

Review of the Freedom of Information Act 1982 and the Australian Information Commissioner Act 2010

SBS Submission

SBS appreciates the opportunity to contribute to this Review.

SBS is Australia's multilingual and multicultural national broadcasting service, and operates under the *Special Broadcasting Service Act 1991* (SBS Act). Our principal function is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect and promote Australia's multicultural society (SBS Charter). SBS also delivers content online on its website www.sbs.com.au.

This submission focuses on the application of the *Freedom of Information Act 1982* (FOI Act) to SBS as a Commonwealth Government agency.

SBS limits its comments to the exemption available to it under section 7 of the FOI Act "in relation to its program material and its datacasting content".

SBS understands from the terms of reference that this exemption is not under review, but would like to emphasise the importance of this exemption to its role in fulfilling its Charter obligations.

SBS would submit that it would be constructive to clarify the application of this exemption by adopting wording similar to that which applies to the Canadian Broadcasting Corporation under the Access to Information Act – R.S.C., 1985, c. A-1 (Section 68.1).¹ The exemption would read:

Special Broadcasting Service in relation to its journalistic, creative or content activities, other than documents relating to its general administration.

Sections 11–13 of the SBS Act give SBS authority and independence over its programming matters. Section 11 provides that the Minister may give directions to Board 'in relation to the performance of SBS's functions as appear to the Minister to be necessary in the public interest'. However the Minister 'must not give a direction in relation to the content or scheduling of programs to be broadcast'. Section 13 sets limits on Government directions to SBS. SBS is subject to General Policy Orders made under the *Commonwealth Authorities and*

¹ "This Act does not apply to any information that is under the control of the Canadian Broadcasting Corporation that relates to its journalistic, creative or programming activities, other than information that relates to its general administration."

Companies Act 1997 (CAC Act), but only to the extent that a General Policy Order does not affect the content or scheduling of programs.

These provisions clearly demarcate SBS's program material from its other business affairs, in respect of which it is accountable under the CAC Act.

This framework enables SBS to deliver on its Charter obligations with independence and integrity, and to fulfil its obligations as a public service broadcaster. This includes allowing different voices and perspectives to be heard in the public discourse, and 'ensuring an informed public debate about key issues affecting Australian society and the nation, free from commercial or other interests through independent, impartial, balanced, credible and trustworthy news and information'.²

In order to function independently, it is also important that SBS not be subject to other forms of interference which could affect its ability to provide information to the public. The exemption contained in the FOI Act for program materials is thus important. Without the exemption, SBS would have to consider requests for access to its program material that it has either broadcast, or is preparing to broadcast. This would have implications on a number of levels ranging from intellectual property, confidentiality of sources to the more serious implications for the free flow of information to the public through the seeking of injunctions to prevent a program being broadcast based on knowledge of its content. SBS would not be able to fulfil its Charter duties if it was subject to requests for access to information about its program material under the FOI Act.

SBS also notes that the licensed broadcasters are not subject to the FOI Act. SBS should be able to compete on a level playing field with the private sector media operators in respect of its program content, and not be subject to an extra layer of regulation that would delay its ability to provide timely and topical news and information to the public, and potentially affect its ability to provide original content.

SBS has no comments on the other aspects of the Review. SBS notes that it receives a very low level of requests for access to information under the FOI Act.

² DBCDE, *Strengthening Our National Broadcasters*, May 2009