

Report on the review of the captioning obligations in the *Broadcasting Services Act 1992*

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Contents

Glossary	1
Executive summary	2
Overview of issues	4
Exempt material	6
The basic rule	7
Rules for free-to-air multichannels	8
Annual captioning targets for subscription television	10
Modified formula for subscription sports services	11
Exclusion for new subscription television services	13
Repeat programs on subscription television	14
Exemptions and target reduction orders	15
Emergency warnings	18
Record-keeping	20
Annual compliance reports	21
Framework for the Captioning Standard	23
The compliance framework	26
Linking captioning targets to compliance with the Captioning Standard	30
Complaints process	32
Other accessibility issues	33

Glossary

Abbreviation	Meaning
ACCAN	Australian Communications Consumer Action Network
ACMA	Australian Communications and Media Authority
ACMA's consultation	The Australian Communication and Media Authority's <i>Review of the captioning obligations in the Broadcasting Services Act 1992</i> consultation paper, June 2016
ASTRA	Australian Subscription Television and Radio Association
BSA	<i>Broadcasting Services Act 1992</i>
Captioning Standard	Broadcasting Services (Television Captioning) Standard 2013
Department	Department of Communications and the Arts
Department's consultation	Department of Communications and the Arts' <i>Captioning regulatory framework</i> policy consultation paper, December 2015
Deregulation Bill	Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014
Deregulation Act	<i>Broadcasting and Other Legislation Amendment (Deregulation) Act 2015</i>
Free-to-air television broadcasters	Free-to-air commercial television broadcasting licensees and national broadcasters
MAA	Media Access Australia
Senate Inquiry	Senate Environment and Communications Legislation Committee 2014 Inquiry into the Deregulation Bill
Subscription television licensees	Subscription television broadcasters and subscription television narrowcasters

Executive summary

The captioning obligations for free-to-air television broadcasters (commercial television broadcasting licensees and national television broadcasters) and subscription television licensees (subscription television broadcasters and narrowcasters) are set out in Part 9D of the *Broadcasting Services Act 1992* (BSA).¹ These cover:

- > rules about the captioning that is required
- > reporting and record-keeping on compliance with these rules
- > the requirement for a Captioning Standard about the quality of captions.

Part 9D of the BSA was introduced in 2012.² The Explanatory Memorandum to the associated Bill³ noted the amendments facilitate improved access to free-to-air and subscription television by Australia's hearing-impaired community.⁴

Part 9D of the BSA requires that:

- (1) Before 31 December 2016, the ACMA must conduct a review of the following matters:
 - (a) the operation of this Part;
 - (b) whether this Part should be amended;
 - (c) the operation of paragraph 7(1)(o) of Schedule 2;
 - (d) whether paragraph 7(1)(o) of Schedule 2 should be amended;
 - (e) the operation of paragraph 10(1)(eb) of Schedule 2;
 - (f) whether paragraph 10(1)(eb) of Schedule 2 should be amended;
 - (g) the operation of paragraph 11(1)(bc) of Schedule 2;
 - (h) whether paragraph 11(1)(bc) of Schedule 2 should be amended.

Consultation

- (2) In conducting the review, the ACMA must make provision for public consultation.

Report

- (3) The ACMA must give the Minister a report of the review before 30 June 2017.
- (4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sittings days of that House after receiving the report.⁵

In accordance with the above terms of reference, the ACMA published a consultation paper in June 2016. Twenty-four submissions were received and have been

¹ Captioning is the presentation of the audio component of audio-visual content as text on screen—this includes sound effects as well as the spoken word. It is generally intended to assist viewers who are deaf or hearing impaired.

² The *Broadcasting Services Amendment (Improved Access to Television Services) Act 2012*.

³ The *Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012*.

⁴ Explanatory Memorandum to the *Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012*, p. 1.

⁵ Section 130ZZE of the BSA; Terms 1(a) and (b) refer to the application of the Part 9D rules. Terms 1(c) to (h) focus on the fact that compliance with Part 9D is a licence condition for commercial and subscription television broadcasting licensees, and broadcasting services provided under a class licence by subscription television narrowcasters).

published on the ACMA's website.⁶ The ACMA also consulted directly with several stakeholders.

Having considered the submissions, operational analysis and supplementary factual information, the ACMA is not recommending specific amendments to Part 9D or the associated licence conditions, but has provided responses on each of the identified issues, for the consideration of the Minister for Communications.

In December 2015, the Department of Communications and the Arts (the Department) released a captioning regulatory framework policy consultation paper (the Department's consultation). The ACMA's review has had close regard to the Department's consultation and submissions received in response to that other process.

The Department's process remains under way. However in line with the requirements of the terms of reference, the ACMA has considered the operation of each of the provisions of Part 9D. Where issues are also considered under the Department's consultation, the ACMA has consolidated information (including all submissions made), and where appropriate, made observations for consideration by the Department.

⁶ <http://www.acma.gov.au/theacma/-/link.aspx?id=44973931F2364042BD81D86931424F11&z=z>

Overview of issues

For ease of reference, issues within the scope of the Department's consultation are shaded in blue.

Matter	Relevant rules
Exempt material	Broadcasters are not required to caption foreign language programs or programs with no identifiable human vocal content.
The basic rule	All programs broadcast on the main free-to-air channels between 6 am and midnight must be captioned. News or current affairs programs, broadcast at any time on the main channel, must also be captioned.
Rules for free-to-air multichannels	Programs broadcast on free-to-air multichannels do not need to be captioned unless they are a repeat of a program that has previously been broadcast by the licensee with captions.
Annual captioning targets for subscription television	Currently there are nine different categories of subscription television services and each has a different annual captioning target. These targets will increase by five per cent each year until the target reaches 100 per cent.
Modified formula for subscription sports services	Broadcasters can aggregate their captioning targets across their sports services, as long as each service provides at least two-thirds of the required target for that service.
Exclusion for new subscription services	A new subscription television service, which is comprised predominantly of programs not previously broadcast in Australia, is not required to provide captioning in its first year of operation.
Repeat programs on subscription television	If a licensee has broadcast a program with captions, they must broadcast all repeats of the program with captioning, if provided by the same channel provider.
Exemptions and target reduction orders	Broadcasters can apply for an exemption, or reduction, to their captioning targets on the grounds that it would cause them unjustifiable hardship.
Emergency warnings	When requested by an emergency service agency, broadcasters must transmit emergency warnings in both text and speech and caption the warnings if reasonably practicable.
Record-keeping	Broadcasters must make written records to show compliance with captioning targets and audio visual records to show compliance with the Captioning Standard and emergency warnings. ⁷

⁷ Emergency warning record-keeping is also within the scope of the Department's consultation.

Matter	Relevant rules
Annual compliance reports	Broadcasters must submit annual reports at the end of the financial year, relating to compliance with captioning obligations, the Captioning Standard and emergency warnings.
Framework for the Captioning Standard	Part 9D sets out a framework for the Captioning Standard, including defining quality for the purposes of the Standard as readability, comprehensibility and accuracy.
The compliance framework	Compliance with the requirements of Part 9D of the BSA and the Captioning Standard are licence conditions for commercial and subscription licensees. The ACMA may disregard breaches of the captioning obligations where a failure to provide captioning is attributable to significant difficulties of a technical or engineering nature, which could not have been reasonably foreseen.
Linking captioning targets to the Captioning Standard	The Captioning Standard contains a note that specifies that a program must meet the requirements of the Captioning Standard in order to be counted towards the captioning targets.
The complaints process	Complaints about captioning can be made directly to the ACMA, or a complainant can also contact the licensee in the first instance, particularly if they think the captioning problem is technical in nature.
Other accessibility issues	These issues are not currently covered in the BSA, but were raised in submissions to the review.
Matters not discussed in this paper No submissions were received on these matters in response to the ACMA's consultation paper and no issues were identified by the ACMA	
The definitions used in Part 9D	Defines key terms used in Part 9D.
Exemptions for section 40 licensees ⁸	Section 40 licences are issued under the BSA without public tender, upon payment of a fee, to permit broadcasting of commercial services outside the broadcasting services bands. Section 40 licensees are exempt from captioning for the first year of operation.
Exclusion for time-shifting and high definition services on subscription television	A service cannot contribute to the calculation of annual captioning targets if it does no more than transmit the same stream of programs that has been previously transmitted on another service; or simultaneously transmit, in a high definition format, the same stream of programs that is transmitted on another service.
Requirement for simultaneously transmitted programs to be captioned	If a program is captioned and the same program is simultaneously transmitted on a second service, then the simultaneous transmission must also be captioned.

⁸ There are currently no licensees operating under section 40.

Exempt material

Relevant provisions:

- > s130ZM—foreign language programs
- > s130ZN—programs that consist wholly of music, with no human vocal content in English
- > s130ZO—captioning service provided for part of a program, where the program consists partly of human vocal content in English and partly of other content.

Background

Broadcasters are not required to caption programs that are wholly in a language other than English; programs that consist wholly of music, with no human vocal content in English; or parts of programs with no human vocal content.

One submission to the Department's consultation, argued that all news should be captioned, regardless of whether it is in a language other than English.⁹

Summary of submissions to this review

The ACMA received two submissions that addressed this matter.

The Deaf Society of NSW submitted that one of their stakeholders would like to access captioned Chinese-language news on SBS, but was not aware whether this was possible.¹⁰

Caption provider, Ericsson, submitted that requiring foreign language programs to be captioned would impose prohibitive financial and administrative burdens, as finding, training and maintaining a pool of staff who are native speakers of all the required languages, and who can develop the appropriate level of captioning skills would be extremely difficult.¹¹

ACMA response

The ACMA acknowledges the importance of accessible information, particularly news, but also notes the significant resourcing and practical issues that would be associated with captioning foreign language news services.

The ACMA is of the view that the provisions are operating effectively and that the administrative and financial costs of requiring foreign language news services to be captioned would be prohibitive.

⁹ Mitting submission to the Department's consultation, p. 1.

