

Investigation report no. BI-621

Summary	
Licensee	General Television Corporation Pty Ltd (Licensee)
Relevant legislation/standard	<i>Broadcasting Services Act 1992</i> (the BSA) <i>Broadcasting Services (Television Captioning) Standard 2013</i> (the Standard)
Finding	Breach of subsection 130ZZA(4) of Part 9D of the BSA [compliance with captioning standard by a commercial licensee] Breach of paragraph 7(1)(o) of Schedule 2 of the BSA [licence condition to comply with Part 9D]
Program [type]	<i>9NEWS Breaking News</i> [News]
Date of broadcast	11 June 2021
Type of service	Commercial—television
Attachments	A – relevant provisions of the BSA and the Standard B – table of distinct program segments in the broadcast of 11 June 2021 with summary of findings C – extracts from the Licensee’s submissions to the ACMA

Background

At 11.44 am on 11 June 2021, General Television Corporation Pty Ltd (the **Licensee**) broadcast a news update on *9NEWS Breaking News* (the **Program**), comprising a live press conference by the Victorian Government relating to COVID-19 and extreme weather events in Victoria.

On 15 June 2021, the Australian Communications and Media Authority (the **ACMA**) received a complaint alleging that the captioning provided on the Program was inaccurate.

On 22 October 2021, the ACMA commenced an investigation under the BSA into the Program.

The ACMA has investigated the Licensee's compliance with:

- > subsection 130ZZA(4) of the BSA, relating to quality under the Standard
- > the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

The Program

The Program was broadcast live, in the form of a news bulletin, comprising a Victorian Government press conference on COVID-19 and wild weather in the State. The Program was approximately 41 minutes in duration.

The press conference was divided into 4 parts and featured 3 speakers: the Hon. James Merlino (Acting Premier of Victoria), Professor Brett Sutton (Victoria's Chief Health Officer) and Tim Wiebusch (Chief Officer Operations at Victoria State Emergency Service), and included questions from reporters at the end of the broadcast.

Legislative framework

Subsection 130ZZA(4) of the BSA imposes an obligation on licensees to comply with the Standard determined by the ACMA under subsection 130ZZA(1) of the BSA.

The Standard establishes minimum requirements relating to the quality of captioning services to ensure that captions are meaningful to deaf and hearing-impaired viewers¹. Specifically, the Standard requires captions to be readable,² accurate³ and comprehensible.⁴

A 'captioning service' is defined in section 4 of the Standard as 'a service in which the captions are provided for programs that enable the viewer to follow the speakers, dialogue, action, sound effects and music of a program'.

'Captions' is defined in section 4 of the Standard as 'the visual translation of the soundtrack of a program in English, in word form'.

The Standard stipulates that the quality of a captioning service for a program must be considered in the context of the program as a whole.⁵ When determining the quality of a captioning service for a program, the cumulative effect of the readability, accuracy and comprehensibility of the captions must be considered.⁶

Compliance with the Standard by a commercial television broadcasting licensee is required under subsection 130ZZA(4). Subsection 130ZZA(4) is in Part 9D of the BSA and, therefore, compliance with the Standard is a licence condition for commercial television broadcasting licensees under paragraph 7(1)(o) of Schedule 2 to the BSA.

¹ Section 3 of the Standard.

² Paragraph 7(a) of the Standard.

³ Paragraph 8(a) of the Standard.

⁴ Paragraph 9(a) of the Standard.

⁵ Paragraph 6(a) of the Standard.

⁶ Paragraph 6(c) of the Standard.

Subsection 130ZZA(7A) specifies circumstances in which a breach of subsection 130ZZA(4) (captioning standards) can be disregarded.

Relevant provisions of the BSA and the Standard are provided at **Attachment A**.

Assessment of distinct program segments

The definition of ‘program’ in section 4 of the Standard includes a television program and a distinct program segment within a television program.

Paragraph 6(b) of the Standard states the following:

When determining the quality of a captioning service for a program that is a distinct program segment within a television program, the captioning service must be considered in the context of that distinct program segment on its own.

The Explanatory Statement to the Standard states the following:⁷

Paragraph (b) of section 6, and the definition of “program” in section 4, together have the effect that the quality of a captioning service for a program that is a distinct program segment within a television program will be considered in the context of that distinct program segment on its own, provided that the segment is unrelated to other program segments. So, for example, a current affairs program may consist of several segments which are each distinct from and unrelated to other segments in that program.

Read together, the definition of program in the Standard and paragraph 6(b) of the Standard requires that, in the case of a program with distinct program segments, the quality of the captioning service must be considered in the context of each distinct program segment.

Similar to a current affairs program, a news program generally consists of segments, which may be distinct and unrelated to other segments.

Assessment of live captioning

The Explanatory Statement to the Standard states the following:⁸

The ACMA recognises that broadcasters and narrowcasters may use different methods of captioning, such as live captioning and pre-prepared captioning. The ACMA takes the view that it is important to consider whether the captioning service provided with a program is what would be expected in the context of the program as a whole.

Factors to consider include the circumstances of the broadcast and the nature of the program being broadcast. For example, it is reasonable to expect that during the live broadcast of a fast-paced sporting match, there would be a time lag between the captions and the soundtrack and the caption lines may not end at natural linguistic breaks.

In determining the quality of captioning, the ACMA takes into account, among other factors, the circumstances of the broadcast, including the nature of live captioning and the fact that delays may occur. The ACMA had regard to this in the present investigation, but also notes that, regardless of the method of captioning, the captioning provided for a program must be meaningful to deaf and hearing-impaired viewers.

Assessment of broadcast of the Program

The ACMA has assessed whether the captioning service for the Program, broadcast on 11 June 2021, complied with the requirements relating to quality set out in the Standard. The outcome of

⁷ Explanatory Statement for the *Broadcasting Services (Television Captioning) Standard 2013*.

