

9 December 2005

Mr Gordon Neil
General Manager
Licensed Broadcasting
Department of Communications, Information Technology and the Arts

Dear Mr Neil

Proposed Reforms to the Broadcasting Regulatory Powers of ACMA

SBS appreciates the opportunity to comment to the Department of Communications, Information Technology and the Arts on the Issues Paper, *Proposed Reforms to the Broadcasting Regulatory Powers of the Australian Communications and Media Authority*.

The Special Broadcasting Service Corporation (SBS) is established under the *Special Broadcasting Service Act 1991 (SBS Act)*. Its principal function under section 6 of the *SBS Act* is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society.

Context

As you will be aware, the *SBS Act* establishes a scheme for SBS to operate and be externally accountable as a national broadcaster. Section 10 requires the SBS Board to develop its own codes of practice, which it must notify to ACMA. Sections 11–13 establish a framework giving SBS authority over programming matters: the only exception is a provision for a Ministerial direction to broadcast a particular matter in the national interest, for which the Minister must show cause to Parliament. Sections 150–153 of the *Broadcasting Services Act 1992 (BSA)* provide a distinct framework for external review of complaints about national broadcaster programming.

This submission focuses on the proposal for the broadcast of on-air statements of ACMA investigation findings. SBS makes no comment on the broader application of the other reforms raised in the Discussion Paper.

On-air statements of ACMA investigation findings

SBS opposes any reform that would empower ACMA to require it to broadcast on-air statements of investigations findings.

The *BSA* currently provides that ACMA may recommend that SBS broadcast an apology or retraction if it finds a complaint that SBS has breached its Code of Practice is justified. If such a recommendation has been made and SBS does not act on it, ACMA is required to report to the Minister on the matter and the Minister must report to Parliament.

This framework, which is unique to the national broadcasters, ensures that SBS operates in an appropriate manner, making it strongly and directly accountable to the Parliament

and the people of Australia. The fact that there have been no instances where ACMA (or its predecessor) has made any such recommendation is evidence that the current accountability mechanisms are appropriate and working.

Giving a statutory authority of the Commonwealth the power to direct SBS in relation to its on-air programming would fundamentally alter the existing scheme and contradict the framework for programming independence provided for in the *SBS Act*.

In this regard, SBS supports the recommendation made in the report of Professor Ian Ramsay to ACMA, *Reform of the broadcasting regulator's enforcement powers* (Ramsay Report) that the power to order on-air statements should not apply to the national broadcasters and concurs with his reasons.

Other matters raised in the Discussion Paper

SBS does not believe that the other proposals in the Discussion Paper directly affect SBS under the current legislative framework.

However, we make the general point that neither the Discussion Paper nor the Ramsay Report raise any matters which would justify changing the current accountability framework for national broadcasters and that the use of injunctive or other powers of compulsion against national broadcasters would be inappropriate.

SBS would be happy to respond to any questions or provide further information.

Yours sincerely

Julie Eisenberg
Head of Policy