¹⁰ Deaf Society of NSW submission to the ACMA review, p. 1.

¹¹ Ericsson submission to the ACMA review, pp. 1–2.

The basic rule

Relevant provisions:

- > s130ZL—definition of *designated viewing hours*
- > s130ZR—the basic rule.

This matter falls within the scope of the Department's consultation, however as required by the BSA, the ACMA has considered the operation of these provisions as part of this review.

Background

Free-to-air broadcasters are required to caption 100 per cent of programs broadcast on main channels between 6 am and midnight, and all news and current affairs programs on main channels, regardless of the time at which they are broadcast.

The Department's consultation canvassed the issue of extending captioning requirements on main channels. In response to the Department's paper, Deaf Australia, Australian Communications Consumer Action Network (ACCAN), and Media Access Australia (MAA) called for the captioning requirements to be extended to a 24-hour period¹², while Free TV, SBS and ABC argued against any extension.¹³

Summary of submissions to this review

The ACMA received seven submissions that addressed this matter.

Two submissions from representative groups MAA and ACCAN, contended that captioning requirements on free-to-air television should apply to a 24-hour period, stating that the current rules discriminated against people who can only watch television outside the 6 am to midnight period.¹⁴ The Deaf Society of NSW said that although there are deaf and hearing-impaired people who are viewing television outside the 6 am to midnight period, it was not currently aware of significant numbers of their clients who are usually viewing television during these hours.¹⁵

Four submissions from the broadcasting industry opposed any extension to the current requirements. The submissions argued that the additional costs of captioning from midnight to 6 am are not justified in relation to the low viewer numbers during that time. Free TV estimated that the additional cost of captioning between midnight and 6 am would be approximately \$845,000 per service per annum.¹⁶

ABC and SBS both said that due to their current funding arrangements, increased captioning would result in cuts to spending in other areas, with SBS stating that the alternative was that they would need additional funding.¹⁷

ACCAN asserted that, based on Free TV's cost estimates in their submission to the Department's consultation, the 25 per cent rebate of commercial free-to-air licence

¹² Deaf Australia submission to the Department's consultation, p. 6; ACCAN submission to the Department's consultation, p. 6; ACCAN submission to the Department's consultation, p. 4.

¹³ Free TV submission to the Department's consultation, pp. 7–8; SBS submission to the Department's consultation, pp. 4–5; ABC submission to the Department's consultation, p. 2.

¹⁴ MAA submission to the ACMA review, pp. 2–3; ACCAN submission to the ACMA review, p. 4.

¹⁵ Deaf Society of NSW submission to the ACMA review, p. 1.

¹⁶ Free TV submission to the ACMA review, p. 9.

¹⁷ ABC submission to the ACMA review, p. 3; SBS submission to the ACMA review, pp. 1–2.

fees as part of the 2016–17 budget would cover the cost of extending captioning on free-to-air channels.¹⁸

Additional information

OzTAM audience data obtained by the ACMA indicates that in 2015–16, the average aggregate audience watching the free-to-air main channels live between midnight and 6 am was approximately 117,000, compared to an average aggregate audience of around 1,119,000 from 6am to midnight.

ACMA response

The ACMA acknowledges concerns, expressed by some stakeholders, that free-to-air broadcasters are not obliged to caption programs between midnight and 6 am. While extending these requirements would enhance access for the relatively low number of viewers during this period, the associated benefits would need to be carefully measured against the high additional costs.

Rules for free-to-air multichannels

Relevant provisions:

- > s130ZR(4)—exceptions to the basic rule
- > s130ZS—special rules for multichannelled services.

This matter falls within the scope of the Department’s consultation, however as required by the BSA, the ACMA has considered the operation of these provisions as part of this review.

Background

Free-to-air television broadcasters are not required to caption programs broadcast on their multichannels unless the program has previously been broadcast with captions on another of the broadcaster’s television services.

The Department’s consultation addressed the issue of extending captioning requirements to multichannels. The Department noted that extending the captioning obligations to multichannels would involve significant additional expense to broadcasters and may reduce expenditure in other areas of business, for example, content development.

Submissions to the Department’s consultation from consumer stakeholders called for a requirement to caption multichannels, whereas broadcasters opposed any extension.

Summary of submissions to this review

The ACMA received eleven submissions that addressed this matter.

Eight submissions argued that multichannels should be subject to the same captioning requirements as the main channels. ACCAN noted that while some captioning is currently provided on multichannels, there is no guarantee that this will remain, or increase.¹⁹ Deaf Australia and the Deaf Society of NSW both said that viewers are disappointed that programs on multichannels aren’t captioned, and Deaf Australia questioned why multichannels weren’t subject to captioning targets, when

¹⁸ ACCAN submission to the ACMA review, p. 4.

¹⁹ ACCAN submission to the ACMA review, p. 5.

subscription channels, which have much lower audiences, are.²⁰ ASTRA expressed a preference that free-to-air multichannels and subscription television be treated equivalently, calling for the multichannels to be subject to the same framework that ASTRA proposed for subscription television.²¹

MAA proposed an incremental introduction of captioning targets on multichannels, starting from a base of 40 per cent (taking into account current captioning levels) and increasing by five per cent each year.²²

Three submitters from the free-to-air broadcasting industry opposed any extension of captioning to multichannels. Free TV argued that captioning on multichannels is already provided where there is demand, and introducing targets would mean that broadcasters would invest less in other services. Free TV estimated that the additional annual cost of captioning on multichannels would be approximately \$2,130,000 per service.²³ ABC said that captioning targets on multichannels would likely mean they would have to reduce services in other areas.²⁴

Free TV also submitted that the wording of subsection 130ZR (4) should be clarified to include the words 'with captions' (in relation to the requirement to caption programs on multichannels that have already been transmitted on a main channel).²⁵

Additional information

The ACMA routinely receives viewer enquiries and complaints about captioning on free-to-air multichannels. In 2015–16, the ACMA received six complaints about captioning not appearing on multichannels. This represented about a third of the total number of captioning complaints to the ACMA that year. In 2014–15, the ACMA received 11 such complaints, representing close to 60 per cent of captioning complaints for the year.

OzTAM audience data obtained by the ACMA indicates that in 2015–16 multichannels had an average live audience of 456,000 (about 27 per cent of total television audience share), compared to 868,000 for free-to-air main channels (about 51 per cent of audience share) and 302,000 for subscription channels (about 17 per cent of audience share).²⁶

ACMA response

The ACMA acknowledges there is strong consumer support for extending the requirements for captioning to free-to-air multichannels. While extending these requirements would enhance viewer access, the associated benefits would need to be carefully measured against the additional costs.

²⁰ Deaf Australia submission to the ACMA review, p. 1; Deaf Society of NSW submission to the ACMA review, p. 1.

²¹ ASTRA stated that this should include genre targets, increasing target increments and exemption availability (including an audience share threshold). See ASTRA submission to the ACMA review, p. 5.

²² MAA submission to the ACMA review, pp. 3–4.

²³ Free TV submission to the ACMA review, p. 9.

²⁴ ABC submission to the ACMA review, pp. 3–4.

²⁵ Free TV submission to the ACMA review, p. 10. While the intention of the provision is generally understood, the current wording leaves the provision open to the interpretation that any program previously shown on a main channel must be captioned if shown on a multichannel, not just those that were shown with captions.

²⁶ Subscription television audience data excludes time-shifted channels.

Annual captioning targets for subscription television

Relevant provisions:

- > s130ZV—annual captioning targets
- > s130ZVA—categories for subscription television movie services
- > s130ZW—categories for subscription television general entertainment services
- > s130ZX—exemptions for certain services provided before 1 July 2022.

This matter falls within the scope of the Department’s consultation, however as required by the BSA, the ACMA has considered the operation of these provisions as part of this review.

Background

Currently there are nine different categories of subscription television services and each has a different annual captioning target. These targets will increase by five per cent on 1 July each year until the target reaches 100 per cent.²⁷ For example:

- > For 2016–17, the annual target for category ‘A’ movie services is 85 per cent. This target will reach 100 per cent by 2019.
- > For 2016–17, the annual target for sports services is 25 per cent (noting licensees can aggregate the required target across sports channels provided by the same channel provider, as long as each service provides at least two-thirds of its required target).²⁸ This target will reach 100 per cent by 2031.

For movie and general entertainment services, licensees nominate which category a particular service fits into, based on how many services the licensee is providing. This means that captioning targets for a particular channel may differ depending on who is providing the service.²⁹

If a licensee has met the annual captioning target for the year for a certain number of services (the threshold number of services), then the provision allows for application for an exemption from captioning for the remaining services. This is a transitional measure that ends in 2022.³⁰

The Department’s consultation noted concerns that the current model for subscription television creates unnecessary administrative burdens and inconsistent outcomes (such as the same channel having different captioning targets). In response, the Department posed several options, including:

- > two models for channel plans that would specify the amount of captioning for a particular channel for the following 12 months and set consistent captioning targets
- > a threshold model that would automatically exempt channels from captioning for 12-months based on either audience numbers or channel revenue.

In response to the options put forward by the Department, ASTRA proposed a variation that gives channel providers a greater role; sets a single captioning target for movies and a single captioning target for general entertainment channels; removes the current system of nominating exempt channels; and introduces three

²⁷ See sections 130ZV, 130ZVA and 130ZW of the BSA.

²⁸ See subsection 130ZV(3) of the BSA.

²⁹ See sections 130ZV; 130ZVA; and 130ZW of the BSA.

³⁰ See section 130ZX of the BSA.

statutory exemptions —for racing channels, international pass-through channels and channels where audience share is below a certain defined percentage.³¹

Summary of submissions to this review

The ACMA received six submissions that addressed this matter.