⁸ Explanatory Statement for the *Broadcasting Services (Television Captioning) Standard 2013*.

this assessment determines whether the Licensee has complied with the Standard and, therefore, the licence condition.

As part of its assessment, the ACMA reviewed a copy of the broadcast of the Program provided by the Licensee, which contained 4 distinct program segments, as follows:

- Wild weather update by Acting Premier of Victoria (approximately 2 minutes) (**Segment 1**)
- COVID-19 (updates by: Acting Premier of Victoria, approximately 5 minutes; Victoria's Chief Health Officer, approximately 7 minutes) (**Segment 2**)
- Wild weather update by Chief Officer Operations at Victoria State Emergency Service (approximately 7 minutes) (**Segment 3**)
- Questions by reporters to Victoria's Chief Health Officer and Acting Premier of Victoria (approximately 20 minutes) (**Segment 4**).

The quality of the captioning service has been assessed in the context of each distinct program segment. The table at **Attachment B** lists the relevant captioning issues in relation to the distinct program segments.

Issue 1: Did the licensee comply with the Standard and, accordingly, comply with subsection 130ZZA(4) of the BSA?

Finding

The captioning service for the Program did not meet the requirements relating to quality imposed by the Standard and, accordingly, the Licensee failed to comply with subsection 130ZZA(4) of the BSA.

Reasons

The ACMA's assessment showed that there were issues with the captioning service in the 4 distinct program segments of the Program. These issues are set out in the table at **Attachment B**.

The ACMA considers the cumulative effect of the issues relating to the accuracy and comprehensibility of the captions in the 4 distinct program segments were significant enough, such that the Program was not meaningful to deaf and hearing-impaired viewers to the Program.

Segment 1

Examples include, but are not limited to the following:

- > Accuracy
 - Captions for spoken words were not captioned between 11:44:00 and 11:45:32 am (subparagraph 8(b)(i) of the Standard).
- > Comprehensibility
 - Captions did not coincide with the onset of speech (subparagraph 9(b)(iii) of the Standard); there was latency of approximately 9 and 10 seconds on 2 occasions, i.e., between 11:45 am and 11:46 am.

Segment 2

Examples include, but are not limited to the following:

> Accuracy

- Captions were not verbatim and, if it was not possible for the captions to be verbatim, they did not reflect the actual meaning of the words spoken (subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard); for example:
 - at 11:46 am, 'To all the Victorians', was captioned as 'To all the Taureans'
 - at 11:47 am, '20,752 people got vaccinated yesterday', was captioned as '7000, but it is good news we are at zero. 7250 people got vaccinated yesterday'
 - at 11:48 am, 'or you've just popped some strepsils, then you know what you have to do', was captioned as 'or you have just popped some strips is a you know we have to do – lozenge'.

> Comprehensibility

- Captions appeared and disappeared too quickly for the viewer to read them (subparagraph 9(b)(ii) of the Standard). For example, at 11:48 am, the text 'we're looking to make QR check-in is compulsory for all', and at 11:49 am the text, 'however the amnesty around enforcement is in place for another two weeks', appear on screen for approximately 1 second.
- At several points during the distinct program segment, captions did not coincide with the onset of speech, (subparagraph 9(b)(iii) of the Standard); latency of captions of this kind ranged from approximately 10 seconds to 13 seconds between the commencement of speech and captions appearing. For example, latency at 11:46 am was 13 seconds and approximately 10 seconds at 11:48 am.

Segment 3

Examples include, but are not limited to the following:

> Readability

- Captions were repeated, which interrupted the natural flow of the captioning, such that the captions did not form an understandable segment. For example, 'the chain of transmission to be run-down' was spoken once but captioned 3 times entirely or in part, between 11:56:17 am and 11:56:23 am (subparagraph 7(b)(ii) of the Standard).

> Accuracy

- Captions for spoken words were omitted (subparagraph 8(b)(i) of the Standard); for example,
 - 'and the Reservoir household' was spoken but not captioned at 11:52 am
 - 'Kappa' was spoken but not captioned at 11:52 am
 - 'city of Whittlesea in Port Melbourne' was spoken but not captioned at 11:53 am.
- Captions were not comprehensible because key words were not captioned verbatim and, as a result, the captions did not reflect the actual meaning of the spoken content (subparagraphs 8(b)(ii) and (iii) of the Standard), for example:
 - at 11:54 am, 'blood testing' was captioned as 'simpler testing'
 - at 11:56 am, 'A day of zero' was captioned as 'Dave zero'.

> Comprehensibility

- At several points during the distinct program segment, captions did not coincide with the onset of speech, (subparagraph 9(b)(iii) of the Standard); latency of captions of this kind ranged from approximately 10 seconds to 19 seconds between the

commencement of speech and captions appearing. For example, latency at timestamp 11:51 am was 19 seconds and approximately 12 seconds at 11:56 am.

Segment 4

Examples include, but are not limited to the following:

> Accuracy

- Captions for spoken words were omitted (subparagraph 8(b)(i) of the Standard); for example,
 - The Victorian town of 'Narbethong' was spoken but not captioned at 11:58 am
 - The Victorian region of 'Gippsland' was spoken but not captioned at 11:59 am
 - The Victorian waterways of 'Traralgon Creek, Thomson River and the Yarra River' were spoken but not captioned at 11:59 am.
- Captions were not comprehensible because key words were not captioned verbatim and, as a result, the captions did not reflect the actual meaning of the spoken content (subparagraphs 8(b)(ii) and (iii) of the Standard), for example:
 - at 12:00 pm, '80-100mm of rain', was captioned as '80-90mm of rain'
 - at 12:01 pm, 'Traffic.vicroads.vic.gov.au', is captioned as 'Traffic.Vic.' and 'closures@traffic.Vic.of.au'.
 - At 12:17 pm, the following question was put by a reporter to the Acting Premier: 'We have become aware of at least one mental health organisation that has been accused of falsifying suicide data to receive funding. Is this a concern and potentially has this misinformed mental health policy?'. The question was captioned as 'We have become aware of one'.

