



Maddocks

SBS NATURAL PROGRAM BREAKS REVIEW

An analysis of SBS's in-program advertising practices

This Save Our SBS review was made possible with pro-bono assistance from the law firm Maddocks

1 February 2025

Executive summary

Was it ever intended that SBS take a broad approach to the concept of ‘*natural program breaks*’?

In 2006, the Special Broadcasting Service (SBS) introduced regular in-program advertising breaks to its programming, reflecting a broad interpretation of ‘*natural program breaks*’, a concept included but not defined in the *Special Broadcasting Service Act 1991* (Cth) (the **SBS Act**).

More than 95 per cent of 10,409 SBS viewers nationally in 2013, 2017, and 2020 have emphatically affirmed that SBS’s in-program advertising breaks appear forced, artificial or contrived¹, with similar views expressed in a 2015 petition signed by 61,931 people². These findings reflect community views that SBS’s practice of forcing in-program breaks to broadcast advertisements cannot rationally be characterised as ‘*natural*’ in any sense of the word.

It is demonstrably the case that it was never intended SBS take an overly flexible approach to ‘*natural program breaks*’. If an advertisement were placed or forced in a program contrary to a program creator’s (and the creative team’s) original intentions, it cannot be said such break in program is genuinely ‘*natural*’. SBS’s overly broad approach stands in marked contrast to formulations and understandings that exist across the industry and various jurisdictions.

In the interests of furthering SBS’s legislated charter³ and fulfilling its unique multilingual and multicultural role, SBS’s current approach to ‘*natural program breaks*’ necessitates a return to a narrower interpretation of that provision. Such would enhance SBS’s standing in the public and enshrine its culturally significant role of providing multilingual and multicultural broadcasting and digital media services that inform, educate and entertain all Australians, and, in doing so, reflect Australia’s multicultural society⁴. Moreover, considering Australia’s existing cultural policy, “*Revive*”, it may further be incumbent on SBS and the SBS board to reconsider its position on advertising.

Contents

SBS NATURAL PROGRAM BREAKS REVIEW	1
Executive summary.....	2
Objectives.....	4
A chronology of SBS’s shifting approach to ‘ <i>natural program breaks</i> ’	5
How current SBS in-program advertising practices are anything but ‘ <i>natural</i> ’: reflections on parliamentary intentions, legislative spirit and industry understandings.....	9
Reconsidering SBS’s approach to in-program advertising following the introduction of Australia’s cultural policy: Revive.....	17
By revisiting its approach to ‘ <i>natural program breaks</i> ’, SBS would better reflect the SBS Act’s spirit, parliamentary intentions and industry understandings. It would also sit consistently with Australia’s existing arts and culture policy priorities, in which the inherent value of Australian art, culture and multiculturalism is recognised.	19
Publication	20
Acknowledgement.....	20
References.....	20

Objectives

1. SBS Natural Program Breaks Review objectives

- 1.1 The conclusion of this review asserts that it was never intended that SBS take an overly broad approach to the concept of '*natural program breaks*'.
- 1.2 This SBS Natural Program Breaks Review's objectives are demonstrated by considering:
 - 1.2.1 SBS's shifting approach to '*natural program breaks*';
 - 1.2.2 the Commonwealth Parliamentary debates that lead to the SBS Act's passage;
 - 1.2.3 the SBS Act as a whole, and how a broader look at the Act favours a narrow approach to '*natural program breaks*';
 - 1.2.4 how SBS's '*natural program breaks*' in-program advertising approach is inconsistent with industry understandings; and
 - 1.2.5 the implications for SBS given the Commonwealth Government's arts and culture policy, "*Revive*".

A chronology of SBS's shifting approach to '*natural program breaks*'

2. SBS's shifting approach to '*natural program breaks*'

SBS's pre-2006 approach to '*natural program breaks*'

- 2.1 SBS began as Radio 2EA in Sydney and 3EA in Melbourne. In 1979, under the Multicultural Broadcasting Commission, covering radio and multicultural television, it later began broadcasting SBS-TV, then known as Channel 0-28 MTV with the logo and jingle Bringing The World Back Home. SBS became an independent corporation in 1991 under the SBS Act.
- 2.2 The SBS Act section 45 sets out the framework relevant to broadcast advertising and touches on, but does not define, the concept of '*natural program breaks*' (applicable to 'broadcast' but not 'streaming' services). Section 45(1)-(2) states:

45 Advertising and sponsorship—broadcasting services

(1) *Subject to subsection (2) and section 70C, the SBS may broadcast advertisements and sponsorship announcements on any of its broadcasting services.*

(2) *The SBS may only broadcast advertisements or sponsorship announcements:*

(a) *that run during periods before programs commence, after programs end or during natural program breaks; and*

(b) *that run in total for not more than 5 minutes in any hour of broadcasting.*

- 2.3 Prior to 2006, SBS broadcast advertisements either in blocks at the end of programs or during '*natural program breaks*' – being breaks within sporting events or entertainment fixtures. This SBS pre-2006 position on '*natural program breaks*' is consistent with a since superseded version of the SBS code of practice which stated that '*natural program breaks*' included:

2.3.1 *any pause during coverage of an event where audiences miss none of the proceedings that relate directly to the event (for example, rest periods in sports events); and*

2.3.2 *the junctions of the program segments that are contained in SBS Radio programs⁵.*

SBS's shift to a broader formulation of 'natural program breaks'

- 2.4 Following a decision of the SBS board in May 2006, SBS introduced regular in-program advertising breaks to its programming. This introduction of regular in-program advertising saw SBS adopt a broader approach to the formulation of 'natural program breaks', under SBS's *Guidelines for the Placement of Breaks in SBS Television Programs* (the **2006 Guidelines**)⁶. According to the SBS 2006-07 annual report, the decision to introduce these in-program breaks would create competitive advantage in the television advertising industry and drive revenue growth⁷.
- 2.5 Updated SBS codes do not expressly refer to, nor seek to limit, the definition of 'natural program breaks'⁸, in contrast to earlier SBS codes. Rather, SBS's approach to 'natural program breaks' appears to continue to be in accordance with the 2006 Guidelines, as well as an additional SBS internal Guidance Note dated 13 November 2019 (the **2019 Guidance Note**)⁹.
- 2.6 Notably, each of the 2006 Guidelines and the 2019 Guidance Note speak to the ongoing importance of maintaining integrity of programs and considering the viewer experience. The 2006 Guidelines state that:

*Decisions about the placement of advertisements in programs will be considered on a case-by-case basis and will have regard to program content and context. SBS will exercise sensitivity in the placement of advertisements*¹⁰.

