



**Australian Government**  

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**Department of Communications**

# **SBS Advertising Flexibility Regulation Impact Statement**

Department of Communications

**Final - March 2015**

# SBS Advertising Flexibility

## Background

The Special Broadcasting Service (SBS) is Australia's multicultural broadcaster established as a corporation under the *Special Broadcasting Service Act 1991* (SBS Act). SBS's principal function is to provide multilingual and multicultural radio, television and digital services that inform, educate and entertain all Australians, and, in doing so, reflect and promote Australia's multicultural society.

The role and functions of SBS are set out in its Charter under section 6 of the SBS Act. Whilst SBS has editorial independence, it is accountable to the Parliament through annual reports, corporate plans, financial and performance audits, and appearances before Parliamentary Committees.

SBS operates under a mixed funding model with the majority of SBS's operating budget funded by the Australian Government and the remainder drawn from SBS's commercial activities including advertising, sponsorship and the sale of goods and services.

Under the SBS Act, SBS is permitted to raise revenue through advertising but is restricted to no more than five minutes of advertising in any hour of broadcasting before or after programmes or during natural programme breaks. This equates to a total daily limit of 120 minutes of advertising per television channel.

In early 2014, the Australian Government instituted an Efficiency Study (the study) of the public broadcasters, SBS and the Australian Broadcasting Corporation (ABC). The study identified an opportunity for SBS to make more effective use of its advertising time through greater flexibility in scheduling. The study recommended that the SBS Act be amended to allow SBS to transfer advertising minutes between hours so as to maximise its advertising revenue during peak viewing times and during popular programmes such as sporting events. This change would not increase the daily advertising limit of 120 minutes currently permitted under the SBS Act, but would potentially allow SBS to extract more advertising revenue.

The study also identified an opportunity for SBS to earn additional revenue through the use of product placement within particular types of programming, such as food or sports. Under the SBS Act, SBS is not specifically prohibited from earning revenue through the use of product placement, however a minor amendment to specifically enable this would provide clarity.

## What is the problem you are trying to resolve?

When SBS was established as a corporation under the SBS Act, Parliament intended for the broadcaster to operate under a mixed funding model. Advertising and sponsorship provides SBS with a valuable source of revenue, allowing additional funds to be channelled towards new content and services for audiences. As a public broadcaster, SBS has specific Charter responsibilities to fulfil, while also meeting and anticipating audience demand for new content and services.

One of the Government's key priorities is to repair the Federal Budget and build a stronger economy. Government funding currently comprises around 75 per cent of SBS's operational budget.

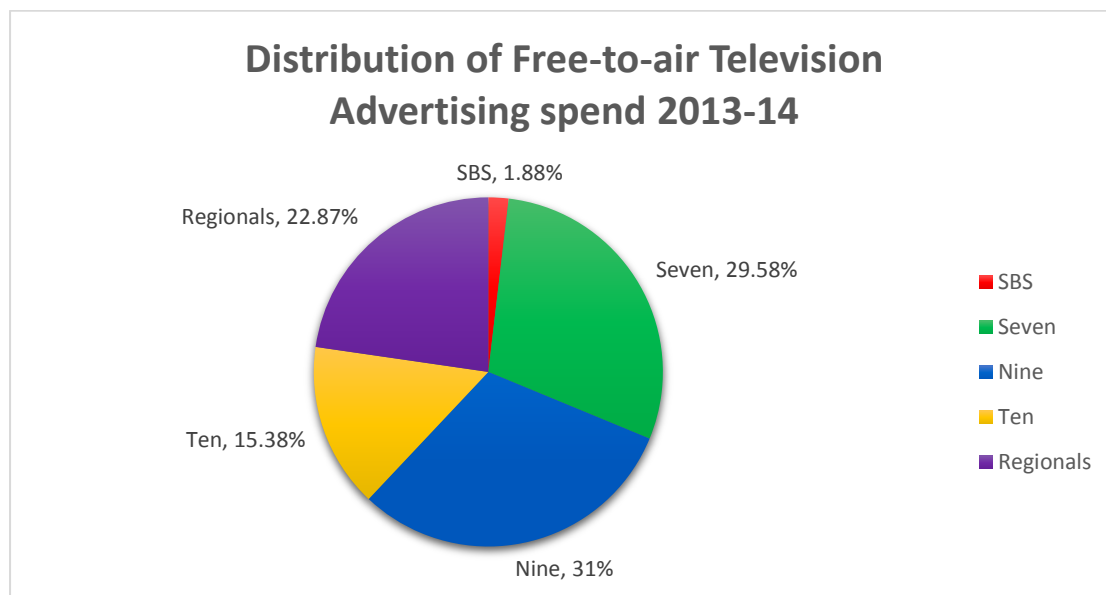
Any additional advertising revenue would lessen SBS's dependence on government funding and contribute to achieving this goal.

