



SBS Producer Compliance Guidelines for factual material in commissioned content

These Guidelines outline SBS’s compliance process and production standards for our external commissioned producers of content containing any factual material.

SBS regards the integrity of the production process and the protection of audience trust as critical to the success of its commissioned programs and content. Our commissioning and compliance teams work closely with external producers to ensure that programs we fund and broadcast/publish meet the editorial, legal and ethical expectations of our audiences and stakeholders.

How to use these Guidelines

These Guidelines are general and non-exhaustive in relation to legal, regulatory and ethical issues that can arise in program and content production. They are intended to provide helpful and practical guidance to producers on particular areas relating to factual content.

SBS content must always comply with the SBS Codes of Practice and SBS Editorial Guidelines (the “Codes”) and any applicable special policies notified to you by your Commissioning Editor, including where applicable, Indigenous Protocols.

The Executive Producer of your program is responsible for making sure that all production staff read and are familiar with these Guidelines and the Codes. The Executive Producer is also responsible for being aware of and complying with all applicable laws and Codes, and for producing the program in accordance with best industry practice according to the genre of program.

Do the Guidelines apply to my program?

All genres of program and online content can contain factual material. These Guidelines apply not only to documentaries, but also to any other program and content which includes statements of fact, or relies on factual matters as a basis for its content. The Guidelines also apply if a program involves dealing with members of the public as participants in a program.

Contents

1. The compliance process	3
• Communication and working with other teams	4
2. Accuracy and fact checking	6
• Expectation of factual accuracy	6
• Right of replies	7
• Accuracy of factual elements in comedy/entertainment and docu/drama	8
• Finding participants and background checks	8
• Research files	9
3. Filming with criminals, illegal activities and people involved in court proceedings	10
• Police requests for program material	10
• Checks on participants for contempt purposes	10
• Animal welfare	11
4. Safety and wellbeing	13
• Physical risk management	
• Dangerous locations	
• Hazardous and “constructed reality” activities	
• Informed consent of participants to risky activities	14
5. Children, vulnerable people and non-English speaking participants	15
• Filming with children	15
• Consents - Vulnerable persons	16
• Non-English speaking participants	16
6. Editorial independence and integrity	17
• Editorial control	
• Anonymity	
• Payments	
• Program screenings	
• Access agreements	18
7. Misleading conduct and pranking/set-ups	19
• Misleading and deceptive conduct	
• Pranking, set-ups and use of hidden recording devices	
• Hidden recording devices	20
8. Record keeping and legal disclosures	21
• Records	
• Legal privilege and confidentiality	
• Legal disclosures	
9. Public interest disclosures	22



1. The compliance process

Your key relationship throughout the production of a program, including any marketing, publicity and online activities is with the Commissioning Editor. All correspondence relating to editorial and content issues, these Guidelines or any legal or Codes issues must be directed or copied to him or her.

An SBS lawyer and/or Codes adviser may assist the Commissioning Editor with input from development through to the marketing and social media campaign for the program. They should also be copied on relevant legal or Codes issues.

Where the program is likely to have significant legal or Codes risks, the Commissioning Editor may arrange for an early round table compliance meeting. This allows for Q&A from relevant production personnel and for best practice protocols for filming to be established.

If appropriate, a training session on legal and Codes issues can be provided. This may be useful for example where a program is going to air live or production timelines are otherwise tight and judgment calls will need to be made quickly.

The lawyer and Codes adviser will also be available throughout production to answer questions, generally on referral from the Commissioning Editor.

Required editorial and legal approvals, processes and editing rights, are dealt with in your commissioning agreement.

