

SBS SUBMISSION

PUBLIC CONSULTATION PAPER: MODERNISING AUSTRALIA'S CLASSIFICATION SCHEME – STAGE 2 REFORMS

MAY 2024

Key points

- It is important that any proposed reforms to the regulation of classification in Australia uphold SBS's independence and reflect the role of the SBS Board in developing Codes of Practice relating to programming matters, as provided for in the SBS Act.
- SBS is supportive of a more harmonised regulatory scheme that is principles-based and provides flexibility for media providers to tailor their classification standards to meet their operational and editorial requirements, that provides audiences with the ability to watch what they want and when they want it with appropriate safeguards in place, and that provides for platform-specific application where relevant.
- SBS content should not be subject to multiple regulatory and complaint mechanisms as is currently the case. SBS is generally supportive of the ACMA as the appropriate body to assess complaints relating to the classification of content on SBS's platforms in line with the current framework provided for in the BSA.

Introduction

SBS appreciates the opportunity to submit to the Department of Infrastructure, Transport, Regional Development and Communications regarding the Public Consultation Paper: Modernising Australia's Classification Scheme – Stage 2 Reforms (Consultation Paper). SBS's submission will focus on those matters relevant to SBS.

SBS has a unique role in the Australian media environment as a national multi-platform public media service. SBS's principal function is to provide 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.¹

SBS reaches almost 100 per cent of the population through: 6 free to air television channels (SBS, NITV, SBS VICELAND, SBS Food, SBS World Movies and SBS WorldWatch), also available as livestream and on-demand services on SBS On Demand; 7 radio stations broadcasting and live streaming in more than 60 languages, with audio content also available via the SBS Radio App; SBS On Demand, SBS's video-on-demand service, which provides more than 15,000 hours of premium, curated content from Australia and across the globe in key genres such as drama, film and documentary.

¹ *Special Broadcasting Service Act 1991, Subsection 6(1)*



SBS operates under the *Special Broadcasting Service Act 1991* (SBS Act). A key principle that applies to the national public media services in Australia is their independence from Government. Under section 10 of the SBS Act, it is the duty of the SBS Board to maintain the integrity and independence of SBS, and to develop codes of practice (SBS Code) relating to programming matters.² Section 11 of the SBS Act limits the matters on which SBS can be directed by the Minister including in relation to content matters.

These legislative provisions provide a strong foundation on which SBS's independence is built. This independence ensures SBS plays a vital role in the effective functioning of Australia's democracy and maintaining the trust and confidence of all Australians, who rely on SBS's independence and integrity in meeting its Charter obligations to inform, educate and entertain all Australians through multicultural and multilingual content.

The SBS Code, developed by the SBS Board and registered with the Australian Communications and Media Authority (ACMA), sets out the principles and programming policies SBS uses to guide its content to ensure that SBS maintains the highest standards of editorial independence and integrity in its content.

The SBS Code applies to SBS content on all SBS platforms, covering broadcast and digital services, as well as SBS content on SBS social media accounts. The Code contains nuanced provisions supporting the classification of content that is provided across SBS platforms and services.

ISSUES FOR CONSULTATION

1. Scope and purpose of the National Classification Scheme

SBS agrees that there is a need to ensure a more harmonised regulatory framework for the classification of content across various media platforms. SBS generally supports the proposed criteria to define classifiable content, that is, professionally produced content that is distributed as part of an organisation's business and is directed at an Australian audience. The proposed approach will ensure a consistent approach to the regulation of content and provision of appropriate audience safeguards which will be of benefit to audiences and relevant content providers.

SBS's concern with any proposed changes to the scope and purpose of the National Classification Scheme (the Scheme) is to ensure that SBS retains its independence in relation to its own content, including the development of classification standards, its approach to assessing and classifying content on its services and the provision of classification advice. This includes retaining the ability to tailor our classification standards, which are set out in the SBS Code, to meet our specific audience needs and deliver on our Charter, as well as the ability to apply a consistent approach across all SBS platforms.

The Consultation Paper refers to the fact that "television" is not subject to the Scheme. The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (Classification Act) does not apply to "broadcast services to which the *Broadcasting Services Act 1992* [BSA] applies".³ This exception does not cover content that is made available on SBS's digital platforms such as SBS On Demand (which is not currently defined as a "broadcasting service" under the BSA), leading to inconsistent regulation of SBS content. SBS online content is subject to the Classification Act and the *Online Safety Act 2021* (Cth) (Online Safety Act). This is reflected in the SBS Code as follows:

² *SBS Code of Practice* – available at <https://www.sbs.com.au/aboutus/sbs-code-of-practice/>

³ s 92 *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (Classification Act)



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

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.

2. A framework for evidence-based classification guidelines

The SBS system of television program classification set out in Appendix 1 to the SBS Code is adapted from the *Guidelines for the Classification of Films and Computer Games 2005* (now the *Guidelines for the Classification of Films 2012* (the Guidelines) made under the Classification Act. SBS also applies the provisions in the Guidelines to online content under the deeming provisions in the Act, and the requirements in the Online Safety Act.