- 2.7 The 2019 Guidance Note states the following in respect of 'natural program breaks':

*Editorial considerations and the interests of viewer experience will be taken into account when considering the placement of breaks. If a program has been deemed unsuitable for internal breaks due to the editorial narrative, for example a one-shot feature film, it will go to air without commercial breaks*¹¹.

- 2.8 However, based on SBS's present and actual practices, it cannot be said that due regard is given to program content and context (as stated in the 2006 Guidelines) or that viewer experience is being taken into account when considering the placement of breaks (as stated in the 2019 Guidance Note)^{12,13}. Rather, it is evident that SBS and its board have transitioned away from a narrow interpretation of what constitutes a 'natural program break', to an overly broad interpretation that pays little regard to what is genuinely *natural* in the context of the relevant program.

- 2.9 The extent to which this broader formulation of *'natural program breaks'* has departed from creative and community attitudes is illustrated by a 2023 opinion piece in the Sydney Morning Herald by film director, Julia Leigh. In that opinion piece, titled *'SBS Butchered My Movie, And There's Nothing I Can Do About It'*, Ms Leigh laments the extent to which advertisements were inserted into SBS's screening of her film "Sleeping Beauty", in a manner that is inconsistent with the creator's (and the creative team's) intentions, as well as the program's content and context generally¹⁴. The resulting letters to the editor, in response to Ms Leigh's piece, further speak to how SBS's current in-program advertising practices continue to contradict community attitudes and expectations, as well as the viewer experience¹⁵.
- 2.10 Given this ongoing and broad formulation to *'natural program breaks'*, as well as the inconsistency between this approach and creative and community attitudes, at issue then is whether it was ever intended that SBS should take such an overly flexible and broad approach to the concept of *'natural program breaks'*?

Returning to a narrower meaning of 'natural program breaks'

- 2.11 There are strong arguments to revert the meaning of *'natural program breaks'* to the pre-2006 and then narrower SBS approach to align with that expressed in the Hansard in the SBS Act's passage. That has been summarised as: *'the break that occurs between the end of one program and the start of the next program, and the natural-break-in-play of a sporting event where audiences miss none of the play, for example, half time in a soccer match'*¹⁶. It might also be said that a break is *'natural'* where an advertisement is placed in the juncture of a program where its creators intended for an advertisement to be placed (i.e. a broken format program, as discussed further below in this review)¹⁷.
- 2.12 SBS Amendment Bills were introduced into parliament (in 2008¹⁸, 2009¹⁹, 2010²⁰, and 2012²¹) clarifying and narrowing the definition of *'natural program breaks'*, placing additional statutory restrictions on SBS in-program advertising. None of the Bills were ever put to a vote.
- 2.13 Public objection to in-program advertising on SBS began in 2006/07 - originally to SBS itself at "about 400 complaints" per night²² and it was understood that when SBS commenced that practice, it received some 10,000 complaints per month by phone.
- 2.14 Due to public distress that SBS was disrupting programs for commercial breaks, in 2008 Save Our SBS petitioned the then responsible minister with 8,000 signatures against in-program advertising²³. Save Our SBS has continued to receive complaints since, collating the written frustrations to Save Our SBS from 2008 to 2018²⁴, and of more than 95 per cent of 10,409 SBS viewers surveyed nationally in 2013, 2017, and 2020, who collectively conveyed:

*In-program advertising breaks on SBS look forced or artificially contrived and it is misleading to describe these as natural program breaks*²⁵.

- 2.15 In addition, a 2015 online petition by Margaret Pomeranz and Quentin Dempster titled “*Preserve its Integrity! Don’t Increase Ads on SBS*”, was signed by 61,931 people, which further affirms how the community generally considers there being value and merit to restricting the level of advertising broadcast on SBS²⁶.
- 2.16 Although the ability to limit the meaning of ‘*natural program breaks*’ is within the SBS board’s role, duty, and power (not exercised since removing the 2005 and prior limitations in 2006 by the then board), introducing statutory clarifications and additional restrictions to limit the current broad interpretation would be of considerable assistance.
- 2.17 The importance of SBS and the need to preserve its important role in promoting social inclusion should not be understated. In 2019, Deloitte Access Economics estimated that the economic dividend from a more inclusive Australia is \$12.7 billion annually²⁷. The Deloitte Access Economics report also makes the case that SBS contributes to social inclusion in Australia through its services²⁸. Consequently, revisiting the concept of ‘*natural program breaks*’, so that SBS operates more consistently with community attitudes and expectations, is more likely to lead to SBS optimally performing its social inclusion role.
- 2.18 Concerns with respect to the broad approach to ‘*natural program breaks*’ is but only one concern with SBS’s advertising practices. It should be noted that:
- 2.18.1 notwithstanding the express 5 minute limit in any hour of broadcasting (applicable to ‘broadcast’ but not ‘streaming’ services) under the SBS Act’s section 45(2), research into SBS’s television broadcasting where every event was logged down to the precise second, in six hour blocks on random dates: (10/11/09²⁹; 7/4/11³⁰; 8/4/11³¹; 6/6/12³²; 13/2/14³³; 20/2/14³⁴; 1/6/20³⁵; 2/6/20³⁶; 3/6/20³⁷; and 4/6/20³⁸) indicate a practice of SBS broadcasting more than 5 minutes of *advertisements* (excluding promos) per hour - up to 50 percent more than allowed³⁹; and
- 2.18.2 in response to questions by the Senate, SBS has not agreed to introduce more detailed methodologies (such as a second-by-second advertisement measurement) in order to calculate whether the statutory 5 minute limit is being breached⁴⁰; and
- 2.18.3 it is questionable whether the statutory limit of “*5 minutes in any hour of broadcasting*” should be limited cumulatively across all of SBS’s television channels and radio stations (in other words, a total cap of 5 minutes may be applicable across all of SBS’s broadcasting in any given hour).
- 2.19 Notwithstanding these surrounding and general concerns, this review demonstrates why it was never intended that SBS take such a broad approach to in-program advertising and ‘*natural program breaks*’. This can be shown by considering the SBS Act’s legislative history, the SBS’s Act’s overall character and by considering the issue from an industry perspective.