The submissions, from subscription television and representative groups, all commented on the complexity of the current arrangements for subscription television. Representative groups also noted that viewers are unsure about what is required to be captioned, with the Deaf Society of NSW submitting that there is a perception that captioning decisions are made on the basis of what is easy to caption, rather than what viewers want.³²

ASTRA and Optus expressed support for the model that ASTRA had submitted to the Department's consultation.³³ ACCAN stated that ASTRA's proposal may create better outcomes for consumers and simplify the regulation, and should be investigated further.³⁴ MAA stated that it had no major objections to the model, but opposed any change that would result in less captioning on some channels.³⁵

ASTRA also noted in the context of the approaching 100 per cent 24-hour target for subscription television, that internationally 100 per cent captioning targets are subject to an exemption (such as between 2–6 am, or limited to an 18-hour period) and proposed a similar approach for Australia.³⁶

ACMA response

The ACMA notes stakeholder consensus about the complexity of the current framework for captioning obligations on subscription television. The ACMA considers that the model discussed in the Department's consultation paper and further developed by ASTRA, has potential to provide a simplified framework, and increase transparency for audiences.

The ACMA also notes subscription broadcasters' concern about the potential difficulties they will face when the captioning targets reach 100 per cent, 24-hours a day (beginning in 2019 for some channels). This is an issue that would be most appropriately considered in the context of the Department's consultation.

Modified formula for subscription sports services

Relevant provisions:

> s130ZV(3)—modified formula for subscription television sports services.

Background

Subscription television licensees that provide a sports service currently have the ability to aggregate their respective captioning targets across all the sports services provided by a particular channel provider, as long as each service provides at least two-thirds of its required target for that service. The intention of the provision is to provide flexibility for licensees when scheduling sports across a range of services.

³¹ ASTRA submission to the Department's consultation, pp. 3, 5, 9–12.

³² Deaf Society of NSW submission to the ACMA review, p. 1.

³³ ASTRA submission to the ACMA review, pp. 4–5; Optus submission to the ACMA review, p. 2.

³⁴ ACCAN submission to the ACMA review, pp. 5–6.

³⁵ MAA submission to the ACMA review, p. 4.

³⁶ ASTRA submission to the ACMA review, p. 8.

The aggregating of sports provisions was raised in the 2014 Senate Inquiry into the Broadcasting and Other Legislation Amendment (Deregulation) Bill, to which ASTRA submitted that where sports services are aggregated, the minimum requirement per service should be reduced from two-thirds to half.³⁷ At the time, ASTRA also provided an example to illustrate the rationale for this provision in its submission to the Senate Inquiry.

... for example, the first day of a golf tournament is shown on FOX SPORTS 1, but the second day is shown on FOX SPORTS 2. There could be a scenario where the captioning target for FOX SPORTS 2 had already been met, whilst the target for FOX SPORTS 1 had not yet been met. Given that FOX SPORTS is likely to choose to apply its captioning investment in order to meet the regulated targets, it may be that (in the absence of amendment) the captioning would not 'follow' the tournament to FOX SPORTS 2 ... Viewers who had watched the first day of the tournament with captions would then not have the benefit of captions for the second day.

[...]

[footnote] Shifting tournaments between sports channels in this way is quite common on STV due to the nature of live sport. It allows a channel provider to deliver a wide range of live sports simultaneously by accommodating scheduling conflicts, simultaneous matches in multi-round tournaments, and last-minute changes due to weather and overruns.³⁸

Summary of submissions to this review

The ACMA received five submissions that addressed this matter.

The Deaf Society of NSW submitted that the rules are particularly confusing.³⁹

ASTRA and Optus submitted that where sports services are aggregated, the minimum captioning requirement per service should be reduced from two-thirds of the target to half the target, arguing that this would allow them to deliver greater benefits to viewers, without decreasing overall captioning levels.⁴⁰

Both MAA and ACCAN noted that further explanation and investigation of ASTRA's proposal was needed, citing the concerns that they had previously expressed that allowing greater flexibility could create confusion and potentially have a negative impact if a viewer's preferred sport is the one that is 'under captioned'.⁴¹

Additional information

Annual compliance data shows that in 2015–16, Foxtel aggregated six sports services. The captioning target for these channels was 20 per cent and the actual captioning levels on the channels ranged from 15.14 per cent to 39.59 per cent.

In supplementary information provided to the ACMA, ASTRA explained that FOX SPORTS increasingly creates 'pop up channels' where channels that feature general sporting content are dedicated to particular programming for the duration of a particular event. Examples were a 'pop up' Bathurst channel for the 2016 Bathurst 1000 and an NRL Finals channel for the 2016 NRL Finals series. ASTRA submitted

³⁷ ASTRA submission to the Senate Inquiry, p. 8.

³⁸ ASTRA submission to the 2014 Senate Inquiry into the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014, p. 8, including the footnote on p. 8.

³⁹ Deaf Society of NSW submission to the ACMA review, p. 2.

⁴⁰ ASTRA submission to the ACMA review, pp. 6–7; OPTUS submission to the ACMA review, p. 2.

⁴¹ ACCAN submission to the ACMA review, p. 6; MAA submission to the ACMA review, p. 4.

that the flexibility afforded by aggregation allowed FOX SPORTS to live caption these ‘pop up’ channels to maximise viewer experience.

If the minimum requirement on an aggregated sports service was 50 per cent, rather than two-thirds, ASTRA said it would enable more flexibility to shift captioning focus to the channels that attract seasonal audiences, during those periods when they are being watched by the highest number of viewers.

In relation to how audiences are made aware of which sporting events are captioned, ASTRA said that programs that are captioned are clearly identified in the television guide on both the FOX SPORTS and Foxtel websites, and through Foxtel’s electronic program guide 14 days before the programs are broadcast. ASTRA also noted that in the case of FOX SPORTS, other forms of non-broadcast media could be utilised to disseminate information regarding captioning decisions (including programming media releases).

ACMA response

The ACMA acknowledges a preference from subscription broadcasters for greater flexibility in the existing ability to aggregate captioning for sports services. The ACMA also notes concerns from some stakeholders that the proposal for increased flexibility would need to be thoroughly explored, as it could potentially have negative impacts on some viewers and could create further confusion about captioning on sports services.

The ability to aggregate captioning targets across sports services has been in place for a relatively short time (since March 2015) and the Department is considering the overall structure for subscription targets. In light of this, the ACMA is of the view that at this point, the focus should be on further monitoring. This should include the operation of the existing aggregation facility, the effectiveness of mechanisms for communicating the availability of captioning to viewers, and any other applicable developments.

Exclusion for new subscription television services

Relevant provisions:

> s130ZV(6)—exclusion for new subscription television service.

Background

New subscription television services do not need to provide captioning for one to two years (depending on the date of commencement) if they predominantly consist of programs not previously transmitted in Australia.

Summary of submissions to this review

The ACMA received three submissions that addressed this matter.

ACCAN and Deaf Australia both submitted that the provision should be removed, on the basis that a blanket exemption for new channels is unnecessary, and licensees should factor in the captioning requirements before commencing a new service.⁴²

Optus expressed support for the existing provisions.⁴³

⁴² ACCAN submission to the ACMA review, p. 7; Deaf Australia submission to the ACMA review, p. 2.

⁴³ Optus submission to the ACMA review, p. 2.

Additional information

In 2015–16, eight different channels (provided across 30 services) were eligible for exemption from captioning requirements under this provision. The channels were *Russia Today*, a Russian English-language news channel; *Sky Election*; *Daystar*, a Christian faith-based channel; *CMusic*, a classical and cinematic music-video channel; *Yesshop*, a shopping channel; *Racing.com*; as well as *BeIN2* and *BeIN3*, which both show European football. These new channels made up about five per cent of the total subscription channels available in 2015–16.

ACMA response

The ACMA is of the view that it is reasonable for a new service, which is broadcasting content that has not previously been broadcast in Australia, to be exempt from captioning in its first year of operation.

The ACMA acknowledges the views expressed by stakeholders, but notes that the ability to exclude new services from captioning allows more flexibility for new formats and genres to be trialled on Australian television, while not excluding accessibility to these services in the longer term.

Repeat programs on subscription television

Relevant provision:

> s130ZZ—captioning services for repeats of television programs.

Background

If a program has been broadcast with captions, all repeats of the program broadcast by the same licensee must be captioned, regardless of whether the repeat appears on the same service or a different service provided by the licensee.

In 2015, this provision was amended as part of the *Broadcasting and Other Legislation Amendment (Deregulation) Act 2015* (Deregulation Act) to specify that the provision only applies to a repeat if the program is supplied by the same channel provider.

Summary of submissions to this review

The ACMA received two submissions that addressed this matter.

MAA expressed support for the current rules.⁴⁴

ASTRA submitted that the repeat rule has relevance for free-to-air licensees because they only have mandatory targets on their primary channel. ASTRA argued that in the subscription context it is superfluous (because all channels and not just one primary channel, have substantive obligations) and should be removed.⁴⁵

ACMA response

The ACMA notes comments from the subscription broadcasters about the relevance of the provisions. However, there are circumstances where the requirement retains utility—for example, if a program is repeated on a channel that has already fulfilled its captioning requirement, or on a channel that is excluded from captioning obligations under s130ZX. Recent changes, which specify that the obligation only

⁴⁴ MAA submission to the ACMA review, p. 5.

⁴⁵ ASTRA submission to the ACMA review, p. 6.

applies when the program has been supplied by the same channel provider, were designed to ameliorate any associated regulatory burden.

The ACMA is of the view that it remains appropriate to require that a repeat program that has previously been broadcast by a licensee, with captions, and is provided by the same channel provider, must be captioned when broadcast again.

Exemptions and target reduction orders

Relevant provisions:

Free-to-air television

s130ZUA—exemption orders and target reduction orders—unjustifiable hardship

s130ZUAA—effect of target reduction order

Subscription television

S130ZY—exemption orders and target reduction orders—unjustifiable hardship

S130ZYA—effect of target reduction order.

This matter falls within the scope of the Department’s consultation, however as required by the BSA, the ACMA has considered the operation of these provisions as part of this review.