Some examples of legal or Codes issues that require early flagging with us include:

- defamatory claims about a person or other entity to be identified in the program;
- a matter discussed in the program is before the courts or a person identified in the program is facing or may, during the licence period for the program, face criminal charges (see below: 'Filming with criminals, illegal activity and people involved in court proceedings');
- the program discusses a protected person (e.g. a sexual assault victim, child involved in court proceedings, adoptee or person who has been involved in a family court matter);
- a person whose personal story is a key part of the program does not wish to be involved, will not sign a release or is hostile to the project;
- a release or copyright clearance cannot be obtained as required under your contractual obligations;

- a participant to a program who has previously given consent, says they want to revoke that consent;
- filming of the program may involve potential issues of trespass, contact with prisoners, detainees, alleged terrorists, lawbreakers or fugitives, leaked documents, confidential sources, protected witnesses or filming of illegal activity;
- filming involving secret recording/hidden cameras, or other new or emerging technology to film material, e.g. using drones;
- filming involving hazardous activities or dangerous locations (see below: 'Safety and wellbeing');
- children or vulnerable people are to appear (see below: 'Children and vulnerable people');
- the true nature of the program is to be withheld from persons filmed, or pranking or a set-up is to occur;
- comments or statements in the program may negatively describe a person or group on the basis of their religion, race, sexuality or other status protected by law, or may promote prejudice or discrimination;
- personal information about a person is revealed without a person's consent, or filming takes place in a way which a reasonable person may consider a breach of their privacy; or
- legal or other threats have been made.

In some cases of high risk, it may be necessary for the Commissioning Editor to upwardly refer an issue to the Head of Commissioning or other SBS executive.

Communication and Working with other teams

An integral part of the program-making and compliance process is timely and effective communication between people working on aspects of the program. SBS divisions and external production teams will have their own internal approaches and practises for communicating information, but to ensure that issues that arise are addressed in a co-ordinated and consistent manner, it is important that teams collaborate when necessary.

An example might be when a legal issue arises in a program which attracts questions from the media. The following people are likely to either be involved or at least be aware of the issue: the Commissioning Editor, producer, lawyer, Codes adviser, corporate communications/publicity, online and marketing teams. It is the Commissioning Editor's



responsibility to involve teams as appropriate. To ensure this is streamlined, please ensure that the Commissioning Editor is copied on all correspondence you have with SBS teams.

The earlier issues are raised and discussed, the more effectively those issues can be addressed. If in doubt when to raise an issue, it is best to ask your Commissioning Editor.



2. Accuracy and fact checking

SBS expects producers to ensure that material presented as fact to our audiences is properly researched and verified.

A fact is a matter capable of verification. Facts can be stated in narration, by participants, or implied in the use and presentation of images, data, footage or other material. Facts are to be distinguished from opinions and advocacy.

It is essential for audience trust (and in some cases, legal and Codes reasons) that facts presented as undisputed, or likely to be true, have been credibly verified as accurate. This is particularly so where to do so may materially affect the audience's understanding of real events, scientific or other issues of public importance, or where issues of legitimate social debate are concerned.

What is reasonable due diligence in relation to fact verification will depend on context and industry practice. In long form documentary or investigative programs, for example, the steps taken to verify facts may be more comprehensive due to the extended timeline available for research than for those of, say, a daily review bulletin where production deadlines mean that a more streamlined approach to fact-checking is necessary.

Reasonable due diligence should also be carried out on participants as appropriate for their contribution (see below: 'Finding Participants'). In particular, when using and relying on expert contributors, ensure that you obtain a copy of their curriculum vitae (CV) and make other enquiries as necessary to satisfy yourself that the person is an appropriate contributor to your program.

Fact checking or background checks that reveal credibility issues with expert or lay participants, or material discrepancies in personal testimony, should be notified to the Commissioning Editor.

The SBS Commissioning Editor and compliance team may need to review or discuss accuracy issues with you. For this purpose, and to ensure easy checking during the editing process, factual sources should be footnoted in the program shooting script or otherwise recorded/filed and made available to SBS on request.

Expectation of factual accuracy

The following standards reflect the expectations of SBS in relation to the presentation of facts to our audiences:

- Presentation of facts can take many forms (voiceover, graphics etc). Take care when translating verified facts into a script, graphic or other representation that



meaning or context is not lost or otherwise inaccurately portrayed. Double check the representation of the fact with your factual source.

