



**SPECIAL BROADCASTING SERVICE CORPORATION (SBS)  
Response to the Legislative Proposals Consultation Paper  
Radiocommunications Bill 2016  
May 2016**

The Special Broadcasting Service (SBS) is unique in the Australian broadcasting environment. Its 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.

As a national free-to-air broadcaster in Australia, SBS reaches almost 100 per cent of the population through its five free-to-air television services (SBS, SBS HD, SBS 2, Food Network and National Indigenous Television (NITV)), subscription TV channel World Movies, and four digital radio channels (including SBS Arabic24) and two analogue stations, as well as the streaming and catch-up service 'SBS On Demand'.

SBS welcomes the publication of the Legislative Proposals Consultation Paper for the *Radiocommunications Bill 2016*. The paper provides a way forward for the Department of Communications and the Arts to meet future challenges for spectrum, mindful of significant forthcoming changes in technology and the consequential impacts on spectrum use.

Overarching Comments

SBS supports the continuing allocation of spectrum to broadcasters to ensure SBS can continue to provide its services which inform, educate and entertain all Australians. These services, as outlined in the introduction above, include radio, television and online content, with a focus on multicultural issues. SBS's priority in regards to spectrum is that there is no reduction to its services.

The financial viability of each individual service a broadcaster provides lies at the heart of the decision making process. This viability is influenced by, for example, its capacity to generate revenue or increase audience reach and share, and is particularly sensitive to government standards and regulatory burden. Beyond fulfilling basic broadcasting obligations (and those illustrated in SBS legislation and Charter), SBS should be allowed flexibility in reaching audiences. SBS recommends that no new regulation limiting spectrum availability should be introduced which would limit SBS (or other broadcasters) in generating a solid return-on-investment from introducing or reducing services. For example, SBS requires the flexibility to provide services such as SBS 2 and Food Network, which generate income to cover their own operating costs, and allows for commercial revenues generated by these channels to support SBS's core content and services. They also increase SBS's reach, delivering SBS content to a wider audience than would otherwise occur.

Consistent with SBS's submissions on spectrum reform in June and December 2014, we believe that a move to a single multiplex, shared with the ABC, cannot occur until broadcasters are in a situation where they are ready to introduce appropriate compression and distribution technologies. SBS is internationally recognised for its technological innovation and with the right spectrum management framework will be well positioned to contribute to an industry wide change to newer compression formats in future. As noted in SBS's submission on Digital Regulation in March 2015, SBS considers that transition to HEVC and DVB-T2 may be possible by 2026; however, there are significant issues that need to be addressed in managing this transition.

After pioneering investment in the online area, SBS is beginning to enjoy scale benefits, in terms of increased audience reach and share and a deeper understanding of those audiences. The social and technological environment SBS participates in is changing. This in turn influences the broadcaster's strategy, how we operate and how we achieve our purpose. As technology changes, SBS must be allowed the flexibility to change and stay on-pace with cutting edge advancements. Such flexibility would allow the organisation to deliver the best available content to audiences, without compromising the broadcaster's legislative obligations. This provides greater incentive for broadcasters to implement technological improvements and efficiencies. SBS is supportive of spectrum reform models that provide commercial incentives for broadcasters to make technology reform as required, rather than being forced to make technology reform to fit spectrum allocation.

SBS welcomes the Department's advice that any future spectrum-sharing would be voluntary, and not enforced. SBS recommends that this be expressly included in the legislation, as it would provide SBS, and other broadcasters, with the opportunity to manage their spectrum with the flexibility required to compete in the broadcasting market while providing incentives to make use of spectrum in an economically efficient way.

Spectrum must be allocated to broadcasters. SBS requires a mandated commitment from Government to fulfil the organisation's obligations under the Charter and meet our audience expectations.

#### Technical Comments

SBS would also like to make various comments on selected technical issues as set out below.

#### **Item 6. Licensing of spectrum**

SBS currently pays an annual fee for apparatus licences, and it is not expected that this would change significantly.

#### **Item 12. Interference management**

SBS believes that the ACMA needs to take a strong and active role in interference management. While the Consultation Paper notes that the Bill will continue to provide the ACMA with the discretion and power to "investigate and take action against interference, particularly when the interference is most serious", we believe that its role could be even stronger. Efficient planning to mitigate interference is very important and should be considered in the role of the ACMA.

#### **Item 13. Equipment regulation**

SBS supports the outcomes-based approach that is proposed in the Consultation Paper. SBS notes we abide by Australian standards for equipment, and that this will not change. Some equipment is already susceptible to issues, such as interference due to bad design, however, this has been an ongoing problem. ACMA equipment rules should be appropriate to the known issues, and labelling regimes should be enforced to reduce customer confusion.

The practices of international administrations could be considered.

#### **Item 16. User involvement: accreditation, delegation, industry codes**

SBS notes that the Consultation Paper provides for ACMA to “accredit other persons to issue certificates” and while this is accepted by SBS, it must be noted that this cannot be *carte blanche* accreditation, and requires some enforcement of the relevant regulation.

#### **Item 17. Broadcasting**

The Consultation Paper proposes that spectrum-related technical matters currently included in LAPs/TLAPs/DRCPs would be included in the licences. SBS believes, however, that keeping this information in the LAPs/TLAPs/DRCPs means that industry can refer back to this information when and if required. If it is only included in the licences, this becomes significantly more difficult. Ideally, the information would be included in both the LAPs/TLAPs/DRCPs and the licences.

SBS appreciates that the Department will work with industry on the available options for transitional arrangements, and proposes that an industry framework is established that identifies key stakeholders. Consultation could then be carried out in greater depth, and should be ongoing.

The Consultation Paper proposed that ACMA will be authorized to vary licences. SBS notes that considering the significant investment and contractual arrangements that Broadcast Australia, Transmission Australia and other site/tower owners make in infrastructure, licence conditions cannot be changed at short notice without considering the impacts. SBS would also request that more information be provided as to the limits to this power, and potential for Parliament to set a disallowance motion. It is also necessary to consider the impact on domestic equipment.

It is noted in the Consultation Paper that “broadcasters will be able to share, trade or lease all or part of their spectrum with or to other broadcasters or for non-broadcasting uses”, and while this is supported by SBS, it would be important for the holder of a spectrum block, who is sub-letting a portion of this, to be mindful of the potential consequences of misuse of the sub-let spectrum.

In regards to access regimes, it is noted that the current Act provides for two access regimes for digital radio – access to the multiplex (i.e. spectrum) and access to broadcast infrastructure, and that it is proposed to incorporate these regimes into the BSA. To align with the opportunity for broadcasters to share, trade or lease all or part of their spectrum, a suitable multiplex access regime would need to be established. SBS recommends analogue radio is also afforded an access to infrastructure provision within the BSA; this already exists for digital television.

#### Structural Comments

SBS has some concerns around the structure and inter-relationship of the proposed *Radiocommunications Bill* and the existing *Broadcasting Services Act 1992*. In particular, we support the statements made in Commercial Radio Australia's submission on the following issues:

- Item 2 Recognising the importance of BSB spectrum;
- Item 3 Licence grant should be for the long term;
- Item 4 Renewal mechanism; and
- Item 8 'Other issues' regarding the annual spectrum work plan, the risks of excessive discretionary power, and dispute resolution.

#### Process comments

As the Consultation Paper is reasonably high-level, we strongly recommend that another consultation paper be produced for industry review prior to releasing draft legislation for comment.