Background

Television broadcasters can apply to the ACMA for an exemption from captioning requirements, or a reduction to captioning targets, on the grounds that to provide captioning would impose an unjustifiable hardship on the applicant.

An application for an exemption order or a target reduction order must be in writing in an ACMA-approved form. The application must be made to the ACMA in the period:

- > commencing on 1 July in the financial year immediately before the eligible period⁴⁶ specified in the application; and
- > ending on the first 31 March in the eligible period specified in the application.

Before making an exemption order or target reduction order, the ACMA must publish a notice setting out the draft order within 50 days of receiving an application. The notice must also invite submissions about the draft order. Submissions about the draft order may be made within 30 days after the notice is published. If the ACMA does not make a decision within 90 days, it is taken to have refused to make the order.

An exemption order exempts a channel from their annual captioning obligations for a set period of time. A target reduction order provides a channel with a reduced annual captioning target for a set period of time.

The provisions specify that when deciding whether to grant an exemption or target reduction, the ACMA must have regard to:

- > the nature of the detriment
- > the impact on deaf and hearing-impaired viewers

⁴⁶ Eligible period means: (a) a financial year; or (b) two consecutive financial years; or (c) three consecutive financial years; or (d) four consecutive financial years; or (e) five consecutive financial years.

- > the number of subscribers to the service concerned (for subscription television only)
- > the financial circumstances of the applicant
- > the estimated expenditure required if the order is not granted
- > the extent to which captioning is provided on services provided by the applicant
- > the likely impact of the failure to make the order on the quantity and quality of programs provided by the applicant
- > whether the applicant has applied for exemption orders or target reduction orders for any other services
- > other matters that the ACMA considers to be relevant.

Summary of submissions to this review

The ACMA received eight submissions that addressed this matter.

Broadcasters raised concerns about the application process for exemptions being inflexible, time consuming and costly. ASTRA suggested that the ACMA should have the ability to vary the terms of an application without the process having to restart, and should consult with the applicant where necessary to support applications through the process.⁴⁷ Optus submitted that retailers of wholesale subscription services should not be required to submit duplicate applications for exemptions/target reductions.⁴⁸

In relation to the criteria for assessing applications, Deaf Australia and Deaf Society NSW submitted that people want to know what the definition of ‘hardship’ is, to provide greater transparency around exemptions.⁴⁹ ASTRA submitted that the ACMA should develop, in consultation with stakeholders, the factors that will be taken into account when determining ‘unjustifiable hardship’.⁵⁰ Imparja submitted that the criteria should include consideration of the impact on other viewers of an exemption/target reduction not being granted—in addition to the impact on the licensee and the impact on audiences who are deaf and hearing impaired. Imparja said that the current criteria mean they must choose between meeting the needs of people who are deaf and hearing impaired, and meeting the needs of their remote audiences, many of whom are Indigenous.⁵¹

Deaf Australia, Optus, MAA and ACCAN argued that a threshold model would be an appropriate means for making these assessments. In this regard, Deaf Australia and MAA noted the UK system, where exemptions are given for channels with a low audience share (0.05 per cent) or if captioning costs exceed one per cent of relevant turnover; and the US system, where a channel is exempt if captioning costs would exceed two per cent of gross profit, or if the channel’s revenue in the previous calendar year was less than three million dollars.⁵²

⁴⁷ ASTRA submission to the ACMA review, p. 6.

⁴⁸ Optus submission to the ACMA review, p. 3.

⁴⁹ Deaf Australia submission to the ACMA review, p. 2; Deaf Society NSW submission to the ACMA review, p. 2.

⁵⁰ ASTRA submission to the ACMA review, p. 6.

⁵¹ Imparja submission to the ACMA review, pp. 7–8.

⁵² Deaf Australia submission to the ACMA review, p. 2; Optus submission to the ACMA review, p. 2; MAA submission to the ACMA review, p. 5; ACCAN submission to the ACMA review, pp. 7–8.

ASTRA's submission also argued that channel providers should be able to seek individual (channel specific) exemptions and target reduction orders, regardless of the platform on which they are broadcast.⁵³

Imparja submitted that it is in a unique circumstance as a remote broadcaster, and should be considered for an automatic exemption from captioning for the local content it produces, a position supported by Free TV.⁵⁴ Imparja asserted that the cost of captioning prohibits it from producing a local news service.⁵⁵ Imparja noted an existing exemption from the requirement to broadcast a local news service under the Broadcasting Services (Additional Television Licence Condition) Notice 2014.⁵⁶

Additional information

In 2015–16, the ACMA made 34 exemption orders and three target reduction orders.⁵⁷ The three target reduction orders made were for the remote broadcaster Imparja.

In 2014–15, the ACMA made 38 exemption orders and four target reduction orders. The four target reduction orders were made for subscription television services on the basis that the cost of the additional captioning required to meet the captioning target for the service was considered to be an 'unjustifiable hardship' for the licensee in question, given their circumstances. The captioning target on those channels for the licensee were higher than the captioning levels on those channels when broadcast by Foxtel (due to the current subscription rules of a licensee being able to nominate certain channels for exemptions, once a certain number of channels have been captioned).

ACMA response

The ACMA acknowledges stakeholder concern about the criteria and application processes for exemptions and target reduction orders. From an operational perspective, options to address these issues are constrained by the current legislative framework, including the legislated time constraints and balancing confidential stakeholder information with a transparent consultation process.

It would be beneficial to review the legislative framework, including the relevant criteria. This could be done within the context of the Department's consultation and could include consideration of whether a threshold (for example, an audience numbers or revenue test) should apply and, for subscription television, the role of channel providers.

Remote broadcasters—Imparja

The ACMA notes Imparja's submission that the process of applying for exemptions and target reduction orders can be administratively burdensome and that, as a remote broadcaster, it should have an automatic exemption. This is a broader policy matter for government.

⁵³ ASTRA submission to the ACMA review, p. 4. This proposal was also included in ASTRA's submission to the Department's consultation (pp.3, 9).

⁵⁴ Free TV submission to the ACMA review, p. 10.

⁵⁵ Imparja submission to the ACMA review, p. 9.

⁵⁶ Imparja submission to the ACMA review, p. 4.

⁵⁷ Details of final exemption orders and target reduction orders made by the ACMA can be found at <http://www.acma.gov.au/theACMA/final-exemption-orders-and-target-reduction-orders>.

Emergency warnings

Relevant provision:

- > s130ZZB—emergency warnings.

Background

If an emergency service agency⁵⁸ requests a broadcaster to transmit an emergency warning, the broadcaster must:

- > transmit the whole of the emergency warning in the form of text and speech
- > if it is reasonably practicable to do so, provide a captioning service for the verbal commentary that accompanies the emergency warning.

In its response to the Department's consultation, ACCAN submitted that captions should be mandatory for all emergency warning broadcasts. ACCAN also submitted that if an Auslan interpreter was present at an emergency warnings broadcast, it should be mandatory for them to be shown in the broadcast, noting they are often 'cut out' of the broadcast.⁵⁹ Deaf Australia submitted that the BSA should require sign language interpreters to be included in all emergency warning announcements.⁶⁰

Summary of submissions to this review

The ACMA received seven submissions that addressed this matter.

Two submitters, Vision Australia and Blind Citizens Australia, supported the requirement to provide emergency warnings in both speech and text, as it provides access to emergency information for people who are blind and vision impaired.⁶¹

ACCAN proposed that all emergency warning broadcasts should be captioned, not only where it is reasonably practicable to do so⁶², with MAA noting that verbal commentary, in addition to the primary text warning, could provide vital extra information for those affected.⁶³

Three submissions put forward that there should also be a requirement for Auslan interpreters to be included in the broadcast of the emergency warning announcement.⁶⁴

Imparja submitted that given the vast area they broadcast to, almost every warning for Central and Eastern Australia applies to them and the warnings can build up and stay around for days or weeks and include constant changes 30 minutes apart.

⁵⁸ Emergency service agency means a police force or service or a fire service or a State Emergency Service of a state or territory or the Commonwealth Bureau of Meteorology or a body that runs an emergency service specified in the regulations.

⁵⁹ ACCAN submission to the Department's consultation, p. 4.

⁶⁰ Deaf Australia submission to the Department's consultation, p. 7.

⁶¹ Vision Australia submission to the ACMA review, p. 2; Blind Citizens Australia submission to the ACMA review, p. 2.

⁶² ACCAN submission to the ACMA review, p. 8.

⁶³ MAA submission to the ACMA review, p. 6.

⁶⁴ ACCAN submission to the ACMA review, p. 8; Deaf Society of NSW submission to the ACMA review, p. 2; Deaf Australia submission to the ACMA review, p. 3.

Therefore, transmitting and captioning every emergency warning that is requested of them is impractical.⁶⁵

Additional information

The Victorian Deaf Society (VicDeaf) provides information, programs and education to over 16,000 deaf and hard-of-hearing adults in Victoria. In leading the 2016 National Auslan Communications for Emergencies project, VicDeaf has formalised best practice protocols with Free TV and ASTRA, which provide that broadcasters will include Auslan interpreters in the frame of emergency warning broadcasts, whenever they are present.⁶⁶ As a result, Free TV has updated its Advisory Note on the Broadcast of Emergency Information⁶⁷ and ASTRA has updated its website⁶⁸ so that both include the following statement:

Where an Auslan interpreter is present at a news conference or official briefing regarding an emergency, licensees will include the Auslan interpreter in frame where it is practicable to do so.

While not enforceable by the ACMA, these advisory notes help to establish expectations among broadcasters and audiences about the production and transmission of emergency warnings.

ACMA response

The ACMA notes perspectives expressed by consumer stakeholders regarding the importance of captioning emergency warnings and their calls to require all emergency warnings to be captioned, not only where it is reasonably practicable to do so.

However, there may be circumstances outside the licensee's control that prevent captioning of emergency warnings. For example, there may not be time to caption an emergency warning because of the urgency to broadcast the warning itself immediately. Therefore, the ACMA considers that the current legislative requirement for broadcasters to provide captioning for emergency warnings, where it is reasonably practicable to do so, is appropriate.