How current SBS in-program advertising practices are anything but *'natural'*: reflections on parliamentary intentions, legislative spirit and industry understandings

3. Contrary to the Commonwealth Parliament's intentions: reflecting on the Commonwealth Parliamentary debates that led to the SBS Act's passage

3.1 In the lead up to the SBS Act's passage, SBS was permitted to broadcast advertisements for a trial period in 1991. The purpose of this trial was to gauge public reaction and see how advertising would be presented on SBS. During this trial, SBS placed advertisements before and after programs only. This approach to advertising, and the reference to *'natural program breaks'* in the Bill to the SBS Act, played a key role in the Commonwealth Parliament enacting the SBS Act, given the understanding that SBS advertising would continue in a manner consistent with the trial.

3.2 Of note were the views of the following parliamentarians, in both Houses, from each major political party, reflecting the attitudes of the Commonwealth Parliament at the time immediately following the advertising trial and prior to the SBS Act's passage:

- **Hon Warwick Smith AO (former House of Representatives member, Liberal):** There is no definition of natural program breaks, but the SBS provides an example of such as being the half-time in a soccer match. So in effect what will happen is that advertising will top and tail programs⁴¹.
- **Richard Alston OA (former Senator, Liberal – subsequently communications minister):** Whilst there is not a definition of natural program breaks, one would think that it is not too difficult to identify what the channel ought to have in mind, and clearly the half-time break in football and other sporting programs is a fairly common occurrence. The topping and tailing of programs so that good quality films are not massacred by advertisements is something that most people will readily identify with and recognise the breach of very quickly⁴².
- **Hon Michael Lee OAM (former House of Representatives member, Labor):** The sponsor, by providing the sponsorship funds, was given the right to run one advertisement--I think perhaps a 60 second advertisement--at the beginning and the end of the sponsored program. In that way the viewers were not disturbed and were not constantly interrupted, as is the case on some of the commercial television programs⁴³.
- **Hon Ian Sinclair (former House of Representatives member, National):** ... let us not try to get the advertising revenue that will make the SBS another commercial channel. If we do, again, that will change its character, and I do not think that is really what we are about⁴⁴.

- 3.3 Significantly and more recently, these views were shared by the late Brian Johns, former SBS managing director, who is credited with coming up with the idea in 1987 of supplementing SBS's taxpayer subsidy by broadcasting ads between TV programs. In 2013, Mr Johns shared with Save Our SBS's president, Steve Aujard, that the meaning of '*natural program breaks*' was that "*the integrity of programs be maintained free of advertising*" and that "*ads were only allowed if a program stops beyond the control of SBS*", such as live sport at half-time^{45,46}.

4. The second reading speech to the SBS Act

- 4.1 The SBS Act and its second reading speech do not define '*natural program breaks*'. However, the absence of a definition does not mean that the interpretation should be unconstrained. Instead, that phrase must be read in step with the purpose of the SBS Act noting that courts have expressed the view that statements of intention by ministers in 2nd reading speeches are rarely helpful⁴⁷. Hence in the absence of express words, other materials and sources must be referred to in order to assist in interpreting those words in line with the drafters' intentions. These materials and sources include:

4.1.1 the trial period discussed above at paragraph 3.1; and

4.1.2 the views of the Commonwealth Parliament outlined above at paragraph 3.2; and

4.1.3 confirmation in the Hansard that the drafters intended a narrow meaning⁴⁸.

- 4.2 Those materials and sources, as well as the matters discussed throughout this review, further suggest that a narrow interpretation of '*natural program breaks*' is most appropriate.

5. Why the Commonwealth Parliament's views still resonate today

- 5.1 When considered in the context of the Commonwealth Parliamentary debates (and the advertising trial that greatly informed and shaped those parliamentary debates), it is apparent how significantly SBS has departed from what was originally intended in respect of SBS's '*natural program breaks*' in-program advertising approach.

- 5.2 Given that these parliamentary views were expressed several decades ago, SBS may argue that those intentions should be relegated to history, in order to make way for alternative advertising approaches that prioritise a more economic imperative⁴⁹. However, the parliamentary views set out above still resonate today with community and industry stakeholders, particularly when considered in conjunction with:

5.2.1 the legislative spirit of the SBS Act when read as a whole (discussed below at paragraph 6 of this review);

5.2.2 industry and creative practices, considerations and understandings (discussed below at paragraph 8 of this review); and

- 5.2.3 the Commonwealth Government’s renewed focus on culture, multiculturalism and the arts, as reflected in its “*Revive*” policy (discussed below at paragraph 9 of this review).
- 5.3 Consistent with the parliamentary views discussed in this section of this review, an analysis of the SBS Act as a whole further illustrates how the current SBS approach to in-program advertising runs contrary to the underlying spirit of SBS’s legislation.
6. **Contrary to legislative spirit: how considering the SBS Act as a whole favours a narrow approach to ‘*natural program breaks*’**

The SBS charter: SBS’s principal function and duties

- 6.1 Under SBS Act section 6(1), SBS’s **principal function** is to:

provide multilingual and multicultural broadcasting and digital media services that inform, educate and entertain all Australians, and, in doing so, reflect Australia’s multicultural society.

