

25 August 2023

Information Integrity Section
Platforms and News Branch
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
Via e-mail: information.integrity@infrastructure.gov.au.

To whom it may concern,

SBS submission – Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

SBS appreciates the opportunity to comment on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 (the **Bill**), which would amend the *Broadcasting Services Act 1992* (**BSA**) to include a new Schedule 9.

As set out in the Government's consultation materials on the Bill, SBS acknowledges that misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as to Australia's democracy, society and economy.

SBS's provision of high-quality public interest journalism and other professionally produced content in more than 60 languages, including English, is extremely important in countering misinformation and disinformation. *SBS News* is Australia's most trusted news provider,¹ supplying high-quality, balanced, and accurate news and information via broadcast television and radio, the SBS website, SBS On Demand, SBS apps, SBS profiles on social media platforms, and in some cases, via third party distribution such as video content on YouTube or podcasts on Spotify.

Any regulatory reform to address misinformation and disinformation must preserve SBS's independence and integrity, which are the statutory foundations on which SBS's services are provided. Ensuring SBS's independence and integrity is essential in maintaining audience trust in SBS content in the face of misinformation and disinformation.

Regardless of the platform on which it is published, SBS's content is subject to strict quality control and safeguard measures set out in the [SBS Code of Practice](#) (**SBS Code**), which is made under the *Special Broadcasting Service Act 1991* (**SBS Act**).² The SBS Code sets out the principles and policies SBS uses to guide its content to ensure that SBS maintains the highest standards of editorial independence and integrity. It details SBS's obligations regarding matters such as accuracy for factual content, impartiality and balance in our news and current affairs, scheduling of content, advertising and complaints handling. Adjudications under the SBS Code are made by the

¹ The 2023 Digital News Report: Australia by the Reuters Institute for the Study of Journalism and the University of Canberra News and Media Research Centre found SBS News is the most trusted (equal with ABC News) and least distrusted news brand.

² Clause 2.1 provides that the Code applies to content on SBS platforms, including SBS's own platforms and SBS accounts and services on third party platforms, including social media platforms.

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independent SBS Ombudsman, and there is an escalation pathway to the regulator, the Australian Communications and Media Authority (**ACMA**), for broadcast content.

SBS content is appropriately regulated under the SBS Code and there are no justifiable grounds for SBS content to be made subject to additional, unnecessary regulation under the amendments proposed in the Bill.

The Bill should not apply to SBS content

SBS acknowledged and supported the work of the Australian Competition and Consumer Commission through its Digital Platforms Inquiry, and related inquiries, in identifying the issue of harm arising from misinformation and disinformation. The work of the ACMA, and the industry group, DIGI, in developing and overseeing the *Australian Code of Practice on Disinformation and Misinformation* is also acknowledged.

The policy intent of the Bill is to regulate content, particularly harmful end-user generated misinformation or disinformation, that is not otherwise subject to any form of meaningful regulation. The Bill seeks to do this by giving the ACMA reserve powers to act, if industry measures to address misinformation and disinformation are not considered adequate.

The design and merits of the uplift of regulation in this area from self-regulation to co-regulation is a matter for those whose digital platforms host the content that is of concern, principally digital media platforms which allow for users to upload or share content. SBS's own platforms do not allow users to upload comments or user-generated content, and instead focus on providing high quality, reliable public interest journalism and other professionally produced content.

Given SBS's content is already subject to extensive and effective editorial standards and community feedback mechanisms, there are no grounds for that content to be subject to the provisions of the Bill, whether by design or via unintended effects.

Amendments should be made to more clearly exempt SBS content for misinformation purposes

Consultation material supporting the exposure draft of the Bill notes that the powers it contains would apply to a broad range of digital platform services, including search engines, news aggregators, instant messaging services, social media, web-forums, dating sites, and online peer-to-peer marketplaces. These are services captured by the definition of 'digital platform service' in clause 4 of proposed Schedule 9 of the BSA.

SBS acknowledges that certain content is 'excluded content for misinformation purposes', which is defined in clause 2 to include 'professional news content' and 'content produced in good faith for the purposes of entertainment, parody or satire'. The definition of 'professional news content' includes reference to content produced by a news source who is subject to rules of a code of practice mentioned in paragraph 10(1) of the SBS Act (this is the provision under which the SBS Code is made)—with comments on these provisions set out below.

However, SBS is concerned that some online services it makes available will be regulated digital platform services under the Bill because:



- they may be interpreted to be 'media sharing services' (being services with the primary function of providing audio-visual content or audio content to end users); and
- have an interactive element, however innocuous, such as the ability to share content from an SBS platform to a social media platform.³

SBS is also concerned that there is a risk that its content may be regulated content when it appears on any regulated digital platform service, such as a social media platform like Facebook (where that service's primary function is to collate and present content from a range of online sources, such as SBS, to end-users).

