

**SBS SUBMISSION TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION
HUMAN RIGHTS AND TECHNOLOGY DISCUSSION PAPER
MARCH 2020**

Key Points

- The Special Broadcasting Service Corporation (**SBS**) supports regulatory and ethical frameworks which respond to technological changes in the area of artificial intelligence (**AI**).
- It is appropriate that these be based on the foundational principles of existing technologies including human rights; accountability and legal protections.
- SBS is unique in the Australian media environment, with a principal function of 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.
- AI is currently not a core component of SBS's services and activities. As such, this submission will focus on the Discussion Paper proposals which would have an immediate effect on SBS's operations—namely privacy, audio description and captioning.
 - SBS maintains the view, as expressed in previous submissions to the Australian Law Reform Commission, and the Australian Competition and Consumer Commission, that there should not be a statutory cause of action for serious invasion of privacy.
 - Current privacy laws and regulatory schemes, including the SBS Codes of Practice, provide appropriate protections for individuals.
 - SBS is committed to telling stories that matter, and notes that audio description can provide meaningful benefits to blind and vision impaired Australians by increasing access to these stories.
 - SBS will introduce audio description to its services from 30 June 2020, with establishment funding to be provided by Government. Legislation is not required for this service.
 - SBS meets its current captioning obligations and would be pleased to increase captioning levels across its services, should funding be made available.



Introduction

SBS appreciates the opportunity to submit on the Australian Human Rights Commission (the **Commission**) *Human Rights and Technology Discussion Paper* (the **Discussion Paper**).

SBS is unique in the Australian media environment, with a principal function of 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 television channels (SBS, SBS HD, SBS VICELAND, SBS World Movies, SBS FOOD and National Indigenous Television (**NITV**)), seven radio stations broadcasting in 68 languages other than English (with audio content also available via the SBS Radio App). SBS On Demand, SBS's video-on-demand service, provides more than 7,000 hours of exclusive and distinctive content across key genres such as drama, film and documentary, including SBS commissioned content—a vast collection of which are stories otherwise untold by other media.

In the Commissioner's Forward to the Discussion Paper, he notes that 'Iwle propose modernising our regulatory approach for AI. We need to apply the foundational principles of our democracy, such as accountability and the rule of law, more effectively to the use and development of AI'.¹ There are parallels to be drawn between these considerations, and those of the Australian Competition and Consumer Commission's (**ACCC**) Digital Platform's Inquiry, which recommended modernising media regulation in response to the introduction and impact of major digital platforms.

In SBS's response to the ACCC's *Digital Platforms Inquiry – Preliminary Report*, SBS noted that the current regulatory framework for the Australian media industry requires significant updates to accommodate technological changes, noting that a platform-neutral approach to regulation is preferred.² This remains true for technological changes in the area of AI. As noted by the Commission, the foundational principles remain the same across industry and technology—it is regulation that must keep pace with change, or alternatively, be flexible enough in its application to be applied to new and evolving services.

Furthermore, SBS supports the Commission's three key goals:

1. AI should be used in ways that comply with human rights law
2. AI should be used in ways that minimise harm
3. AI should be accountable in how it is used.³

AI is not a core component of SBS's services and activities at this early stage, though this may change as technology and service develop. As such, this submission will focus on those areas of the Discussion Paper which would have an immediate effect on SBS's operations—namely proposals relating to privacy (Proposal 4) and accessibility measures (audio description and captioning) (Proposal 22).

¹ Discussion Paper, page 8.

² <https://www.accc.gov.au/system/files/Special%20Broadcasting%20Service%20%28February%202019%29.PDF>.

³ Discussion Paper, page 7



Proposal 4 – Privacy

As noted in the Discussion Paper, 'AI-informed decision making clearly poses particular risks to the right to privacy'.⁴ The Discussion Paper, however, urges the implementation of the Australian Law Reform Commission recommendation (from 2014) for the enactment of a statutory cause of action for serious invasions of privacy. This is on the basis that 'bly extending the protection of Australian law beyond 'information privacy', such reform could address some (though not all) of the concerns about how personal information can be misused in the context of AI-informed decision making.⁵ This is formalised in Proposal 4.

SBS maintains the views expressed in its submissions to the Australian Law Reform Commission's 2013 inquiry into serious invasions of privacy⁶, and in its response to the ACCC *Digital Platforms Inquiry – Preliminary Report*⁷, that there should not be a statutory cause of action for serious invasion of privacy because:

- the existing co-regulatory scheme applying to SBS and to the media generally already protects individual rights to privacy to an adequate level in relation to media services;
- current federal and state laws already provide protection of individual privacy, including the *Privacy Act 1988 (Privacy Act)*, in relation to data privacy; and
- significantly, there is a lack of any counterbalancing protection of freedom of speech under Australian law.