- 6.2 Section 6(2) imposes various duties on SBS, including duties to contribute to the communication needs and awareness of multicultural society, including ethnic and Aboriginal and Torres Strait Islander communities. Section 6(3) states that the principal function and the SBS duties together constitute the **SBS charter**.
- 6.3 Section 6(5) further states that a subsidiary function of the SBS is to carry on, within or outside Australia, any business or other activity *incidental to the fulfilment of the SBS charter* (our emphasis).
- 6.4 Based on these key provisions of the SBS Act, it is evident that SBS’s paramount duty is to fulfil the SBS charter, while the pursuit of business and other activities is *incidental* to the charter’s fulfilment. However, arguably SBS’s current and overly broad approach to advertising during ‘*natural program breaks*’ reverses this important statutory priority by considering advertising concerns over the needs of the community⁵⁰. Namely, by adopting a broad approach to ‘*natural program breaks*’, SBS risks alienating its viewers, and in doing so, jeopardises its ability to fulfil the SBS charter and provide multilingual and multicultural broadcasting that informs, educates and entertains all Australians. It is evident that these SBS Act provisions do not inherently support a broad approach to ‘*natural program breaks*’ and accordingly, it cannot be said from a review of these provisions that it was ever intended that SBS take such a broad approach to ‘*natural program breaks*’.
- 6.5 It should be noted that the ‘*natural program breaks*’ provision in the SBS Act is only applicable to SBS broadcast or free-to-air services, not online, streaming nor SBS On Demand or SBS Audio. However, generally SBS apply the same approach in their On Demand and Audio platforms as for broadcast transmissions. Arguably, consistent with the SBS Act key provisions (see above), a narrowing in the placement of ‘*natural program breaks*’ by policy, direction, or legislation for SBS broadcast transmissions ought to also apply online, in streaming, digital, On Demand and Audio services.

SBS Act provisions relating to the SBS board

6.6 In addition to the provisions under the SBS Act concerning SBS more generally, considering the provisions on the SBS board's role and duties similarly raises questions as to whether SBS's current advertising practices are contrary to the SBS Act's requirements.

6.7 Under the SBS Act section 9, the SBS board's role is:

(a) to decide the objectives, strategies and policies to be followed by the SBS in performing its functions; and

(b) to ensure that the SBS performs its functions in a proper, efficient and economical manner and with the maximum benefit to the people of Australia.

6.8 The SBS board's duties are detailed in section 10(1). Relevantly, the SBS board's duties, include the following (including our emphases):

*(a) to maintain the **independence** and **integrity** of the SBS; and*

*(b) to develop and publicise the SBS's **programming policies**;*

...

*(d) to ensure that the SBS **does not contravene**:*

*(i) **this Act** or any other Act; or*

(ii) any directions given to, or requirements made in relation to, the SBS under this Act or another Act; and

*(e) to ensure the **efficient** and **cost effective functioning** of the SBS; and*

...

*(g) to be aware of, and responsive to, **community needs** and **opinions** on matters relevant to the **Charter**; and*

...

*(i) to ensure that the pursuit by the SBS of its **subsidiary functions** **does not detract** from the SBS fulfilling its **Charter** responsibilities; and*

*(j) develop **codes of practice** relating to:*

*(i) **programming matters**; and*

...

- 6.9 Assessed as a whole, it is clear from these provisions that responsibility falls on the SBS board to determine SBS's objectives, strategies and policies, provided this is done in a manner that is consistent with the SBS charter. It is also apparent from the SBS Act section 10 that considerable emphasis is placed on the SBS board carrying out its role in a manner that prioritises principles of integrity, the SBS charter and the needs of the community, over any other subsidiary functions.
- 6.10 It is noted that the SBS board's duties include:
- 6.10.1 ensuring SBS's efficient and cost effective functioning⁵¹; and
 - 6.10.2 developing policies and codes regarding programming matters⁵².
- 6.11 However, these SBS board duties of efficiency and determining programming policies must be balanced against (and be incidental to) the SBS board's overwhelming duties to integrity, the SBS charter and the community, as set out in SBS Act sections 6, 9 and 10. Based on those overwhelming requirements of the SBS Act, it is questionable whether the necessary balance and statutory requirements have been met, given the SBS board's current approach to advertising and the risk these practices pose to community satisfaction with the SBS^{53,54}. As such, these SBS board provisions further call into question whether it was ever intended that SBS should take such an overly flexible approach to the concept of '*natural program breaks*'.

7. The minister may investigate use of section 11 of the SBS Act to require SBS adopt a narrow approach to ‘natural program breaks’

SBS Act provisions relating to the minister (and board)

- 7.1 Under section 11 of the SBS Act, after consulting the SBS board, the minister may give directions in matters or circumstances prescribed in writing to the board that relate to the performance of SBS’s functions as appear to the minister to be necessary in the public interest however is prohibited from giving directions on the content or scheduling of programs.
- 7.2 This review details compelling reasons as a whole as to why it is in the public interest that SBS return to a narrower meaning of ‘*natural program breaks*’ than that currently practised by SBS.
- 7.3 It is noted that the SBS Codes of Practice (current and past) state that SBS is an associate member of Free TV Australia, the national peak body for Australian commercial free-to-air broadcasters.
- 7.4 Commercials (advertisements and promotions) are not program and are not captured by the programming restrictions imposed on the minister under section 11 of the SBS Act. The television industry via the Free TV Australia Codes of Practice refers to a commercial as “non program matter”. Historically that has also been the case.
- 7.5 On its website, in its annual reports, and at other forums, SBS interchanges the terms advertisements, commercials, in-program breaks, natural program breaks, natural breaks, commercial breaks and has consistently acknowledged that these are not program nor program content.
- 7.6 The minister has the option to investigate if section 11 of the SBS Act may be used to direct the SBS board to adopt a narrow approach to ‘*natural program breaks*’ and define that in the SBS Codes of Practice. This would be in the public interest and not interfere with SBS's scheduling or content of programs.

