

Executive Council of Australian Jewry



11 September 2006

SBS Codes of Practice Review
Locked Bag 028
Crows Nest NSW 1585

By email to codesreview@sbs.com.au

Dear Sirs/Madams,

SUBMISSION CONCERNING THE DRAFT SBS CODES OF PRACTICE

Introduction

1. The Executive Council of Australian Jewry is the elected representative roof body of the Australian Jewish community, with affiliated organisations as set out on this letterhead. Our State affiliates are also elected roof bodies, representing their direct voters and the various Jewish organisations in their respective States.
2. Since its inception in 1980, SBS has played an important role in Australian broadcasting, reaching out to an audience that hitherto had not been catered for. The focus on multicultural media, a global approach to news, and giving airspace to non-English language programs all fill an important gap in what is otherwise provided to Australian audiences. As with any mainstream media, SBS plays an important role in contributing to public debate, and therefore is a key element of our Australian democracy. The independence of SBS in making programming and editorial decisions is vital in ensuring the integrity of news reports is maintained. With a number of sensitive issues, it is particularly important that coverage is carefully handled, and is fair, balanced and accurate.

Basic concerns relating to the content of radio and television programming and website material

3. In general the Jewish community has the following basic concerns relating to the content of radio and television programming and website material:
 - It goes without saying that prejudice, racism and discrimination should never occur, and that adequate and prompt safeguards must be in place.
 - News and current affairs in matters affecting the community, including matters relating to Israel, should be accurate and balanced, and reasonably well-informed in terms of historical context.
 - Language should not be the only determining factor in the allocation of broadcasting time to ethnic groups.
4. This submission considers the provisions of the draft Codes in the order in which relevant provisions appear, in the context of these concerns.
5. The Draft Codes state that the broadcast of material will not be prevented by the Code if it is "genuinely-held opinion, or material that is factual, or presented in the context of a humorous, satirical or dramatic work". Our submission is that if material is seriously offensive to any racial or ethnic group, or if it is likely in all the circumstances (including the context) to incite prejudice, racism or discrimination, then it cannot be justified as opinion or satire and it should not be permitted at all.

Specific areas of the Draft Codes

1.2 Diversity of Views and Perspectives and 2.2 Accuracy, Impartiality and Balance

6. The draft states that SBS may "broadcast programs, such as documentaries, which are presented from particular points of view", and that "such programs are not required to present every viewpoint...or allocate equal time."
7. Occasionally documentaries have been broadcast which included half-truths, distortions and omissions, and complaints have been met with the response that balance will be achieved over a period of time. No period of time is specified. Impressions that are not balanced quickly, while the first impression in front of mind, remain unbalanced.
8. This is frankly an unacceptable solution. Our submission is that in principle SBS should not broadcast one-sided propaganda material which causes offence and distress to a particular ethnic group or which is likely to promote or exacerbate discord between ethnic communities. In the interests of freedom of expression a rare exception might be made if an identified SBS executive officer takes responsibility by setting out reasons why a particular program should be broadcast.
9. Next the draft states that SBS may broadcast "a documentary that gives greater weight to the claims of one side than another." This language is licence for accepting allegations as fact under the value-free rubric that all allegations of fact are "claims" worthy of broadcast. To not exercise appropriate journalistic scepticism of all allegations made by a documentary and to ascribe equal value to facts and falsehoods as "claims" opens SBS up to the possibility of unacceptable abdication of journalistic responsibility. SBS should

not expose itself in that way. It devalues the skills of SBS' journalists who are very capable professionals. This issue also affects the draft code in relation to accuracy, impartiality and balance.

10. The Board of SBS is duty bound under section 10(1)(c) of the Special Broadcasting Service Act 1991 " to ensure, by means of the SBS's programming policies, that the gathering and presentation by the SBS of news and information is accurate and is balanced over time and across the schedule of programs broadcast". The draft code creates an unnecessary risk that SBS will not comply with the statutory standard.

1.3 Prejudice, Racism and Discrimination

11. We strongly support the proposal that SBS should counter attitudes of prejudice on the ground of race, ethnicity and religion etc. (Obviously prejudice against a seriously repugnant "political belief" is part of the democratic system, and these words would hopefully be deleted.)
12. Our view is that the Code should go further than merely "avoiding programming which clearly condones, tolerates or encourages discrimination". We submit that any material which offends, insults, humiliates or intimidates any racial or ethnic group should also be expressly prohibited by the Code.

