

**SBS SUBMISSION TO THE DEPARTMENT OF INFRASTRUCTURE, TRANSPORT,
REGIONAL DEVELOPMENT, COMMUNICATIONS AND THE ARTS
STATUTORY REVIEW OF ONLINE SAFETY ACT 2021 (OCTOBER 2024)**

Key Points

- SBS supports the need for appropriate measures to ensure Australians, including children, can confidently take advantage of the benefits of the online environment without exposure to harmful content or conduct.
- SBS does not provide the kinds of harmful content (illegal or restricted) which are the focus of the *Online Safety Act 2021* (Cth) (the **Act**) and does not allow user-generated content or activities on any of its own online services.
- SBS's online services are subject to a robust framework of safeguards, oversight and accountability mechanisms, covered by the same [SBS Code of Practice](#)¹ (**SBS Code**) which applies to all SBS content. The SBS Code contains a range of safeguards against harmful or inappropriate content, including in relation to children.
- Given the very low-risk nature of SBS's content, and the extensive protections already in place through other regulatory frameworks, SBS has therefore consistently been of the view that there are strong grounds to justify the exclusion of SBS's services from the operation of the Act.
- If the Act continues to apply to SBS's services, there may be merit in applying a further refined tiered or categorised system of rules which would apply differently depending on the level of risk associated with various categories of content, or where other protections are in place.
- For example, a new sub-category of designated internet service (**DIS**) could be created to cover the online services provided by national broadcasters, which are subject to extensive existing regulation, and which are very low-risk compared to the content the Act is intended to capture.
- The definition of professional journalistic material under 'exempt material' (subsection 104(1)) should be expanded to cover material made by news or current affairs staff employed at organisations who adhere to published editorial standards, given the extensive regulatory protections which already apply to this content, and the very low-risk of significant harm.
- Similarly, regarding new amendments proposed in the Issues Paper, efforts to address online harms could safely exclude very low-risk services such as SBS's, including those proposing a duty of care requirement towards users, the best interests of the child principle, and a cost-recovery model.
- The relevant Classification Framework pursuant to the 2021 version of the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (the **Classification Act**) should be further harmonised, considering the subsequent introduction of the Act.
- SBS would welcome further consultation, and further collaboration or partnership opportunities with eSafety regarding online safety education, awareness raising, and research, particularly in relation to Australia's multilingual, multicultural, First Nations, and school-age audiences.

¹ Available at <https://www.sbs.com.au/aboutus/sbs-code-of-practice/>

I. INTRODUCTION – SBS PROVIDES SAFE ONLINE SERVICES

SBS appreciates the opportunity to respond to Department of Infrastructure, Transport, Regional Development, Communications and the Arts' (the **Department**) *Statutory Review of the Online Safety Act 2021* Issues Paper (the **Issues Paper**).

This submission reiterates SBS's long-standing position that it should not be subject to the Act as its services do not provide or allow harmful content that the Act aims to prevent. SBS's services are also already subject to a wide range of appropriate and robust protections (i.e, there is no regulatory 'gap' that needs to be addressed).

SBS's online services are inherently very low-risk

As noted above and in our recent [submission](#)² to the Department in February 2024, SBS provides professionally produced material and content in the public interest, in line with its legislated Charter as an independent and trusted public institution. SBS's online services (including those through its websites, apps, and presence on social media services) primarily consist of on-demand, professionally produced audio and/or visual content; and published journalism, news and information.

Harmful class 1 and class 2 material as defined in sections 106 and 107 of the Act are not available on any of SBS's services. Further, SBS's own online services do not provide any functionalities for end-users to interact with other end-users, including by uploading, posting, or generating any content. Therefore, no harmful content or conduct pursuant to the Act – such as cyber-bullying, or cyber abuse material – can be uploaded or generated by end-users of SBS's own online services.

All of SBS's online services are subject to multiple control mechanisms including the overarching SBS Code (with safeguards relevant to children) which applies across platforms. Other control mechanisms include, but are not limited to, SBS's rigorous editorial protocols and checks, the publicly available and updated [SBS Terms of Service \('Terms and Conditions'\)](#) (which take into account, and are in compliance with, the Online Safety framework, among other things), [Social Media Protocol](#), and [Privacy Policy](#). All SBS personnel, including staff working for its online services, are also subject to the robust SBS Code of Conduct.