In relation to calls for the inclusion of Auslan interpreters, the ACMA notes recent undertakings (by ASTRA and Free TV) made to VicDeaf in relation to ensuring an Auslan interpreter is included in the broadcast if they are present at the announcement. While those undertakings are not enforceable by the ACMA, the ACMA proposes to monitor future enquiries and complaints about this matter to assess whether any further regulatory intervention should be considered.

Imparja has submitted that it is not feasible for it to be required to broadcast all emergency warnings due to the large, multi-community and heterogeneous nature of its licence area and its resource constraints. The ACMA acknowledges Imparja's concerns but notes that the obligation to transmit emergency warnings in text and speech only applies where an emergency service agency has requested a licensee to do so, or where notified by the minister.⁶⁹ Also, as noted above, the current

⁶⁵ Imparja submission to the ACMA review, pp. 8–9.

⁶⁶ As part of VicDeaf's National Emergency Management Project, see <http://www.vicdeaf.com.au/news.asp?aid=963&t=introducing-the-national-emergency-management-project>.

⁶⁷ http://www.freetv.com.au/Media/Advisory_Notes/Updated_Emergency_Information_Broadcasts.pdf, accessed on 5 October 2016.

⁶⁸ <http://astra.org.au/advocacy/broadcast-of-emergency-information>, accessed on 5 October 2016.

⁶⁹ Paragraphs 7(1)(d) and 7(1)(e) of Schedule 2 to the BSA.

provision provides that emergency warnings do not need to be captioned where it is not 'reasonably practicable' for the licensee to do so. Any consideration for modifications of these requirements based on the nature of the licence area or licensee is a broader policy matter for government.

Record-keeping

Relevant provision:

> s130ZZD—record-keeping.

The matter of emergency warning record-keeping falls within the scope of the Department's consultation, however as required by the BSA, the ACMA has considered the operation of the provisions as part of this review.

Background

Section 130ZZD requires that *written* records must be made to demonstrate compliance with annual captioning targets. These records must be kept for at least 90 days after the annual compliance report is submitted.

Section 130ZZD also requires that *audio-visual* records must be made to demonstrate compliance with the Captioning Standard and the obligation to broadcast emergency warnings. These records must be kept for at least 30 days after the program is broadcast or 90 days if a complaint is lodged about the program.

Prior to 2015, broadcasters were required to keep both written and audio-visual records relating to compliance with the emergency warnings provisions. This was amended by the *Broadcasting and Other Legislation Amendment (Deregulation) Act 2015*.

In the context of a proposed change from annual compliance reporting to a complaints-based system in the Broadcasting and Other Legislation Amendment Bill 2014, MAA and ACCAN both expressed concerns in their responses to the Senate Inquiry into that Bill about making any changes to record-keeping requirements that would facilitate removal of annual compliance reporting.⁷⁰

The Department's consultation noted that broadcasting stakeholders had previously raised concerns about the record-keeping requirements for emergency warnings being burdensome, but stated that completely removing record-keeping requirements might not provide the ACMA with the ability to investigate issues.

In its response to the Department's consultation, Free TV expressed support for removing the record-keeping requirements for emergency service warnings.⁷¹

Summary of submissions to this review

The ACMA received two submissions that addressed this matter.

Free TV commented that the general record-keeping requirements allow the ACMA to investigate any issues that arise and would work with a complaints-based system to provide a balanced approach without imposing an unnecessary administrative burden. Free TV stated that additional record-keeping requirements for emergency warnings are unnecessary and disproportionate to any benefit derived.

⁷⁰ MAA submission to the Senate Inquiry, p. 4; A ACCAN submission to the Senate Inquiry, pp. 4–5.

⁷¹ Free TV submission to the Department's consultation, p. 6.

MAA argued that it is essential to maintain record-keeping requirements as they allow consumers to know that the regulated targets are being met.⁷² In relation to emergency warnings, MAA submitted that broadcasters should continue to be required to keep records of whether emergency service warnings were captioned.⁷³

ACMA response

The ACMA agrees with submitters about the ongoing importance of accurate record-keeping in any compliance model and recognises that broadcasters generally have well-established systems for the storage of audio-visual material as broadcast, and logging of captioning errors.

The ACMA is of the view that the current provisions are operating effectively and should be maintained.

Annual compliance reports

Relevant provision:

- > s130ZZC—annual compliance reports.

This matter falls within the scope of the Department’s consultation, however as required by the BSA, the ACMA has considered the operation of the provisions as part of this review.

Background

Broadcasters must prepare and give the ACMA a report within 90 days after the end of each financial year, relating to compliance with:

- > captioning obligations
- > emergency warnings broadcasts
- > the Captioning Standard.

The annual compliance reports must be in a form approved by the ACMA and the ACMA must publish the reports on its website.

The 2014 Deregulation Bill proposed removing the requirement for annual compliance reporting. While some broadcasters were supportive of this proposal⁷⁴, other stakeholders opposed the change.⁷⁵ The Age and Disability Discrimination Commissioner submitted that the annual reporting requirements were intended to mitigate the risk of shifting the responsibility for investigating captioning complaints from the AHRC to the ACMA and have done so.⁷⁶

In 2015, the ACMA simplified the forms for annual compliance reports to streamline reporting requirements. The focus is now on overall compliance rather than exception reporting on specific captioning obligations. Broadcasters only provide substantive reporting on the captioning target obligation and no longer provide

⁷² Free TV submission to the ACMA review, p. 13.

⁷³ MAA submission to the ACMA review, p. 6.

⁷⁴ See submissions to the Senate Inquiry, for example the Free TV submission, SBS submission pp. 3–4 and ABC submission pp. 2–3.

⁷⁵ See submissions to the Senate. For example, Ai-Media submission, p. 7 (proposing an ‘intermediate’ position); Deafness Council WA submission, p. 1; ACCAN submission, pp. 4–5; MAA submission, pp. 2–3; Communications Law Centre, UTS submission, pp. 2–4; and nine citizen submissions.

⁷⁶ Age and Disability Discrimination Commissioner submission to the Senate Inquiry, p. 2.

explicit data in these reports on compliance with other captioning obligations, including the Standard and emergency warnings.

The Department's consultation put forward four options in relation to annual reporting requirements:

1. Removing annual reporting requirements for free-to-air television broadcasters and relying on a complaints-based model—noting that this might necessitate an additional requirement for broadcasters to effectively promote the availability of captioning and relevant complaints mechanisms.⁷⁷
2. Transferring responsibility for compliance reporting for subscription television from the licensee to the channel provider (although the licensee would retain ultimate responsibility for compliance).
3. Removing annual reporting requirements for emergency warnings (the consultation paper did not refer to changes made to the ACMA annual compliance reporting form such that distinct reporting on emergency warnings is no longer required).
4. No change to current arrangements.

Several broadcaster submissions to the Department's consultation supported the removal of the annual reporting requirements. Submissions from representative groups put forward that annual reporting ensures that consumers know the regulated target is being met⁷⁸ and expressed concern that removing the reporting requirements would place the burden of monitoring compliance unduly upon consumers.⁷⁹

The ABC submitted to the Department that the current reporting requirements should be maintained, noting the recent revisions made to the reporting requirements by the ACMA.⁸⁰

Summary of submissions to this review

The ACMA received six submissions that addressed this matter.

Two submissions put forward that it is essential to maintain the reporting requirements, as they allow audiences to know that targets are being met.⁸¹

The Deaf Society of NSW submitted that viewers who are deaf are not seeing the impact of reporting, as viewers are unsure about where and how to access the information. In addition, the Society submitted that reports are of limited use after the end of the financial year, long after an error had occurred or a target was not met.

Three submissions, from broadcasters, proposed that annual reporting requirements be removed and replaced with a complaints-based system and/or spot audits.⁸² SBS submitted that the reporting process takes significant time and resources and is of limited value to audiences—particularly given the time between any faults occurring

⁷⁷ *Captioning regulatory framework policy consultation paper*, Department of Communications and the Arts, December 2015, p. 13.

⁷⁸ MAA submission to the Department's consultation, p. 2.

⁷⁹ ACCAN submission to the Department's consultation, p. 3.

⁸⁰ ABC submission to the Department's consultation, p. 2.

⁸¹ MAA submission to the ACMA review, p. 6; Deaf Australia submission to the ACMA review, p. 3.

⁸² Free TV submission to the ACMA review, p. 13; SBS submission to the ACMA review, p. 2;

Imparja submission to the ACMA review, p. 9.

and when the reports are published.⁸³ Free TV argued that the value of the reporting is limited for free-to-air television, given there is now a 100 per cent captioning requirement between 6 am and 12 am.⁸⁴

SBS noted that it has internal processes in place to monitor compliance, so the burden would not rest with viewers. SBS also noted that it is motivated to meet its captioning requirements because they are legally mandated and because it is committed to accessibility, not because of annual reporting. Adapting existing recorded data to the form approved by the ACMA was noted by SBS to be resource intensive.

In relation to the reporting of emergency warnings, Free TV submitted that reporting on an emergency broadcast up to a year after the event is not timely or useful.

ACMA response

Consumer stakeholders have indicated that the requirements for annual compliance reporting contribute to community confidence that captioning obligations are being met. The ACMA acknowledges submissions from broadcasters that regard reporting as unnecessary and/or favour additional flexibility in the way that they meet reporting requirements. To date, the ACMA has sought to strike a balance between these interests, including by streamlining its annual compliance reporting form in 2015.

The ACMA notes, in relation to the requirement to report on emergency warnings, that due to reporting form changes, licensees are no longer subject to any specific reporting requirements for emergency warnings.

Any further reform to annual compliance reports should have regard to the costs and benefits of those arrangements and would most appropriately be considered as part of the Department's consultation.

Framework for the Captioning Standard

Relevant provisions:

s130ZZA—captioning standards.

