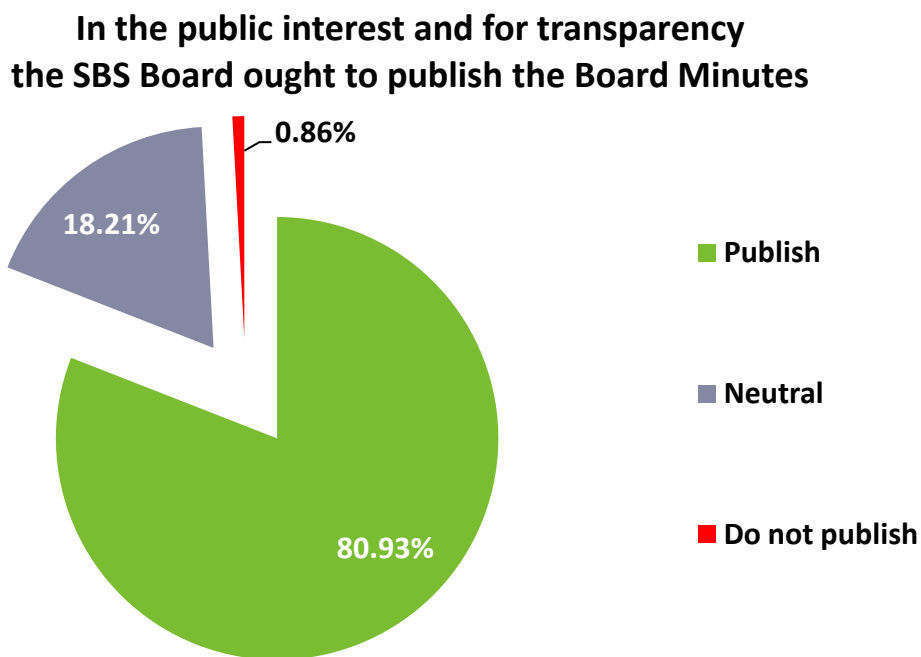
## Governance

This part covers five areas of SBS governance.

### Publication of Board (and committee) Minutes

80.93% of 1176 SBS viewers nationally in 2017 said that:-

***in the public interest and for transparency the SBS Board ought to publish the Board Minutes<sup>168</sup>.***



*Survey 2017 about SBS*

The BBC Trust (its governing body), stated "in the interests of openness and transparency we publish the schedule of meetings and the minutes"<sup>169</sup>. These appear on the BBC website.

If the SBS Board were to publish its Minutes it may help in understanding how certain decisions were made and why. In this more transparent process, the likelihood of SBS seeking to gain in an unfair manner, or exploit any advantage it may be able to access, would be greatly reduced by such publication.

### **RECOMMENDATION 2**

Legislate that–

**The SBS Board shall publish its Minutes and tabled materials of its meetings (and its committees, including the Community Advisory Committee) within 90 days after the date on which the Minutes and tabled materials were confirmed, with provision to redact privacy and commercial-in-confidence matters (according to a published set of principles).**

## **Accountability of the Board**

The Charter is undermined by the provision of section 6(4) in the SBS Act which states: “Nothing in this section imposes on the SBS a duty that is enforceable by proceedings in a court.”

Section 10 of the Act describes the Duties of the Board, some of which includes references to the Charter. However, section 10(2) removes accountability to the extent that it states: “Nothing in this section imposes on the Board a duty that is enforceable by proceedings in a court.”

This legislated immunity from prosecution for SBS and its Board may have made the commercialisation of SBS opportune without regard to upholding competitive neutrality principles.

It may seem unusual that, at law, SBS and its Board are not accountable for enforcing Charter obligations or in executing the duties of the Board. An argument in favour of this possibly might go to the heart of the independence of a public broadcaster; if SBS is to serve the public (as expected of a public broadcaster) the broadcaster must be able to operate independently without fear of obstruction or interference. This is reflected in section 10(1)(a): “It is the duty of the Board to maintain the independence and integrity of the SBS”.

However, there is no mechanism for outside, independent assessment of matters affected by the provisions of sections 6(4) or 10(2). That fact has almost 'invited' SBS to test just how far it could go in using its advantage in a fashion not open to the commercial broadcasting sector.

Evidentially under these sections neither SBS nor the Board are accountable to any body outside SBS. Due to the special and independent nature of SBS, we are not suggesting sections 6(4) or 10(2) be repealed.

However, SBS and its Board ought to be subject to an external and independent body, such as ACMA or the Commonwealth Ombudsman.

