



SBS Submission

Environment and Communications Legislation Committee

Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014

Introduction

SBS welcomes the opportunity to provide comment on the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 (the Bill).

SBS is Australia's multilingual and multicultural national broadcasting service, operating under the *Special Broadcasting Service Act 1991* (SBS Act). SBS's principal function is to provide multilingual and multicultural radio, television and digital media services that inform, educate and entertain all Australians, and, in doing so, reflect and promote Australia's multicultural society.

SBS broadcasts three national television services – SBS ONE, SBS 2, and NITV. SBS ON DEMAND delivers online catch-up television and on demand video services. SBS also operates two subscription channels which are available through Foxtel – STUDIO (to March 2015) and World Movies.

ACMA's planning powers

SBS has some concerns about the removal of the requirement in section 27 of the *Broadcasting Services Act 1992* (BSA), for the Australian Communications and Media Authority (ACMA) to consult widely, including with relevant licensees/broadcasters, when planning the broadcasting services bands (BSB) under sections 24, 25, 26. While the initial planning of services in the BSB spectrum is complete, spectrum planning is ongoing. The Government's Spectrum Review Potential Reform Directions Consultation Paper envisages a more flexible approach to spectrum allocation and re-allocation which will require assessment against the public policy objectives of the BSA and the *Radiocommunications Act 1992* (RA).

SBS would expect to be consulted in the event that, for example, the Government was planning to make significant changes to analog radio services or current television licence area plans (TLAPs), digital radio was rolled out regionally, or additional frequencies were identified for Digital Audio Broadcasting (DAB).

SBS trusts that the provisions in the *Legislative Instruments Act 2003*, and the planning criteria set out in section 23 of the BSA will sufficiently address the removal of section 27. SBS considers consultation, particularly with relevant industry groups, as crucial to any significant planning changes.



Digital switchover and re-stack provisions

The BSA has developed into a dense and complex Act, so the removal of redundant provisions in Schedule 4 relating to digital switchover and re-stack is welcome. SBS appreciates the removal of the high definition digital television quotas and standards, which will provide greater flexibility to SBS when planning its television services.

SBS notes the minimal changes to the anti-siphoning scheme, to the effect that delisting is still required before events can be broadcast on the multichannels. The introduction of the Bill provides a timely opportunity to remove this time-consuming administrative process, which digital switchover has rendered redundant. The Minister has indicated that reform of the anti-siphoning scheme will occur in the near future. SBS looks forward to being consulted further on this matter.

Captioning reform

SBS is committed to broadcasting television programs that are accessible to all Australians. SBS provides captioning services for its free-to-air television services (including SBS ON DEMAND) in two forms: closed captioning services for English language content; and subtitling services for programs in a language other than English (open captions). The captioning provisions in the Part 9D of the BSA apply to SBS's English language content.

SBS does not consider the captioning reform provisions will have an impact on the viewing experience of deaf or hearing impaired viewers. SBS will address the issues raised by consumer groups:

- removing compliance reporting for free-to-air television broadcasters so they no longer have to publically report that they are meeting captioning regulations;
- watering down measurement and regulation of caption quality.¹

In relation to SBS's subscription television channels, SBS supports ASTRA's submission to the Committee in respect of captioning reform.

Compliance reporting – caption quality² and captioning obligations (basic rule)³

The current compliance reporting obligations under section 130ZZC are particularly onerous. SBS is required to provide a report to the AMCA, within 90 days after the end of each financial year, detailing how it met its captioning obligations in respect of captioning targets, captioning standards and emergency warnings.

¹ Media Access Australia, ACCAN, Deaf Australia Inc., Deafness Forum of Australia, AFDO, 'Consumers ask for input into laws cutting back captioning regulations', Media Release, 30 October 2014

² s. 130ZZA, BSA

³ ss. 130ZL, 130ZR, BSA



Reports must be provided in a form approved by the ACMA. In order to meet these requirements SBS compiles material from a number of internal sources, as the reporting requirements cover different workflow areas within the business. SBS collates the data for its 12 markets,⁴ into the ACMA's spreadsheet.

The preparation of these reports involves the collation of data on captioning issues (and other transmission matters) that SBS monitors and responds to on a daily basis. SBS collects this data regardless of the compliance reporting requirements set out in section 130ZZC. While SBS understands the importance of regulatory oversight by an independent regulator, SBS submits that this reporting does no more than indicate to the regulator, in some cases more than a year after the fact, that a problem has occurred and what steps were taken to rectify the problem.

The processes SBS has in place are more effective in ensuring that technical, workflow and captioning service provider errors are investigated and rectified as soon as possible so that systemic issues do not arise. These processes ensure that captioning faults are picked up either before transmission or as each program is going to air, and the error rectified to ensure that it will not recur.

These internal monitoring and reporting processes will remain in place after the amendments to the BSA, and will meet the requirements of the proposed new section 130ZZD.