Background

All free-to-air and subscription broadcasters must comply with a captioning quality standard. The [Television Captioning Quality Standard](#) aims to ensure that captions are meaningful to viewers who are deaf and hearing impaired.

S130ZZA sets out the framework for the Captioning Standard, defining 'quality' for the purposes of the Standard as readability, comprehensibility and accuracy.

As part of the Deregulation Act in 2015, S130ZZA was amended to include the following:

⁸³ SBS submission to the ACMA review, p. 2.

⁸⁴ Free TV submission to the ACMA review, p. 13.

(2A) In determining the standard under subsection (1), the ACMA must consider the differences (including time constraints for live content) between providing captioning services for:

- (a) live television programs and pre-recorded television programs; and
- (b) wholly live or wholly pre-recorded television programs and television programs that include both live and pre-recorded program material.

(2B) Subsection (2A) does not authorise the ACMA to determine that a lower quality (within the meaning of subsection (2)) of captioning service is acceptable for a kind of program or program material.

ACCAN previously submitted that these amendments are meaningless because they are contradictory.⁸⁵ ASTRA submitted that the provisions are illogical, stating that it does not support the provision preventing the ACMA from determining that a lower standard of captioning is acceptable for live captioning. In this regard, ASTRA argued for recognition of the fact that the circumstances in which live captions are prepared are very different to the pre-prepared captioning environment.⁸⁶

Summary of submissions to this review

The ACMA received three submissions that addressed this matter.

The ABC expressed support for the recent changes to the framework that require the ACMA to consider the differences between live and pre-recorded captioning services when applying the Standard.⁸⁷

Deaf Australia and the Deaf Society of NSW expressed concerns about the terms used to define 'quality' (readability, comprehensibility and accuracy). Deaf Australia submitted that the current terms are ambiguous and proposed a five star quality system, referring to accessibility (captions travelling with programs between different providers); availability (ease of reading and positioning); quality (speed, time lag, age appropriateness and spelling); continuity (consistent captioning within a series); and dignity (ability to make complaints and watch programs with ease and confidence).⁸⁸ The Deaf Society of NSW submitted that people want consistency and an industry benchmark for captioning and noted that some elements of quality—such as the positioning of captions—are not captured by the current framework.⁸⁹

The ACMA also received eight submissions commenting on the Captioning Standard and captioning quality more generally. These included concerns from caption users about the poor quality and inaccuracy of captions, particularly in relation to news broadcasts, and a comment from one submitter that caption font size is displayed in 'double height' character option, which is no longer appropriate now televisions have large flat screens and higher resolution, as captions appear excessively large and block out too much of the picture. The submitter suggested that this could be resolved if the text size was transmitted in two different versions, so that the appropriate one could be selected.⁹⁰

In relation to the Captioning Standard itself, Free TV and the ABC both submitted that the Standard should recognise the difference in creating pre-prepared captions

⁸⁵ ACCAN submission to the Senate Inquiry, p. 4.

⁸⁶ ASTRA submission to the Senate Inquiry, p. 13.

⁸⁷ ABC submission to the ACMA review, p. 4.

⁸⁸ Deaf Australia submission to the ACMA review, pp. 2–3.

⁸⁹ Deaf Society of NSW submission to the ACMA review, p. 2.

⁹⁰ Drake submission to the ACMA review, p. 1.

and live captions.⁹¹ Free TV commented that the distinction between program and segment should be removed.⁹² MAA and Ericsson both expressed their support for the current formulation of the Captioning Standard, with Ericsson commenting that the quality of captions must be judged in the context of the program as a whole.⁹³

Additional information

Over half of all captioning complaints received by the ACMA between 1 July 2012 and 31 December 2016 were about the quality of captioning. This included complaints about missing captions, latency or time lag of the captions, and the placement of captions and complaints about superimposed advertising—such as pop-ups, overlays and banners interfering with the ability of viewers to read captioning.

When assessing broadcaster compliance with the quality of a captioning service, the ACMA takes a holistic approach to determining quality. For example, when investigating a complaint, the ACMA considers the cumulative effect of the readability, comprehensibility and accuracy of captions to assess whether the captioning service, overall, enabled audiences to meaningfully access the program. The ACMA also considers factors such as whether the captions are positioned to avoid obscuring other on-screen text, any part of the speaker's face and any other important visuals.

The captioning must provide meaningful access to the program, regardless of circumstances such as the program genre or whether the captioning is live or pre-prepared. This approach could include consideration of factors such as whether a pop up advertisement, or the positioning of captions, would prevent a viewer from reading the captions.

The ACMA is aware of technological developments within the broader captioning industry that could favourably impact the quality of caption delivery. One example is a process innovation developed by Ericsson and the BBC to reduce the latency of live captioning. This approach utilises the time taken to compress audio and video streams for transmission and distribution to increase the time available for captioning live content and decrease the apparent delay to viewers. This system is currently being rolled out to all BBC channels in the United Kingdom.⁹⁴

ACMA response

The ACMA acknowledges stakeholder concerns about the way in which quality is defined for the purposes of the Captioning Standard (readability, comprehensibility and accuracy) and about the application and implication of the provisions addressing live captioning.

The ACMA also notes that there is continuing concern among some stakeholders about the quality of captions and a divergence of views among stakeholders in general about how to best address these issues.

The ACMA notes that the Captioning Standard was developed following extensive stakeholder consultation. In December 2012, a draft Standard was released for public comment with 20 submissions received. The Captioning Standard came into

⁹¹ ABC submission to the ACMA review, pp. 4–5; Free TV submission to the ACMA review, p. 11.

⁹² Free TV submission to the ACMA review, p. 11. The Captioning Standard defines program to include both a television program and a distinct segment within a television program.

⁹³ Ericsson Submission to the ACMA review, pp. 1–3; MAA submission to the ACMA review, p. 6.

⁹⁴ <https://www.ericsson.com/news/2017177>, accessed 8 December 2016.

effect in June 2013. Prior to the Captioning Standard's development, the ACMA considered a set of meta-principles when assessing the quality of captioning in its investigation of complaints. The meta-principles are a concise version of draft quality indicators, developed in consultation with a Co-regulatory Captioning Committee (the CCC). The CCC was established in 2010 to develop indicators for assessing the quality of captioning. CCC members included broadcasters, deaf and hearing-impaired groups, relevant government departments and captioning service providers.

In March 2016, the ACMA completed a review of the Captioning Standard. The review required the ACMA to consider the differences between live, 'part-live' and pre-recorded programs and how these affect the quality of television captions. This review involved extensive stakeholder consultation, including a *Citizen conversation* forum with participation by over 80 attendees. The outcome of the review was that the ACMA decided to maintain the current Standard's approach to assessing the quality of captions—that is, the quality of captions are assessed in the context of the program as a whole, including the circumstances of the broadcast and the nature of the program being broadcast. The ACMA considered that this approach allows flexibility when assessing the quality of captioning for different types of programming.

The ACMA maintains the view that the quality of a captioning service needs to be considered in a holistic way, with regard to all the circumstances of a program. In this context, the ACMA notes that the current provisions have allowed for the development of a Captioning Standard that is focussed on ensuring that captioning services provide meaningful access to programs and, in this regard, the framework is operating reasonably efficiently and effectively.

However, the ACMA will continue to monitor relevant technical and other environmental developments in this context.

The compliance framework

Relevant provisions:

Schedule 2:

- > 7(1)(o)—licence condition for commercial television broadcasting licensees
- > 10(1)(eb)—licence condition for subscription television broadcasting licensees
- > 11(1)(bc)—licence condition for services provided under class licences (relevantly, this refers to subscription narrowcasters)
- > s130ZUB—disregard certain breaches of Part 9D (applies to the obligation for free-to-air television broadcasters to provide captions in accordance with the basic rule and the captioning requirements for multichannels)
- > s130ZZAB—disregard certain breaches of Part 9D (applies to the obligation for subscription television licensees to meet annual captioning targets and the captioning requirements for repeat programs and simulcast programs)
- > s130ZZA(7A)—disregard certain breaches of the Captioning Standard (to the extent to which failure is attributable to significant, reasonably unforeseeable technical difficulties).

Background

The regulatory framework established by the BSA comprises a combination of direct regulation (including standards and licence conditions) and co-regulation (industry codes).

Captioning rules are directly regulated under the BSA.⁹⁵ For commercial free-to-air and subscription television licensees, compliance is a licence condition (under Schedule 2 to the BSA). The BSA framework contemplates that individual licensees are responsible for compliance with regulatory and co-regulatory obligations (including captioning obligations). This means that where there is an affiliate arrangement in place where an affiliate largely retransmits part or all of the original broadcast, the affiliate is responsible for the material broadcast and no distinction is made between the licensee of the originating broadcast feed and the affiliated licensee.

If a licensee does not comply with captioning rules, the ACMA's enforcement options include issuing a remedial direction, accepting an enforceable undertaking, imposing an additional licence condition, or suspending or cancelling a licence. The ACMA also has the power to seek civil penalties in the Federal Court.⁹⁶

The national broadcasters, ABC and SBS, are not licenced services under the BSA.⁹⁷

For the national broadcasters, non-compliance with the Part 9D captioning rules is a breach of the BSA. Where a national broadcaster has breached the BSA, the ACMA can recommend certain actions the broadcaster should take. If the broadcaster does not act on the ACMA's recommendation, the ACMA can report the matter to the minister, who must table the report in Parliament.

The ACMA is required to disregard a breach by broadcasters to the extent that the breach is attributable to significant difficulties of a technical or engineering nature that could not reasonably have been foreseen by the licensee.⁹⁸ The ACMA also has a general discretion to decline to pursue enforcement action where a breach has occurred.