### **RECOMMENDATION 3**

Legislate that–

- **ACMA may investigate matters relating to SBS Charter compliance; and**
- **the Commonwealth Ombudsman may investigate matters that relate to duties of the Board; and**
- **the SBS Board must 'give regard' to advice received from ACMA and the Commonwealth Ombudsman; and**
- **SBS, ACMA and the Commonwealth Ombudsman respectively, must publish details of any investigations with outcomes.**

**The above recommendation does not remove SBS's independence but it ensures external assessment and feedback to SBS and its Board whilst making it more difficult to disregard the principles of competitive neutrality.**

## **Reporting of financials**

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 \$106.719m<sup>170</sup> of which \$93.1m may be attributed to advertising and sponsorship revenues<sup>171</sup>. Commissioned programs – at cost in 2017 was \$97.8m<sup>172</sup>. SBS no longer report network or platform breakdowns of ad revenues.



Prior to 2015 financial information like that above was relatively easy to locate and it appeared in the certified financial tables under predictable consistent headings. Although indexed, some of such information is now buried in the body text of an annual report. It is comparatively difficult to locate.

In 2015 SBS changed the method by which its 'own source revenue' was reported and altered certified financials from a previous year.

In the SBS Annual Report 2015, under Note 4(a) to Financial Statements (Sale of goods in connection with - Related and External parties) data in the 2014 column was amended from that published in the 2014 Annual Report. Specifically, the apportionment between related parties and external parties changed as follows. In the 2015 Annual Report, (2014 column) \$229m appeared at *Related parties* and \$2,907m at *External parties* respectively<sup>173</sup>. However, in the Annual Report 2014, (2014 column) these values were \$0 (*Related parties*) and \$3,136m (*External parties*)<sup>174</sup>. No explanation was made as to this apparently retrospective change from previously published and certified statements.

In a departure from ordinary reporting practices of annual reports over many years, commencing in the Annual Report 2015, *Notes to the Financial Statements*, 4(a) merged a number of own-source income line items into a quite unhelpful amalgam of "Rendering of services in connection with - Related and External parties". In particular the breakdown between advertising and sponsorship, Pay TV subscription revenue and production services was no longer available<sup>175</sup>. Apart from causing an inconsistency with the reporting of standard data compared to prior years, this change served to cast a veil over key own-source income performance – including advertising revenue – which is critical to the parliament and public understanding of the budgetary requirements of SBS.

Section 73 of the SBS Act outlines reporting requirements for SBS and it is also bound by the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*. Due to the doubt raised since 2015 in the reporting of these financials (subsequent reports altering data of earlier reports without explanation and removing advertising revenues from certified tables to be 'buried' in the body text of a report), reports are less transparent than they were.

#### **RECOMMENDATION 4**

Legislate that–

**Within a certified financial table, SBS annual reports must clearly show the breakdown of the rendering of services own-source income and broad breakdowns of income and expenses for each SBS network and platform.**

## Efficiency

SBS is the least funded broadcaster and financially very efficient.

Under section 10(1)(e) of the SBS Act: “It is the duty of the Board to ensure the efficient and cost effective functioning of the SBS”.

However, section 10(1)(e) fails to require that SBS be efficient at delivering on its Charter. This failure of the Act, has in part enabled SBS to develop its commercially aggressive strategy that now brings into question competitive neutrality principles. For example:-

- As advertisers pay more for an advertisement during a program compared to top and tail only, the 2006 SBS strategy to position advertisements within programs eventuated not only due to a failure of the Act to define “natural program breaks”<sup>176</sup>, but largely as a consequence of section 10(1)(e)<sup>177</sup> requiring that SBS be financially efficient. This enabled SBS to compete even more directly with the commercial sector.
- Although the transmission of betting and gambling advertisements is more tightly regulated now than before March 2018, 87.1% of a cohort of SBS viewers surveyed in 2017 said such advertisements on SBS could decrease social cohesion (contrary to what SBS purports to be about), and 91% said SBS ought to cease broadcasting these types of advertisements<sup>178</sup>. These ads used to be more associated with commercial television than SBS, until it sought revenue in this area. However, taxpayers do not support the idea of a public institution, such as SBS, chasing money that is harming people's lives<sup>179</sup>. Although SBS's Board has a firmly stated ‘social cohesion’ policy and has for many years<sup>180, 181, 182</sup>, by transmitting betting and gambling advertisements the Board has shown itself to be disingenuous about its own ‘social cohesion’ policy. To be fair though, the Board is conflicted by the provisions of section 10(1)(e) that SBS be financially efficient as it is highly efficient to broadcast these types of advertisements, rather than reject them.
- SBS purchases some local acquisitions with product placement or branded content at a difference of 10% of what it would cost if the broadcaster commissioned and made the same program<sup>183</sup> (see discussion on ‘product placement and branded content’ and *Bondi Harvest* in the *Codes of Practice* section of this submission). The nature of these programs appears to be more in line with the type of content expected on commercial television<sup>184</sup>. This is a good example of where SBS has failed to uphold the Charter as evidentially acquisitions like this are financially efficient, satisfying the provisions of section 10(1)(e).
- Overall, it would be fair to say that section 10(1)(e) plays a part in SBS increasing its commercial foothold to the detriment of competitive neutrality principles.