- Where facts are controversial or subject to credible debate, they should be presented with these qualifications rather than as undisputed;
- Experts may present facts – however such experts must be credible and well accepted as an authority in their field;
- Sources of facts should be well recognised as credible and independent, especially when using and relying on statistical and scientific data, which must be verified and checked;
- Where a disputed factual claim cannot be verified via a credible, first hand independent source, the basis of its inclusion should be made clear and should be justified editorially;
- Participants giving eye witness or personal testimony should be subject to reasonable due diligence to test and corroborate their claims;
- Where footage, images or other material is presented as actual real event recordings, they must be of that actual real event;
- If a reconstruction or dramatisation is used this must be indicated expressly onscreen unless the Commissioning Editor agrees that it is obvious from the context.

Right of replies

In some circumstances, it may be editorially necessary to seek a right of reply from an interested party in relation to a particular claim, allegation or comment made in a program. The right of reply process can also be useful in order to aid the assessment of legal risks, as well as assisting in program research and importantly, factual accuracy.

It is important to ensure the substance of a right of reply, whether by letter, email or phone, is thought through carefully and that the recipient is given relevant and accurate information on the issue to which you would like them to respond. This will vary depending on what the issue is, but take care not to mislead the recipient as to the program's content. Equally, it may not be necessary to include a detailed, scene-by-scene account of the entire program's content.

Timing when to send a right of reply is also critical. It will depend on the program, the subject matter/issue, and what kind of a response you are seeking (e.g. filmed interview, or written statement). Sending a right of reply on a legally contentious point (such as one which may be perceived as potentially defamatory or as disclosing confidential



information) may have the potential to trigger injunction proceedings to prevent broadcast or other pre-broadcast challenges, so seek legal advice at an early stage and discuss with the Commissioning Editor to ensure that any challenge to the program can be robustly defended or otherwise addressed.

Accuracy of factual elements in comedy/entertainment and docu-drama

SBS accepts that comedy sometimes requires that obviously exaggerated or wrong claims be made (if clearly flagged to the audience as such). However, defamation concerns may need to be addressed if real persons are identified, and risks discussed with SBS Legal.

Genres such as docu-drama do often present facts with some dramatic licence. In these cases a program disclaimer to make this clear may be necessary, and defamation concerns may need to be reviewed here also. SBS Legal may require research to be provided identifying those parts of the script which are based on real events and which are dramatic licence.

Finding participants and background checks

Finding engaging and interesting participants for programs takes skill, patience and good judgement. Authenticity of participants is integral to the accuracy of a program.

For the majority of participants, there are unlikely to be any problems. However, if a participant is revealed as not being who they purport to be, this could seriously undermine the credibility of the program and have adverse consequences for SBS and the producers.

Where necessary, reasonable and appropriate steps should be taken during production to ensure participants are genuinely who they say they are, and that the information they are telling you is accurate. For example, if a participant's life story is a central part of the program, it would be reasonable to conduct further research to corroborate and verify aspects of that story.

The most effective method of finding participants will vary depending on a number of factors, such as the subject matter of the program; whether you already have contacts; whether you are filming locally, nationally or internationally; the production schedule; and the demographic you are seeking. For example, you may be more successful finding participants for a documentary about treatment of the elderly by posting a notice in the local community centre as you might via Twitter.

Other potential avenues for soliciting for participants may include:

- Advertising in newspapers, noticeboards, online and via social media;
- Handing out flyers in the street;
- Working with local community centres or charities;



- Liaising with places of employment;
- Being immersed in the relevant community and talking to people;
- Locating and talking to a person mentioned in the media;
- Discussing with your SBS Commissioning Editor and other contacts.

If you plan to post an advertisement seeking participants, wording must be approved by your Commissioning Editor, who may also seek the advice of the SBS Lawyer especially if the subject matter relates to potentially contentious topics such as racial vilification, crime or children, for example.

Once potential participants have been identified, in addition to any self-disclosure that participants have already provided during the casting process, it may be necessary to conduct your own background checks. The level of checking that may be appropriate will vary, and in most cases, it will be a judgment call as to what aspects of a participant's background warrants further investigation. Conducting a press and online search would be a good and relatively straight forward start.