SBS requires flexibility in the development and application of its classification guidelines to manage the unique range of content that SBS provides on its services and to reflect the different expectations of its audiences. For example, SBS's role as a multilingual and multicultural broadcaster requires SBS to reflect a diversity of cultures including those of Aboriginal and Torres Strait Islander communities, and to take account of audience expectations on matters such as ethnicity and nationality. This means that SBS classifies programs based on SBS's knowledge of the cultural context of each program. While SBS will interpret the relevant classification elements so as not to impede the presentation of relevant cultural information to audiences or limit its ability to reflect diverse cultural values, SBS may, for example, give special attention to culture, levels of violence, sex and nudity, and use of language. This approach enables the broad application of a widely understood framework, overlaid with nuance that considers the particular expectations of the SBS audiences.

It remains essential to SBS's independence that the SBS Board continue to make SBS's codes of practice relating to programming matters independently, including codes relating to program classification across all SBS content.

SBS supports the continuation of shared classification principles, with the current flexibility maintained so SBS can interpret these principles in accordance with the specific requirements

⁴ s 6HA Classification Act



of the SBS audience. SBS would therefore be supportive of a framework which provides for more regular updates and reviews of the Guidelines to reflect changing community standards and expectations, subject to SBS retaining the ability to tailor its classification guidelines as relevant to its audiences and services, as it currently does under the SBS Code.

With respect to the current classification categories, SBS considers that they are well understood by audiences, and there is no evidence at this time that a change to these categories is required.

SBS notes that in developing and reviewing the SBS Code, SBS takes into account available research on community standards and classification standards to inform its approach (for example, the Department's 'Report on classifications and community standards research', August 2023 and the Australian Communications and Media Authority's (ACMA) 'What audiences want – Audience expectations for content safeguards', June 2022).

In the event that an independent body is established to inform a review of the Guidelines, it is important the body consists of representatives who are currently working in the industry and have a practical understanding of the classification process and the application of the various industry codes of practice.

3. Fit-for-purpose regulatory and governance arrangements

The Consultation Paper acknowledges that there are a number of inconsistencies in the current regulatory approach to the classification of content in Australia. This is the case for SBS where various pieces of legislation apply to SBS's broadcasting and online content and where there are different regulators involved in managing content under the Scheme and under the SBS Act.

The SBS Code provides for complaints which allege that SBS has breached the SBS Code to be managed by the SBS Ombudsman. Under the co-regulatory scheme established in the BSA the ACMA has the ability to investigate complaints that SBS has acted contrary to the SBS Code in certain circumstances in relation to SBS's 'national broadcasting services'.⁵

SBS content on SBS On Demand that has not previously been broadcast on SBS's national broadcasting services, such as SBS On Demand online exclusive content, is not covered by these provisions. SBS online content that meets the definition of a "designated internet service" is subject to the provisions in the Online Content Scheme under Part 9 of the Online Safety Act. Such content would be subject to review by the eSafety Commissioner under the Online Safety Act. While SBS does not broadcast or publish content that would likely be classified as Refused Classification, X18+ or R18+ under the Classification Act (Class 1 and Class 2 material) in compliance with the Online Safety Act, SBS understands that under the provisions of the Online Safety Act, if a person is of the view that SBS has mis-classified content that would meet the definition of Class 1 or Class 2 material, they may submit a complaint to the eSafety Commissioner who may deal with the complaint under the Act.

Technically, the Classification Board also has the power to review classification decisions made by SBS under the deeming provisions in the Classification Act.

These regulatory inconsistencies have arisen over time as the digital media services provided by SBS (and other media companies) have evolved without concurrent consideration and amendment to the applicable legislative frameworks.

⁵ ss 150-151 BSA



To ensure that SBS's independence is properly maintained, SBS content should not be subject to multiple regulatory and complaint mechanisms. The various options are likely to be confusing to audiences, and could result in inconsistent decisions or audience outcomes. This is not in keeping with the purpose of the Scheme, the SBS Act or the SBS Code. Any regulatory scheme should aim to ensure the application of reliable and consistent editorial standards, alongside consistent, efficient and effective complaint and feedback processes.

SBS is generally supportive of the ACMA as the appropriate body to assess complaints relating to the classification of content on SBS's platforms in line with the current framework provided for in the BSA.⁶ Under this approach, complaints which allege that SBS has breached a provision in the SBS Code (Code complaints) are managed by the SBS Ombudsman in the first instance. Where SBS has not responded to a Code complaint within the relevant timeframe, or where the complainant has received a response but considers it to be inadequate, they may complain to the ACMA. The ACMA has the discretion to investigate the complaint if it considers it appropriate to do so.

In determining the design of fit-for-purpose regulatory arrangements under a single national regulator, SBS recommends a principles-based co-regulatory approach to ensure that services like SBS can maintain their legislated independence and the ability to tailor their content to their audiences and provide appropriate safeguards across its multi-platform services.

Conclusion

SBS considers it is important to continue to develop further reforms to the Scheme to ensure a consistent approach to the regulation of classification processes in Australia and appreciates the opportunity to provide a submission on the issues raised in the Consultation Paper.

It remains essential to SBS's independence that the SBS Board be empowered to make the SBS Code, including in relation to program classification across all SBS content.

⁶ Ss 150-151 BSA