These are the unintended consequences of section 10(1)(e).

The problem of section 10(1)(e) is that it ignores other (non-financial) efficiency measures that are essential to SBS fulfilling the purpose for which it was established. SBS is now less efficient in its primary function of fulfilling Charter obligations than before it introduced in-program advertising<sup>185, 186, 187</sup> (see the *Advertising placement* section).

#### **RECOMMENDATION 5**

Legislate to–

**Include a provision that section 10(1)(e) shall not negate a duty of the Board to ensure that SBS is efficient in its primary function of fulfilling Charter obligations.**

Without also adopting RECOMMENDATION 1 (option 1 or 2), the Board will be conflicted by RECOMMENDATION 5 alone.

## **Codes of Practice**

Under section 10(1)(j) of the SBS Act, the SBS Board is responsible for developing the SBS Codes of Practice in respect of programming matters and notifying the Codes to the ACMA.

The original purpose of a Code of Practice was to provide a mechanism to resolve audience complaints against a known benchmark that reflects community standards, while gathering statistics and reporting the issues raised with measured outcomes.

However, in recent years SBS has positioned material into guidelines that may once have been destined for their Codes.

Under section 150(1)(a) or (b) of the *Broadcasting Services Act 1992* (BSA), ACMA may only investigate a complaint made under a Code – not a set of guidelines outside a Code.

Examples of where SBS has placed material in a guideline are:-

- Guidelines For The Placement of Breaks in SBS Television Programs<sup>188</sup>
- SBS Editorial Guidelines<sup>189</sup>
- SBS's User-Generated Content Guidelines<sup>190</sup>

- Guidelines for the Sponsorship of SBS News Properties<sup>191</sup>

There are other SBS guidelines too.

Whilst some of these are a protocol of how employees are to deal with a particular situation, parts or all of some ought to be contained within the SBS Codes of Practice and previously were.

**None of the SBS guidelines or Codes include protocols to ensure the principles of competitive neutrality are upheld.**

The Codes of Practice 2005 were the last Codes to include a definition of natural program breaks<sup>192, 193</sup> (not dissimilar to the ‘yellow box’ definition found in the *Advertising placement* section in this submission, never defined in the SBS Act and now not in a Code).

When SBS re-interpreted the SBS Act to ‘force’ numerous commercial breaks into all programs under the pretext that the breaks were ‘natural’, the broadcaster simultaneously removed the definition of natural breaks from their Codes to a set of guidelines outside the Codes.

As a consequence of section 150(1)(a) or (b) of the BSA, SBS’s move denied a complainant’s ability to lodge a formal complaint or being referred to the industry regulator, ACMA, and block any investigation or resolution by ACMA to the SBS policy that effectively re-interpreted the SBS Act. It also prevented ACMA from collecting statistics about the 6,000 or so complaints made to SBS when it first commenced in-program advertising which was later raised at Senate Estimates<sup>194</sup>.

In the example just cited, SBS circumnavigated accountability by lawfully obstructing natural justice from any complainant and investigation by ACMA in this matter.

**The culture within SBS to move material from a Code into a guideline is less transparent than pre-2006 (the introduction of in-program advertising) and arguably this removed the checks and balances that were once there, enabling SBS (since 2006) to take advantage of its position in respect of the public – commercial playing field.**

Evidently, there needs to be a framework for determining which parts of SBS’s policies or guidelines ought to be included in a Code of Practice. A good starting point might be to:-

**RECOMMENDATION 6**

Legislate that–

**If an SBS policy or guideline impacts presentation or content in respect of competitive neutrality principles, then the relevant policy or guideline shall be included in the SBS Codes of Practice.**

When SBS drafts a new Code of Practice or updates an existing one, it does not usually consult the community. Nor it is required to.

Under section 123 of the BSA, the broadcasting sector is required to develop its Codes “in consultation with the ACMA”. SBS is exempt from such requirement.

Under section 10(1)(g) of the SBS Act, the SBS Board is required to “to be aware of, and responsive to, community needs and opinions on matters relevant to the Charter”. However, other than via the SBS Community Advisory Committee (who do not have a community presence), there is no provision for a consultation process nor a means to assess a draft or final Code against a benchmark, such as community standards (except gambling advertisements, as of March 2018), nor for ACMA to Register an SBS Code.

However, for all other (non-public) broadcasters and subscription services, ACMA is required to register broadcasting Codes but only when ACMA is satisfied of criteria being met under the BSA, two of which includes at section 123(4)(b)(i) and (iii) that: “the code provides appropriate community safeguards for the matters contained in the code” and “members of the public have had an adequate opportunity to comment on the code”. Other than the fairly new gambling code, there is no similar requirement placed on SBS.