The five minute hourly restriction on advertising limits SBS's ability to generate revenue and make effective use of its advertising minutes permitted under the SBS Act. SBS currently earns the majority of its advertising revenue during peak viewing times (6pm to midnight) but is unable to capitalise on this due to the five minute hourly limit.

Product placement occurs when a product, service or trademark is integrated within a programme in return for payment or similar consideration. Product placement is widely used by broadcasters to earn additional revenue and subsidise the cost of content production.

SBS currently broadcasts acquired programming which already contains product placement from deals made to the benefit of the production company or commissioning broadcaster, prior to SBS's consideration of the programme. However, SBS does not use product placement in its own commissioned programming due to a lack of clarity in the SBS Act regarding its ability to earn revenue through product placement. As such, SBS has not capitalised on an opportunity to earn additional revenue through the use of product placement in its food or sports programming or other commissioned productions.

In 2013-14, the commercial free-to-air television broadcasters earned \$3.9 billion in revenue from advertising with SBS earning \$73.4 million from advertising and sponsorship (in a FIFA World Cup year, up from its usual \$50 to 60 million per annum). This represents a share of less than two per cent. On average, SBS has a five per cent television audience share. Based on audience share alone, SBS's television advertising revenue could represent up to five per cent of the total television industry airtime revenue or approximately \$195 million. This highlights the effect of existing regulation which limits the ability of SBS to translate audience share into advertising revenue. This also suggests that there is potential for SBS to improve its revenue from advertising, without increasing the overall level of advertising permitted. SBS is likely to be limited by a combination of factors including the nature of its Charter content, time restrictions on advertising and economies of scale.



Sources: ACMA Broadcasting Financial Results, Free TV Australia, Annual Reports (SBS, Seven Network, Network Ten, Prime Media Group, Southern Cross Media Group), Nine Entertainment Co IPO prospectus November 2013

## **Why is Government action needed?**

A legislative amendment is required to make any change to SBS's advertising arrangements.

The objective of the first amendment is to provide SBS with greater flexibility in the scheduling of advertising in order to make more effective use of advertising time and potentially earn additional advertising revenue. The second amendment seeks to allow SBS to earn revenue through the use of product placement in its programming.

The Government is determined to repair the Federal Budget and it is only fair that all government agencies make a contribution to achieving this goal. Accordingly, a number of savings measures were applied to SBS in the 2014-15 Budget totalling \$53.7 million over five years. The Government anticipates that SBS will generate \$28.5 million in additional advertising revenue to contribute to achieving these savings over the forward estimates. Moving forward, the additional revenue could be directed into producing new content or services and will lessen SBS's dependence on government funding, which comprises around 75 per cent of its operational budget.

The Government is committed to a strong, healthy, and resilient public broadcasting sector that efficiently uses taxpayers' money.

## **What policy options are you considering?**

Three options have been explored to address the problem. These options are:

### **Option one – Maintain the status quo/No change to regulation**

The status quo involves maintaining the current regulatory approach with no amendments made to the SBS Act, resulting in no additional revenue.

### **Option two – SBS Act amended to allow advertising flexibility**

Section 45 of the SBS Act is amended to remove the hourly limit of no more than five minutes of advertising and is instead replaced with:

- a daily limit of no more than 120 minutes of advertising; and
- a new hourly limit of no more than 10 minutes of advertising in any single hour.

The daily cap of 120 minutes represents the current amount of advertising permitted on SBS (five minutes per hour over 24 hours). Therefore under this option the overall level of SBS advertising does not increase.

The new hourly limit of no more than 10 minutes of advertising per hour prevents SBS from scheduling an excessive amount of advertising in any hour. SBS may schedule up to 10 minutes of advertising during higher rating programmes to capitalise on advertising revenue, while scheduling less advertising during other hours so that the 120 minute daily cap is not exceeded.

The 10 minute hourly cap is still well below the hourly limits imposed on the commercial broadcasters under the Commercial Television Industry Code of Practice (13 to 16 minutes of advertising per hour depending on the time of day and type of channel). Furthermore, the commercial broadcasters are permitted to schedule over 350 minutes of advertising per channel per day, in contrast to 120 minutes allowed on SBS.

