



## SBS submission to the Independent Review of the *Public Governance, Performance and Accountability Act 2013* and Rule – Draft Report June 2018

### *Key points*

- The *Public Governance, Performance and Accountability Act 2013* and related Rule provide a comprehensive, coherent and effective governance framework.
- This independent review provides a valuable opportunity to consider adjustments to the framework following its initial period of operation. SBS's comments focus on the practicability of key recommendations, and avoiding unintended consequences.
- Any amendments to audit committee requirements should not prevent a member of an entity's accountable authority—in SBS's case, the SBS Board—from sitting on that entity's audit committee.
- SBS welcomes the development of clearer linkages between reporting requirements of portfolio budget statements, corporate plans and annual reports—to avoid duplication.
- Current annual report timelines enable sufficient time to settle financial statements and other information required prior to tabling in Parliament. Should the same level of detail be required, SBS recommends that current timelines for tabling be retained.
- SBS should only be subject to new remuneration reporting requirements where these apply across all like organisations.
- SBS endorses the review finding that the Senate Order on Entity Contracts has a disproportionate impact on corporate entities, and the review panel's encouragement to Parliament to consider the administrative burden of this order.
- Existing fora for Commonwealth entities to share approaches to legal issues are appropriate. It is not appropriate to require agencies to share confidential legal advice relevant only to the agency's specific circumstances.

## ***Introduction***

SBS welcomes the opportunity to provide comments on the Draft Report of the Independent Review of the *Public Governance, Performance and Accountability Act 2013* and Rule (the **Draft Report**).

As previously submitted by SBS, the introduction of the *Public Governance, Performance and Accountability Act 2013* (**PGPA Act**) and Rule was a very successful process. The final PGPA Act and Rule were relevant, coherent and effective.

Further to our earlier comments on the overarching framework established by the PGPA Act, this submission focuses on the practicability of key recommendations in the Draft Report.

## ***About SBS***

SBS reaches almost 100 per cent of the population through its free-to-air TV channels (SBS, SBS HD, SBS VICELAND, SBS VICELAND HD, Food Network and National Indigenous Television (**NITV**)) and radio stations (SBS Radio 1, 2 3 and 4, SBS Arabic24, SBS PopDesi, SBS Chill and SBS PopAsia). Engagement is being significantly extended through SBS's digital services, including SBS On Demand and portals which make online audio programming and information available in nearly 70 languages other than English.

SBS has made continued investment in exclusive and distinctive content, as it provides more than 6,000 hours of programming on SBS On Demand across more than 10 distribution platforms. This includes exclusive premiere titles across key genres of drama, film and documentary, including SBS commissioned content scheduled and distributed across television and digital platforms.

Through content across all our platforms, SBS inspires a richer, more holistic understanding of our world and presents surprising perspectives in entertaining and innovative ways.

## ***Performance framework***

SBS agrees that the PGPA Act and Rule provide a sound framework for the measurement and reporting of the performance of entities across the Commonwealth, and notes the recommendations in the Draft Report for improving the quality of performance reporting.

While SBS is very confident in the quality of its performance reporting, we understand there may be value in confirming by amendment to the PGPA Rule that such reporting must be relevant, reliable and complete.<sup>1</sup>

The Draft Report recommends that accountable authorities—in SBS's case, the SBS Board—should ensure that their audit committees have the skills, capability and resources to provide advice on performance reporting. This is appropriate. Indeed, the SBS Audit and Risk Committee operates under a charter which provides clear expectations in relation to its functions. Committee members include experts who

---

<sup>1</sup> SBS agrees with the finding in the Draft Report, at page 11, that 'rich and insightful performance information is unlikely to come from the application of hard and fast rules or the widespread use of a template approach. However, the framework should be clear on the minimum standard of reported performance information'.

possess relevant qualifications, knowledge, skills and experience. Through a regular cycle of meetings committee members are fully informed by management on relevant matters.

The Draft Report recommends that a range of programs and guidance be developed by the Department of Finance to assist entities to meet the requirements of the PGPA Act and Rule and to develop high-quality performance reports. Such resources would be of value in assisting audit and risk committees to review performance reporting.

### ***Managing and engaging with risk***

The Draft Report makes a number of recommendations to improve risk management and engagement practices. SBS has a strong risk culture and a number of these recommendations are consistent with existing SBS practice, including:

- embedding effective risk management and engagement into policy development and program management;
- engaging across the organisation to determine risk appetite and documenting how risks will be identified, accepted and managed; and
- including both 'audit' and 'risk' in the name of the audit committee—to reinforce the important role of the committee in supporting the accountable authority to engage with risk.