To create a level playing field and comply with the principles of competitive neutrality, it would seem fair that in the development of the SBS Codes of Practice, SBS ought to be required to consult the community and take account of community standards in respect of SBS’s social responsibility as a public broadcaster.

## RECOMMENDATION 7

Legislate that–

**SBS shall be required to consult with, and take account of, community views in the development of a socially responsible Codes of Practice.**

Although section 10(1)(g) of the SBS Act requires the SBS Board be “aware of, and responsive to, community needs and opinions”, this is limited to matters relating to the Charter. There is no specific provision for that above in the development of the SBS Codes of Practice. NOTE the inclusion of the phrase “socially responsible” in the recommendation.

An obvious example of where the SBS Codes of Practice have failed to keep up with community standards is in the area of product placement or branded content as SBS prefers to call it. The SBS Act and Codes of Practice are silent on this ‘hidden’ form of advertising. Leaving aside the question as to if this is unlawful, it would not be unreasonable to expect SBS declare to viewers if a program contained branded content. The paragraph below is an example of what SBS could place into their Codes of Practice so that it is more transparent when broadcasting programs with product placement or branded content.

**Where a program contains product placement or branded content and SBS is aware of that, it must endeavour to declare such either during the program, or in the credits of the program, or immediately following the program, in a manner that is readily understandable to a reasonable person.**

Although SBS fails to address this in their Codes, the above text is very similar to code 1.23 under the *Disclosure of Commercial Arrangements* in the (now obsolete) *Commercial Television Industry Code of Practice*, January 2010<sup>195</sup>. SBS does not follow that Code.

The SBS Editorial Guidelines<sup>196</sup> at guideline 5.9.1 covers *Use of products, services and facilities in content production*. As this is a guideline only and not part of the Code of Practice, no action can be imposed on SBS for failure to comply under section 123(4)(b)(i) and (iii) of the BSA – as detailed above. In any case, guideline 5.9.1 is silent on whether or not product placement or branded content should or should not be declared to viewers.

To understand the extent of this issue, SBS viewers were subjected to no less than 10 commercial brands in the recently SBS acquired series *Bondi Harvest*.

Monitoring by Save Our SBS shows that the branded content included:-

**Weber BBQ; Lazy Bear Rum; Torelli swimwear; Cobram Estate Olive Oil; BondiHarvest.com; Heineken beer; Chasseur; Depot Cafe; Red Island Olive Oil; and a SMEG food blender.**

All these products were flashed on screen for anywhere between half of one second and a couple of seconds numerous times.

Most viewers would not have been aware of these advertisements that seemed to be part of the program content.

SBS did not declare this anywhere.

Additionally, episode 4 contained an advertorial of more than 30 seconds for *Depot Cafe*, which is the family business of the program's presenter Guy Turland.

Upon questioning before a Senate Estimates hearing on 27 February 2018, in evidence the SBS MD said that SBS had exempted all of the above from being counted in the 5 minute hourly advertising limit<sup>197</sup> that the SBS Act sets for the broadcaster.

Although the SBS Act is silent on product placement as are the SBS Codes of Practice, a past management and Board would have intuitively known not to acquire a program with the content described, it being more of the type expected to be seen on a commercial broadcaster. That distant former attitude pretty much ended when SBS adopted their commercially aggressive approach and the introduction of in-program commercial breaks just over a decade ago.

Clearly the above is an example of SBS delving into commercial territory and in a very opaque manner.

The decision to accept *Bondi Harvest* with its 'hidden' form of advertising and not declare that to its audience, says a lot about the lack of care and respect SBS now has for its audience and where SBS sees its place in the broadcasting sphere.

It tests to the limit the whole notion of public broadcasting – what it stands for – and SBS competing with the commercial sector head on. The content, construction, and advertising in this program is definitely of the type not expected on SBS. It appears to undermine competitive neutrality principles totally and is so far off Charter, it is a wonder the SBS Board permits it.

Unfortunately, it is not the only program of its type on SBS.

Much of this goes to the transparency of SBS, how it is governed, its overly commercial culture, funding, and legislation that is deficient in the areas discussed.

## Conclusion

In the 1990's with a sensitive and sensible approach, advertising between programs only served SBS well. From late 2006 with advertisements disrupting programs, the culture of SBS changed dramatically.

However, due to Australia's growing migration and the importance of social cohesion, SBS is needed more now than ever before and it is essential it get back on track.

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 high time this destructive practice and questionable funding model for an Australian public broadcaster was overturned, as it has been in other parts of the world.

SBS ought to be funded as a public broadcaster, not a subsidised quasi commercial look-a-like. Let commercial broadcasters operate in their territory and keep SBS separate.

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 its full potential and commercial broadcasters operate free of an ever encroaching SBS in their space, is if advertising is curtailed or preferably prohibited on SBS by legislative amendments as outlined under RECOMMENDATION 1: option 1 or 2 in the *Advertising placement* section of this submission.