The lack of captioning meant the question and the Acting Premier's response were not meaningful to deaf and hearing-impaired viewers.
- Captions for spoken words were omitted (subparagraph 8(b)(i) of the Standard); for example, 'Kappa' was spoken but not captioned at 12:04 pm.

> Comprehensibility

- Captions did not coincide with the onset of speech, (subparagraph 9(b)(iii) of the Standard); there was latency of approximately 15 seconds on 2 occasions at 11:57 am.
- Captions included a list of suburbs that were spelt incorrectly (subparagraph 9(b)(v) of the Standard); Examples include:
 - at 11:59 am, 'Maroondah Highway' was captioned as 'Miranda Highway'
 - at timestamp 11:59 am and 12:00 pm , the suburb of Traralgon was captioned as 'to rail' and 'Elgin', respectively
 - at 12:00 pm, the Victorian region of 'Gippsland' was captioned as 'gets lent'
 - at 12:02 pm, '66KVA services' was captioned as '60 6K DA services'.

These spelling errors were material because they made it difficult for deaf and hearing-impaired viewers to understand the specific areas and services that were affected by wild weather. As a result, the distinct program segment was not meaningful to deaf and hearing-impaired viewers.

- Captions did not coincide with the onset of speech, (subparagraph 9(b)(iii) of the Standard); there was latency throughout most of this distinct program segment

commencing at 12:04 pm until the end of the Program at 12:24 pm. During this 20-minute period, there was latency ranging from 15 to 25 seconds, continuously.

- Captions included a suburb that was spelt incorrectly on 2 occasions (subparagraph 9(b)(v) of the Standard) - at 12:13 am, 'Hallam' was captioned as 'Hell' and 'hell am'.

Conclusion

The ACMA finds that the cumulative effect of the issues relating to the readability, accuracy and comprehensibility of the captions in the 4 distinct program segments resulted in the captioning service for the Program not meeting the requirements relating to quality imposed by the Standard.

The Licensee provided comments about this matter on 11 November 2021 and provided comments about the ACMA's preliminary breach finding on 29 September 2022. On both occasions, the Licensee argued that any breach found by the ACMA should be disregarded in accordance with subsection 130ZZA(7A). In the Licensee's view, the factors that contributed to the disruption of the captioning service – in particular, the delayed commencement of the captioning service for approximately 1 minute and 35 seconds after the commencement of the Program – constitute significant technical difficulties which could not reasonably have been foreseen, and which, notwithstanding its best efforts, amounted to an unavoidable obstacle to the Licensee's ability to ensure compliance with its captioning obligations (see **Attachment C**).

The Licensee also submitted that any failure to comply with the Standard was caused by a number of unprecedented difficulties caused by the COVID-19 pandemic combined with, in the case of the Program, the inconsistent commencement times for the live press conferences held by the Victorian Department of Health during June 2021 and the difficulties of conveying the correct commencement time to the relevant captioning staff at short notice.

In response to the preliminary breach finding, the Licensee submitted on 29 September 2022 that:

[...] the crux of the unforeseeable technical issue [...] was the ambiguity in commencement time of these conferences which gave rise to the unforeseeable technical limitations in this instance. Not knowing the actual commencement times of the press conferences necessarily leads to very short windows in which to action the relevant technical requirements to facilitate the readiness of live captioning services for breaking news events.

The Licensee compared the Victorian Government COVID-19 press conferences to those held by the NSW Government:

[...] press conferences by the New South Wales Government were able to be foreseen as they all commenced at 11am each day. Accordingly, this allowed for the relevant technical preparations to be attended to. This is not always possible when the precise commencement times of the Victorian Government's press conferences were only made known [...] on very short notice.

While the ACMA accepts that the variability of the start times of the Victorian Government press conferences may have presented challenges to licensees, it does not accept that these challenges were unforeseeable, especially because, by June 2021 when the Program was broadcast, the COVID-19 pandemic had been in existence for more than a year and the Victorian Government had scheduled many such press conferences, often at short notice. In light of this, the variable nature of the Victorian Government's press conferences was a known factor and it would be a reasonable expectation that the Licensee would have made the necessary captioning arrangements to be prepared for the programming changes for the press conferences.

Further, the ACMA is of the view that as the timing of the press conferences necessitates a response from human captioners to convert from pre-prepared to live captions, the failure to achieve this in a timely way is a process failure, rather than a technical or engineering failure. The Explanatory Memorandum gives an example of a significant and unforeseen technical difficulty where the provision to disregard a breach is intended to apply, as follows:

[...] if there were technical outages due to local weather conditions that resulted in a television program being broadcast without captions, then the licensee would be exempt from the provisions in the Bill due to such unforeseen technical issues.

In order for subsection 130ZZA(7A) to apply, on the date the Program was broadcast, the Licensee's failure to comply must have been attributable to significant difficulties of a technical or engineering nature that were unforeseen (such as a failure of software or hardware due to a storm). The ACMA finds that the circumstances described by the Licensee do not meet that threshold .

The Licensee also submitted that

[...] in the wake of the pandemic, a number of unprecedented difficulties and limitations have arisen which have dramatically affected the efforts of organisations such as Nine to comply with its regulatory obligations, and in particular live captioning requirements. Live captioning has been impacted by virtue of the restrictions imposed upon workers during the pandemic – working from home, internet speed, connectivity and not having access to the same systems and equipment available in the workplace have impacted the practical ability of broadcasters to comply with live captioning requirements. Nine therefore submits these issues do constitute technical issues for the purpose of section 130ZZA(7A).

