

24 May 2013

Committee Secretary
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Secretary,

SBS Comments on the Public Governance Performance and Accountability Bill and Explanatory Memorandum, introduced 16 May 2013 (“PGPA Bill and EM”)

SBS welcomes the opportunity to provide further comments in relation to the PGPA Bill and EM.

1. SBS acknowledges the consultation process with the Department of Finance and Deregulation, and is appreciative of the opportunity to raise issues at various stages. SBS appreciates that many of the issues it has raised have been dealt with in new versions of the Bill and the Explanatory Memorandum.
2. Throughout the consultation process SBS has raised issues around 3 main principles.
 - (i) First, the paramount need to preserve SBS independence and integrity as mandated by section 10 (1) (a) of the SBS Act.
 - (ii) Second, the need to maintain competitive and commercial flexibility in a rapidly changing media landscape.
 - (iii) Third the need to ensure administrative efficiency, which is not burdened by excessive reporting or duplicated process.
3. SBS is pleased to note that the EM specifically refers to SBS’s independence, particularly in paragraph 35.
4. SBS also welcomes the inclusion of section 35 (4) in the PGPA Bill, which provides that the provisions in Section 35 in relation to the preparation and publication of an entity’s corporate plan applies only to the extent that compliance with section 35 is not inconsistent with the entity’s enabling legislation.
5. This provision coupled with the inclusion of references to SBS independence in the EM tempers the potential for intrusion into the SBS board’s independence in acquittal of the SBS Charter.
6. SBS also seeks an additional revision to the Bill in relation to the provisions dealing with measurement and assessing performance of Commonwealth entities by inclusion of a provision in relation to sections 37, 38 and 39 that these sections only apply to the extent that they are not inconsistent with an entity’s enabling legislation.



The ability to decide how SBS achieves its purpose is fundamental to the independent operation of the SBS board. The potential imposition of external performance measures and criteria could undermine this independence. SBS expresses similar concerns that the application of the principal of earned autonomy could compromise SBS's independence in relation to risk management depending on the nature of oversight and intervention imposed by the Finance Minister.

7. The reason that SBS's enabling legislation, like the enabling legislation of the ABC, includes protections and obligations in relation to independence is to support the unique role played by the publicly funded national broadcasters in a modern democracy. The obligation to inform and educate citizens means that the national broadcasters must stand aside from government, and be protected from government intrusion, whilst at the same time being funded by taxpayers to achieve a public purpose.
8. However, the ABC Act and the SBS Act provide different levels of guaranteed protection for independence.
9. The ABC is required to consider policies proposed by government, but has the power to refuse to adopt them which might happen if the policy conflicted with other charter responsibilities. The SBS Act in contrast sets out a process where SBS must comply with Ministerial directions. Further, SBS is subject to General Policy Orders providing that those Orders do not affect the content or scheduling of programs, whereas the ABC is not subject to General Policy Orders.
10. As SBS submitted during the consultation process for the PGPA Bill, editorial independence potentially can be compromised by the obligations imposed through a regulatory framework.
11. This principal was recognised in debates surrounding the introduction of the CAC Act Bill in 1995 when an exemption was granted to the ABC from government policy directives. *"In short, independence goes much further than the scheduling and broadcasting proposed in the present government amendments". Senator Spindler Senate Hansard 23-03-1995.*
12. The Senate debates in 1995 in relation to the appropriate level of independence to be afforded to the ABC did not refer to SBS. In SBS's view, this was an oversight which should be remedied in consequential amendments to SBS enabling legislation following introduction of the PGPA Bill.
13. As a final point, SBS notes that the rules will set out the level of detail and format of required reporting. This will determine the administrative burden involved in servicing such requirements. In turn, this can affect competitive and commercial flexibility to adapt and respond to a changing environment. Accordingly SBS seeks assurance that there will be meaningful consultation in relation to the rules.

Yours faithfully

Jon Torpy '
Chief Financial Officer