

## Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012

### SBS Submission

#### Introduction

SBS appreciates the opportunity to comment on this Bill.

SBS understands that the provisions in this Bill are intended to operate in conjunction with separate legislation to the effect that a broadcaster who complies with these provisions will not be subject to complaint under the *Disability Discrimination Act 1992* (as recommended in the Government's Media Access Review Final Report.<sup>1</sup> SBS welcomes this development which will clarify industry obligations and achieve regulatory certainty.

SBS is Australia's multilingual and multicultural national broadcasting service. SBS's principal function is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect and promote Australia's multicultural society. SBS broadcasts to a national television and radio audience and delivers content online on its website [www.sbs.com.au](http://www.sbs.com.au).

SBS currently provides two national television services: SBS ONE – in analogue (in coverage areas which have not yet switched to digital-only transmission) and digital (SD / HD); and SBS TWO – digital only. SBS ONE and SBS TWO are also available on the digital VAST service.

SBS also operates two subscription television channels – Studio and World Movies – which are managed by SBS Subscription TV Limited (STV Ltd), a wholly owned subsidiary of SBS. SBS does not comment on those elements of the Bill which relate to subscription television licensees, who are represented by ASTRA.

SBS supports the introduction of measures to ensure that television programs are accessible to all Australians. This is an exacting task for SBS, given our Charter requirement to provide multicultural and multilingual television services for all Australians. SBS provides captioning services in two forms: through the provision of closed captions for our English language programming; and through the provision of subtitles (open captions) for programming in languages other than English. Both types of captioning are resource intensive and costly.

#### Captioning obligations (130ZR; 130ZS; 130ZU)

In respect of captioning targets, SBS has been progressively increasing the proportion of programs broadcast with closed captions over recent years, in accordance with our obligations under temporary exemptions from the *Disability Discrimination Act 1992* in respect of captioning granted by the Australian Human Rights Commission. The annual captioning targets for 2012-13 and 2013-14 in section 130ZU are consistent with the progressive targets which have applied to the free-to-air broadcasters under the current and earlier temporary exemption. SBS is satisfied with these targets, subject to clarification of the definition of 'total hours of programs transmitted' in the formula for each period (see below).

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<sup>1</sup> DBCDE, 2010, p. 3.

**Annual captioning targets – total hours excludes exempt programming (130ZU)**

SBS is satisfied with the targets set out in section 130ZU, on the understanding that 'Total hours of programs transmitted' excludes exempt programming as defined in sections 130ZM and 130ZN. Programs which are not required to be captioned should not be counted towards the total hours of programs transmitted. SBS understands that this is the intention of sections 130ZM and 130ZN, which state that Part 9D does not apply to the exempt programming set out in those sections.

**Annual captioning targets – to be measured at the end of the financial year (130ZU)**

SBS also submits that, for clarity, the reference to the annual captioning target in section 130ZU should be followed by the words "measured at the end of the financial year ["2012-13" in subsection (1) and "2013-14" in subsection (2)]".

**Certain breaches to be disregarded (130ZUB)**

With the obligation to caption programs increasing to 100% of all programs broadcast between 6am and midnight from 1 July 2014, broadcasters should be given more leeway in respect of breaches than is currently provided for in section 130ZUB, that is, breaches "attributable to significant difficulties of a technical or engineering nature" which "could not reasonably have been foreseen by the broadcaster".

The provision of closed captions can be affected by a range of technical factors, some of which may be outside the control of broadcaster. For example local weather conditions can disrupt the transmission of closed captions from local transmission towers. Most obviously, power outages can affect the delivery of the whole service. In those situations, broadcasters could, it appears, be held to be in breach of the captioning obligations set out in the proposed new Part 9D of the BSA.

SBS submits that section 130ZUB should be modified to provide that breaches 'attributable to difficulties of a technical or engineering nature, or other circumstances which are beyond the control of the broadcaster, which could not reasonably have been foreseen by the broadcaster' are to be disregarded.

**Captioning standards (s130ZZA)**

The free-to-air broadcasters and ASTRA have been working towards establishing practicable, measurable and deliverable closed captioning quality indicators to meet the needs of Australia's deaf and hearing impaired community as part of the ACMA's Co-Regulatory Captioning Committee. These discussions have highlighted issues around defining how to measure the quality of captioning services. In addition to this, the presentation of closed captions on screen can be affected by a range of factors that are not within the control of broadcaster. These factors include the type of television receiver (domestic equipment issues) and reception issues, for example local weather conditions can disrupt the transmission of closed captions from local transmission towers.

For this reason, along with the fact that the provision relates to standards which are yet to be determined, SBS does not consider that compliance with captioning standards should be a strict liability provision. SBS submits that the provisions in section 130ZZA should be modified to provide that broadcasters must comply with a standard determined under subsection (1) "as far as is practicable".

**Annual compliance reports – captioning standards (s130ZZC)**

SBS considers that it would be a particularly onerous burden to require broadcasters to report on their compliance with captioning standards when there are currently no standard industry measures. SBS submits that this requirement, in its present form, should be removed from the Bill.



Whether or not a broadcaster is meeting the captioning standards will be able to be ascertained from the number of complaints made about captioning standards which have been upheld (either by the broadcaster or the ACMA on appeal). This would be in keeping with the approach used to evaluate compliance with other aspects of the co-regulatory scheme implemented under the BSA.

### **Complaints – section 150**

SBS currently deals with formal complaints about its closed captioning service under Code 8 (Comments and complaints about SBS programming) of the SBS Codes of Practice. Code 8 sets out timeframes for responding to formal complaints and provides that the SBS Ombudsman will endeavour to provide a written response to the complainant within 30 days of receipt of the complaint, but must do so within 60 days.

Section 150 currently provides for the ACMA to investigate complaints that SBS acted contrary to its Codes of Practice. Complainants may refer the matter to the ACMA if the complainant has not received a response within 60 days or they consider SBS's response to be inadequate

SBS submits that the proposed amendment to section 150 should be consistent with the current section 150, so that SBS has up to 60 days to respond to the complainant before they can complain to the ACMA. It could otherwise be confusing for complainants. It also suggests that some complaints are to be given priority over others, which is unfair.

### **Multi-channels exemption (130ZR(6)-(7))**

The exemption for multi-channelled services could be stated better. The exemption (subsections 130ZR(6) and (7) for the national broadcasters) provides that captioning is not required on multi-channelled services with the exception of programs that have premiered on the core or primary service *with captions* and are repeated on a multi-channel service (as set out in Explanatory Memorandum). The current draft does not directly state this. It only refers to programs "previously transmitted by the national broadcaster" on the core or primary service. Adding the words "with captions" after the words "previously transmitted" where they appear in subsections 130ZR(6)(e), (f) and (7) would clarify the exemption.

### **Conclusion**

SBS supports the introduction of measures to ensure that television programs are accessible to all Australians. Subject to its concerns stated above, SBS supports the Bill, and welcomes the clarity it will provide in respect of its captioning obligations.