For the Committee's information these process include:

- monitoring all SBS output and reporting captioning faults on a daily basis through SBS's master control room team, the presentation team, SBS's captioning service provider and SBS's Audience Relations team;
- captioning issues are referred on to SBS Subtitling team for investigation and action as required;
- regular reviews of quality control by the SBS Subtitling team and SBS's captioning service provider;
- monitoring complaints and feedback.

SBS invests a significant amount of its funding in transmission and closed captioning services. SBS's business practices require it to respond in a timely and effective manner to issues as they arise in order to ensure that: SBS is meeting its captioning obligations under the BSA; SBS is providing its full suite of available services to its audience; SBS makes efficient and effective use of its funding.

⁴ Eastern markets: Brisbane, regional Qld (including NT), Sydney, regional NSW, Melbourne, regional Victoria, Tasmania. Central markets: Adelaide, regional SA, Darwin. Western markets: Perth, regional WA.



In respect of its captioning target obligations,⁵ SBS has processes in place to ensure that all eligible content is captioned. The Explanatory Memorandum to the Bill points out that the captioning requirements have increased to the extent that it will be clear to consumers when they have not been met. Consumers then have the option of providing feedback to SBS, and SBS will investigate the matter.⁶

SBS therefore supports the proposed reforms which replace annual reporting obligations with a complaints-based process of measuring broadcasters' compliance. This represents an effective means of reducing the costs and administrative burdens associated with annual reporting.

The proposed complaints-based approach means that SBS's internal monitoring systems are reinforced by processes that respond to audience concerns about potential non-compliance and also provides a consumer measure of our performance. This is particularly relevant in respect of compliance with the captioning standards.⁷ This is more effective than annual reporting because SBS is accountable to its audience through complaint mechanisms which require SBS to investigate compliance with the captioning obligations within 30 days.⁸

The complaints-based process ensures that SBS is responsive to any real areas of non-compliance, and provides a more evidence-based process for informing systemic changes that may be required.

SBS submits that broadcasters have demonstrated they take their captioning obligations seriously and comply with the government directed regulation and should be trusted to continue to do so without the ongoing imposition of complicated, time-consuming and redundant annual reporting requirements.

Caption quality

Section 130ZZA of the BSA requires the ACMA to determine standards that relate to the quality of captioning services, covering readability, comprehensibility and accuracy. The ACMA has determined the Broadcasting Services (Television Captioning) Standard 2013.

The proposed amendment provides for the ACMA to consider the differences between providing captioning services for live television programs or program material, and pre-recorded television programs or program material. The proposed amendment represents a

⁵ SBS is required to caption: all English language programs broadcast between 6am and midnight and all news and current affairs programs broadcast on SBS ONE; all programs broadcast on its multichannels (SBS 2 and NITV) which have previously been broadcast with captions (sections 130ZL, 130ZR, 130ZS, BSA). SBS subtitles the majority of its non-English language content.

⁶ Information about how SBS handles enquiries and complaints about its closed captioning services is available here: <http://www.sbs.com.au/aboutus/complaints>

⁷ s. 130ZZA, BSA

⁸ s. 150(2), BSA



valid and reasonable recognition that applying the same standards to pre-prepared and live captioning services is unworkable. For example, some elements of the current Standard have limited application to live captioning services, including colour, positioning, identification of individual speakers and sound effects.

SBS relies on the best mix of captioning services suitable for the nature of its programs to manage its captioning output and meet its captioning obligations. SBS is constrained by a number of factors in this regard, including the length of time between delivery or completion of a program and its transmission. To impose quality standards that fail to take these practical and business considerations into account represents a particularly onerous imposition on the free-to-air broadcasters.

For these reasons SBS supports the proposal to amend the Standard to take into account the differences between live and pre-recorded programs.

It is also unrealistic given the technical nature of the captioning process, to not have an exemption for breaches resulting from factors that are beyond the broadcaster's control. The proposal to exempt instances of non-compliance which are attributable to significant difficulties of a technical or engineering nature which the broadcaster could not reasonably have foreseen is a practical and welcome amendment.⁹

Conclusion

SBS supports the Bill, which removes unnecessary legislation and reduces the regulatory burden on the broadcasters, without affecting consumer safeguards.

SBS understands the provisions in the *Legislative Instruments Act 2003* require the ACMA to consult affected parties when planning broadcasting services on the BSB. SBS considers consultation, particularly with relevant industry groups, as crucial to any significant planning changes.

The captioning reform amendments will not affect the quantity of closed captions available on SBS's free-to-air services. In respect of captioning standards, the proposed amendment to consider the nature of the program – live or pre-recorded – will not affect the quality of captioning services provided by SBS, and represents a more realistic approach to the captioning quality standards.

⁹ Proposed s. 130ZZA(7A)