



17 June 2004

The Secretary
Senate Community Affairs Legislation Committee
Suite S1 59
Parliament House
CANBERRA ACT 2600

Dear Secretary,

The Special Broadcasting Service (SBS) thanks the Senate Community Affairs Legislation Committee for the opportunity to contribute to the Inquiry into Tobacco Advertising Prohibition.

Background

SBS is established under the *Special Broadcasting Service Act 1991* (“SBS Act”). Its principal function, as set out in section 6 of the *SBS Act*, is to provide multilingual and multicultural broadcasting services that inform, educate and entertain all Australians, and, in doing so, reflect Australia’s multicultural society. In carrying out this function, SBS provides a national multicultural television network (one analogue and five digital services), multilingual radio services to all State and Territory capital cities and some regional centres and a website, www.sbs.com.au.

In providing television services that reflect the diverse cultural heritage of Australian society, SBS purchases more than half of its programming from overseas sources. Through these and SBS produced and commissioned programs, SBS reflects many diverse experiences, lifestyles, languages and points of view, as directed by its Charter.

Under the *SBS Act* programming and editorial decisions are matters for the SBS Board. Among other things, section 10 of the *SBS Act* requires the Board to develop codes of practice relating to programming matters, and to notify those codes to the Australian Broadcasting Authority. SBS is ultimately accountable to Parliament, and is required to report annually on matters including how the SBS’ programming activities have fulfilled the SBS’ Charter obligations.

While SBS is permitted to broadcast advertisements and sponsorship announcements before and after programs and in natural program breaks, it is prohibited from advertising within a program (section 45 of the *SBS Act*). SBS’ Editorial Guidelines recognise that reference to, or images of, commercial entities and their products and services occur in the normal course of broadcasting and direct SBS to avoid endorsement of particular products and services.

Comments in response to the Terms of Reference

For the purposes of this submission, SBS has directed its comments to section (b) of the terms of reference: the exposure draft of the Tobacco Advertising Prohibition (Film, Internet and Misleading Promotion) Amendment Bill 2004. SBS has made similar comments in its October 2003 submission to the Department of Health and Ageing Review of the *Tobacco Advertising Prohibition Act 1992*.

SBS supports the submission made to the Inquiry by Free TV Australia regarding the exposure draft of the Tobacco Advertising Prohibition (Film, Internet and Misleading Promotion) Amendment Bill 2004 and provides the following additional comments:

Summary of SBS Position

- SBS recognises the significant health issues associated with smoking and tobacco products and the important role of the media in reducing harm caused by smoking. SBS also recognises the need to balance this role with its Charter responsibility to expose Australian audiences to a diverse range of cultures and perspectives.
- SBS is concerned that the proposed amendments to Section 13 of the draft exposure Bill may conflict with the intentions of the SBS Charter. In this regard, SBS' ability to buy in a wide range of programming from around the world could be affected.

Proposed Amendment 7: Section 13A Films not to include product placement of tobacco products

A person or regulated Corporation must not, knowingly or recklessly, screen a film or television program, made after 1 July 2004 containing a product placement of a tobacco product, in Australia or Norfolk Island on or after 1 July 2004.

This proposed amendment has a particular impact on SBS, which is heavily reliant on overseas purchased programming to deliver on its multicultural Charter.

SBS aims, over time, to provide television programs in all languages spoken in the community. Given the limited availability of such programming in Australia, SBS must purchase and subsequently broadcast programs from overseas countries. SBS purchases programs from over 400 sources. In 2002-3, for example, SBS Television broadcast programs from 71 countries, portraying 217 cultures in 117 languages.

Depiction of smoking is a common feature in the films of many overseas countries. While SBS would not knowingly screen a film or television program containing a product placement of a tobacco product as it would breach our Codes of Practice, it is not clear what actions would amount to a reckless screening under the proposed legislation. For example, the production of overseas films requires the involvement of many different people at different stages. It would be extremely difficult for SBS to introduce a new process that ensured proper investigation of the actions of all these people prior to screening a film that included depictions of smoking.

Tighter restrictions on tobacco product placements have serious implications for the moral rights of overseas filmmakers. When broadcasting overseas produced material SBS aims as far as possible to avoid interfering with the integrity of the material and the moral rights of the creator, while being conscious of legislative and Code obligations. As SBS is not in a position to edit films to avoid depictions of smoking that may or may not be product placements, the

proposed amendment has the potential to cause unreasonable burden on SBS in identifying suitable overseas films for broadcast.

SBS has been able to work comfortably within the current tobacco advertising provisions to broadcast overseas material with minimal editing. A more prescriptive regime could have the effect of limiting our ability to broadcast a significant amount of our overseas material and would deprive Australian audiences of portrayals of other cultures.

Conclusion

Like Free TV Australia, which has also made a submission to this Inquiry, SBS works within the legislation and puts programs to air responsibly and in line with its Codes of Practice. We are unaware of any instance in which this organisation has breached the legislation or Codes in relation to the promotion of tobacco use. We believe the current system adequately addresses the policy underlying the legislation.

SBS welcomes the opportunity to engage in further consultations prior to finalisation of this Review.

Yours sincerely

Julie Eisenberg
Head of Policy