The existing SBS restrictions on the broadcasting of commercials before and after programmes and during natural programme breaks would remain unchanged.

A second amendment would also specifically allow SBS to earn revenue through the use of product placement during its programming and require the SBS Board to develop and publicise guidelines regarding the use of product placement and report on its use in the annual report. The same requirement exists in the SBS Act for the use of advertising and sponsorship announcements. These guidelines would be included in the SBS Codes of Practice, which require SBS Board approval and would be subject to the overriding requirement under the SBS Act that such arrangements do not compromise SBS's integrity or editorial independence. SBS is also required to notify the Australian Communication and Media Authority (ACMA) of these codes. The ACMA may investigate complaints related to content broadcast on SBS television or radio.

While SBS is not specifically prohibited from earning revenue through the use of product placement, a minor amendment to specifically enable this would provide clarity. Product placement is widely used by broadcasters to earn additional revenue and subsidise the cost of content production.

### **Option three – Remove all advertising restrictions in the SBS Act**

All restrictions on advertising included in the SBS Act are removed and the SBS Board can determine its own advertising requirements in the SBS Codes of Practice. SBS would not be limited in the amount of advertising scheduled per hour or per day, or by the timing of advertisements during programming. In this scenario, SBS would be likely to adopt a similar amount of advertising to the commercial broadcasters. Under this option SBS would be unlikely to achieve similar revenues to the commercial broadcasters due to the nature of its content and schedule.

## **What is the likely net benefit of each option?**

### **Option one – Maintain the status quo/No change to regulation**

The five minute statutory restriction imposed on SBS will continue to limit the broadcaster's ability to generate revenue from advertising. The ability of SBS to raise additional funds from the use of product placement will remain unclarified. It is likely that SBS will continue to earn around \$50 to 60 million per annum from advertising and sponsorship (the average revenue in a year when SBS does not broadcast the FIFA World Cup) and will not be able to generate additional revenue to put towards meeting the savings target included in the 2014-15 Budget. As a result, SBS's programming, content and services are likely to be significantly impacted. This option will not lessen SBS's reliance on government funding into the future or provide additional revenue that could be directed towards programming. This option is not preferred as it will result in a continuation of existing inefficient restrictions without any additional benefits.

Under this option, there are no existing regulatory obligations imposed on SBS, such as monitoring or reporting obligations.

Table 1: Regulatory burden and cost offset estimate table for option one

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$0	\$0	\$0	\$0
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$0	\$0	\$0	\$0
Are all new costs offset? <input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$ million) = \$0				

### Option two – SBS Act amended to allow advertising flexibility

The proposed amendments to the SBS Act will provide SBS with greater flexibility in the scheduling of its advertising and allow SBS to earn revenue through the use of product placement, which is likely over time to result in an increase in SBS’s advertising revenue of approximately \$8 to 9 million per annum by the end of the fourth year. The estimated revenue takes into consideration the cost of additional staff and resources SBS will need in order to sell additional advertising, and that SBS is unlikely to consistently fill 10 minutes of advertising during prime time due to the nature of much of its Charter content.

The proposed new advertising limits may impact on some viewers as the proposal will alter the distribution of advertising on SBS. While the overall amount of advertising minutes remains unchanged, some viewers may experience more advertising per hour at some times and less commercials per hour at others during a 24 hour period.

The SBS Board would be required to develop and publicise guidelines (or codes) regarding the use of product placement and report on its use in the annual report, similar to its treatment of advertising and sponsorship announcements. SBS would also be subject to the overriding requirement under the SBS Act that such arrangements do not compromise SBS’s integrity or editorial independence. SBS is also required to notify the ACMA of these codes of practice. The ACMA may investigate complaints related to content broadcast on SBS television or radio.

The proposal will allow SBS to sell more advertising minutes during primetime or during more popular programmes and introduce product placement into some commissioned programmes, which may result in a minor increase in competition for television advertising among the broadcasters.

SBS advertising revenue is diminutive when compared to the revenues of other free-to-air broadcasters and the size of the overall free-to-air television advertising market. In 2013-14, in a year when SBS broadcast the FIFA World Cup, SBS earned \$73.4 million in revenue from advertising and sponsorship, which constituted less than two per cent of the \$3.9 billion advertising revenue earned by the commercial broadcasters in the same year. Even assuming minimal growth in the television advertising market and SBS's revenue growth is at the expense of other broadcasters, the proposal is unlikely to result in a significant loss in revenue to any individual network.