The ACMA accepts that workplace changes caused by the COVID-19 pandemic, including the adoption of remote working, would have presented challenges for live captioners. The ACMA takes the view that the pandemic and its impacts, particularly in its early stages, were factors that could not reasonably have been foreseen by the Licensee. However, the ACMA considers that by the time the Program was broadcast, the challenges cited by the Licensee – including the potential for occasional periods of non-connectivity by remote workers – could be expected and therefore could reasonably have been foreseen by the Licensee. In any case, the ACMA notes that while there may have been an ongoing and foreseeable risk of disruption to the Licensee's captioning service caused by issues of a technical or engineering nature, the Licensee's submissions do not demonstrate that those risks manifested to cause the failure to comply in this case.

The Licensee also submitted that

Nine also notes these issues have previously been raised on several separate occasions with the ACMA, including the need for regulatory forbearance given the ongoing impact of the pandemic. Moreover, noting Nine is required to maintain a 100% captioning compliance rate, Nine submits there are significant and insurmountable hurdles (such as the pandemic and other limitations in the relevant technology) which are beyond its control and which render such an unyielding target effectively impossible to attain. Nine has also, through its industry representative Free TV, voiced the need for reform and forbearance in this area.

The ACMA notes that during the COVID-19 pandemic, it did consider applications for regulatory forbearance, including from commercial television broadcasting licensees, in instances where non-compliance was due to the impact of the pandemic, particularly in the short to medium term. In this regard, the ACMA granted limited regulatory forbearance in many instances at the beginning and peak of the COVID-19 pandemic, including by accepting annual captioning compliance reports that were provided later than the 28 September 2020 statutory due date and not taking enforcement action in relation to breaches where commercial television licensees failed to meet their 100% captioning targets.

In conclusion, the ACMA has taken into account the Licensee's submissions and the explanations given for the difficulties encountered in providing a captioning service for the Program. However, the ACMA is of the view that subsection 130ZZA(7A) of the BSA does not apply to the breach finding in this case. The ACMA cannot disregard the breach as the failure was not attributable to significant difficulties of a technical or engineering nature and which the Licensee could not reasonably have foreseen.

The ACMA notes the Licensee's view that regulatory forbearance is needed in response to the ongoing impact of the pandemic. The ACMA is of the view that regulatory forbearance in relation to the breach arising from the present investigation is not warranted. The ACMA notes that, although it gave limited regulatory forbearance against some breaches of the captioning rules during the

early stages of the COVID-19 pandemic, this forbearance was never intended to be ongoing, but limited, and effectively ended on 30 June 2020, which was well before the broadcast date of the Program.

Issue 2: Did the licensee comply with paragraph 7(1)(o) of Schedule 2 to the BSA?

Relevant provision of the BSA

Schedule 2—Standard conditions

Subclause 7(1) Conditions of commercial television broadcasting licences

(o) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that provision.

Finding

The Licensee did not comply with the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

Reasons

By failing to comply with the requirements relating to quality imposed by the Standard under subsection 130ZZA(4) of the BSA, the Licensee has failed to comply with the licence condition under paragraph 7(1)(o) of Schedule 2 to the BSA.

Relevant provisions

Broadcasting Services Act 1992

Section 130ZR of Part 9D of the BSA

Captioning obligations--basic rule

Basic rule

- (1) Each commercial television broadcasting licensee, and each national broadcaster, must provide a captioning service for:
 - (a) television programs transmitted during designated viewing hours; and
 - (b) television news or current affairs programs transmitted outside designated viewing hours.

Section 130ZZA of Part 9D of the BSA

Captioning standards

- (1) The ACMA may, by legislative instrument, determine standards that relate to:
 - (a) the quality of captioning services provided by commercial television broadcasting licensees for television programs; [...]
- [...]
- (4) A commercial television broadcasting licensee must comply with a standard determined under subsection (1).
- [...]
- (7A) A failure by a licensee or broadcaster to comply with a standard determined under subsection (1) is to be disregarded to the extent to which the failure is attributable to significant difficulties of a technical or engineering nature for the licensee or broadcaster, which it could not reasonably have foreseen.

Schedule 2 to the BSA

7 Conditions of commercial television broadcasting licences

- (1) Each commercial television broadcasting licence is subject to the following conditions:
 - [...]
 - (o) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee--the licensee will comply with that provision.

Broadcasting Services (Television Captioning) Standard 2013

3 Object of Standard

The object of this Standard is to specify mandatory requirements for broadcasters and narrowcasters that relate to the quality of captioning services, to ensure that captioning services are meaningful to deaf and hearing-impaired viewers.

4 Definitions

In this Standard:

Terms that are defined in the *Broadcasting Services Act 1992* have the same meaning as in that Act, unless the contrary intention appears.

[...]

captioning obligations means the legislative obligations under Part 9D of the Act that require:

- (a) commercial television broadcasting licensees and national broadcasters to provide a captioning service for programs transmitted under subsection 130ZR(1) of the Act;

[...]

captioning service means a service in which captions are provided for programs that enable the viewer to follow the speakers, dialogue, action, sound effects and music of a program.

captions means the visual translation of the soundtrack of a program in English, in word form.

distinct program segment within a television program means a distinct segment that is unrelated to other program segments within the same television program.

[...]

program includes:

- (a) a television program; and
- (b) a distinct program segment within a television program.

5 Quality of captioning services

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.

6 Determining the quality of captioning services

- (a) Subject to paragraph (b), when determining the quality of a captioning service for a program, the captioning service must be considered in the context of the program as a whole.
- (b) When determining the quality of a captioning service for a program that is a distinct

program segment within a television program, the captioning service must be considered in the context of that distinct program segment on its own.