However, if a participant who is likely to be a major contributor to the program, discloses something (e.g. "*been arrested or convicted*"; "*currently involved in a court matter*" etc.) it may be appropriate to do further investigating such as:

- Speaking further with the participant to gather more detail;
- Obtaining consent to access criminal records;
- Talking to friends, family or colleagues of the participant;
- Conducting more in depth research of formal records and/or media references to corroborate information.

If your research reveals anything about a participant which gives you cause for concern (e.g. something material which contradicts what the participant may have told you), then discuss it with your Executive Producer in the first instance or the Commissioning Editor.

Ensuring you are clear about a potential participant's *motivation* to be involved in the program is also important. This will sometimes reveal clues as to the genuineness of a participant and whether or not there may be issues later in the production.

Keep a research file

The creation of a research file containing press clippings, relevant searches, life chronologies, correspondence and full interview transcripts should be kept for each participant and provided to the Commissioning Editor and SBS Legal on request.

As a research file is likely to contain personal information about the participant, it is important that you have agreement from the participant to disclose that information to SBS.

3. Filming with criminals, illegal activities and people involved in court proceedings

There is no prohibition on working and filming with convicted criminals, filming illegal activities or with people involved in court proceedings, but care is required given the legal risks that may arise.

If a program is covering matters which are or have been the subject of criminal court proceedings, checks should be carried out to ensure any reporting of the proceedings is accurate, and to confirm whether there are any reporting restrictions. To report something that is prohibited either by statute or by Court order could be a 'contempt of court' and attract criminal liability.

If you are filming illegal activities (e.g. graffiti artists, drug use) you must be an observer only. You must not under any circumstances contribute to, encourage or facilitate the illegal activity. To do so may expose your production staff to criminal charges.

In some instances, you may have an ethical or legal duty to report serious criminal offences (including terrorism) to authorities. You should discuss with your own legal advisors, the Commissioning Editor and SBS Legal before embarking on filming of any potentially illegal activity.

Police requests for program material

Filming illegal activities can sometimes attract the attention of police, who may be investigating matters related to the subject of your program. If you are contacted by a member of the police, any other authority or person requesting material from your program (e.g. footage, notes, contact details of participants) – do not provide or agree to provide any material without first contacting your SBS Commissioning Editor or SBS Lawyer for advice. In most cases, SBS will require a subpoena or search warrant before agreeing to provide program material in its possession to a third party.

Checks on participants for contempt purposes

In some programs, there will be participants who are or may become involved in court proceedings during the course of filming which could impact on what you can broadcast or publish, including where publication may risk being in contempt of court.

Depending on the nature of the court proceedings and the person or persons involved, certain statutory restrictions may also apply to what can be published.

There may be a risk of contempt if an identifiable participant in the program is facing a criminal charge which is still active (i.e. they have not yet been acquitted or convicted) at the time of broadcast, and their appearance in the program poses a substantial risk of interfering with the course of justice; or prejudicing the proceedings.



Broadcasting information which tends to impute guilt or innocence on an accused could be in contempt. For example, if a participant is facing a charge of aggravated assault, references to any past convictions, violent tendencies or information about their character may be problematic, and legal advice must be sought.

If you become aware that a participant is involved in criminal or civil court proceedings, find out as many details as you can from the participant, their lawyer, the courts and/or through your own independent research. Discuss the matter with the Executive Producer, Commissioning Editor and SBS lawyer.

Where a decision has been made to include the participant who is facing criminal charges in a program, you will need to follow carefully the status of the court proceedings up until at least the time of broadcast in case there is any change. It is always useful to know what the charges are; which court is the matter being heard in; when a trial is expected to take place; whether the accused has entered a plea; whether it is going to be a jury trial or 'judge alone'.

Ensure that the Commissioning Editor and SBS lawyer are kept updated.

Whether a participant's involvement in a program has the potential to prejudice proceedings is a matter of fact and degree, and also the extent of the participant's involvement in the program. Each situation must be determined on a case by case basis, so it is best to always seek legal advice if this is an issue.