The Draft Report notes that for larger entities, or entities with complex risks, consideration should be given to establishing separate risk and audit committees. This would be unnecessary for an agency such as SBS, which is relatively small, and which benefits from the integration of audit and risk functions in a single committee.

### ***Audit committees***

The Draft Report recommends that all audit committee members should be independent, meaning that they are not an official or employee of a Commonwealth entity.

The SBS Audit and Risk Committee is typically comprised of members of its accountable authority. The SBS Audit and Risk Committee Charter provides that the majority of members of the committee must be external (not employed by the SBS). In addition, SBS already limits the ability of staff to serve on the SBS Audit and Risk Committee and specifically excludes the Chief Executive Officer and Chief Financial Officer from serving. These measures promote independence.

While the Draft Report notes that the majority of audit committee members of corporate Commonwealth entities and Commonwealth companies are appointed from among these independent directors from their governing boards, who are not officials,<sup>2</sup> there may be potential for confusion in light of the definition of 'official' in section 13 of the PGPA Act.

Section 13 of the PGPA Act defines an official of a Commonwealth entity as an individual who is in, or forms part of, the entity, including a member of the accountable authority of the entity. On its face, a general prohibition on officials of a Commonwealth entity being a member of an entity's audit committee would prevent a member of that entity's accountable authority from sitting on the entity's audit committee.

---

<sup>2</sup> Draft Report, page 22.

In light of the following commentary in the Draft Report it would appear that this is not the intention:

Currently, an independent member can be a person that is not an official of the entity in question. An official from another Commonwealth entity can be considered 'independent' for the purposes of the appointing entity. We propose that for the purposes of determining a member's independence, they must not be an official or employee of a Commonwealth entity.<sup>3</sup>

Instead, the focus appears to be on preventing officials from one Commonwealth entity sitting on the audit committee of another Commonwealth entity. This should be clarified and clearly articulated.

SBS does not agree with the recommendation, because officials of other Commonwealth entities could provide valuable insights to an audit committee. A general prohibition may prevent sensible appointments in some circumstances.

The proposed measure should not go beyond the current audit committee requirements of the ASX Listing Rules, where the majority of audit committee members are non-executive and independent directors. In particular, any prohibition on officials or employees of another Commonwealth entity serving on an entity's audit and risk committee should not extend to limitations on members of an entity's accountable authority serving on that entity's audit and risk committee.

As noted above, and consistent with the recommendations of the Draft Report, the SBS Audit and Risk Committee is regularly convened with senior management present to provide relevant information and answer questions.

SBS notes and supports recommendations in the Draft Report that accountable authorities should ensure audit committee members are appropriately qualified, sourced broadly from a range of industries, sectors and locations and remunerated in a way that is commensurate to their responsibilities. We also support findings that accountable authorities are best placed to make decisions about matters such as maximum appointment terms—and therefore agree with the draft finding that the PGPA Rule should not mandate a maximum appointment term.

The SBS Annual Report broadly outlines the role and activities of the SBS Audit and Risk Committee for each reporting period. In line with ASX practice, the Draft Report recommends a more granular level of detail be included in Annual Reports—such as the committee charter, membership (as well of qualifications, skills and experience of members), attendance at meetings and remuneration.

SBS acknowledges that transparency is a cornerstone of an effective public sector, and does not in principle have concerns with reporting this further detail. However, there should be flexibility in how this information is included in annual reports. Unduly prescriptive rules about presentation of this information should be avoided.

### ***Clarifying reporting requirements and reducing the reporting burden***

SBS agrees that duplicative performance reporting requirements should be avoided as they divert the resources of agencies away from their core purpose—which, in the case of SBS, is providing distinctive information, education and entertainment services to our audiences.

---

<sup>3</sup> Draft Report, page 24.

The Draft Report recommends clearer linkages between reporting requirements of portfolio budget statements, corporate plans and annual reports.

While SBS is confident that its suite of regular reporting cohesively delivers an appropriate level of transparency in each of these publications we would welcome further guidance. This will support SBS in ensuring continuous improvement of these publications.

In relation to reducing unnecessary reporting, SBS supports recommendations in the Draft Report that:

- Corporate plan templates be made available—although these should provide guidance and not be mandatory; agencies should retain discretion as to presentation of their reports so long as they fulfil all relevant requirements.
- Corporate plans should cover a four-year period (SBS already prepares corporate plans on this basis).
- The Department of Finance should clarify and explain the integrated performance reporting requirements and linkages in portfolio budget statements, corporate plans and annual reports.

Changes to the reporting framework should not require agencies to publish information that is commercial-in-confidence—for example, unduly granular information about particular identified risks in corporate plans.