The commercialisation of SBS has caused it to lose its way by focusing too heavily on a commercial business model, forgetting that its real business – the business of any public institution – is to serve the public.

Setting aside the SBS growth in advertising of 123%<sup>198</sup> since the introduction of in-program advertising and acknowledgment from SBS that “some programs have absolutely nothing to do with the Charter”<sup>199</sup>, it is no coincidence that in 2018 a statistically credible sample of nationwide viewers identified 45% of content on SBS “as the type expected to be seen on commercial TV, not SBS”<sup>200</sup>, with 70% saying SBS now has “insufficient niche programming”<sup>201</sup>, and the ‘alternativeness’ of SBS dropping from 85% in 1998<sup>202</sup> to a mere 14% in 2017<sup>203</sup>. This deliberate strategy<sup>204, 205</sup>, which is driven by advertising, is inconsistent with the purposes of SBS in particular and public broadcasting in general.



In an advertising free environment, SBS would fulfil its public broadcaster role and once again focus on unique and 'special' content that viewers might otherwise not see.

**The current arrangement has skewed the playing field to the point that SBS no longer leads or acts like a public broadcaster and this never ending drive for more and more revenue – from in-program advertising and purchasing commercially attractive programs – places SBS in direct conflict with the principles of competitive neutrality.**

The SBS hybrid funding model of itself was assessed by 69% of those studied nationally in 2018 as providing SBS with a competitive advantage<sup>206</sup>. This is staggering. Equally staggering is that 91% of two separate cohorts of viewers in 2013 and 2017 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”<sup>207, 208</sup>. Clearly SBS fails the average reasonable person (Clapham omnibus) test in these matters.

That summarised above are the compelling reasons to either prohibit all advertising on SBS totally and fully-fund it, or at least cease in-program advertising completely (the pre-2006 model).

**If only one recommendation in this submission were to become law, the single recommendation most needed to ensure a significantly fairer playing field and guarantee SBS fulfils its “principal function”, would be RECOMMENDATION 1 (option 1 or 2). If not adopted, the competitive advantage that SBS now enjoys and its failure to satisfy Charter obligations will continue – even if other recommendations were put in place – in the absence of RECOMMENDATION 1.**

Additionally, considering that 84% of the 2017 cohort 'objected to advertising on a public broadcaster' and 94% said 'advertising on SBS impeded their viewing experience'<sup>209</sup>, it is high time for change as recommended.

Unquestionably, the public ethos and culture of SBS has shifted dramatically with it now operating more like a commercial broadcaster however with public funds.

The purpose of SBS is not to grow its commercial arms and exploit legal loopholes nor utilise its competitive advantage, but rather 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.

## Endnotes:

This submission may be published at:-

[https://saveoursbs.org/wp-content/uploads/2018/06/Attaining-a-level-playing-field\\_SBS-commercial.pdf](https://saveoursbs.org/wp-content/uploads/2018/06/Attaining-a-level-playing-field_SBS-commercial.pdf)

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<sup>1</sup> Department of Communications and the Arts, *Inquiry into the Competitive Neutrality of the National Broadcasters*, Terms of Reference, 28 March 2018,

<https://www.communications.gov.au/file/35341/download?token=4kpyX9-7>

from

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<sup>2</sup> Department of Communications and the Arts, *Inquiry into the Competitive Neutrality of the National Broadcasters, Issues Paper*, 24 April 2018,

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<sup>3</sup> SOSBS, 26 April 2017, *Survey 2017 about SBS*, pages 3, 6, 32,

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<sup>4</sup> SOSBS, 12 June 2018, *Programs on SBS survey 2018*, page 3 and 10,

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<sup>5</sup> CommunityRun & SOSBS (WayBack Machine), Pomeranz M & Dempster Q [petition], 2015, *Preserve its Integrity! Don't Increase Ads on SBS*,

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<sup>6</sup> Kostakidis M & SOSBS (WayBack Machine), 2017, *Preserve our media diversity: Don't turn SBS into Australia's fourth commercial TV network*,

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<sup>7</sup> Senate Select Committee, 10 December 2014, Scrutiny of Government Budget Measures Submission 52, SOSBS, *Impact of budget cuts and increasing advertising on SBS in primetime*, page 9,

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<sup>9</sup> SOSBS, 12 June 2018, *Programs on SBS survey 2018*, pages 8 and 14 to 27,

<https://saveoursbs.org/wp-content/uploads/2018/06/Programs-on-SBS-survey-2018.pdf>

<sup>10</sup> B&T (broadcasting and television advertising, marketing and media weekly magazine), January 2007

<sup>11</sup> Dempster, Q, July 2007, *Come Clean On Commercialisation*, edition of the Walkley Magazine (archived from the Way Back Machine),