Animal welfare

Filming animals or people interacting with animals can sometimes raise animal welfare concerns, even if the activity is seemingly justifiable and legal. All states and territories have legislation which regulates animal welfare, including offences relating to cruelty to and treatment of animals.

Filming may capture an animal being mistreated, injured, killed or slaughtered, and also the methods used to do so. The question may be asked whether or not the conduct contravenes applicable animal welfare legislation, and whether there are any legal exceptions to the conduct. Equally, proposals to film animals in a studio environment will also require careful planning.

It is important that research is undertaken and legal advice sought at the appropriate time so you have a fully informed understanding of the process or incident that is taking or due to take place, including reviewing any legal obligations or cultural guidelines relating to the process. In addition, including for studio-based filming of animals, it may be necessary to seek advice from adequately qualified animal-handlers and/or a veterinarian as to the most appropriate way to conduct the filming.



Once this information has been obtained, any legal or other risks to the production team and SBS may be assessed and measures taken to address any risks, including how to film the conduct, what information should be conveyed to the viewers, and whether a line against enquiry should be drafted with publicity.



4. Safety and wellbeing

The safety and wellbeing of production staff, participants and members of the general public who may come into contact with production filming must be the producer's paramount concern.

Producers must comply with applicable occupational health and safety laws, and any applicable film industry safety regulations.

Physical risk management

Potential risks should be discussed well in advance with the Commissioning Editor.

Consideration should be given to insurable risks, waivers, informed consent of participants and other risk management strategies. Potential participants may need to be medically and psychologically assessed and background criminal checks may need to be obtained with the participant's consent. Special care must be taken in relation to children and vulnerable people (see below).

Depending on the level of risk, SBS may require an independent expert risk assessment to be prepared. It may also be necessary to engage medical, psychological, security or other expert personnel for the production and to make contingency plans in the event of an emergency.

If in SBS's view a risk cannot be adequately managed or is not editorially justified, or if an occurrence during filming significantly raises a risk, SBS may, after discussion, require a producer to alter production plans or abandon filming.

Dangerous locations

Dangerous locations include places with extreme physical conditions or personal security concerns. SBS will usually require a risk assessment to be undertaken before filming in or visiting dangerous or potentially dangerous locations.

If overseas, travel advisories should be consulted and SBS may arrange for internal advice from its news bureau regarding country conditions. Medivac, security and consular support may need to be arranged in advance and participants may need to be provided with training (e.g. hostile environment training) and immunisations.

Hazardous and "constructed reality" activities

Hazardous activities include those that inherently carry a significant physical risk, or involve exposure to very traumatic or personally confronting subject matter.



Where filming among the public, production teams must take care not to exacerbate or inflame a volatile situation. In some cases, the presence of a camera can do this.

If personal safety is in danger, it may be necessary to alter production plans, or abandon filming.

Hazards can also arise from participant behaviour, particularly in a “constructed reality” scenario where the producer has selected participants on the basis of their differences. Where participants are to interact together in extreme psychological pressure situations or in unsupervised close contact, the producer must ensure that it has screened out potentially dangerous or violent or otherwise unsuitable participants, and given careful consideration to the situations participants are being asked to be involved in.

Informed consent of participants to risky activities

Where a program involves heightened risks, including to the physical or emotional welfare of participants, it is important for the producer to obtain the informed consent of the program participants and to conduct appropriate risk assessments.

In some cases it may be necessary for editorial reasons not to inform the participants of the exact nature or location of filming. However, participants should have the opportunity to receive relevant information about the general nature of the activity or location well before filming begins and before they sign any release. Participants should be given time to consider this information, including the potential risks and obtain advice on the release.

During production the participant may need to receive a fuller briefing and opportunity to withdraw before or during filming, and it may be appropriate for follow up support to be offered after filming is complete.

The information provided to participants from the time of program call out onwards, risk assessment, protocols for any background, medical or psychological checks, release and production filming protocols will need to be reviewed by the Commissioning Editor and SBS Legal.