8. Contrary to industry practice: how SBS’s ‘*natural program breaks*’ in-program advertising approach is inconsistent with industry understandings

Forcing breaks in unbroken format programs

- 8.1 SBS’s current approach to in-program advertising reflects, not only a departure from the Commonwealth Parliament’s intentions and the SBS Act’s spirit, but it is also at odds with industry understandings of what constitutes a ‘*natural program break*’.
- 8.2 Considered from a technical perspective, programs supplied to SBS in their original format either:
- 8.2.1 having been made for commercial television, are scripted and produced with provision for commercial breaks (the **broken format**); or

- 8.2.2 having not been made for commercial television, have not been produced, assembled or compiled with provision for commercial breaks, which includes British Broadcasting Corporation programs or cinema-release movies (the **unbroken format**).
- 8.3 Arguably, programs delivered to SBS in the **broken format** might be regarded as supporting the placement of in-program advertisements. Such placement of advertisements might constitute a '*natural program break*'. This is because a program delivered to SBS in broken format is scripted and produced with cues for the placement of advertisements and is therefore consistent with that program's creator's original intentions. That said, it is observed that between 1991 and 2006, SBS's practice for certain programs was to close up all breaks (even when received by SBS in the broken format) so that those programs aired without the insertion of advertisements and in the interests of preserving their integrity⁵⁵. On this basis, it is not strictly necessary for advertisements to be placed during program, in or between program segments, even when a program is received in the broken format. It remains available for SBS to return to its 1991 to 2005 position of placing advertisements between programs, rather than during programs.
- 8.4 However, Hansard evidence is that most programs delivered to SBS arrive in an **unbroken format** and without markers to identify the placement of an advertisement⁵⁶. As such, the practice of SBS placing or forcing an advertisement in an unbroken format program can be properly regarded as arbitrary, given the advertisement has been inserted contrary to that program's creator (and the creative team's) original intentions. In such circumstances, it cannot be said that such placement of an in-program advertisement is genuinely '*natural*'.

Approaches to 'natural breaks' that are contrary to the current SBS approach

- 8.5 The concept of '*natural*' breaks is not new and there are various examples, in Australia and other jurisdictions, that adopt or indicate a much narrower formulation to in-program advertising than SBS's current practice. Early examples can be traced to 1972, when the United States Federal Communications Commission defined the phrase '*natural breaks*' to be the break in programming over which the cable operator has no control⁵⁷. Closer to home, a 1987 report by the now-abolished Australian Broadcasting Tribunal, "*Advertising Time on Television*" sets out a similarly narrow formulation in television advertising conditions that provided the following:

3(i) advertisements must be transmitted between programs or in 'natural breaks';

3(ii) advertisements may be visually superimposed only during live programs in which there are no natural breaks, or during other programs which would be adversely affected by interruption for the presentation of advertisements.

- 8.6 Referring to more recent examples, Ofcom, the United Kingdom’s television regulator, discusses the concept of ‘*natural breaks*’ in its “*Code on the scheduling of television advertising*” (**Ofcom Code**)⁵⁸. Under the Ofcom Code, where advertising is inserted during a program, broadcasters must ensure that the integrity of a program is not prejudiced, having regard to the nature and duration of the program, and where natural breaks occur⁵⁹. The Ofcom Code’s use of concepts such as *integrity* and *prejudice*, speaks considerably against the practice of inserting in-program breaks where no such break was intended by its creator.
- 8.7 In the United States, the Public Broadcasting Service (**PBS**), an American non-profit, free-to-air television public broadcaster and streaming network, also provides guidance on the meaning of ‘*natural breaks*’ in its “*PBS Producer’s Handbook*” (**PBS Handbook**)⁶⁰. Under the PBS Handbook, a particularly narrow approach to the meaning of ‘*natural break*’ is adopted, whereby the phrase is taken to mean the beginning and end of a program⁶¹. Importantly, there is no express reference in the PBS Handbook to a ‘*natural break*’ occurring during a program.
- 8.8 By referring to these historical and alternative formulations to ‘*natural breaks*’, it is apparent how SBS’s overly broad approach stands in marked contrast to formulations and understandings that exist across the industry and various jurisdictions. These historical and alternative approaches (which notably correspond with SBS’s pre-2006 advertising practices) further call into question SBS’s approach and justification for its in-program advertising activities.

Reconsidering SBS's approach to in-program advertising following the introduction of Australia's cultural policy: Revive

9. The "Revive" policy: why Australia's arts and culture policy has implications for SBS and its advertising practices

9.1 The Commonwealth Government's renewed focus on culture and the arts further calls into question SBS's current approach to 'natural program breaks'. In January 2023, the Commonwealth Government published its 5-year cultural policy – "*Revive: a place for every story, a story for every place – Australia's cultural policy for the next five years*" (**Revive**). Revive marks a key turning point for Australia's cultural and arts sectors generally, while also having implications for SBS specifically.

9.2 At a general level, the Revive policy's intention is to "*change the trajectory of the creative sector, to deliver new momentum, so that Australia's artists and arts workers, organisations and audiences thrive and grow, and our arts, culture and heritage are re-positioned as central to Australia's future*"⁶². This policy intention, with its focus on issues of Australian content as well as audiences, resonates with the issues faced by SBS, its audience and its purposes, as explored throughout this review.

9.3 Importantly, Revive makes express reference to SBS and its importance to Australia, by stating that (with our emphases):

9.3.1 SBS plays an important role in shaping Australia's **national identity, fostering social inclusion** and encouraging myriad forms of **cultural expression**⁶³; and

9.3.2 one of the pillars of Revive is to provide **security of funding** and **independence** for SBS, by delivering five-year funding terms⁶⁴.