SBS services and content are also subject to the *Criminal Code Act 1995* (Cth) and the *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019* (Cth) (which regulate abhorrent violent material).

Any third-party advertising present on SBS's online services must also comply with a range of Advertising Codes made by the Australian Association of National Advertisers (AANA) and administered by the advertising regulator, Ad Standards; as well as guidelines and standards administered by the Interactive Advertising Bureau (IAB).

SBS continuously monitors the regulatory environment and updates its controls and compliance measures as appropriate (for example, upon the commencement of the Act and the Online Safety (Basic Online Safety Expectations) Determination 2022 (**BOSE Determination**)).

SBS's services do not give rise to online harms of the kind targeted in the Issues Paper

We note the Issues Paper has a focus on harms 'not explicitly captured under the existing statutory schemes' such as

- cyber flashing;

² SBS's submission in response to respond to the draft Online Safety (Basic Online Safety Expectations) Amendment Determination 2023 and the relevant consultation paper, available at https://www.sbs.com.au/aboutus/wp-content/uploads/2024/06/SBS-submission_amendments-to-BOSE-Determination_February-2023.pdf

- online hate;
- volumetric (pile-on) attacks;
- technology-facilitated abuse;
- online abuse of public figures;
- body image harms / self-harm promotion; and
- new types of harms arising from interactions in immersive environments which may include augmented reality, virtual reality or mixed reality.

As outlined above, SBS's own services do not provide any functionalities that allow any interaction between end-users, including those listed in the Issues Paper. This includes interactions involving generative artificial intelligence, or immersive technology.

SBS's recommender systems only recommend other SBS's content or services, all of which are underpinned by appropriate and robust safeguards.

Therefore, SBS's services do not carry any risk of the online harms identified in the Issues Paper.

As such, there is no demonstrated policy imperative for the proposed new regulatory arrangements to apply to SBS, including of a duty of care requirement towards users, and best interests of the child. Application of unnecessary and/or duplicative regulatory frameworks would result in an administrative burden to SBS.

SBS's complaint handling is industry-leading

Another set of important safeguard mechanisms at SBS is its industry-leading complaint handling process and system – which were re-designed in 2022 to accommodate the Act and BOSE Determination. SBS uses a world-class digital system to support its dedicated audience relations activities, ensuring that its complaint handling process is best-practice and easily accessible by end-users.

In general, complaints and feedback to SBS have the Median First Reply Time of 1 hour and 24 minutes, compared to the media industry's 31 hours. SBS has a Median Full Resolution Time of 11 hours and 6 minutes, compared to the media industry's 84 hours. Customers' satisfaction with SBS's complaint handling is very high – at 87 per cent compared to the media industry's 77 per cent.³

Complaints in relation to SBS services also have possible recourse to other avenues where applicable, including the independent SBS Ombudsman, the ACMA, as well as eSafety (as stated in the updated SBS Terms and Conditions, which reflect the BOSE Determination).

These mechanisms reflect the strong accountability and transparency arrangements that apply to SBS in relation to all its services, including its online services.

II. SBS RECOMMENDS AMENDMENTS BE MADE TO THE ACT, AND HARMONISATION OF THE CLASSIFICATION REGULATORY FRAMEWORK

If SBS is to remain subject to the Act, we support an approach which reflects the varying levels of risk and harm associated with various categories (or tiers) of online content.

To this end, SBS suggests a number of amendments to the Act or its legislative instruments, and harmonisation of Classification regulatory framework, as follows.

A potential for a new sub-category for very low-risk online services

As noted in the Issues paper – *'designated internet services are broadly defined to provide the regulator with significant flexibility to capture a wide set of services. However, given the services*

³ Source: Zendesk Q3 FY2023–24 (01 January – 31 March 2024); Response Times, and Customer Satisfaction based on Customer Service Tickets; Median Full Resolution Time excludes phone calls for SBS (phone call duration is not measured in Zendesk); Media Industry Benchmark are based on global Zendesk data.

that fall within this category present very different levels of risk to users [...] The framework should be updated to include a new sub-category of online services under the Act for very low-risk online service providers who are already subject to appropriate and effective regulation, such as SBS. This could be effected through further sub-categorising the proposed 'General Purpose DIS' (Tier 3, according to eSafety's [fact sheet](#) on the Draft Online Safety (Designated Internet Services – Class 1A and Class 1B Material) Industry Standard 2024).