5. Children, vulnerable people and non-English speaking participants

Children

Minimum legal requirements

You must comply with any current applicable “working with children” guidelines and regulations that apply in all states to children engaged professionally.

In relation to programming the producer must ensure that it does not breach any relevant legal prohibitions on the identification of children’s juvenile records, participation in court proceedings or adoption, family court or guardianship orders.

The courts also have an inherent jurisdiction to protect the interests of children and have exercised this jurisdiction at times to injunct programs before broadcast. Factors similar to those set out below have been cited in such cases.

SBS compliance guidelines

Consents - children identified and featured in programming

The following guidelines are not a legal standard but reflect SBS’s expectations of best industry practice concerning children identified in programs.

At a minimum, the child should be given the opportunity to understand what the program is about before deciding to participate, and their parent/guardian, or if appropriate, a responsible adult family member or carer must sign the release on behalf of the child, or co-sign with the child if appropriate.

The best interests of the child is the paramount consideration. In some cases, even if the child and/or their responsible adult have consented, there is an additional ethical responsibility of the producer to independently assess the likely impact of the child’s participation in the program and take reasonable steps to mitigate any impact. This additional responsibility may be present if one or more of the following factors applies:

- the child is under 16;
- the program is to reveal private details about them such as their sexuality, medical history, genetic identity or mental illness;
- the program discusses family conflict;



- the program discusses their criminal behaviour, abuse by others or may show them in a light that could negatively impact on their future.

It may also be necessary to consider any public interest justifications that may be relevant.

Where heightened risk factors are present, the producer should discuss with the Commissioning Editor whether it may be necessary to:

- de-identify the child;
- offer them a pre-broadcast screening of the program;
- offer them independent counselling before, during and/or after filming/broadcast; or
- take any other reasonable steps including cancelling their participation.

Consents - Vulnerable persons

Similar considerations as for children may arise in the case of persons who are vulnerable to the extent that they may not be in a position to give informed consent by reason of mental incapacity, illiteracy or other reason. You should discuss these issues with your Commissioning Editor before embarking on any filming.

Careful consideration should also be given when proposing to film identifiable people who may be under the influence of substances including alcohol or drugs, and/or have diminished capacity to give informed consent, even if temporarily. What may be appropriate will depend on each specific situation.

An appropriate filming protocol should be established setting out the process for obtaining consents. It may also be necessary to have flexibility within that protocol to deal with different scenarios and levels of capacity.

A 'one-size-fits-all' approach to obtaining consents will often not readily apply to all situations. Some factors to take into account and considerations when determining the most appropriate approach include:

- Whether or not someone has capacity to consent is a judgment call to be made by the production team member who has contact with the person. If your production is likely to involve seeking consents from vulnerable people on location, ensure production team members with appropriate experience and judgement are tasked with this role.



- If there are doubts as to the person's ability to consent, then it may be necessary to discuss with the Executive Producer/Commissioning Editor.
- 'On-camera' consent in addition to written consent may be useful. This will provide some evidence as to the contributor's capacity at the time if that may be disputed. Subject to the circumstances, 'on camera' consent alone may suffice.
- Consider whether a two-stage consent process may be appropriate. Step 1 – obtain consent to film a person; Step 2 – obtain consent to broadcast their contribution (which may be obtained at a later stage).
- If filming in an area where people may become under the influence of alcohol (e.g. in a bar/pub/club), it may be appropriate to display 'Filming' signs notifying people that filming for television broadcast is taking place and the contact details for someone at the production company should someone not wish to appear. This approach may negate the need to obtain individual consents, but it will always depend on the circumstances and extent of a person's contribution.
- Is the person a featured contributor or incidental? Is filming in a public or private place? If incidental and if filming is in a public place, consider whether specific consent is necessary.
- You should endeavour to obtain sufficient consent to enable you to broadcast or use someone's contribution in your program. Be careful about suggesting to a contributor that they may be able to 'withdraw' later if that approach has not first been agreed with the Executive Producer, and Commissioning Editor.