In all cases, the ACMA takes a graduated approach to enforcement action. Where a breach has occurred, regulatory action will be commensurate with the seriousness of the breach and the level of harm. The ACMA will generally use the minimum power or intervention necessary to achieve the desired result, which would usually be compliance with the relevant obligation. Further information about the ACMA's compliance and enforcement approach can be found in the ACMA's [compliance and enforcement policy](#).⁹⁹

Free TV previously submitted to the Department's consultation that:

The requirement to caption 100% of programs on the primary commercial television broadcasting service, coupled with the inherent complexity in providing a captioning service, means that in any given year, most (if not all) commercial free-to-air

⁹⁵ Some provisions relating to captioning are also reflected in the Subscription Broadcast Television Codes of Practice 2013 and Subscription Narrowcast Television Code of Practice 2013. These state that closed captioning, where available, will be clearly identified in program schedules and program guides. The Commercial Television Industry Code of Practice 2015 and the ABC and SBS television codes of practice do not include equivalent provisions about captioning.

⁹⁶ By contrast, the ACMA's enforcement options in the event of a code of practice breach are limited to accepting agreed measures or enforceable undertakings, or imposing an additional licence condition.

⁹⁷ ABC and SBS are independently authorised to broadcast under the *Australian Broadcasting Corporation Act 1983* and *Special Broadcasting Service Act 1991*, respectively.

⁹⁸ Sections 130ZUB and 130ZZAB of the BSA.

⁹⁹ www.acma.gov.au/theACMA/About/Corporate/Responsibilities/compliance-enforcement-policy.

broadcasters will breach their licence condition requiring compliance with Part 9D. There is no room for error.

At present, broadcasters are reliant on the ACMA using discretion and regulatory forbearance for minor breaches of these licence conditions. This is an unsatisfactory situation, which leaves commercial free-to-air broadcasters exposed to very serious sanctions for breaches that may well be unavoidable.¹⁰⁰

Ai-Media submitted to the Senate Inquiry that there should be more flexibility for captioning breaches due to unforeseen technical difficulties. It submitted that reporting small outages was costly. It proposed that a benchmark of 99.5 per cent should be set, and that any failure to comply with the Part 9D captioning obligations should be disregarded where the outage (or total lost time) did not exceed 0.5 per cent.¹⁰¹

Deaf Australia submitted to the Senate Inquiry that increased flexibility could lead to broadcasters absolving themselves from their responsibility to monitor captions.¹⁰²

Summary of submissions to this review

The ACMA received five submissions that addressed this matter.

Free TV submitted that compliance with Part 9D should not be a licence condition, stating that captioning should be subject to a separate compliance regime, similar to the regime that applies to a breach of the code, given that the penalties for breaching a licence condition can be severe and in a 100 per cent captioning target environment there is no room for error.¹⁰³

The Deaf Society of NSW submitted that the fact that the captioning requirements are a licence condition reflects the importance of captioning in providing viewers who are deaf and hearing impaired with access to television.¹⁰⁴

Free TV and ASTRA¹⁰⁵ both argued for expansion of the rules permitting the ACMA to disregard breaches resulting from technical or engineering difficulties to all circumstances over which they have no control. Free TV proposed that both technical and human-caused unforeseen difficulties should result in disregarded breaches and that licensees not be in breach if unable to provide a captioning service due to circumstances beyond their control, where they have acted 'reasonably and honestly'.¹⁰⁶

Other stakeholders do not support greater flexibility. ACCAN submitted to the ACMA that the current provisions provide necessary safeguards and no additional flexibility is needed.¹⁰⁷ Deaf Australia submitted that if a penalty is applied to broadcasters, it may be an incentive to improve the quality of captions.¹⁰⁸ The Deaf Society of NSW

¹⁰⁰ Free TV submission to the Department's consultation, p. 9.

¹⁰¹ Ai-Media submission to the Senate Inquiry, p. 9.

¹⁰² Deaf Australia submission to the Senate Inquiry, p. 10.

¹⁰³ Free TV submission to the ACMA review, pp. 5–6.

¹⁰⁴ Deaf Society NSW submission to the ACMA review, p. 3.

¹⁰⁵ ASTRA submission to the ACMA review, p.7.

¹⁰⁶ Free TV submission to the ACMA review, pp. 6–7; ASTRA submission to the ACMA review, p. 7.

¹⁰⁷ ACCAN submission to the ACMA review, p. 9.

¹⁰⁸ Deaf Australia submission to the ACMA review, p. 4.

submitted that a balance is needed and suggested that a warning system would ensure that there are not systemic issues that remain unresolved.¹⁰⁹

Free TV submitted that a licensee should not be in breach of their captioning obligations if a captioning failure affects a minority of their licence area, and the BSA should include a provision stating that compliance will be measured with reference to the majority of a particular licence area.¹¹⁰ Free TV noted that this is a concern to any licensees that have more than one transmitter in a licence area:

If three separate small translators in a licence area experience a captioning failure equal to 1% of the quota, a broadcaster will have to record a non-compliance figure of 3%, even though no single viewer [in that licence area] has experienced more than a 1% failure.¹¹¹

Free TV also submitted to the ACMA that Part 9D of the BSA should be amended so that regional affiliate broadcasters are not in breach where captioning errors occur in the relay of programming being broadcast from a network source.¹¹²

ACMA response

Some licensees articulated apprehension about the inevitability of non-compliance with a 100 per cent captioning requirement (in certain circumstances) and the associated risk of serious enforcement consequences.

Although broadcasters demonstrate high levels of compliance with captioning obligations, as recorded in the ACMA's 2014–15 and 2015–16 annual reports¹¹³, no licensee that was subject to the 100 per cent captioning target between 6 am and midnight met that requirement without the allowance of disregarded breaches or target reduction orders.¹¹⁴

Captioning plays a crucial role in enabling viewers who are deaf and hearing impaired to participate in the opportunities that television offers. The ACMA is of the view that the significance of the captioning obligations is appropriately reflected through direct regulation via the BSA (Part 9D and Schedule 2).

The ACMA notes that any heightened regulatory risk faced by licensees because their captioning obligations are in licence conditions is mitigated by the ACMA's use of regulatory discretion to ensure that enforcement action is commensurate with the seriousness of the breach, taking into account all the relevant circumstances. The suspension and cancellation of a licence, and the ability for the ACMA to take the matter to court for civil penalties are high-level remedies that, to date, have not been used in relation to captioning breaches. The ACMA took no formal enforcement action against licensees that failed to meet their obligations in 2015–16.

¹⁰⁹ Deaf Society of NSW submission to the ACMA review, p. 3.

¹¹⁰ Free TV submission to the ACMA review, pp. 7–8.

¹¹¹ Free TV submission to the ACMA review, p. 7.

¹¹² Free TV submission to the ACMA review, p. 8.

¹¹³ Between 99.75 per cent and 99.99 per cent captioning in 2014–15 and between 99.86 per cent and 99.99 per cent in 2015–16 for main free-to-air channels (6 am to midnight).

¹¹⁴ For 2014–15, the shortfalls between the compliance result and the 100 per cent target were disregarded in 21 out of 92 cases due to significant unforeseen technical or engineering difficulties. The other 71 shortfalls could not be disregarded on these grounds. Consequently, 71 free-to-air services breached the captioning target in 2014–15. For 2015–16, a breach was disregarded in 22 out of 92 cases. Seventy breaches were not disregarded due a mix of technical and human error.

In these circumstances, the ACMA concludes that expanding the criteria for disregarding breaches is not justified. In particular, an expansion that contemplates *all* difficulties not reasonably foreseeable, is not appropriate in the context of complex captioning delivery systems with inherent capacity for human error. As human error is one of the most commonly cited causes of a captioning breach, the likely outcome of expanded criteria would be a significantly higher number of disregarded breaches, over which the ACMA would have no opportunity to take action. This could effectively leave only deliberate breaches open to remedy by the ACMA.

In relation to the submission that the ACMA should automatically disregard breaches that affect less than a majority of the viewers in a licence area, the ACMA is of the view that the number of people affected by a breach does not, of itself, affect or negate its seriousness or occurrence. Captioning provides an important service in enhancing the accessibility of television to people who are deaf and hearing impaired, and the number of people affected by a disruption of that service is just one of the many factors to consider in determining a breach.

The ACMA acknowledges that, in general, regional broadcasters source a substantial amount of programming from metropolitan networks, in addition to providing their own local programming. Regional affiliates may wholly re-transmit that content with no opportunity for amendment, including in relation to the captions. These are matters taken into account by the ACMA when deciding whether to investigate a matter and when deciding on an appropriate remedy in the event of a breach.

The ACMA notes the suggestion from Ai Media for replacing the current system with an allowable margin of error. The ACMA considers that the overall framework is currently operating appropriately. In the event that the framework comes under increased regulatory and practical strain, alternative models could be explored.

Linking captioning targets to compliance with the Captioning Standard

Relevant provisions:

- > s130ZZA (4),(5),(6),(7)—free-to-air television broadcasters and subscription television licensees must comply with the Captioning Standard
- > s130ZR—each free-to-air television broadcaster must provide captioning as specified by the basic rule
- > s130ZV—each subscription television licensee must meet annual captioning targets.

Background

There are two key captioning requirements for both free-to-air and subscription broadcasters: to provide a captioning service (quantitative targets) and to comply with the Captioning Standard (quality of captions).

Part 9D does not explicitly link the two requirements. However, in developing the Captioning Standard, the ACMA took the view that a program must meet the requirement of the Captioning Standard in order to be counted towards the captioning targets. A note was included in the Captioning Standard at Clause 5 to that effect.

The Captioning Standard at Clause 5 provides that:

Broadcasters and narrowcasters must, when providing a captioning service in accordance with their captioning obligations, comply with the requirements relating to quality in this Standard.

Note: In exercising its enforcement powers under the Act, the ACMA takes the position that a program that does not meet the requirements of section 5 of this Standard will not be eligible to be used by a broadcaster or narrowcaster to comply with its captioning obligations.

Summary of submissions to this review

Five submissions to the ACMA's consultation paper addressed this matter.