Exempt material – subparagraph (e)(ii) of subsection 104(1) of the Act – should be amended and expanded to cover material made by contemporary news or current affairs staff

The existing exemption for news content refers to 'a news report, or a current affairs report, that is in the public interest' and 'is made by a person working in a professional capacity as a journalist'. The framing of this exemption in terms of 'professional journalists' is unduly restrictive in light of contemporary news media practice. It is common for individuals to contribute to the preparation of news or current affairs reports (or programs) whilst not being employed as journalists (i.e. they are employed in other capacities or roles, for example as a digital editor).

An alternative approach may be to construct the exemption so that it applies to material made by persons working in a professional capacity 'in a news or current affairs business or organisation', potentially with a further protective element that the organisation must adhere to publicly available editorial standards.

SBS also notes that the protections for journalists in the new *National Anti-Corruption Commission Act 2022* (Cth) includes protections for persons 'assisting the journalist' (subsection 31(2)). Similarly, the Act's 'exempt material' could also be expanded to include material made by persons assisting the journalist (considering the contemporary production environment of news or current affairs material).

This approach will also help to further uphold fundamental human rights and supporting principles, to which the Issues Paper refers:

'In regulating the online environment, governments must consider how to uphold a range of fundamental human rights and supporting principles, including [...] the right to freedom of information, opinion, and expression [...]'⁴,

Classification regulatory framework should be harmonised

In line with SBS's [submission](#)⁵ in May 2024 to the Department, regarding the *Modernising Australia's Classification Scheme – Stage 2 Reforms* Consultation Paper, SBS refers to the fact that 'television' is not subject to the National Classification Scheme.

This is because the Classification Act does not apply to 'broadcast services to which the *Broadcasting Services Act 1992* (Cth) [the **BSA**] applies'.⁶

This exception means that certain content – such as films available only on SBS On Demand, or films available on SBS On Demand that are yet to be broadcast on television – are subject to the (Online Safety) Act, and the Classification Act. However, the same films would be also subject to the BSA if or when they are broadcast on television – thus subject to classification for television broadcasting. This current scenario creates inconsistencies regarding classification of the same content or material.

This is currently reflected in the SBS Code, as follows.

'SBS television programs and program promotions broadcast on SBS television broadcasting services and re-transmitted on SBS On Demand are assessed by SBS

⁴ [Issues Paper](#), page 43.

⁵ Available at <https://www.sbs.com.au/aboutus/wp-content/uploads/2024/06/SBS-Submission-Classification-Reform-May-2024.pdf>

⁶ Section 92 of the Classification Act

under SBS's television classification system. SBS's system of classification for television broadcasting services is set out in Appendix 1.

SBS online content is managed with reference to the provisions of the Guidelines for the Classification of Films under the *Classification Act 1995* (Cth) (in accordance with the online content scheme in the *Online Safety Act 2021* (Cth) (Part 9)).⁷

In its May 2024 submission, SBS supported harmonisation of the Classification regulatory framework as follows:

'The first stage of the Government's classification reforms, which commenced on 14 March 2024 amended the Classification Act to provide that films classified by SBS under the SBS Act at R18+ or a lower classification are deemed to have been classified by the Classification Board (Board) under the Classification Act.⁴ SBS understands that these deeming provisions apply to any content that SBS classifies under the SBS Act, which includes content classified under the SBS Code (such as content that has previously been broadcast on SBS's broadcasting services) and content that SBS classifies in accordance with the Classification Act and the Online Safety Act such as online exclusive content that is not broadcast on SBS's broadcasting services.