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<sup>12</sup> Shoebidge N, 27 February 2006, *FIFA world cup kicks off SBS ad sales*, *Australian Financial Review*,

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<sup>13</sup> Environment and Communications Legislation Committee, 27 February 2018, *Estimates*, COMMUNICATIONS AND THE ARTS PORTFOLIO, Special Broadcasting Service Corporation, Mr Ebeid, page 66 (PDF 70),

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2Fe7a8364f-1f69-4a4b-9f10-70eef15e6814%2F0006;query=Id%3A%22committees%2Festimate%2Fe7a8364f-1f69-4a4b-9f10-70eef15e6814%2F0000%22>

<sup>14</sup> SBS, *Annual Reports*, FY06/07 = \$41.742m and FY16/17 = \$93.1m which is 123% increase in total advertising revenues; Number of TV advertisers has moved from 404 to 665 in the same period (i.e. 65% increase),

<https://www.sbs.com.au/aboutus/corporate/view/id/111/h/Annual-Reports>

<sup>15</sup> SOSBS, 12 June 2018, *Programs on SBS survey 2018*, pages 8 and 14 to 27,

<https://saveoursbs.org/wp-content/uploads/2018/06/Programs-on-SBS-survey-2018.pdf>

<sup>16</sup> FreeTV, 29 January 2018, *Submission on the economic and cultural value of Australian content on broadcast, radio and streaming services*, page 43 (PDF 51), section 3.2,

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<sup>17</sup> Environment and Communications Legislation Committee, 24 October 2017, *Estimates*, COMMUNICATIONS AND THE ARTS PORTFOLIO, Special Broadcasting Service Corporation, Mr Ebeid, page 151 (PDF 151),

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<sup>18</sup> SBS, *Annual Reports*, FY06/07 = \$41.742m and FY16/17 = \$93.1m which is 123% increase in total advertising revenues; Number of TV advertisers has moved from 404 to 665 in the same period (i.e. 65% increase),

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<sup>19</sup> Department of Communications, *The ABC and SBS Efficiency Study Report (redacted)*, April 2014, (pp 85)

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- <sup>21</sup> SOSBS, 12 June 2018, *Programs on SBS survey 2018*, (The question asked was: "As SBS is largely publicly funded and commercial broadcasters are not, does SBS have a competitive advantage or disadvantage in carrying advertising?"), page 14, <https://saveoursbs.org/wp-content/uploads/2018/06/Programs-on-SBS-survey-2018.pdf>
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- <sup>69</sup> SBS, *Annual Report 1998-99*, page 20 (PDF 22), [http://media.sbs.com.au/home/upload\\_media/site\\_20\\_rand\\_121927656\\_sbs\\_annual\\_report\\_1998\\_99.pdf](http://media.sbs.com.au/home/upload_media/site_20_rand_121927656_sbs_annual_report_1998_99.pdf)

<sup>70</sup> “Alternativeness” is a measure of the data derived from 14.2% (8.9% + 5.3%) of SBS viewers in the *Survey 2017 about SBS* (page 7) who said ‘SBS had become more mainstream than compared to 10+ years earlier’, and data derived from 85.2% of SBS viewers reported in the survey results in the *1998-99 SBS Annual Report* (page 20 PDF 22) who said ‘SBS has types of programs you would not see on other TV stations’.

<sup>71</sup> SOSBS, *A study of 2044 viewers of SBS television on advertising, Charter, relevance and other matters*, 23 July 2013, pages 16 and 98, <https://saveoursbs.org/wp-content/uploads/2013/07/A-study-of-2044-viewers-of-SBS-television-on-advertising-Charter-relevance-and-other-matters.pdf>

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<sup>73</sup> SOSBS, 1 December 2008, *One Minute Survey Results*, Answers to questions 3), 5), 9), <https://saveoursbs.org/archives/332>

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<sup>76</sup> B&T (broadcasting and television advertising, marketing and media weekly magazine), January 2007

<sup>77</sup> Dempster, Q, July 2007, *Come Clean On Commercialisation*, edition of the Walkley Magazine (archived from the Way Back Machine), [http://web.archive.org/web/20090322222338/http://magazine.walkleys.com/the\\_news/stories/come\\_clean\\_on\\_commercialisation\\_20070617104](http://web.archive.org/web/20090322222338/http://magazine.walkleys.com/the_news/stories/come_clean_on_commercialisation_20070617104)

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<sup>79</sup> SBS, *Annual Reports*, FY06/07 = \$41.742m and FY16/17 = \$93.1m which is 123% increase in total advertising revenues; Number of TV advertisers has moved from 404 to 665 in the same period (i.e. 65% increase), <https://www.sbs.com.au/aboutus/corporate/view/id/111/h/Annual-Reports>