The Deaf Society of NSW submitted that it is preferable to link targets to compliance with the Standard, as it defeats the purpose of captioning targets if the quality of the captioning is poor.¹¹⁵ ACCAN submitted that Part 9D should be amended to include an explicit link between compliance with the captioning targets and compliance with the Standard, as from a consumer perspective, captions that are inaccurate or incomplete can be worse than no captions.¹¹⁶

Free TV, ASTRA and MAA submitted that compliance with the Captioning Standard should not be linked to compliance with the captioning targets. Free TV stated that a failure to provide a captioning service of a certain quality should not be treated as a failure to provide a captioning service at all. MAA stated that caption targets and caption quality are two separate issues, with most channels meeting or overfilling their target. They stated that the ACMA should be focused on systemic quality issues, rather than 'glitches' where a few seconds of captioning is missed.¹¹⁷

ASTRA supports the decoupling of compliance with the Standard and compliance with captioning targets. It submitted that the note to section 5 of the Standard is inappropriate and not required by section 130ZR of the BSA.¹¹⁸

Free TV submitted that Clause 5 of the Captioning Standard should be removed and, in particular does not agree that a failure to provide a captioning service of a certain quality should be treated as a failure to provide a captioning service at all. Free TV notes that 'on its face' section 130ZR contains no requirement for the captioning service to comply with the Captioning Standard.¹¹⁹

ACMA response

The ACMA notes divergent stakeholder views about whether the captioning targets should be linked to compliance with the Captioning Standard.

Allowing programs that do not comply with the Captioning Standard and so do not provide meaningful access to be counted towards captioning targets would not be of benefit to audiences and would undermine the policy goal of increased accessibility.

Explicitly de-linking the two requirements would arguably have little impact on regulatory risk for commercial television licensees—as breaching the Captioning Standard constitutes a licence condition breach, whether or not it also leads to a

¹¹⁵ Deaf Society of NSW submission to the ACMA review, p. 3.

¹¹⁶ ACCAN submission to the ACMA review, pp. 8–9.

¹¹⁷ MAA submission to the ACMA review, p. 7.

¹¹⁸ ASTRA submission to the ACMA review, p. 6.

¹¹⁹ Free TV submission to the ACMA review, p. 12.

breach of the captioning targets in the BSA. As noted above, the ACMA takes a graduated approach to compliance and enforcement, taking into account all relevant circumstances. Overall, the ACMA is of the view that the current framework is operating reasonably efficiently and effectively.

Complaints process

Background

Part 9D does not include provisions about captioning complaints. However, the consultation paper addressed the complaints process because it is closely aligned to the compliance framework and is an issue that has previously been raised by stakeholders.

If a person believes that a free-to-air commercial television broadcasting licensee or a subscription television licensee has breached the captioning rules, they can complain directly to the ACMA.¹²⁰ Alternatively, a complainant could also contact the licensee in the first instance, particularly if they think the captioning problem is a technical one that could be fixed by the broadcaster—for example, if the captions are dropping in and out.

If a person believes that a national broadcaster has breached the captioning rules, they can complain directly to the Australian Broadcasting Corporation (ABC) or Special Broadcasting Service (SBS). If they do not receive a response within 30 days, or are not satisfied with the response, they may complain to the ACMA.¹²¹

In response to the Department's consultation, Deaf Australia said the complaints process needs to be user-friendly and better advertised¹²² and Free TV submitted that contacting a broadcaster directly can often be the most efficient and effective means of having a captioning error rectified.¹²³

Summary of submissions to the review

The ACMA received five submissions that addressed the complaints process.

MAA submitted that simplifying the complaints process is a priority¹²⁴ and ACCAN noted that consumers found the process to be onerous and lengthy, and that it was in need of streamlining.¹²⁵ Ericsson submitted that regulators, broadcasters and caption providers need to help viewers better understand the issues around captioning and provide them with sufficient information to ensure that realistic expectations are managed.¹²⁶

Deaf Australia submitted that viewers should be allowed to complain in the language of their choice, including Auslan.¹²⁷ The Deaf Society of NSW submitted that people are often unsure how to make a complaint, what they are able to complain about and who they can complain to, with many contacting the captioning provider in the first

¹²⁰ Section 147 of the BSA allows a person to make a complaint to the ACMA about a breach of a licence condition.

¹²¹ Under subsection 150(2) of the BSA a person can make a complaint to the ACMA about a breach of the Part 9D rules.

¹²² Deaf Australia submission to the Department's consultation, p. 7.

¹²³ Free TV submission to the Department's consultation, p. 5.

¹²⁴ MAA submission to the ACMA review, p. 6.

¹²⁵ ACCAN submission to the ACMA review, p. 10.

¹²⁶ Ericsson submission to the ACMA review, p. 3.

¹²⁷ Deaf Australia submission to the ACMA review, p. 4.

instance. The Society suggested an education campaign including an Auslan video and offered the use of its newsletter, *The Deaf Herald*¹²⁸ to disseminate information about the complaints process.¹²⁹

Additional information

There are no codified rules for captioning complaints (as there are for complaints under television codes of practice, which prescribe requirements for both complainants and licensees). Broadcasters have reported receiving some captioning complaints directly from viewers, which covered a variety of matters including technical difficulties. ASTRA indicated that Foxtel customers normally contact the Foxtel customer contact centre with captioning issues.

In supplementary information provided to the ACMA, both Free TV and ASTRA indicated that television licensees have arrangements and procedures in place to address complaints and queries that may come from captioning providers or other third parties (such as representative groups), although they receive only a small number of complaints in this way.

Free TV undertook to update the information that accompanies its online complaint form to clarify that viewers can lodge captioning complaints directly with a licensee by using this form. Free TV also noted that broadcasters are willing to update the complaints information on their websites to make the complaints process clearer.

SBS has information on its website about the captioning complaints process, including in relation to technical difficulties. The website indicates that while SBS attempts to respond to all general complaints, it is not always possible to do so. The ABC has a general online complaints form on its website and a complainant can elect to receive a response using this form.

ACMA response

The ACMA acknowledges concerns expressed by some stakeholders about the complaints process, including a lack of clarity about what the subject of a complaint can be, who to make complaints to, and concerns about being able to make complaints in a way that is accessible to people who are deaf and hearing impaired. The ACMA agrees that clear and accessible complaints related information is critical. Aspects of the complaints/investigation process (including the time it takes to resolve complaints) may remain a source of frustration to audiences. The complaints/investigation framework necessarily reflects the rules of procedural fairness.

That said, the ACMA reiterates its commitment to continuous improvement of the resources on its website, such as the Auslan videos explaining the captioning requirements and complaints process. The ACMA will also continue to engage with stakeholders to ensure that useful information is effectively disseminated.

Other accessibility issues

The ACMA received several submissions that fall outside the scope of this particular review. The issues raised in these submissions advocate enhanced accessibility through the provision of:

- > audio description

¹²⁸ Deaf Society of NSW produces a monthly email newsletter called *The Deaf Herald* for members of the deaf community and wider community http://deafsocietynsw.org.au/information/page/deaf_herald.

¹²⁹ Deaf Society of NSW submission to the ACMA review, p. 3.

- > enhanced verbal information
- > enhanced Auslan signing.

Audio description

Audio description of television programs is the vocalised description of broadcasts to assist viewers who are blind and visually impaired. By way of background, it is noted that in 2010, a *Media Access Review Final Report* was tabled in Parliament. One of its recommendations was that a trial of audio description be undertaken.¹³⁰ The trial commenced in 2012 and was undertaken by the ABC. The ABC submitted a report to the then Minister for Broadband, Communications and the Digital Economy in December 2012.¹³¹ In April 2015, the ABC commenced a 15-month trial of audio description on iView, with an interim report released in November 2015.¹³² The trial concluded in June 2016 and a final report was released in April 2017.¹³³ On 6 April 2017, the minister announced the formation of an Audio Description Working Group to examine options for increasing the availability of audio description services in Australia. The working group is due to report to the government by 31 December 2017.¹³⁴

The ACMA received five submissions that commented on this issue. These submissions argued that audio description is a vital service for audiences who are blind and vision impaired, and the provision of audio description should fall within the scope of Part 9D.¹³⁵ The submitters noted that Australia is lagging behind international practice regarding the provision of audio description and supported an incremental approach to introducing audio description targets for television services.¹³⁶

Provision of enhanced verbal information

The ACMA received three submissions from representative groups for audiences who are blind and vision impaired, arguing that the requirement to transmit emergency warnings in both text and speech should be extended to the provision of other information, such as warnings about disturbing themes, or information about counselling services provided after a distressing program or segment.¹³⁷

Provision of enhanced Auslan signing

The ACMA received one submission that commented on the lack of Auslan signing on television. This submission argued that captioning is not meaningful for people who are deaf and whose natural language is Auslan, and therefore signing should be required to be provided on television in Australia, as it is in some other countries.¹³⁸

¹³⁰ Department of Broadband, Communications and the Digital Economy, *Investigation into access to electronic media for the hearing and vision-impaired: media access review: final report*, December 2010.

¹³¹ <https://www.communications.gov.au/sites/g/files/net301/f/ABC-Audio-Description-Trial-Report2.pdf>

¹³² <https://www.communications.gov.au/documents/audio-description-trial-iview-interim-report-november2015>

¹³³ <https://www.communications.gov.au/documents/final-report-trial-audio-description-abc-iview>

¹³⁴

http://www.minister.communications.gov.au/mitch_fifield/news/new_audio_description_working_group_to_improve_accessibility#.WPlurk1f270

¹³⁵ Australian Blindness Forum submission to the ACMA review, p. 2.

¹³⁶ Vision Australia submission to the ACMA review, p. 4.

¹³⁷ Vision Australia submission to the ACMA review, p. 2; Australian Blindness Forum submission to the ACMA review, p. 3.

¹³⁸ Val Fox submission to the ACMA review, p. 1.

ACMA response

The ACMA acknowledges the concerns raised in these submissions. They all contemplate areas not currently covered by Part 9D and are therefore outside scope of this review. Consideration of enhancements to existing legislation are a matter for government but the submissions have been recorded here for completeness and to assist any future consideration of these issues.

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