- (c) When determining the quality of a captioning service, the cumulative effect of the following factors must be considered:
 - (i) the readability of the captions;
 - (ii) the accuracy of the captions; and
 - (iii) the comprehensibility of the captions.

[...]

7 Readability of captions

- (a) When providing a captioning service for a program, broadcasters and narrowcasters must use captions that are readable.
- (b) When determining whether captions are readable, the following factors must be considered in the context of the program as a whole:
 - (i) whether colour and font are used in the captions in a way that makes them legible;
 - (ii) whether the caption lines end at natural linguistic breaks and reflect the natural flow and punctuation of a sentence, so each caption forms an understandable segment;
 - (iii) whether standard punctuation of printed English has been used in the captions to convey the way speech is delivered;
 - (iv) whether the captions are positioned so as to avoid obscuring other on-screen text, any part of a speaker's face including the mouth and any other important visuals where possible; and
 - (v) whether the captions are no more than three lines in length.

8 Accuracy of captions

- (a) When providing a captioning service for a program, broadcasters and narrowcasters must use captions that accurately recreate the soundtrack of a program.
- (b) When determining whether captions accurately recreate the soundtrack of a program, the following factors must be considered in the context of the program as a whole:
 - (i) whether spoken content has been captioned;
 - (ii) whether the captions of spoken content are verbatim;
 - (iii) where it is not possible for the captions of spoken content to be verbatim, whether the captions reflect the actual meaning of the spoken content;
 - (iv) where the intended target audience of a program is children and the captions are not verbatim, whether the captions reflect the actual meaning of the spoken content;
 - (v) whether the manner and tone of voice of speakers has been conveyed, where practical and material; and

- (vi) whether sound effects and/or music, material to understanding the program and not observable from the visual action, have been accurately described.

9 Comprehensibility of captions

- (a) When providing a captioning service for a program, broadcasters and narrowcasters must use captions that are comprehensible.
- (b) When determining whether captions are comprehensible, the following factors must be considered in the context of the program as a whole:
 - (i) whether the captions clearly identify and distinguish individual speakers, including off-screen and off-camera voices;
 - (ii) whether the captions are displayed for a sufficient length of time to allow the viewer to simultaneously read them and follow the action of the program;
 - (iii) the extent to which the appearance of the caption coincides with the onset of speech of the corresponding speaker, sound effect or music;
 - (iv) the extent to which the disappearance of the caption coincides with the end of the speech of the corresponding speaker, sound effect or music;
 - (v) whether the words used in the captions have been spelt correctly;
 - (vi) where a word is not spelt correctly, whether the spelling provided nevertheless conveys the meaning of the actual word;
 - (vii) whether explanatory captions are provided for long speechless pauses in the program;
 - (viii) the extent to which a caption over-runs a shot or scene change; and
 - (ix) the extent to which the appearance or disappearance of the caption, as the case may be, coincides with the relevant shot or scene change.

Attachment B

TABLE OF DISTINCT PROGRAM SEGMENTS, APPROXIMATE DURATION AND ASSOCIATED KEY ISSUES

Bold and shaded – Breach due to captioning issues identified in the distinct program segments. The captioning issues affected the accuracy, comprehensibility or readability of the distinct program segments, to the extent that they would have made it difficult for a person relying on the captions to comprehend the segment. As such, the captioning was not meaningful to viewers relying on captions.

Normal and unshaded – No breach despite captioning issues identified in the distinct program segments. The captioning issues did not affect the accuracy, comprehensibility or readability of the distinct program segments in question, to the extent that the errors would have made it difficult for a person relying on the captions to comprehend the segment. As such, the captioning remained meaningful to viewers relying on captions.

Broadcast of 9NEWS Breaking News on 11 June 2021

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
1 Wild weather update by Acting Premier of Victoria	Media conference commences at 11:44:00 am	Accuracy	Subparagraph 8(b)(i) Spoken content is not captioned. Closed captions not available until 11:45:32 am (i.e., 1 minute and 32 seconds)
	11:45:34 and 11:45:43 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 9 seconds.
	11:45:58 am	Accuracy	Subparagraph 8(b)(ii) The captions of spoken content are not verbatim. However, the captions convey the intended meaning. 'Tim is here', is captioned as: 'to Ms here'.
	11:45:58 and 11:46:08 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 10 seconds.
2 COVID-19 update by Acting Premier of Victoria and Victoria's Chief Health Officer	11:46:52 am	Accuracy	Subparagraph 8(b)(ii) The word 'lab' is omitted. However, the captions convey the intended meaning.
	11:46:39 and 11:46:52 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 13 seconds.
	11:46:57 am	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
			<p>the actual meaning of the spoken content.</p> <p>The phrase 'To all the Victorians', is captioned as: 'To all the Taureans'.</p>
	11:47:10 am	Accuracy	<p>Subparagraph 8(b)(ii) and (iii)</p> <p>Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content.</p> <p>The phrase '20,752 people got vaccinated yesterday', is captioned as: '7000, but it is good news we are at zero. 7250 people got vaccinated yesterday'.</p>
	11:47:04 am	Accuracy	<p>Subparagraph 8(b)(ii)</p> <p>The phrase 'State run centres' is omitted. However, the captions convey the intended meaning.</p>
	11:47:19 am	Comprehensibility	<p>Subparagraph 9(b)(v)</p> <p>Some words are spelt incorrectly. However, the captions are comprehensible.</p> <p>The phrase 'Ambulance Victoria staff', is captioned as: 'ambulance Victoria stuff'.</p>
	11:48:22 am	Comprehensibility	<p>Subparagraph 9(b)(v)</p> <p>Some words are spelt incorrectly. However, the captions are comprehensible.</p> <p>The word 'today', is captioned as 'two day'.</p>
	11:48:40 am	Accuracy	<p>Subparagraph 8(b)(ii) and (iii)</p> <p>Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content.</p> <p>The phrase 'or you've just popped some strepsils, then you know what you have to do', is captioned as: 'or you have just popped some strips is a you know we have to do – lozenge.'.</p>
	11:48:48 am	Accuracy	<p>Subparagraph 8(b)(i)</p>