Consents - Non-English speaking participants

Where non-English speaking participants are to appear in a program, the producer should arrange for a translation of the release or for an on camera consent to be given by the person after having the release read to them to them in their own language.



6. Editorial independence and integrity

SBS is obliged under the *Special Broadcasting Service Act 1991* (“SBS Act”) and its Codes to maintain the editorial independence and integrity of its programs.

Producers should consult the SBS Editorial Guidelines in relation to program support and funding guidelines.

The producer must bring to the attention of the Commissioning Editor any proposed conditions or undertakings requested by a participant.

Editorial control

Producers must ensure that participants or any other party are aware that they do not have editorial control over the program. This wording should be reflected in the release signed by the participant and approved by SBS Legal. (see also: ‘Access agreements’).

Anonymity

If a participant requests that he or she is not identified this needs to be discussed with SBS Legal as this can raise confidential source protection issues and may compromise legal defences to defamation.

Payments

The Commissioning Editor must be made aware of any proposal to pay fees or expenses to a participant. Extra thought may be required if a payment is proposed to a convicted criminal, a child or vulnerable person, a participant who has drugs or alcohol problems, or a person who may be likely to be a witness in criminal proceedings – among others.

Consideration is necessary to ensure that such payments do not adversely impact on the perception of a participant’s credibility or the program.

Program screenings

The decision whether to offer an advance screening of a program to any third party prior to lock off should be discussed with the Commissioning Editor. Such a decision might be taken in order to comply with the SBS Indigenous Protocol or to ensure the accuracy of narration about a participant who appears in the program. However, the benefits and potential risks of doing so should be discussed with the Commissioning Editor and, where appropriate SBS Legal.

Where possible, any screening offered should be at a secure location and private recordings prohibited. Under no circumstances should a participant or other third party



be given a copy of the program prior to broadcast without the matter being first discussed with the Commissioning Editor, who should give approval. Advance screenings of programs are carefully controlled by the broadcaster in consultation with the production company and other stakeholders, so it is important that the dissemination of any copies of the program prior to broadcast is managed with care.

Access agreements

In some cases the producer may wish to obtain access to materials not available on the public record, or visit locations that are otherwise restricted from public or filming access (e.g. hospitals, filming with the police). In these cases the relevant authority may wish the producer to sign an access agreement.

Any proposed access agreement and all correspondence with the relevant authority may be reviewed by SBS Legal. In some cases a screening of the program may be granted to the authority for the purposes of checking accuracy or ensuring that protected persons are not identified, or for similar privacy or other legal reasons. However, if editorial independence cannot be sufficiently guaranteed, SBS may require that the agreement is not signed or that it be amended.

Special legal conditions currently apply to access to Australian immigration detention centres. As any breach of the conditions signed by producers of SBS programs may affect SBS news journalist access, these agreements also require careful review by SBS Legal prior to signing.



7. Misleading conduct and pranking/set-ups

Misleading and deceptive conduct

Current consumer laws prohibit 'misleading and deceptive conduct' in the course of trade or commerce. This can apply to conduct in the arranging, filming and broadcast of programs.

Misleading or deceptive conduct may include: not revealing the true nature of your program or who you are; taking on an assumed persona; giving misleading information to someone in order to obtain an interview or elicit a reaction or response. It can also apply in more generic commercial matters such as contractual negotiations.

Such conduct may result in a legal claim for damages, material not being able to be included in the final program, and can adversely impact on the credibility of SBS, the program and its makers.

If you are unsure whether proposed conduct may constitute misleading or deceptive conduct, it is best to discuss your plans in advance with the Commissioning Editor and SBS Lawyer to assess the proposal and risks.

Pranking, set-ups and use of hidden recording devices

Pranking or set-ups often involve a departure from the usual 'best practice' approach to aspects of program making such as the process of obtaining consents, privacy considerations and the use of hidden cameras or recording devices. As such, they carry with them an element of risk, but with early advice risks can be identified and mitigated.

