



SBS Is Mocking “Your Right to Know”

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In October last year, the SBS joined the Your Right to Know Coalition, a push from the major media outlets to put pressure on parliament to improve freedom of information and other laws so that Australians can know more about what their government is doing.

And how does the nation’s second-largest public broadcaster measure on transparency? Based on a recent freedom of information request submitted to SBS it seems that the Right to Know is a right designed only for those Australians who are employed in Big Journalism, rather than the millions of Australians who are concerned with what the public sector do with their money.

This particular instance of SBS opacity dates back to October of 2013 when the SBS published on its website an article with the headline “Fires not due to climate change: expert”.

The article was a news report written by the AAP, a news aggregation service, and featured the considered opinion of retired Monash University researcher David Packham, who said linking bushfires to climate change is “absolute nonsense” and reducing fuel loads in the Australian bush



is urgently needed to reduce the intensity of bushfires.

The article resurfaced in November 2019 and was shared around social media in the wake of opportunistic alarmism from the green lobby that the bushfires at the time were the result of climate change. But on November 12, it was inexplicably taken down from the SBS website.

A day or two later, the SBS put the article back online but featured a new preamble. The substance of the new paragraphs was to confirm that Packham still held the same views then as he did in 2013. In response, Packham said “The most important (factor) is the dryness of the fuel, which comes from hot dry weather... the theory is as solid as the universal theory of gravitation.”

One could be mistaken for thinking that the SBS felt that the link between climate change and bushfires was now unimpeachable and that this update would discredit Packham.

In response to these bizarre actions by SBS, the Institute of Public Affairs submitted a Freedom of Information request for “Copies of correspondence or emails or documents created, sent or received by SBS staff in relation to the deletion of the October 22, 2013 article titled ‘Fires not due to climate change: expert’ between 9 November 2019 and 13 November 2019.”

On December 12, 2019, SBS then sent the IPA a letter of refusal, stating that the SBS is exempt from the operation of the Freedom of Information Act in relation to documents that are created “in relation to its program material and its datacasting content.”

In other words, the SBS was arguing that its website was a “program” and that because of this, any correspondence about a decision to edit or remove an article from its website was program material and not available under freedom of information laws.

On January 8 the IPA challenged this position in a request for an internal review of the decision. The reason for the rejection falls at the very first hurdle. An article on a website is not a program in the ordinary or legal sense of the word.

A definition given by the Oxford Dictionary of English defines ‘programme’ or ‘program’ in the broadcasting context as ‘a presentation or item on television or radio, especially one broadcast regularly between stated times.’

SBS has rejected this argument and reasserted that an article on the SBS’s website is a program. It argued that the word “program” should be read in a wider context. Since the SBS charter includes as a principal function digital media services, the argument goes, it must therefore follow that digital media services are a program.

As we noted, this is inconsistent with the express definition in the Special Broadcasting Service Act—the main act of parliament regulating the SBS—which restricts the meaning of program to mean something broadcast on television or the radio. This definition is also implied in the Broadcasting Services Act.

Despite their insistence, the SBS has not been given the power to decide which of its activities are



programs and which are not. The public broadcasters are bound by the legislation which establishes them.

Even in the unlikely event that a web news article could be defined as a program, it does not then lead to the conclusion that any document about it is exempt from FOI laws. The program material exemption is itself limited to a certain range of documents. At its broadest, it would capture documents which are “created or acquired for the purposes of such as those that are created to be used in a program or for the purpose of creating the program, whether or not incorporated into the complete program.”

Nothing in the existing definition of program material would capture correspondence about why an AAP authored article would be taken down for special editing over six years after its first publication.

The SBS is a commercialised entity operating in the media marketplace. As such an exemption for program material may be explained by the need to protect material which the SBS as a statutory corporation might have a proprietary interest in.

In other words, the legislation will not force the SBS to release its intellectual property to its competitors and other third parties, and the legislation provides for this by way of exemption from FOI laws.

It is not intended as a carte blanche exemption from releasing any document to taxpayers who, as unwilling donors of the SBS, have a special interest in overseeing how government entities such as the SBS are operating.

Which makes the SBS’s support of the Your Right to Know campaign entirely hypocritical. When the SBS signed on to the campaign, it was arguing for “A suite of changes to FOI law to reduce and restrict the significant delays, obstacles, cost and exemptions that allow government agencies to prevent disclosure.”

These are the very tools the SBS now employ to avoid oversight. It advocates for the very kind of transparency and accountability in areas of government that it will not accept for itself.

The IPA has appealed the SBS’s refusal decision to the Information Commissioner to ensure that ‘Your Right to Know’ is more than just ‘Their Right to Know’.

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