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
			Spoken content is omitted. The captions do not reflect the actual meaning of the spoken content. ‘Go and get tested, isolate at home until you get the negative result’, is captioned as: ‘Isolated home into you get the test result.’
	11:48:39 and 11:48:49 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 10 seconds.
	11:48:58 am	Comprehensibility	Subparagraph 9(b)(ii) The length of time the captions are displayed makes it difficult for the viewer to read them and follow the action of the program. The following text appears on screen for approx. one second: ‘we’re looking to make QR check-in is compulsory for all’
	11:49:16 am	Comprehensibility	Subparagraph 9(b)(ii) The length of time the captions are displayed makes it difficult for the viewer to read them and follow the action of the program. The following text appears on screen for approx. one second: ‘however the amnesty around enforcement is in place for another two weeks’
	11:49:56 and 11:50:06 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 10 seconds.
	11:50:44 am	Comprehensibility	Subparagraph 9(b)(v) Some words are spelt incorrectly. However, the captions are comprehensible. The phrase ‘I’ll now hand over to Professor Sutton’, is captioned as: ‘On a handover to Professor Sutton’.
	11:50:46 am	Accuracy	Subparagraph 8(b)(ii) The phrase ‘Thanks acting Premier, good morning’ is omitted. However, the captions convey the intended meaning.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	11:51:06 am	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning. The phrase 'as the acting premier said', is captioned as: 'premier said - - acting premier'.
	11:51:19 am	Accuracy	Subparagraph 8(b)(ii) The phrase 'at the very first sign' is omitted. However, the captions convey the intended meaning.
	11:51:36 am	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning. The phrase 'thousands of primary close contacts', is captioned as: 'thousands of close contacts'.
	11:51:46 am	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning. The phrase 'its only been 48 hours', is captioned as: 'it is living 48 hours'.
	11:51:44 and 11:52:03 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 19 seconds.
	11:52:03 am	Accuracy	Subparagraph 8(b)(ii) The phrase 'and the Reservoir household' is omitted. The captions do not reflect the actual meaning of the spoken content.
	11:52:14 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 10 seconds.
	11:53:11 am	Comprehensibility	Subparagraph 9(b)(v) Some words are spelt incorrectly. This makes the captions incomprehensible. The phrase '4 household contacts have tested positive', is captioned as: 'For household contacts have tested positive'.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	11:53:16 and 11:53:28 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 12 seconds.
	11:53:40 am	Accuracy	Subparagraph 8(b)(i) Spoken content is omitted. The captions do not reflect the actual meaning of the spoken content. 'Kappa' is not captioned.
	11:53:41 am	Accuracy	Subparagraph 8(b)(i) Spoken content is omitted. The captions do not reflect the actual meaning of the spoken content. 'city of Whittlesea in Port Melbourne' is not captioned.
	11:53:38 and 11:53:50 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 12 seconds.
	11:54:09 am	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content. The term 'blood testing', is captioned as 'simpler testing'.
	11:54:57 am	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning. The phrase 'it's difficult to say', is captioned as: 'is in difficult to say'.
	11:55:18 and 11:55:30 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 12 seconds.
	11:55:57 and 11:56:07 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 10 seconds.
	11:56:12 am	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content. The phrase 'A day of zero', is captioned as 'Dave zero'.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	11:56:15 am	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning. The phrase 'we've got a lot to run', is captioned as: 'we have two lot to run'.
	11:56:17 am	Readability	Subparagraph 7(b)(ii) The phrase 'the chain of transmission to be run-down', was repeated 3 times which interrupted the natural flow of the sentence. The captions appeared three times entirely or in part: 11.56.18 am - 'the chains of transmission to be run-down' 11.56.21 am - 'the chains of transmission to be run-down', and 11.56.23 am - 'transmission to be run-down'.
	11:56:30 am	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning. The term 'upper respiratory tract infection symptoms' is captioned as 'upper respiratory tract system'.
	11:56:36 and 11:56:48 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 12 seconds.
	11:56:48 am	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning. The phrase 'That is the only way we can be sure we know', is captioned as 'That is there anyway we know'.
3 Wild weather update by Chief	11:57:25 and 11:57:40 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 15 seconds.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
Officer Operations at Victoria State Emergency Service	11:57:35 and 11:57:50 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 15 seconds.
	11:57:47 and 11:57:58 am	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 11 seconds.
	11:59:04 am	Comprehensibility	Subparagraph 9(b)(v) A word is spelt incorrectly. This makes the captions incomprehensible. The location 'Maroondah Highway', is captioned as 'Miranda Highway'.
	11:58:59 am	Accuracy	Subparagraph 8(b)(i) Spoken content is omitted. The captions do not reflect the actual meaning of the spoken content. The Victorian town of 'Narbethong' is not captioned.
	11:59:08 am	Accuracy	Subparagraph 8(b)(i) Spoken content is omitted. The captions do not reflect the actual meaning of the spoken content. The Victorian region of 'Gippsland' is not captioned.
	11:59:15 am	Accuracy	Subparagraph 8(b)(i) Spoken content is omitted. The captions do not reflect the actual meaning of the spoken content. The following waterways are not captioned: Traralgon Creek, Thomson River and the Yarra River.
	11:59:45 am	Comprehensibility	Subparagraph 9(b)(v) A word is spelt incorrectly. This makes the captions incomprehensible. The Victorian town 'Traralgon', is captioned as 'to rail'.