9.4 Revive also notes the following key issues and challenges faced by broadcasters in SBS's position:

9.4.1 commercial and community television and radio broadcasting play a role in promoting social inclusion by broadcasting local news, telling local stories, and providing a platform for emerging and established local artists⁶⁵;

9.4.2 there is an increasing consumer trend away from broadcast and subscription television services to online subscription content⁶⁶; and

9.4.3 streaming platforms (including SBS On Demand discussed further below at paragraph 9.6), currently have no requirements to make Australian content available on their platforms⁶⁷.

- 9.5 Revive’s concerns with retaining audiences, addressing shifting viewing trends and preserving the important role of free-to-air broadcasters is consistent with the concerns raised in this review. Namely, there is a pressing need to consider and address the causes of Australia’s changing viewing trends. In the SBS context, addressing these challenges requires considering whether SBS’s current advertising practices are adversely contributing to viewers moving away from SBS and towards online subscription content (including moving away from SBS On Demand which in 2024 introduced viewer removal of specific but limited advertising categories⁶⁸ – outside the scope of this review focusing on free-to-air).
- 9.6 As noted above, Revive is concerned with addressing the issue of streaming platforms not (at time of publication) being required to broadcast Australian content. The logical extension to this problem is that these platforms are similarly not currently required to address the needs of Australia’s multicultural and multilingual communities. Meeting these challenges, as identified by Revive, serves as further impetus for SBS to reconsider its current advertising practices. This review also notes that in 2018, SBS and Save Our SBS made separate submissions to a Senate Committee inquiry that a quota of *fully-funded* Australian content be required of SBS (our emphasis)^{69,70}. Unlike the requirements placed on commercial broadcasters to meet Australian content quotas on their free-to-air channels, there are still no set quotas of Australian content imposed on SBS free-to-air (nor streaming) services.
- 9.7 Finally, Revive’s significant five year funding of SBS calls into question SBS’s overall advertising model (although advertising restrictions or limits were outside the scope of the DITRDCA *Review of options to support the national broadcasters’ independence* in 2023). However, given that SBS is recognised as an important service and a new funding model implemented (under and since Revive) in the interests of maintaining SBS’s independence, there is merit in considering whether advertising on SBS should be considerably revisited, reduced or abolished altogether. Abolishing all SBS advertisements would represent a significant departure to SBS practices and the SBS Act’s principles. However, this would nonetheless reflect recent views expressed by members of the Commonwealth Government regarding the need to consider and adopt a new, values-based capitalism for Australia - involving the pursuit of more confident and forward-thinking approaches; more aligned with Australian values; based more on evidence and integrity⁷¹.
- 9.8 If SBS advertising is not abolished altogether, at the very least, Revive’s funding commitment and related objective of safeguarding SBS’s independence:
- 9.8.1 call into question SBS’s current approach to in-program advertising; and
 - 9.8.2 supports the position that SBS should restore its earlier and narrower approach to ‘*natural program breaks*’.

By revisiting its approach to ‘*natural program breaks*’, SBS would better reflect the SBS Act’s spirit, parliamentary intentions and industry understandings. It would also sit consistently with Australia’s existing arts and culture policy priorities, in which the inherent value of Australian art, culture and multiculturalism is recognised.

10. A compelling need for SBS to revisit its approach to ‘*natural program breaks*’

- 10.1 The purpose of this review was to consider whether it was ever intended that SBS take an overly flexible approach to the concept of ‘*natural program breaks*’. By referring to historical, statutory and industry contexts, as well as Australia’s cultural policy direction, arguably, it is demonstrably the case that it was never intended that SBS take an overly flexible approach to ‘*natural program breaks*’.
- 10.2 Considering the matters and materials raised in this review, it would be reasonable to expect SBS and the SBS board to return to a narrow formulation of ‘*natural program breaks*’ and in so doing, honour the will and intent of the Commonwealth Parliament and the community. It is also incumbent on SBS to look to Australia’s reinvigorated commitment to protect SBS and its independence, which would better allow SBS to fulfil its vital role of upholding the SBS charter and informing, educating and entertaining all Australian multilingual and multicultural communities.

Publication

Published by **SAVE OUR SBS INC - supporters & friends of SBS** - SaveOurSBS.org
Suite 911, 585 Little Collins Street, Melbourne VIC 3000 - Phone: +61 3 9008 0644

<https://saveoursbs.org/wp-content/uploads/2025/02/sbs-natural-program-breaks-review.pdf>

<https://saveoursbs.org/archives/8103>

This review may be cited or republished in part or full with credit to Save Our SBS and Maddocks.

Acknowledgement

In preparing this SBS Natural Program Breaks Review, Save Our SBS is especially grateful for the time and pro-bono assistance provided by the law firm: Maddocks, Collins Square, Tower Two, Level 25, 727 Collins Street, Melbourne VIC, 3008

References

¹ SOSBS, *Natural Breaks (Natural Breaks)*,
<https://saveoursbs.org/natural-breaks>

² CommunityRun, *Preserve its Integrity! Don't Increase Ads on SBS (Margaret Pomeranz and Quentin Dempster online petition)*,
<https://web.archive.org/web/20150713042945/https://www.communityrun.org/petitions/preserve-its-integrity-don-t-increase-ads-on-sbs>

³ SBS Act section 6

⁴ SBS Act section 6(1)

⁵ SBS, *SBS Codes of Practice (2005) page 23*,
http://web.archive.org/web/20051216010641/http://sbs.com.au/media/9736Text_Codes_SCREEN.pdf

⁶ SBS, *Guidelines for the Placement of Breaks in SBS Television Programs (2006), (2006 Guidelines)*,
https://saveoursbs.org/wp-content/uploads/2010/06/3913advertising_guidelines_2006.pdf

