

Director  
AI and Consumer Law Review Unit  
Market Conduct Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600



Via email: [AIACLReview@treasury.gov.au](mailto:AIACLReview@treasury.gov.au)

12 November 2024

Dear Madam/Sir,

### **Review of AI and the Australian Consumer Law**

SBS welcomes the opportunity to comment on the Treasury's *Review of AI and the Australian Consumer Law* Discussion paper (the **Discussion Paper**).

In line with SBS's submission<sup>1</sup> to the Department of Industry, Science, and Resources (**DISR**) in July 2023, SBS re-iterates that artificial intelligence (**AI**) can and is already delivering significant benefits across the economy and society. Therefore, any new regulatory framework should strike the optimum balance between harm prevention and not hindering or stifling innovation.

Similarly, SBS has also made another submission<sup>2</sup> to DISR in October 2024, re-iterating its position, which remains, that (emphasis added)—

**'SBS supports a risk-based approach to AI regulation, focusing on high-risk settings** and activities that pose the greatest potential for individual and/or societal harm. Regulation must balance harm prevention with fostering innovation and evolving governance frameworks, without hindering the potential societal and individual benefits that can be derived from AI'.<sup>3</sup>

The Treasury's current Discussion Paper is relevant to SBS because it makes references to:

- "the *Consumer Rights Act 2015* (UK) which provides protections for consumer digital content 'such as software, apps, [...] and streaming services'<sup>4</sup>; and
- "examples of AI-enabled goods and services in Australia, which includes 'streaming services use of AI for content recommendation based on user preference and viewing/listening history'<sup>5</sup>."

### ***Use of AI for content recommendation and other low risk settings does not warrant regulation for consumer protection, or consumer guarantees***

The potential use case of AI by SBS (and similar regulated media providers) for content recommendation on streaming services or otherwise poses a very low risk of any harm to consumers. Thus, its regulation via consumer protection law is unwarranted and unnecessary.

SBS's apps and services, including the SBS On Demand streaming service, only recommend content within SBS's own ecosystem—which does not contain any harmful material. SBS applies existing rules for the pre-classification of content, and none of SBS's content exceeds the MA15+ classification. All SBS content, regardless of platform, is governed by the publicly available SBS Code

<sup>1</sup> Available at <https://www.sbs.com.au/aboutus/2023/09/28/supporting-responsible-ai-australia/>

<sup>2</sup> Available at <https://www.sbs.com.au/aboutus/2024/10/14/ai-guardrails-in-high-risk-settings/>

<sup>3</sup> As immediately above

<sup>4</sup> Discussion Paper, page 10

<sup>5</sup> Discussion Paper's Appendix A, page 16

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of Practice<sup>6</sup>, our robust editorial safeguards, as well as a wide range of relevant laws and regulations including the *Online Safety Act 2021* (Cth). Any potential harm arising from content is therefore already addressed in regulatory terms, and the addition of AI to the process of recommending content in no way changes the very low risk profile of that content.

Furthermore, AI-recommended content may not, and does not assert to, achieve 100 per cent accuracy in predicting which piece(s) of content each consumer may wish to consume – they are mere recommendations and the consumer retains control over what they select. Therefore, consumer guarantees in relation to AI-recommended content are unwarranted and would be unrealistic to attain or maintain.

### ***Further clarity is needed regarding apps for media consumption***

Attachment A (examples of AI-enabled goods and services in Australia) of the Discussion Paper includes references to apps that feature AI such as language learning apps using AI to adapt lessons based on user progress and learning patterns, and ride sharing apps using AI for route optimisation and dynamic pricing.

Whilst SBS does not operate nor offer apps in these two example categories, the Discussion Paper is not clear regarding the full scope of apps which are proposed to be included in the Treasury's consideration with regards to consumer regulatory arrangements. Further clarification of the intended scope of app-related regulation in the consumer law setting is required, so that SBS can properly assess the potential impact of the proposals on the apps we do operate (such as SBS On Demand, SBS News, and SBS Audio).

As outlined above, the content on SBS's apps, and the apps themselves, pose a very low risk of harm to consumers. They comply with existing consumer and privacy laws and regulations, among others. Furthermore and as abovementioned, the risk profiles of the apps or their content do not change, even with AI functionality deployed for content recommendation.

### ***Further clarity is needed regarding software***

The Discussion Paper also makes reference to software, including the following (emphasis added)—

'Software is a good within the meaning of the ACL [Australian Consumer Law]. Previously only software supplied on hardware (such as a CD-ROM) was considered a good; however, following the introduction of the ACL this distinction no longer exists. Some stakeholders have raised that residual **uncertainty remains in connection with the definition of software under the ACL**, including where software is supplied incidentally to the provision of AI-enabled services or includes components such as non-executable data (such as music in a video game) or bundled services (such as security protection).'<sup>7</sup>

Whilst SBS is not a software provider, it is a deployer of third-party software, and has limited (or at-times nil) ability to set parameters for, or modify, the software it deploys or utilises – including in relation to how the software may function or operate.

Hypothetically, if a consumer has an issue with certain software (in SBS's case – third-party software that it deploys or utilises), further clarity is needed in relation to the Treasury's approach – including whether there would be any implications or impacts on the software's deployers such as SBS.

### ***Will AI-assisted display of advertising be in-scope of this consultation***

The Discussion Paper does not address the use of AI in advertising, which can include the use of AI in selecting and serving display advertisements to consumers. This has been an emerging use case of AI, and additional clarity regarding potential intersection of consumer law and these practices would be welcome.

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<sup>6</sup> <https://www.sbs.com.au/aboutus/sbs-code-of-practice/>

<sup>7</sup> Discussion Paper, page 10



Advertising is already subject to a range of robust rules and regulations, therefore, care must be taken to ensure that over-regulation or duplication of regulation does not occur.

Thank you again for the opportunity to comment on the Discussion Paper. If you have any queries or would like further information, please do not hesitate get in touch.

Yours sincerely,

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