	12:00:04 pm	Comprehensibility	Subparagraph 9(b)(v) A word is spelt incorrectly. This makes the captions incomprehensible. The Victorian town 'Traralgon', is captioned as 'Elgin'.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	12:00:07 pm	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning The phrase 'we are expecting to see', is captioned as: 'we are respecting to see'.
	12:00:13 pm	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content. The phrase '80-100mm of rain', is captioned as '80-90mm of rain'.
	12:00:38 pm	Comprehensibility	Subparagraph 9(b)(v) A word is spelt incorrectly. This makes the captions incomprehensible. The Victorian region 'Gippsland', is captioned as 'gets lent'.
	12:00:54 pm	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning The phrase 'stay in touch', is captioned as: 'Saint at'.
	12:01:11 pm	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content. The website 'Traffic.vicroads.vic.gov.au', is captioned as 'Traffic.Vic.' and 'closures@traffic.Vic.of.au'.
	12:01:19 pm	Comprehensibility	Subparagraph 9(b)(v) A word was spelt incorrectly. However, the captions are comprehensible. 'Premier' is captioned as 'premiere'
	12:01:31 and 12:01:43 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 13 seconds.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	12:01:48 pm	Accuracy	Subparagraph 8(b)(ii) The city of 'Sale' is omitted. However, the captions convey the intended meaning. The phrase 'riverine threats on the Thomson River at Sale', is captioned as: 'riverine flats threats on the Thomson River'
	12:01:48 and 12:02:02 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 12 seconds.
	12:02:53 pm	Comprehensibility	Subparagraph 9(b)(v) A word is spelt incorrectly. This makes the captions incomprehensible. '66KVA services', is captioned as '60 6K DA services'.
	12:03:02 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 13 seconds.
	12:03:03 pm	Accuracy	Subparagraph 8(b)(ii) The name of Australian energy company 'AusNet' is omitted. However, the captions convey the intended meaning.
	12:03:54 pm	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning The phrase 'Again, we cant emphasise enough to stay away from fallen power lines', is captioned as: 'Again, it is enough to stay away from fallen power lines'.
4 Questions by reporters to Victoria's Chief Health Officer and Acting Premier of Victoria	12:04:25 pm	Accuracy	Subparagraph 8(b)(i) Spoken content is omitted. The captions do not reflect the actual meaning of the spoken content. 'Kappa' is not captioned.
	12:04:24 and 12:04:36 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 12 seconds.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	12:04:39 pm	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning The name 'Allen Cheng', is captioned as: 'We'.
	12:04:41 pm	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning The word 'people', is captioned as: 'It will'.
	12:04:46 pm	Accuracy	Subparagraph 8(b)(ii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning The phrase 'it's not always easy to judge', is captioned as: 'It is not away is easy to judge'.
	12:04:43 and 12:05:08 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 25 seconds.
	12:05:13 and 12:05:33 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 20 seconds.
	12:05:43 and 12:06:03 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 20 seconds.
	12:06:27 and 12:06:47 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 20 seconds.
	12:06:56 and 12:07:13 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 17 seconds.
	12:07:14 and 12:07:36 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 22 seconds.
	12:08:00 and 12:08:19 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 19 seconds.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	12:08:24 and 12:08:46 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 22 seconds.
	12:09:20 and 12:09:35 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 15 seconds.
	12:09:46 pm	Accuracy	Subparagraph 8(b)(ii) and (iii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning 'Delta variant' is captioned as 'Dealt variant'
	12:09:50 and 12:10:14 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 24 seconds.
	12:10:21 and 12:10:40 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 19 seconds.
	12:11:36 and 12:11:54 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 18 seconds.
	12:13:20 pm	Comprehensibility	Subparagraph 9(b)(v) A word is spelt incorrectly. This makes the captions incomprehensible. The Victorian suburb 'Hallam', is captioned as 'Hell'.
	12:13:24	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content. '6 million check-ins' is captioned as '6 million chickens'
	12:13:36 pm	Comprehensibility	Subparagraph 9(b)(v) A word is spelt incorrectly. This makes the captions incomprehensible. The Victorian suburb 'Hallam', is captioned as 'hell am'.
	12:13:38 and 12:13:58 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 20 seconds.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	12:14:24 and 12:14:47 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 23 seconds.
	12:15:28 and 12:15:47 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 19 seconds.
	12:16:07 and 12:16:24 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 17 seconds.
	12:17:08 pm	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content. 'We have become aware of at least one mental health organisation that has been accused of falsifying suicide data to receive funding. Is this a concern and potentially has this misinformed mental health policy?' , is captioned as: 'We have become aware of one'.
	12:17:20 pm	Accuracy	Subparagraph 8(b)(ii) and (iii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning 'Contact tracers' is captioned as 'contact racers'
	12:17:20 and 12:17:37 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 17 seconds.
	12:18:30 and 12:18:50 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 20 seconds.
	12:18:59 and 12:19:18 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 19 seconds.
	12:19:24 and 12:19:42 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 18 seconds.
	12:20:28 and 12:20:49 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 21 seconds.