<sup>80</sup> Free TV Australia/Commercial TV Australia, media releases, Advertising revenue for commercial television networks, 2003 – 2016, [http://www.freetv.com.au/content\\_common/pg-free-tv-advertising-revenue.seo](http://www.freetv.com.au/content_common/pg-free-tv-advertising-revenue.seo) and [http://www.freetv.com.au/content\\_common/pg-media-release-archive.seo](http://www.freetv.com.au/content_common/pg-media-release-archive.seo)

<sup>81</sup> FreeTV, 15 April 2015, (submission) - *Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015*, “A list of advertisers on the SBS (sourced from the SBS 2014 Annual Report) compared with the Nielson Adex data demonstrates that at least 85% of advertisers on the SBS also advertise on commercial free-to-air television”, page 9 (PDF 10), [http://www.freetv.com.au/Media/Submissions/2015\\_0007\\_SUB\\_FINAL\\_Senate\\_Environment\\_and\\_Communications\\_Committee\\_SBS\\_Advertising\\_Flexibility\\_and\\_Other\\_Measures\\_Bill.pdf](http://www.freetv.com.au/Media/Submissions/2015_0007_SUB_FINAL_Senate_Environment_and_Communications_Committee_SBS_Advertising_Flexibility_and_Other_Measures_Bill.pdf)

<sup>82</sup> Environment and Communications Legislation Committee, 27 February 2018, *Estimates*, COMMUNICATIONS AND THE ARTS PORTFOLIO, Special Broadcasting Service Corporation, Mr Ebeid, page 61, (PDF 65), <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2Fe7a8364f-1f69-4a4b-9f10-70eef15e6814%2F0006;query=id%3A%22committees%2Festimate%2Fe7a8364f-1f69-4a4b-9f10-70eef15e6814%2F0000%22>

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<sup>84</sup> FreeTV, *Commercial Television Industry Code of Practice (2015)*, section 5 Advertising Limits, [http://www.freetv.com.au/media/Code\\_of\\_Practice/Free\\_TV\\_Commercial\\_Television\\_Industry\\_Code\\_of\\_Practice\\_2015.pdf](http://www.freetv.com.au/media/Code_of_Practice/Free_TV_Commercial_Television_Industry_Code_of_Practice_2015.pdf)

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<sup>89</sup> SOSBS, 18 May 2017, *Government backs down on SBS advertising Bill*, <https://saveoursbs.org/archives/5930>

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<sup>91</sup> Department of Transport and Communications, 1988, *Review of National Broadcasting Policy*,

<sup>92</sup> The Canberra Times (Trove), Sunday 11 June 1989, *Advertising on SBS television*, page 6, <https://trove.nla.gov.au/newspaper/article/122269118>

<sup>93</sup> The Canberra Times, (Trove), 26 September 1988, *SBS: we need ads*, page 34, “a discussion paper on the subject [of SBS carrying advertising] is circulating at the moment, initiated by the then-Minister for Communications, Senator Evans, and SBS has made its views known. There is a need for more money to make the kind of programs the channel wants to produce, and advertising is one of the obvious ways of getting it. . . We need funds to make the kind of programs we want to specialise in — ones that encourage respect and regard for all Australians, whatever their background”,

<https://trove.nla.gov.au/newspaper/article/102074515>

<sup>94</sup> Hansard House of Reps, 14 October 1991, *SPECIAL BROADCASTING SERVICE BILL 1991* Second Reading, Mr SMITH Liberal, page 1842, “The SBS claims that it [advertising] will give a major boost to the creative and cultural well-being of this country and that every dollar that SBS puts towards Australian production has a potential to draw another \$3. . . But, if one of the consequences of going down this path is to provide greater Australian production, that certainly would be welcomed by me and the Party that I represent. . . a 1988 policy discussion paper, the Department of Transport and Communications estimated that \$70m would be necessary if SBS television was to incorporate local content in accordance with ABT requirements”,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansardr/1991-10-14/0041%22>

<sup>95</sup> Hansard Senate, 11 November 1991, *SPECIAL BROADCASTING SERVICE BILL 1991* Second Reading, Sen ALSTON Liberal, page 2843, “It [SBS] currently spends very little on Australian production initiatives, and if it is able to raise additional funding by way of sponsorship and advertising that would seem, on the face of it, to be a desirable outcome because it will enable it to undertake more production activities”,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansards/1991-11-11/0083%22>

<sup>96</sup> Hansard Senate, 11 November 1991, *SPECIAL BROADCASTING SERVICE BILL 1991* In Committee, Sen COLLINS Labor, page 2862, “the sponsorship provision [will enable SBS to increase] the number of productions in which the SBS itself engages”

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansards/1991-11-11/0109%22>

<sup>97</sup> The Sydney Morning Herald, 10 June 1991, *SBS and TV advertising*, page 8, “There will be (or should be) more money available [from advertising] . . . for Australian-made programs.”

