



SBS submission to Department of Communication and the Arts Reviews of the *Enhancing Online Safety Act 2015* and the Online Content Scheme July 2018

Key Points

- The Special Broadcasting Service Corporation (**SBS**) is a public broadcaster with a unique purpose to inspire all Australians to explore, appreciate and celebrate our diverse world and in doing so, contribute to a cohesive society.
- SBS supports proper regulatory controls that mitigate online risks and ensure Australians can confidently take advantage of the benefits of the internet and the digital environment.
- The SBS Codes of Practice (**SBS Codes**), which apply to SBS content, are developed by the SBS Board under the *Special Broadcasting Service Act 1991 (SBS Act)*, and are a robust and enforceable set of rules. They are overseen by the independent SBS Ombudsman, and in the case of television and radio content, there is recourse to the Australian Communications and Media Authority (**ACMA**).
- The SBS Codes are the appropriate mechanism for regulation of SBS content and should be maintained as the prime source of regulation for SBS broadcast and online platforms and content. This is clearer for audiences and reflects the role of SBS as an independent public broadcaster.
- The Online Content Scheme is the appropriate mechanism for regulating prohibited and potentially prohibited content. It should be focused on material likely to be of harm to Australians (in particular child sexual abuse material) rather than expanded to focus on a broader range of low level or non-contentious content.

Introduction

SBS welcomes the opportunity to comment on the Reviews of the *Enhancing Online Safety Act 2015* and the Online Content Scheme (the **Reviews**).

SBS is unique in the Australian media environment, providing multilingual, multicultural and Indigenous radio, television and digital media services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.

SBS reaches almost 100 per cent of the population through its six free-to-air TV channels (SBS, SBS HD, SBS VICELAND, SBS VICELAND HD, Food Network and National Indigenous Television (**NITV**)) and seven radio stations (SBS Radio 1, 2 and 3, SBS Arabic24, SBS PopDesi, SBS Chill and SBS PopAsia). This reach 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 for SBS On Demand, and provides more than 6,000 hours of programming 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 platforms, SBS inspires a richer, more holistic understanding of our world and presents surprising perspectives in entertaining, educational and innovative ways.

Review of the Online Content Scheme

SBS welcomes a consistent and technology-neutral approach in respect of prohibited and potentially prohibited content and believes that streamlining the current regulations would provide certainty for industry and regulators.

The 2012 Australian Law Reform Commission National Classification Review (**ALRC Review**) indicated widespread industry confusion over Schedules 5 and 7 of the *Broadcasting Services Act 1992* (**BSA**) as they are applied to the regulation of online content in the context of modern content consumption habits. The ALRC Review states:

2.57 The *Broadcasting Services Act* provisions regulating online content have been described as 'highly complex and confusing legislation that is almost incomprehensible' and legally uncertain.¹

Since 2012, when the ALRC reported, advances in technology have continued to shift content consumption towards digital TV content accessed through televisions, computers or on mobile devices. SBS has seen significant audience growth across its digital platforms and recently secured five million registrations for the On Demand service—reaffirming the appetite held by audiences for content, available anytime, anywhere and on a device of their choosing. In this environment clear, technology-neutral approaches to content regulation are even more necessary.

A key principle of public broadcasting in Australia is its independence from Government. Under section 10 of the SBS Act, it is the role of the SBS Board to maintain the integrity and independence of the SBS, and to develop codes of practice relating to programming matters. In addition, section 11 of the SBS Act limits the matters on which SBS can be directed by the Minister.

¹ ALRC Report 118 - Content Regulation and Convergent Media, page 62
<https://www.alrc.gov.au/publications/2-current-classification-scheme/assessing-current-scheme-0>

While in other media sectors it may be the case that codes of practice are limited to regulating broadcast platforms, and not online platforms, this is not the case for SBS. The SBS Codes already cover both broadcast and online services (as relevant).

One set of rules, in the SBS Codes, that cover both broadcast and online platforms is:

- **clearer for audiences** – given the unique nature of SBS as a public media organisation with specific regulatory mechanisms contained in the SBS Act, audiences expect a single source of content rules, not different rules and different complaint and compliance processes for different platforms;
- **efficient** – both for SBS and the ACMA – because only one rigorous process of complaints-handling needs to be maintained; and
- **appropriate** – because it preserves SBS’s editorial independence from Government, a fundamental principle and underpinning of Australia’s successful public broadcasting framework.

Any amendments to SBS Codes are subject to the usual process of notification to the ACMA², with complaints investigated by the independent SBS Ombudsman. Indeed, co-regulatory mechanisms such as the SBS Codes are the Government’s stated preference, and are consistent with regulatory best-practice as promoted by both the ACMA and the Department of Communications and the Arts (**Department**) over a number of years.

The interaction of the BSA and the SBS Act ensures that SBS is accountable for its editorial and commercial decisions, whilst preserving its editorial independence. The SBS Codes and Board-developed guidelines must therefore be the primary source of content rules applying to all SBS platforms. Relevantly for this review, the SBS Codes contain a rigorous classification framework and television content (including television content that is then provided on SBS On Demand) classified higher than MA15+ is not permitted.

In the Department discussion paper, it is noted that ‘complaints statistics indicate that mainstream community concerns are predominantly related to the eradication and prevention of [child sexual abuse material] CSAM’³. SBS notes the suggestion put forward in the paper that the scope of the content that is captured by Schedule 5 and 7 might not reflect community concerns and suggests that the Online Content Scheme should be focused on material that is likely to be of harm to Australians and, in particular, CSAM, rather than expand to focus on a broader range of low level or non-contentious content.

Review of the Online Safety Act

SBS acknowledges the importance of the eSafety Commissioner’s role in protecting all Australians online, and notes the possible expansion of the Commissioner’s responsibilities to cover cyberbullying of adults, not just children. Any such expansion should be carefully designed and subject to industry consultation, noting that many organisations (including SBS) have robust policies and procedures in place to moderate and manage their social media platforms in a responsible manner.

Responsibility for moderating these platforms is managed successfully through SBS’s Website Terms and Conditions, User-generated Content Guidelines and Social Media

² Section 10(1)(j) of the SBS Act provides that it is a duty of the SBS Board to develop codes of practice relating, among other things, to programming matters—and to notify those codes to the ACMA.

³ Reviews of the *Enhancing Online Safety Act 2015* and The Online Content Scheme – discussion paper, page 21

Protocol. These mechanisms ensure SBS is responsible for all online activities and content, and SBS's independence.

Any changes should take account of existing policies and practices, and focus on areas where there is no regulation in place. Any proposals to apply changes to organisations who are already regulating this behaviour with appropriate community safeguards (such as SBS) should be subject to industry consultation and engagement.