Without a clearer exemption for SBS content, the proposed Schedule 9 may require social media platforms to consider whether content posted by SBS is excluded content for misinformation purposes. This is unnecessary given the existing robust content standards that apply to SBS content under the SBS Code, which are appropriately applied by SBS, and should not be subject of the judgement of digital platforms. A clear exemption for SBS content will assist platforms have confidence that accurate and trustworthy SBS news, which is a social good, falls outside the new regulations.

While the definition of 'digital service' in clause 3 excludes services which are broadcasting services, the Bill should be broadened to include a clearer exemption for SBS's digital services from proposed Schedule 9.

An overview of recommended amendments is at **Attachment A**. SBS is aware that the commercial television industry group, Free TV Australia, has proposed specific drafting for amendments to the Bill which encapsulate SBS, as well as its members and the ABC. SBS supports these recommended amendments.

SBS thanks the Department for the opportunity to submit in relation to the Bill. Should any queries arise, please do not hesitate to contact Michael Coonan (SBS Head of Regulatory and Government Affairs) via michael.coonan@sbs.com.au.

Kind regards,

Clare O'Neil
Director of Corporate Affairs

³ For example, users can share a story from the SBS News website to Facebook and Twitter /X.



Overview of concerns and recommended amendments to the Bill

Concerns

| Issue | Concern |
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| Definition of 'digital service' | <ul style="list-style-type: none">• The current definition 'digital service' for the purpose of Schedule 9 excludes broadcasting services but does not exclude SBS's digital services. |
| Definition of 'excluded content for misinformation purposes' | <ul style="list-style-type: none">• While the definition of 'excluded content for misinformation purposes' includes 'content produced in good faith for the purposes of entertainment, parody or satire' and 'professional news content' there are concerns that the definition of these terms is too narrow.• For example, 'good faith' is not defined and is open to interpretation.• 'Entertainment, parody or satire' are limited categories and would not, for example, include educational content, which should also be excluded.• The definition of 'professional news content' relates only to news content produced by a news source, and not a program, or segment of a program, produced by an independent production company for SBS. Even where produced by independent production companies, this content is already regulated under the SBS Code and should also be exempt. |
| Definition of 'excluded service for misinformation purposes' | <ul style="list-style-type: none">• Currently, a digital platform service will only be exempt if it is an 'excluded service for misinformation purposes' (Parts 2 and 3 of Schedule 9 will not apply where a relevant service is an excluded service for misinformation purposes).• For the reasons set out below, there is a risk that SBS digital services that have even the most innocuous interactive functions—as well as SBS profiles and posts on third party digital platforms (such as social media platforms)—will be regulated services. |
| Definition of 'media sharing service' | <ul style="list-style-type: none">• A 'media sharing service' is one of four listed categories in the definition of a 'digital service' in clause 4.• SBS digital services, such as SBS websites and SBS On Demand, fall within the definition of 'media sharing service' because their primary function is providing audio-visual content to end-users.• An excluded service for misinformation purposes is a 'media sharing service that does not have an interactive feature'.• An 'interactive feature' can, among other things, include a feature which allows end-users to share content from the digital service with other end-users of the digital service, and a feature which allows interaction between users.• While SBS's digital properties do not currently provide for user comments on the SBS platform, there is a risk that they would be |



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| | <p>captured if, in the future, even the most innocuous form interaction was enabled within the platform.</p> <ul style="list-style-type: none">• Furthermore, if SBS's profiles on social media platforms could fall within the definition of 'media sharing service', then the interactivity available to users on those platforms could mean these services are not excluded services, bringing SBS within the scope of the regulation. |
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Recommended resolution to concerns

It is recommended that amendments be made to the Bill to exempt all SBS services and content from being regulated under proposed Schedule 9. SBS supports the specific drafting suggestions proposed by Free TV Australia which would, in overview:

- Add a new provision defining an 'Excluded Broadcaster Service'.
- Specify that a 'broadcaster' for the purpose of the definition includes the Special Broadcasting Service Corporation, among other broadcasters.
- Amend the definition of 'digital service' to exempt an 'Excluded Broadcaster Service'.
- Exclude services provided by broadcasters, including digital services, and services that are part of, or accessed through another service, including an online channel or social media account of the broadcaster.
- Amend the definition of 'excluded content for misinformation purposes' such that it also applies to content that is available on an Excluded Broadcaster Service, irrespective of whether it is accessed from that Excluded Broadcaster Service or from any other digital service.
- Amend the definition of 'excluded services for misinformation purposes' such that a professional content service is excluded.
- Amend the definition of 'news source' to capture circumstances where exempt content is produced for a broadcaster by a third party.
- Amend the definition of 'professional news content' with the effect that any professional content regulated by the SBS Code is exempt.