SBS appreciates the enactment of these first stage reforms, which enable SBS to manage its classification decisions consistently across all of its platforms. However, SBS understands it remains the case that certain online content is subject to the Online Safety Act. These inconsistencies could be better managed by a harmonised regulatory framework, which should be an identified outcome of the Classification reform program.⁸

III. OTHER MATTERS

SBS welcomes the proposed protection under the Act for public figures from online abuse

During the period leading up to the recent Aboriginal and Torres Strait Islander Voice referendum in 2023, SBS's National Indigenous Television (NITV) and other relevant staff received an unprecedented level of abuse through social media. Similarly, a number of high profile SBS personalities have been in receipt of hateful or abusive commentary and contacts on social media. SBS therefore sees the proposed protection as necessary.

However, SBS notes that the mechanism of such proposed protection remains unclear. It is important that the relevant regulatory approaches of this protection target services on which harmful content or conduct largely occur, including social media, and not the very low-risk services (such as SBS's).

SBS would welcome further consultation by Government regarding the proposed details of the relevant or new provision(s) of the Act that would afford this protection.

SBS should not be subject to the proposed cost-recovery mechanism on online service providers for regulating online safety

As highly regulated, low-risk and predominantly publicly-funded Government entity, SBS should be exempt from any proposed cost-recovery regulatory model, to ensure funding is not diverted away from fulfilment of services to all Australians in line with its Charter.

⁷ See SBS Code, available at <https://www.sbs.com.au/aboutus/sbs-code-of-practice/>

⁸ Page 3 of SBS's submission in response to the *Public Consultation Paper: Modernising Australia's Classification Scheme – Stage 2 Reforms*, available at <https://www.sbs.com.au/aboutus/wp-content/uploads/2024/06/SBS-Submission-Classification-Reform-May-2024.pdf>

SBS would welcome further collaboration or partnership opportunities with eSafety

As the world's most linguistically diverse broadcaster, SBS has deep connection with, unique insights and significant reach into more than 60 of Australia's multilingual/multicultural communities it serves. It also connects with First Nations communities through NITV cross-platform services, coverage and activities—which include those on Country.

SBS can therefore provide enhanced opportunities to partner with agencies to ensure key online safety materials and messages are appropriately delivered to all Australians.

As a key example, in 2019, ahead of the premiere of SBS's multi-award-winning and popular drama *The Hunting*, SBS partnered with the eSafety Commissioner to produce educational resources that help parents and teachers keep young people safe online. These resources include those available via [SBS Learn](#)⁹—SBS's dedicated educational platform for school-age children, in line with the Australian curriculum. SBS Learn also collaborated with the eSafety Commissioner on teacher resources to support education about respectful relationships, linked to the SBS documentary *See What You Made Me Do*.

SBS would also welcome other collaboration opportunities with eSafety – including in relation to online safety education and literacy, awareness raising, and research.

These other opportunities may be through:

- Sharing of SBS research or insights about preferred media distribution platforms and areas of interest for multilingual and First Nations communities, to support effective service delivery;
- [SBS Audio](#), which has well-established and unparalleled connections with Australia's diverse communities for almost 50 years;
- [SBS Media](#)¹⁰, which offers an end-to-end cross-platform of communications campaigns, including in-language (see SBS [CulturalConnect](#)¹¹ web page); or
- via tools such as the [SBS Inclusion program](#) or [Cultural Atlas](#), which may assist eSafety's team members or stakeholders in further understanding Australia's diverse communities.

All of SBS's services are backed up by robust research conducted by SBS's Audience Data and Insights team.

IV. CONCLUSION

SBS appreciates the opportunity to respond to the Issues Paper.

While SBS supports a safe online environment for all Australians, SBS's online services are inherently very low-risk, and are already subject to extensive and effective protection measures. SBS's services do not provide the kinds of harmful content or conduct captured by the Act or further identified in the Issues Paper.

Therefore, SBS's position remains that it should not fall within the scope of the regulatory framework set out in the Act, including where such capture may be inadvertent, or may arise from new proposals in the Issues Paper – such as the consideration of a duty of care requirement towards users, best interests of the child, and a cost-recovery model.

SBS would welcome further opportunities for consultation and collaboration with eSafety, to play a further role in supporting online safety for all Australians.

⁹ See <https://www.sbs.com.au/learn/resources/cyber-safety-discussion-guides/>

¹⁰ <https://www.sbsmedia.com.au/>

¹¹ <https://www.sbsmedia.com.au/make-deeper-connections/>