SBS raised a number of concerns with the ALRC's proposed statutory right set out in *Discussion Paper 80 – Serious Invasions of Privacy in the Digital Era*. SBS's position is as outlined in its submission to the Paper which is available on the ALRC website.⁸ SBS remains extremely concerned with the potential chilling effect a tort of privacy would have on contemporary methods of expression and story telling and the impact on SBS's ability to fulfil its Charter.

SBS has a robust privacy policy and practices and is transparent with audiences through its information privacy policy. As a Corporate Commonwealth Entity, SBS is also subject to the *Australian Government Agencies Privacy Code* which commenced on 1 July 2018 and provides additional obligations and safeguards.

Privacy is also an area that is regulated by the *SBS Codes of Practice*, which deals with privacy of individuals in relation to SBS content. Complaints under the *SBS Codes of Practice* can be escalated to the independent media regulator, the Australian Communications and Media Authority, if the complainant is not satisfied with the way their concerns have been addressed by SBS.

SBS notes that in the Government's December 2019 response to the ACCC Digital Platforms Inquiry it announced that it would review the Privacy Act to ensure it empowers consumers, protects their data and best serves the Australian economy. SBS will participate in this review process. Should the Government be minded to make any changes to Australia's current privacy laws through this process, it would be vital to ensure that existing media exemptions relating to journalistic practice in the *Privacy Act 1988* are maintained.

⁴ Discussion Paper, page 92.

⁵ Discussion Paper, page 92.

⁶ https://www.alrc.gov.au/wp-content/uploads/2019/08/59_org_sbs_submission.pdf
www.alrc.gov.au/sites/default/files/subs/123_org_sbs_submission.pdf.

⁷ <https://www.accc.gov.au/system/files/Special%20Broadcasting%20Service%20%28February%202019%29.PDF>.

⁸ www.alrc.gov.au/sites/default/files/subs/123_org_sbs_submission.pdf.



Proposal 22 – Audio Description and Captioning

The Discussion Paper states that,

Stakeholders representing people with disability advocated a range of measures to combat the prevalence of inaccessible technologies. Some submitted that the Australian Government should increase captioning quotas and introduce minimum quotas for audio description on free-to-air television, on-demand and subscription broadcasting.⁹

SBS is committed to telling stories that matter, and notes that audio description and closed captioning can provide meaningful benefits to blind and vision impaired, and Deaf and hearing impaired Australians, by increasing access to these stories.

Audio Description

In mid-December 2019, the Minister for Communications, Cyber Safety and the Arts announced funding to support SBS and the ABC to introduce audio description.

A one- off funding grant will be provided to each of the public broadcasters for the introduction of this service, which is to launch by 30 June 2020.

SBS will launch the service with approximately 14 hours per week of audio described content and would be pleased to increase the content in future years, should sufficient funding be available.

SBS will author audio description tracks to ensure that prominent content—including key programs commissioned by SBS—is described, so that audiences can participate in ‘watercooler’ conversations with family and friends. SBS will work closely with blind and vision impaired audiences and communities to ensure that its audio description services meet their needs.

Captioning

SBS provides closed captions in accordance with its legislative obligations under the *Broadcasting Services Act 1992* (Cth) (the **BSA**). The BSA requires SBS to caption all English language programs broadcast between 6.00 am and midnight on its main television channel SBS and all English language news and current affairs programs. For its multi-channels—including SBS VICELAND, SBS Food, National Indigenous Television and SBS World Movies—SBS is required to caption programs that have previously been broadcast on an SBS channel with captions. The Act does not require SBS to caption content available on its video on demand platform, SBS On Demand.

SBS understands the value of closed captions for audience members, and does provide some discretionary captioning from time to time. Without additional funding, however, SBS is not in a position to materially increase its current captioning levels.

Given SBS’s commitment to providing an audio description service in 2020–21, SBS does not support Proposal 22(a) that the provision of audio description or an increase to captioning should be legislated.

Without additional funding, SBS would not be in a position to fulfil additional obligations arising under Proposal 22(b), an increase to the minimum weekly hours of captioned content on an annual basis.

⁹ Discussion Paper, page 158.



Taking into account its current service provision and funding envelope, SBS is therefore unable to support Proposal 22. It would not be appropriate to introduce regulation for audio description, or increase regulation for closed captions, without also increasing SBS base funding.