1.4.2 Allocation of Air Time for Community Languages – Radio

13. As a people that has maintained a separate ethnic and religious identity during a long period of dispersion, the Jewish community is in a unique linguistic position, and we would seek an understanding of that position in determining the allocation of airtime. The Hebrew language is the language of our prayers, of our sacred literature and of modern Israel. Most Jews have a basic literacy in Hebrew, although Jews in Australia have varying degrees of spoken fluency. Yiddish was the unique Jewish language spoken in central and Eastern Europe, and a large section of the community maintains it as a spoken language with its own secular literature and culture. Ladino is another Jewish language, spoken by Jews of the Sephardi, or "Spanish" tradition, and also preserved in literature and music.
14. In this regard the census figures will be misleading, since the first language of many members of the Jewish community will often be the language of their country of origin, with languages such as Polish, Hungarian, Russian, German and French featuring prominently. However the reality is that almost all Jews in Australia have become completely fluent in English, and (with the possible exception of some relatively recent arrivals from Russia) only a small number would be interested in broadcasts made in the languages of their countries of origin.
15. On the other hand there is a strong demand for programs which include Hebrew and Yiddish segments, but which basically provide material which reflects a specifically Jewish outlook and culture, expressed predominantly in the English language. Our submission is therefore that the allocation of air time for the Jewish radio program should be based on the numbers of the Jewish population based on ethnicity and religion in addition to spoken language, and that programming should provide for the specific cultural needs of

the Jewish community in the English language, in addition to Hebrew and Yiddish segments.

1.6 International Conflicts and Historical Events

16. We reiterate the submission made under heading 1.2. We see untruthful propaganda as a serious problem and we seek protection against such propaganda in the Code.
17. The second part of the last sentence - "Any situation which could...give the appearance that the Corporation is influenced by any particular group...should be avoided" - could imply that SBS will make its programming decisions not on the basis of truth and fairness, but on the basis that it seeks to avoid a perception that it is influenced by a "lobby". We submit that this phrase should be deleted, and replaced by a sentence such as the following: "SBS will accept representations made by community organisations, and will give due consideration to factual and historical material provided by them".

1.7 Religions

18. We strongly support the proposals in this paragraph.

2.3 Non-SBS Sources

19. We reiterate the submissions made above. We note that the BBC has been the subject of justified criticism in the United Kingdom for its distorted news coverage of Israel, and that sometimes news items have been presented in Australia, including by SBS, which are so factually incomplete as to be seriously distorted. We submit that subject to the exigencies of time, overseas news items should be selected and edited with the aim of ensuring fairness and accuracy as far as possible.
20. We submit that language radio news and current affairs programs should be the subject of "spot check" monitoring to ensure that all material broadcast complies with SBS standards.

8. Comments and Complaints – Our principal position

21. Whilst self-regulation is an effective first stage of a complaints process, and in most instances will be able to effectively deal with the complaint at hand, self-regulation will not be an effective process in all cases. For example, internal interpretations of the SBS Charter may reflect interests in a way that an external decision maker could view with greater dispassion. We therefore strongly urge SBS to agree to:
- Internal processes that comply with Australian Standard on Complaints Handling AS 4269-1995, and are audited annually for compliance with the standard.
 - an independent Ombudsman style model for more serious complaints.

That way all parties can agree that the process has been fair, and is perceived to be fair. It also facilitates statutory compliance by SBS.

22. It is well understood that a complaints procedure is not a substitute for effective compliance and a framework which encourages principles of fairness to be imbued throughout an organisation. Elizabeth Johnstone Partner, Corporate Advisory, Blake

Dawson Waldron is a leading authority on corporate governance and compliance issues (well known to SBS). She has written:

More than ever we need effective accountability, checks and balances on those who are charged with the stewardship of shareholder funds and stakeholder interests. Good corporate governance will feature independence, disclosure, transparency and accountability.

...