⁷ SBS, *Annual Report 2006-2007 (Report, 2007) page 56, (SBS Annual Report 06-07)*,
http://media.sbs.com.au/home/upload_media/site_20_rand_1324117321_annual_report_2006_07.pdf

⁸ SBS, *SBS Code of Practice (2021) (amended 4 April 2022)*,
http://web.archive.org/web/20241217204946/https://www.sbs.com.au/aboutus/wp-content/uploads/2023/04/sbs_code_of_practice_2021_amended_2022.pdf

⁹ *SBS 2019 Guidance Note, (SBS 2019 Guidance Note)*,
<https://saveoursbs.org/wp-content/uploads/2020/02/SBS-Policy-on-Ad-Breaks-Final-.pdf>

¹⁰ SBS, *2006 Guidelines*, (n 6) page 1

¹¹ SBS 2019 Guidance Note (n 9) page 2

¹² SOSBS, *SBS continues to alienate and betray its audience*,
<https://saveoursbs.org/archives/7995>

-
- ¹³ SOSBS, *Survey 2017 about SBS (2018)* page 3,
<https://saveoursbs.org/wp-content/uploads/2017/04/Survey-2017-about-SBS.pdf>
- ¹⁴ Julia Leigh, *'SBS Butchered My Movie, And There's Nothing I Can Do About It'*, The Sydney Morning Herald (17 February 2023),
<https://www.smh.com.au/culture/movies/sbs-butchered-my-movie-and-there-s-nothing-i-can-do-about-it-20230216-p5c16r.html>
- ¹⁵ *Letters to the Editor*, The Sydney Morning Herald and The Age (20 February 2023)
- ¹⁶ SOSBS, *Natural Breaks* (n 1)
- ¹⁷ Broken and unbroken format programs are discussed at paragraph 8 of this SBS Natural Program Breaks Review
- ¹⁸ Special Broadcasting Service Amendment (Prohibition of Disruptive Advertising) Bill 2008
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s620
- ¹⁹ Special Broadcasting Service Amendment (Prohibition of Disruptive Advertising) Bill 2009
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s726
- ²⁰ Special Broadcasting Service Amendment (Prohibition of Disruptive Advertising) Bill 2010
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s789
- ²¹ Special Broadcasting Service Amendment (Natural Program Breaks and Disruptive Advertising) Bill 2012
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s863
- ²² Commonwealth, *Parliamentary Debates*, Senate, 30 Oct 2006, 8 (Shaun Brown),
<https://web.archive.org/web/20070204161553/http://www.aph.gov.au/hansard/senate/commtee/S9768.pdf>
- ²³ *Petition, No Advertisement or Sponsorships on SBS* (SOSBS),
<https://www.saveoursbs.org/phpPETITION/Index.php>
- ²⁴ SOSBS *Comments about SBS 2008-2018*,
https://saveoursbs.org/wp-content/uploads/2019/01/Comments_about_SBS_2008-2018.pdf
- ²⁵ SOSBS, *Natural Breaks* (n 1)
- ²⁶ Margaret Pomeranz and Quentin Dempster online petition (n 2)
- ²⁷ Deloitte Access Economics, *The Economic Benefits of Improving Social Inclusion: A Report Commissioned by SBS* (August 2019) page 34, **(Deloitte Access Economics Report on Improving Social Inclusion)**,
<https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-benefits-improving-social-inclusion-181119.pdf>
- ²⁸ Deloitte Access Economics Report on Improving Social Inclusion (n 27) pages 39-40
- ²⁹ SOSBS, *SBS TV Airlog Report* (10 November 2009),
<https://saveoursbs.org/wp-content/uploads/2020/08/091110-SBS-TV-1-LOG-1800-2400-SOSBS.pdf>
- ³⁰ SOSBS, *SBS TV Airlog Report* (7 April 2011),
<https://saveoursbs.org/wp-content/uploads/2020/08/110407-SBS-TV-1-LOG-1800-2400-SOSBS.pdf>
- ³¹ SOSBS, *SBS TV Airlog Report* (8 April 2011),
<https://saveoursbs.org/wp-content/uploads/2020/08/110408-SBS-TV-2-LOG-1800-2400-SOSBS.pdf>
- ³² SOSBS, *SBS TV Airlog Report* (6 June 2012),
<https://saveoursbs.org/wp-content/uploads/2020/08/120606-SBS-TV-1-LOG-1800-2400-SOSBS.pdf>
- ³³ SOSBS, *SBS TV Airlog Report* (13 February 2014),
<https://saveoursbs.org/wp-content/uploads/2020/08/140213-SBS-TV-1-LOG-1800-2400-SOSBS.pdf>
- ³⁴ SOSBS, *SBS TV Airlog Report* (20 February 2014),
<https://saveoursbs.org/wp-content/uploads/2020/08/140220-SBS-TV-2-LOG-1800-2400-SOSBS.pdf>