### ***Annual report timing and Parliamentary scrutiny***

The Draft Report suggests that current arrangements for presenting annual reports to the Parliament do not ensure they receive adequate scrutiny by the Parliament. It is recommended that presentation of annual reports be brought forward to on or before 30 September to ensure that they can be assessed prior to Senate Supplementary Budget Estimates hearings, with a recommended requirement that the responsible Minister be provided the report at least seven days prior to the presentation deadline.

SBS does not agree with this finding, and considers existing reporting arrangements provide appropriate opportunity for Parliamentary scrutiny.

As noted in the Draft Report:

the preparation of annual reports involves significant resources. The Parliament requires entities to report in detail on a range of information. This list of required content has increased over time.<sup>4</sup>

SBS is concerned that the proposed shorter timeline for preparation and tabling of annual reports may not allow agencies sufficient time to finalise both financial statements and the significant volume of other information required. We recommended that existing timelines for annual reports be retained.

To the extent that there is concern about the ability of Senators to enquire with agencies about matters dealt with in their annual report, we note that there are three rounds of Senate Estimates hearings each year. In the event that an agency's Annual Report has not been tabled prior to October hearings, the second and third rounds of hearings in each

---

<sup>4</sup> Draft Report, page 33.

financial year (generally February and then May) provide appropriate opportunity for agencies to address questions arising from their report.

As previously submitted by SBS, any proposal to introduce an earlier date would need to be combined with a rationalisation in the amount of information required to be included in the report.

The Draft Report also recommends that Parliament and the Department of Finance continue to implement a fully digital reporting platform and reporting process for annual reports and other relevant reporting requirements. It is recommended that entities phase out hard copy reporting by 2019–20, and that sufficient resources and funding should be allocated to achieve this goal.

SBS supports this recommendation as it will reduce the cost to taxpayers of reporting and is consistent with the transition of content and services to digital platforms—across both the public and private sectors. Should there be concerns about access to digital-only reports these could be addressed on a case-by-case basis—for example, by providing hard copies that are printed upon request.

While the introduction of digital-only annual reports may marginally reduce production timelines, agencies will still require an appropriate period within which to finalise key matters to be included in annual reports, particularly financial statements.

### ***Reporting of executive remuneration***

The Draft Report sets out the panel's concerns that current executive remuneration reporting across Commonwealth entities and companies is not sufficiently transparent. Recommended changes include publication in annual reports of:

- the remuneration, including allowances and bonuses, of the accountable authority and their key management personnel, in line with the disclosure of ASX listed companies; and
- the number and average remuneration (including allowances and bonuses) of all other senior executives and highly paid staff, by band.

The Draft Report also notes that where the remuneration of senior executives of Commonwealth entities and companies is not set by the Remuneration Tribunal, entities and companies should report on the remuneration policy and practice for their key management personnel, as with arrangements for ASX listed companies. This is also recommended as good practice for other senior executives and highly paid staff.<sup>5</sup>

Remuneration reporting for SBS and the ABC is currently the subject of debate with the Government having introduced legislation to Parliament relating only to the reporting of the salaries at the two public broadcasters. The *National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017* (the **Bill**) would, if passed, require SBS to report personally identifiable details of annual salaries and allowances of its employees, and amounts paid to 'on-air talent', in excess of \$200,000.

As SBS noted in its submission to a Parliamentary inquiry assessing the Bill:

---

<sup>5</sup> Draft Report, page 42.

- SBS already operates under a robust accountability framework, and provides de-identified executive salary information on its website and in its Annual Report in accordance with the expectations of the Department of Prime Minister and Cabinet, and guidelines provided by the Department of Communications and the Arts.<sup>6</sup>
- There is no public interest in adding names to this existing process.
- Reporting of the type required by this Bill does not occur in counterpart public service agencies or the private sector.
- The Bill has the potential to seriously undermine the hard work and resources invested in making SBS an employer of choice.

We note that the proposal to report the remuneration of the accountable authority and their key management personnel is narrower, and more targeted than the proposal under the Bill (in that it would not require publication of the identity and remuneration of all staff whose remuneration exceeds a certain level).

SBS believes that it currently provides an appropriate and robust level of transparency in relation to salary information, and that further reporting is not necessary. However, should the review panel and Government be minded to expand reporting requirements in accordance with the draft recommendation this should be applied consistently across all like entities. Further reporting requirements should not be applied to some agencies and not others, as would be the case if the Bill were passed.

Any new reporting scheme should preserve the privacy rights of staff. Other than for the accountable authority and key management personnel, SBS would not support proposals which release the private information of individuals—in particular, names and individual salary levels. Regular and ongoing public updates about the salaries of individual staff would create the potential for recurring embarrassment, and raises concerns regard the wellbeing of these staff.