<sup>98</sup> Hansard House of Reps, 14 October 1991, *SPECIAL BROADCASTING SERVICE BILL 1991* Second Reading, Mr LEE Labor, page 1857, “It is also important that we recognise that any revenues which SBS is able to attract through sponsorship or advertising will be in addition to the revenue which SBS now receives... That should be an encouragement to SBS to get out into the marketplace and seek to attract the extra revenue.”

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansardr/1991-10-14/0047%22>

<sup>99</sup> Hansard House of Reps, 14 October 1991, *SPECIAL BROADCASTING SERVICE BILL 1991* Second Reading, Mr SMITH Liberal, page 1842,

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<sup>100</sup> Unless indicated, Australian content refers to first run Australian drama, documentaries and other genres, excluding news, current affairs and sport.

<sup>101</sup> Although there appears to be a 1.8% decrease in Australian content on SBS over the period commencing FY06/07 (the start of in-program advertising) up to FY16/17, this is difficult to confidently confirm as SBS substantially changed their tabulation method multiple times of reported data over the course of the period – what was included or excluded, and how categorised. The annual reports contain data and expressions that are incompatible and inconsistent year-to-year. Additionally a number of variables compound confusion, e.g., reports from earlier years referred variously to SBSi, General Production Fund, and the Special Production Fund but in later years these are absent with reports categorising by genre. In some reports, it is difficult to separate content broadcast versus future content budgeted or forecast. Furthermore, SBS now transmits 24 hours per day on four channels whereas in 2006 it only transmitted part of the day from one channel. Reports from some years do not adequately separate certain types of content from other content. In conclusion, it is difficult to assess changes in Australian content levels over the period against a benchmark.

<sup>102</sup> 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](http://media.sbs.com.au/home/upload_media/site_20_rand_224099426_sbs_annual_report_2017.pdf)

<sup>103</sup> FreeTV, 29 January 2018, *Submission on the economic and cultural value of Australian content on broadcast, radio and streaming services*, page 43 (PDF 51), section 3.2,

<https://www.aph.gov.au/DocumentStore.ashx?id=994bef16-3f10-4c14-8379-79449f56a3b9&subId=562862>

<sup>104</sup> SBS, *Australian and Children’s Screen Content Review SBS response to the Consultation Paper September 2017*, page 5,

[https://www.communications.gov.au/sites/g/files/net301/f/submissions/sbs\\_0.pdf](https://www.communications.gov.au/sites/g/files/net301/f/submissions/sbs_0.pdf)

<sup>105</sup> SBS, January 2018, *Submission to the Environment and Communications References Committee Australian content on broadcast, radio and streaming services*, page 9,

<https://www.aph.gov.au/DocumentStore.ashx?id=1cb6a384-76bc-40cd-b47b-2a9c7de6a021&subId=563386>

<sup>106</sup> SOSBS, 12 June 2018, *Programs on SBS survey 2018*, (The question asked was: “As SBS is largely publicly funded and commercial broadcasters are not, does SBS have a competitive advantage or disadvantage in carrying advertising?”), page 14,

<https://saveoursbs.org/wp-content/uploads/2018/06/Programs-on-SBS-survey-2018.pdf>

<sup>107</sup> The Age, Peak R, 7 June 1991, *Advertisements to be allowed on SBS networks*, page 6, Communications Minister Mr Beazley, “The limit on advertisements would ensure that it did not resemble commercial broadcasting.”

<sup>108</sup> The Age, O’Neil J & Burton T, 9 June 1991, *SBS’ could get \$30 million a year on ads*, page 9, ‘natural breaks would apply to sporting programs where there were stoppages.’

<sup>109</sup> The Sydney Morning Herald, 10 June 1991, *SBS and TV advertising*, page 8, SBS advertisements “will be presented more discreetly and less frequently than on the commercial television channels.”

<sup>110</sup> SBS, 1 June, 2006, *SBS to Bolster News and Current Affairs Increase Australian Content* - media release (WayBack Machine),

<http://web.archive.org/web/20070105112728/http://www20.sbs.com.au/sbscorporate/index.php?id=1215>

<sup>111</sup> Senate Hansard, 12 February 2008, QUESTIONS ON NOTICE, Special Broadcasting Service, page 2135, *Question 7 - ATTACHMENT A - Programs delivered to SBS without breaks (2007)*,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2008-06-16%2F0157%22>

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- <sup>144</sup> 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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<sup>200</sup> SOSBS, 12 June 2018, *Programs on SBS survey 2018*, pages 8 and 14 to 27,

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<sup>206</sup> SOSBS, 12 June 2018, *Programs on SBS survey 2018*, (The question asked was: "As SBS is largely publicly funded and commercial broadcasters are not, does SBS have a competitive advantage or disadvantage in carrying advertising?"), page 14,

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