-
- ³⁵ SOSBS, *SBS TV Airlog Report* (1 June 2020),
<https://saveoursbs.org/wp-content/uploads/2020/08/200601-SBS-TV-1-Primary-Channel-Melbourne-LOG-1800-2400-SOSBS.pdf>
- ³⁶ SOSBS, *SBS TV Airlog Report* (2 June 2020),
<https://saveoursbs.org/wp-content/uploads/2020/08/200602-SBS-TV-VICELAND-Melbourne-LOG-1800-2400-SOSBS.pdf>
- ³⁷ SOSBS, *SBS TV Airlog Report* (3 June 2020),
<https://saveoursbs.org/wp-content/uploads/2020/08/200603-SBS-TV-World-Movies-Melbourne-LOG-1800-2400-SOSBS.pdf>
- ³⁸ SOSBS, *SBS TV Airlog Report* (4 June 2020),
<https://saveoursbs.org/wp-content/uploads/2020/08/200604-SBS-TV-FOOD-Melbourne-LOG-1800-2400-SOSBS.pdf>
- ³⁹ SOSBS, *SBS hour logged with 50 percent more ads than allowed* (1 September 2020),
<https://saveoursbs.org/archives/7020>
- ⁴⁰ Parliament of Australia, *Answers to Senate Estimates Questions on Notice, Budget Estimates October 2020, Communications Portfolio, Special Broadcasting Service – Topic: Measuring Advertising, Senate*, (29 October 2020),
<https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId8-EstimatesRoundId9-PortfolioId35-QuestionNumber159>
- ⁴¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 14 October 1991, 1842 (Warwick Smith),
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansardr/1991-10-14/0041%22>
- ⁴² Commonwealth, *Parliamentary Debates*, Senate, 11 November 1991, 2843 (Richard Alston),
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansards/1991-11-11/0083%22>
- ⁴³ Commonwealth, *Parliamentary Debates*, House of Representatives, 14 October 1991, 1857 (Michael Lee),
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansardr/1991-10-14/0047%22>
- ⁴⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 14 October 1991, 1860 (Ian Sinclair),
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansardr/1991-10-14/0048%22>
- ⁴⁵ SOSBS, *SBS continues to alienate and betray its audience*,
<https://saveoursbs.org/archives/7995>
- ⁴⁶ SOSBS, *Survey 2017 about SBS* (2018),
<https://saveoursbs.org/wp-content/uploads/2017/04/Survey-2017-about-SBS.pdf>
- ⁴⁷ *Harrison v Melhem* (2008) 72 NSWLR 380 [12] (Spigelman CJ)
- ⁴⁸ Hansard, *30 October 2006 Senate*, ECITA 11 [PDF page 15] - Senator CONROY: “... I have spoken to some of the people who were involved in drafting it—it was not open slather. Clearly, it does not say: ‘Just have ads wherever you want;’ it says: ‘You can have ads in only a couple of places,’ and yet, as you have testified, there is now open slather in every single program. That just seems to me to be inconsistent with the intent of the limits that the legislation attempted to set. You have now defined those limits as being unlimited ...”,
<https://web.archive.org/web/20070204161553/http://www.aph.gov.au/hansard/senate/commtee/S9768.pdf>
- ⁴⁹ *SBS Annual Report 06-07* (n 7) page 56, as discussed at paragraph 2.4 of this SBS Natural Program Breaks Review
- ⁵⁰ SOSBS, *End in-Program Ads on SBS Campaign* (2021),
<https://saveoursbs.org/archives/7937>
- ⁵¹ SBS Act section 10(1)(e)
- ⁵² SBS Act section 10(1)(j)(i)
- ⁵³ SBS, *SBS Commercial, Funding and External Relationships Guidelines* (2022) [4.3] page 9,
https://www.sbs.com.au/aboutus/wp-content/uploads/2023/04/sbs_commercial_funding_and_external_relationships_guidelines_2022.pdf
- ⁵⁴ SOSBS *End in-Program Ads on SBS Campaign* (2021) including 11,591 separate emails sent from the SBS audience to the SBS board,
<https://saveoursbs.org/archives/7937>

⁵⁵ For instance, the program *'The American Civil War'* was delivered to SBS in the broken format but was screened on SBS without any in-program advertisements, during the trial period described in paragraph 3.1 of this SBS Natural Program Breaks Review. During that trial period, all advertisements were top and tail of programs only. SBS continued the practice of 'closing the breaks' in other programs up to 2006.

⁵⁶ Commonwealth, *Parliamentary Debates*, Senate, 16 June 2008, 2135,
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2008-06-16%2F0157%22>

⁵⁷ The Program Origination Rules 47 C.F.R. § 76.201 (1972), 37 Fed. Reg. - (1972)

⁵⁸ United Kingdom, *Code on the scheduling of television advertising* (updated 28 April 2022), (**UK Code on the scheduling of television advertising**),
https://www.ofcom.org.uk/__data/assets/pdf_file/0014/32162/costa.pdf

⁵⁹ UK Code on the scheduling of television advertising (n 58) page 4

⁶⁰ Public Broadcasting Service, *PBS Producer's Handbook* (as of December 2019), (**PBS Producer's Handbook**),
[https://bento.cdn.pbs.org/hostedbento-prod/filer_public/Producing%20for%20PBS/Handbook%20Drafts/PBS%20Producer%27s%20Handbook%20\(December%202019\).pdf](https://bento.cdn.pbs.org/hostedbento-prod/filer_public/Producing%20for%20PBS/Handbook%20Drafts/PBS%20Producer%27s%20Handbook%20(December%202019).pdf)

⁶¹ PBS Producer's Handbook (n 60) pages 12 and 16

⁶² Commonwealth of Australia, *Revive: a place for every story, a story for every place – Australia's cultural policy for the next five years* (January 2023) page 16 (Revive)

⁶³ Revive (n 62) page 87

⁶⁴ Revive (n 62) page 105

⁶⁵ Revive (n 62) page 87

⁶⁶ Revive (n 62) page 87

⁶⁷ Revive (n 62) page 87

⁶⁸ SBS, *SBS On Demand unveils slew of personalisation and curation enhancements*, 31 October 2023,
<https://www.sbs.com.au/aboutus/2023/10/31/sbs-on-demand-unveils-slew-of-personalisation-and-curation-enhancements>

⁶⁹ SBS, *Submission to the Environment and Communications References Committee Australian content on broadcast, radio and streaming services January 2018*,
<https://www.aph.gov.au/DocumentStore.ashx?id=1cb6a384-76bc-40cd-b47b-2a9c7de6a021&subId=563386>

⁷⁰ SOSBS, *Australian content on SBS and related matters* (9 February 2018),
<https://www.aph.gov.au/DocumentStore.ashx?id=401c3201-f1ec-430c-a28e-f01ffe9b3bca&subId=563554>

⁷¹ The Hon Jim Chalmers MP, *Capitalism After the Crises* (2023).