SBS notes the recommendation that accountable authorities should provide an explanation of their entity’s remuneration policy and practice, consistent with the practice of ASX listed companies. In SBS’s view, such reporting should note in general terms how an organisation will manage remuneration, but not be required to include granular detail. It should be noted that remuneration policies and practices provide entities with very useful guidance, but are not applied inflexibly—given that markets, particularly the media market, evolve over time and remuneration practices must be adjusted accordingly.

### ***Reporting of contracts and consultancies***

The Draft Report notes that stakeholders have expressed concern about the burden of duplicative reporting on contractual arrangements across annual reports, AusTender and the Senate Order on Entity Contracts (the **Senate Order**, also known as the Murray Motion).<sup>7</sup>

The Senate Order has applied to SBS since 1 July 2017. Compliance with the Senate Order imposes significant administrative burden on SBS, including because the reporting cycle is not aligned with other SBS reporting and because the Senate Order requires entities to

---

<sup>6</sup> Published at <https://www.sbs.com.au/aboutus/corporate/index/id/229/h/SBS-Executive-Remuneration-2016-17>.

<sup>7</sup> Draft Report, page 44.

obtain an assurance on a six monthly basis from its accountable authority in relation to certain aspects of the listed contracts.

The Draft Report notes that a guiding principle of the PGPA Act is that the framework should support the legitimate needs of the Parliament in discharging its responsibilities, including its role in ensuring the proper use of public resources.<sup>8</sup> SBS fully supports this principle and notes the range of ways in which corporate Commonwealth entities report to, and are accountable to Parliament.

However, we also agree with the Draft Report that '[t]he challenge is in finding the right balance to demonstrate to the Parliament and citizens that public resources are being spent wisely'.<sup>9</sup>

While making certain findings in relation to reporting that should be undertaken by non-corporate Commonwealth entities, the Draft Report notes that:

[w]e do not support amending the reporting requirements for corporate Commonwealth entities to require reporting on contracts and consultancies similar to that of non-corporate entities, since this would impose unnecessary red tape on these entities.<sup>10</sup>

SBS endorses this finding and agrees that unnecessary red tape should be avoided. SBS also endorses the finding in the Draft Report that the extension of the Senate Order to corporate Commonwealth entities 'has a disproportionate impact on corporate entities, since they do not report contracts and consultancies through AusTender. Its impact on smaller corporate entities is particularly great'.<sup>11</sup>

SBS supports the encouragement in the Draft Report to Parliament to consider this issue. We note in particular the following observations:

Over time, the Parliament has added incrementally to the reporting burden of entities, requiring information including lists of departmental files, lists of contracts and consultancies, statements on advertising and public information projects, lists of appointments and lists of grants. Some of these requirements have not been reviewed for simplification or redundancy in a long time, if at all.

If the Parliament wishes to require additional information on contracts and consultancies, we would encourage it to consider the burden that this would impose on entities, particularly corporate Commonwealth entities and smaller entities. A key consideration would be whether any new reporting requirements duplicate or overlap with existing ones, or render existing reporting redundant.<sup>12</sup>

### ***Technical and other matters***

SBS notes a number of other technical, legislative and policy recommendations arising from earlier submissions to this inquiry.

SBS notes the recommendation that Finance and the Attorney-General's Department explore how legal advice on the PGPA Act and Rule can be shared across Commonwealth entities. Caution should be exercised in relation to this proposal given that the particularities of legal advice relevant to one agency may not be relevant to other agencies, and that legal advice routinely contains confidential information. It is not appropriate to require agencies to share confidential information, and confidential

---

<sup>8</sup> Draft Report, page 44.

<sup>9</sup> Draft Report, page 44.

<sup>10</sup> Draft Report, page 45.

<sup>11</sup> Draft Report, page 45.

<sup>12</sup> Draft Report, page 45.

advice relevant only to their specific circumstances. Existing fora for sharing approaches to legal issues across agencies—such as General Counsels’ fora—are appropriate.

We note the recommendation that Finance should evaluate the merits of making a rule, under section 61 of the PGPA Act, relating to indemnities, guarantees or warranties by corporate Commonwealth entities. Any such rule should be principles-based as each corporate Commonwealth entity has its own sector and risk profile. In this context an inflexible one-size-fits-all rule would not be appropriate where it prevented agencies from tailoring these matters to their circumstances.

Finally, SBS notes the recommendation that Finance should evaluate the merits of legislating a provision, equivalent to section 27L of the former *Commonwealth Authorities and Companies Act 1997*, to allow board members of corporate Commonwealth entities to inspect the books of the entity. While SBS does not object to this recommendation, we expect that such access would be provided as a matter of course, so legislating a requirement may not be necessary.