Any lost revenue as a result of SBS's growth is likely to be split among the commercial broadcasters based on their approximate traditional share, with combined regional broadcasters attracting the same market share as a single metropolitan broadcaster. Even if SBS were to earn an additional \$20 million per annum, this would result in a loss of less than one per cent for any individual metropolitan broadcaster (i.e. around \$5 million per broadcaster) in a zero growth advertising market.

However, it is not certain that any increase in SBS advertising spend will draw away revenue that would have otherwise gone to other commercial free-to-air broadcasters.

The proposed amendments will allow SBS to increase its overall level of advertising revenue while also reducing its dependence on government funding.

This option would result in a minor change to the existing regulatory obligations for SBS by including paid product placement in SBS's existing reporting obligations for advertising and sponsorship announcements. Given the minor nature of this change, there are no compliance costs for SBS, industry or community organisations.

This option is preferred as it will provide increased flexibility and potential additional advertising revenue to SBS with minor impacts on audiences and the commercial broadcasters.

Table 2: Regulatory burden and cost offset estimate table for option two

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$0	\$0	\$0	\$0
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$0	\$0	\$0	\$0
Are all new costs offset?				
<input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$ million) = \$0				

### Option three – Remove all advertising restrictions in the SBS Act

This option would involve SBS determining its own advertising allowances in the SBS Codes of Practice. SBS would be likely to adopt a similar amount of advertising to the commercial broadcasters, around 13 minutes of advertising per hour, and would also be able to earn additional revenue through the use of product placement in programming.

If SBS were to schedule an average of 13 minutes of advertising per hour across primetime and introduce product placement, over time this could potentially result in approximately \$13 to 14 million in additional advertising revenue per annum. However, due to the nature of its Charter content, SBS is unlikely to be able to fill the same amount of advertising as the commercial broadcasters with the exception of some higher rating programmes. As a result, an unrestricted amount of advertising may encourage SBS to prioritise commercial revenue which may compromise its ability to fulfil its Charter obligations as a multicultural broadcaster.

If SBS were to substantially increase the overall amount of advertising currently permitted and no longer fulfil its distinctive role as a multicultural public broadcaster, this could have a significant negative impact on its audiences. A lack of advertising limits would also unfairly advantage SBS given the commercial broadcasters are subject to advertising restrictions under the Commercial Television Industry Code of Practice.

Although this option would remove all advertising restrictions in the SBS Act, there will be no change in regulatory burden as this option would not alter the existing regulatory obligations imposed on SBS. SBS would still be required to report on the use of advertising and sponsorship in its annual report.



This option is not recommended as it would result in significant negative impacts on audiences and an increased impact on the commercial broadcasters.

Table 3: Regulatory burden and cost offset estimate table for option three

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$0	\$0	\$0	\$0
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	\$0	\$0	\$0	\$0
Are all new costs offset?				
<input type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input checked="" type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$ million) = \$0				

## Who will you consult about these options and how will you consult them?

This Regulation Impact Statement was released for public consultation in March 2015.

The Department of Communications specifically engaged with SBS, Save Our SBS, the free-to-air commercial broadcasters through their peak representative body Free TV Australia (Free TV), the Federation of Ethnic Communities' Councils of Australia and the Australian Association of National Advertisers.

The Department received three submissions from Free TV, SBS and Save Our SBS respectively. The submissions raised the following issues:

### Revenue projections

Free TV contend that the calculations of additional revenue that SBS is likely to earn through advertising flexibility are incorrect. Free TV estimates that as a result of the amendments, SBS will earn an additional \$148 million over four years, rather than SBS's estimate of \$28.5 million over four years. In addition, Free TV claims that any additional revenue earned will be drawn entirely from the commercial broadcasters, which will result in SBS broadcasting content that maximises advertising income over Charter specific programming.

While the ABC and SBS Efficiency Study provided a preliminary assessment of potential revenue for a range of options, SBS subsequently developed highly detailed modelling to provide the revenue projections included in the RIS. Given the modelling contains commercially sensitive material, it has not been publicly released. SBS has stated that the variance between its modelling and that

conducted by *Anomaly* on behalf of Free TV is due to the difference in underlying assumptions. These assumptions include differing approaches to:

- Fill rates

The *Anomaly* modelling assumes that SBS's fill rates are currently 100 per cent across its schedule and in all markets, which is not the case. Not all content provided on SBS is attractive to commercial advertisers. In some regional markets and parts of its schedule, SBS is unable to fill five minutes of advertising – in these areas of insufficient demand SBS is unlikely to earn any additional advertising revenue.