Good corporate governance involves much more than mere compliance with technical rules. "Tick the boxes" or "mere" corporate governance has never worked. Approaches that see corporate governance as an end in itself are doomed to being regarded as of little consequence.⁷

23. It is not enough – if one accepts Ms Johnstone’s prescription (a formula widely adopted in corporate Australia) to “formalise’ compliance. Under section 73(j), SBS must provide an assessment of the extent to which the operations of SBS have achieved its objectives and fulfilled its functions. SBS claims this has been achieved via the mere existence of the Annual Report - "such details are included throughout the body of the report". An effective compliance system is nowhere mentioned.
24. However a complaints procedure is not a substitute for effective compliance and a framework which encourages principles of fairness to be imbued throughout an organisation.
25. These are matters which section 48(1)(b) in particular requires be dealt within the SBS corporate plan, and we are not aware of that having been done.
26. It also is unclear how the codes of practice implement the plan and thus enable the Board members to comply with their statutory duties. We assume that that SBS has a compliance plan, as part of ordinary corporate governance. A critical part of any compliance program is effective and critical supervision from Board level down.

8. Comments and Complaints – Our secondary position

27. Even if the foregoing structure for complaints handling is not adopted, we present the following comments.
 - Code 8.3 provides that formal complaints will be accepted only if it alleges a breach of the Code. The problem is that the draft Code is imprecise in its formulations, leaving very wide discretions to SBS management, as well as being necessarily incomplete, and this gives an opportunity for complaints to be rejected on technical grounds. Our submission is that all genuine complaints of substance, whether alleging a breach of the Code or not, should be promptly investigated and responded to.
 - Code 8.10 provides that “if necessary” (not defined) a complaint “can be” referred to a “Complaints Committee” (again undefined) which makes an “independent”
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determination. Our submission is that if the Audience Affairs Manager determines that a complaint concerns a genuine matter of substance which has not been resolved by a written apology, then it must be referred to a Complaints Committee comprising people of standing who are not employed by SBS to make an independent determination and a recommendation for redress.

- Code 8.10 provides for unnecessarily lengthy and counter-productive delays in dealing with complaints. Indeed by the time a complaint is considered the matter complained of will usually be forgotten. Our suggestion is that for redress to be useful, it should take place within a maximum period of 30 days after the complaint is made.
- Code 8.11, setting out types of redress, does not include any undertaking by SBS that it will seek to avoid similar breaches in future.

Summary of Submissions

1. Material which offends, insults, humiliates or intimidates any racial or ethnic group should also be expressly prohibited by the Code.
2. SBS should publicly accept the obligation to exercise appropriate journalistic scepticism of all allegations made by a documentary and not simply ascribe equal value to facts and falsehoods as "claims".
3. SBS should not broadcast one-sided propaganda material relating to local or international matters which causes offence or distress to a substantial ethnic group in Australia, or which is likely to promote or exacerbate discord between ethnic communities. An exception may be made only if an identified SBS executive officer has taken responsibility by setting out reasons why a particular program should be broadcast.
4. The allocation of air time for the Jewish radio program should be based on the numbers of the Jewish population based on ethnicity and/or religion rather than on spoken language, and programming should provide for the specific cultural needs of the Jewish community in the English language, in addition to segments in the Hebrew and Yiddish languages.
5. The words "Any situation which could...give the appearance that the Corporation is influenced by any particular group...should be avoided" should be deleted, and replaced by a provision that SBS will accept representations made by community organisations, and will give due consideration to factual and historical material provided by them.
6. Subject to the exigencies of time, overseas news items should be selected and edited with the aim of ensuring fairness and accuracy as far as possible.
7. Language radio news and current affairs programs should be the subject of "spot check" monitoring to ensure that all material broadcast complies with SBS standards.
8. All genuine complaints of substance, whether alleging a breach of the Code or not, should be promptly investigated and responded to.
9. SBS should adopt :
 - 9.1. internal processes that comply with Australian Standard on Complaints Handling AS 4269-1995, and are audited annually for compliance with the standard; and
 - 9.2. an independent Ombudsman style model for more serious complaints.

10. The determination of all complaints should be completed and any redress recommended should be made within a maximum period of 30 days after the complaint is made.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'GJ Leonard', with a long horizontal stroke extending to the right.

Grahame J. Leonard
President