Any proposal to 'prank' or use a set-up, including the use of any hidden recording devices must be discussed with the Commissioning Editor and SBS Lawyer at an early stage. Areas for consideration may include:

- What is the editorial justification for the prank, set-up or use of hidden recording devices?
- Consent forms: may require careful drafting to ensure the filmed material is usable and consents sound (including considerations of any element which could be construed as misleading);
- What is the process for obtaining consents from people who are not the target of the prank/set-up? On-camera consent? Blurring?
- The nature of the prank, including location, health/safety risks, impact on people who have not given consent;



- Who is the 'target' of the prank/set-up? Are they robust enough? What can be done to mitigate any risk (e.g. talking to friends/family of the target in advance);
- Are any children or vulnerable people involved in the prank/set-up? Is it appropriate they are involved?
- Are there any cultural impacts? Is it necessary to consult the SBS Indigenous Protocol?
- What are the on location filming procedures? For example: If an individual realises they are being secretly recorded and asks for recording to stop, in most cases the producer should do so.

Hidden recording devices

Each State and Territory in Australia has surveillance laws that apply to the use of hidden microphones, cameras, GPS tracking and computer surveillance. Rules are not consistent between States and advice must be sought from your lawyer, and your plans discussed with the Commissioning Editor and SBS Legal.



8. Record keeping and legal disclosures

Records

The producer must keep research and correspondence files appropriate to the program and must make these available to the Commissioning Editor, SBS Legal or Codes advisers on request.

In particular the producer must keep and provide to SBS on request:

- Full interview rushes and/or transcripts with all participants;
- Advices from your legal advisers relating to issues covered in these Guidelines or otherwise relating to program content risks;
- Copies of press clippings, online or other searches or background checks on participants or in relation to factual verification of content;
- Correspondence with third parties including requests for interview, correspondence with authorities, copyright licensors and correspondence with location owners.

These materials must be kept for a minimum of 12 months after the program first airs.

Legal privilege and confidentiality

Correspondence regarding legal issues between SBS and the producer should be clearly marked “legally privileged” and notes of conversations with the producer’s or SBS’s legal advisers should be separately recorded and headed “legal advice/meeting”. Such correspondence should not be circulated internally other than on a need to know basis. Do not circulate legal advice to third parties or privilege could be lost.

Matters of commercial in confidence, such as discussion of licence fees and other commercial terms, should be clearly marked as such.

Legal disclosures

While SBS respects the confidentiality of its arrangements with producers, SBS may be required to disclose information about the program or its arrangements with the producer by law.

SBS must comply with a valid legal subpoena or other legal disclosure order.



SBS may also be required to provide information to the Australian Communications and Media Authority if a complaint about the program is being investigated under the SBS Codes of Practice.

Freedom of Information Act disclosure

As a Commonwealth agency SBS is subject to the *Freedom of Information Act 1982 (FOI Act)* that in some circumstances may compel SBS to disclose information to third parties.

SBS will consult with the producer before providing such materials in relation to any request. SBS may be entitled to rely on an exemption provided for in the FOI Act for 'program materials'.

The exemption applies to all versions of a program (whether or not incorporated into the complete program) and any document acquired or created for the purpose of creating a program (which may include program development agreements and production agreements, for example). If necessary, SBS will raise exemptions if the disclosure would reveal commercially valuable information, private personal information or otherwise be legitimately refused.

Senate Estimates

As a Commonwealth agency SBS is obliged to answer questions at Senate Estimates and questions asked in Parliament, and may be required to respond to government inquiries in relation to financial or other matters relevant to SBS's operations.

If SBS is required or requested to disclose information about the program or the producer that is otherwise confidential, it will where appropriate consult with the producer in advance and keep the producer informed of the outcome.

9. Public Interest Disclosures

As a Commonwealth agency SBS is bound by the *Public Interest Disclosure Act 2014* ("PID Act"). As contractor to SBS, producers are also bound by this Act.

The Act provides whistle-blower protection in the case of allegations of wrongdoing by SBS or its contractors, and provides certain obligations to report and investigate such allegations. For more information please visit the SBS Website at <http://www.sbs.com.au/aboutus/corporate/index/id/186/h/Public-Interest-Disclosure-Act-2013>.