- Growth

The *Anomaly* modelling uses revenue growth based on the PwC analysis from the *Australian Entertainment and Media Outlook 2014-18* report, which is a forecast for the entire free-to-air television industry (of which SBS is just one minor component). SBS's modelling has instead used actual audience decline for its free-to-air primary channel (five per cent decline per annum) as the basis for predicting potential growth (the primary channel is usually a network's highest rating service). Unlike the commercial broadcasters, SBS is a public broadcaster with specific Charter responsibilities to fulfil, and is subject to different advertising restrictions. SBS considers that using actual historical data specific to its organisation is a better indicator for its future growth, rather than a forecast which applies to the free-to-air television industry as a whole, including broadcasters that are not subject to the same restrictions and earn over ten times the advertising revenue of SBS.

- Ratecards

SBS is currently a premium buy for advertisers, however, it is likely that SBS will need to discount the existing ratecard by around 15 per cent in order to attract new advertisers. The *Anomaly* modelling assumes there will be no discount on SBS's current rates to the market.

- Starting point

The *Anomaly* modelling uses a starting point in 2014 that is higher (due to the FIFA World Cup) than SBS's business as usual television advertising revenue, which compounds over time.

- Cost of sales

SBS's estimate of additional revenue is net of the cost of sales and commissions, whereas the *Anomaly* model is a gross revenue figure, which does not subtract these costs.

The sum total of these differences in assumptions contribute to a significantly higher revenue projection in the *Anomaly* model. It is important to note, that Free TV has stated that it is strongly opposed to any proposal that would allow SBS to increase its advertising revenue, regardless of the size of the increase.

If option two was adopted, the Department of Communications would monitor SBS's advertising revenue against projections and assess if the new advertising arrangements were functioning as anticipated.

## Programme promotions

Both the Free TV and Save Our SBS submissions raised the use of programme promotions on SBS. Programme promotions include material that publicises programmes to be broadcast on the SBS or other SBS products or services. The submissions noted that programme promotions are not included in SBS's advertising minutes while material greater than 10 seconds in length which promotes a programme or programmes broadcast by a commercial television broadcaster and is scheduled within a programme break or between programmes, or in the form of superimposed text or visual matter that occupies all of the screen during a programme, is included in the hourly advertising limits that apply to commercial television broadcasters established by the Commercial Television Industry Code of Practice (the Code). Both organisations consider that under option two, SBS could provide a similar level of advertising and programme promotions to the commercial broadcasters as a result of this difference.

In its submission, SBS has stated that this assessment does not take into consideration other forms of promotional material that is not counted in the hourly advertising limits under the Code. This material includes: sponsorship announcements that last less than 10 seconds, prize, competition or information segments which refer to commercial products, promotions for digital television, and other programme promotion material of up to 30 seconds such as a list of programmes to be broadcast and announcements about the next programme. SBS argues that when these additional promotions are included, programme breaks on the commercial broadcasters can often be in excess of the current limit of 13 to 16 minutes per hour. In addition, programme promotions do not usually earn advertising revenue.

## Impact on SBS Charter

Save Our SBS does not support options two and three as it considers that any changes to current advertising restrictions would affect SBS's ability to comply with its Charter obligations. Save Our SBS did not provide any strong evidence that this would be the case. This view is based on limited surveys conducted by Save Our SBS in 2013 and 2008, which sought the opinions of viewers in response to targeted questions concerning the removal of advertising. SBS has stated that it has guidelines in place to ensure that decisions regarding commercial revenue are subject to the overriding principle that the integrity of SBS's Charter and SBS's editorial independence are not compromised.

In addition to the submissions received from stakeholders, the Department regularly consulted OBPR throughout the development of the proposals and the RIS. The RIS was assessed by OBPR to be consistent with best practice prior to its consideration by government and prior to its release for consultation.

## What is the best option from those you have considered?

The second option is recommended as it will provide increased flexibility and revenue to SBS with minor impacts on audiences and the commercial broadcasters. As such this option has the highest likely net benefit. The proposed amendments will allow SBS to earn additional advertising revenue which will lessen its dependence on government funding and could be directed towards producing new content or services in the future. This option provides a compromise between a removal of all restrictions on SBS advertising and maintaining the status quo and its inherent limitations.

## **How will you implement and evaluation your chosen option?**

Once adopted, the proposed amendments are expected to commence the day after Royal Assent.

SBS is required to report its advertising use each year in its annual report, which is tabled in Parliament by the Minister for Communications. The Department of Communications will monitor advertising revenue and any comments and complaints received regarding the change in advertising arrangements.