Segment	Timestamp	Key issues	Relevant provision of the Standard / Issue / Description of content
	12:21:17 pm	Accuracy	Subparagraph 8(b)(ii) and (iii) Captions of spoken content are not verbatim. However, the captions convey the intended meaning' Contact tracers' is captioned as 'contact racers'
	12:21:49 pm	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content. 'going interstate' is captioned as 'going into State'
	12:21:36 and 12:21:57 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 21 seconds.
	12:22:09 and 12:22:25 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 16 seconds.
	12:23:16 pm	Accuracy	Subparagraph 8(b)(ii) and (iii) Some spoken words are not captioned verbatim. The captions do not reflect the actual meaning of the spoken content. 'More helps' is captioned as 'Moore helps'
	12:23:24 and 12:23:43 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 19 seconds.
	12:24:30 and 12:24:50 pm	Comprehensibility	Subparagraph 9(b)(iii) Latency within the segment of approx. 20 seconds.

Licensee's submissions

Extract from Licensee submission to the ACMA dated 11 November 2021:

[...]

Introduction

1. The ACMA has indicated it is investigating the quality of captions during a live Victorian Department of Health press conference that was aired by Nine on 11 June 2021 (the Broadcast). Specifically, the ACMA has indicated it is investigating the Broadcast's compliance with [section 130ZZA(4) of the BSA], as well as paragraph 7(1)(o) of Schedule 2 to the Act. The investigation was commenced in response to a complaint received by the ACMA (the Complaint), which Nine notes has not been provided to Nine in the course of the current investigation. [...]

[...]

Captioning of the Broadcast

9. At the outset, Nine wishes to emphasise that it takes its obligations regarding captioning extremely seriously and acknowledges the importance of providing same to our community, particularly in light of the COVID-19 pandemic.
10. Nine also notes that in the wake of the pandemic, a number of unprecedented difficulties and limitations have arisen which have dramatically affected the efforts of organisations such as Nine to comply with its regulatory obligations, particularly with respect to live captioning requirements. Live captioning has been impacted by virtue of the restrictions imposed upon workers during the pandemic – working from home, internet speed, connectivity and not having access to the same systems and equipment available in the workplace have impacted the practical ability of broadcasters to comply with live captioning requirements. Nine notes that these concerns have previously been raised on several separate occasions with the ACMA by Nine, including the need for regulatory forbearance given the ongoing impact of the pandemic. Nine has also, through its industry representative Free TV, voiced the need to for reform and forbearance in this area.
11. Nine submits that this investigation should be cast against this backdrop and further that the assessment of Nine's compliance with its captioning obligations should be considered in the context of the Broadcast as a whole, as per section 6 of the Standard.
12. By way of context, the Broadcast was a breaking news event that was aired live by Nine. As with all live news events, there is an inherent level of unpredictability associated with covering such events and as such, it is not always possible to anticipate certain elements of these event, including but not limited to, their specific commencement times.
13. In this regard, we note that unlike the COVID-19 press conferences from the New South Wales Government (which had a fixed commencement time of 11am), the live press conferences held by the Victorian Department of Health did not have a consistent commencement time, thus making the precise commencement time extremely difficult to anticipate and action the relevant technical arrangements to ensure the live captioning of same.
14. As previously advised in Nine's email to the ACMA dated 30 August 2021, according to our records, between 7 June 2021 and 17 June 2021, COVID-19 press conferences by the Victorian Government were held as follows:
 - a) Monday, 7 June 2021 at 11:45am;
 - b) Tuesday, 8 June 2021 at 10:30am;
 - c) Wednesday, 9 June 2021 at 11:30am;
 - d) Thursday, 10 June 2021 at 11:40am;
 - e) Friday, 11 June 2021 at 11:40am;

- f) Monday, 14 June 2021 at 12:00pm;
- g) Wednesday, 16 June 2021 12:15pm; and
- h) Thursday, 17 June 2021 at 10:30am.

15. The above paragraph demonstrates the fact that there were at least six different commencement times for live Victorian Government COVID-19 press conferences. As such, Nine's ability to prepare for same and action its process for ensuring live captioning was entirely contingent upon when the relevant government representatives decided to commence the press conferences, usually at short notice.
16. In relation to the Broadcast specifically, Nine was informed of an approximate commencement time for the conference which was conveyed to the relevant personnel, and upon receipt of updated information regarding the commencement time, an updated notification was recirculated to relevant personnel. Notwithstanding this, the Broadcast still required interruption of the regularly scheduled program to the breaking coverage of the Broadcast.
17. As a result of the above context, regrettably, the commencement of the Broadcast was missing captions for no more than approximately 1 minute and 35 seconds. However, the remainder of the Broadcast was captioned.
18. Furthermore, in terms of the Broadcast's practical context, Nine notes the substantive information of the Broadcast was captioned in compliance with the Act and the Standard. The extremely brief, and in Nine's submission – fleeting, duration for which captions were not available only covered a presenter stating that broadcast was moving to a live press conference, and acting Victorian Premier, James Merlino, stating who was present and that the Health Minister would only be available briefly. The substantive matters covered in the Broadcast were captioned. Nine also notes that an AUSLAN interpreter was also in frame from 11:44:06 onwards.
19. Nine would therefore submit that in assessing the quality of captioning for the Broadcast, the ACMA should have regard to the context of the Broadcast as a whole (per section 6(a) of the Standard), and to the extent the Broadcast is considered to be comprised of distinct segments (as per section 6b) of the Standard), the relevant segments were highly impacted by the unavoidable context which has been outlined above.
20. If, notwithstanding the above, the ACMA is still minded to make a finding that Nine has breached its captioning obligations under the Act and the Standard, then Nine would respectfully submit that any such breach ought be disregarded pursuant to [subsection 130ZZA(7A) of the BSA].
21. In support of this submission, Nine would again draw to the ACMA's attention the highly relevant contextual factors identified above, and in particular the extremely short window available in which to action the relevant technical arrangements to ensure live captioning. Nine submits these factors constitute significant technical difficulties which could not have been reasonably foreseen, and which, notwithstanding Nine's best efforts, amounted to an unavoidable obstacle to Nine's ongoing efforts to ensure compliance with its captioning obligations.

Conclusion

22. Nine reiterates that it takes its captioning obligations under the Act and the Standard extremely seriously and devotes its best efforts to ensuring compliance with same. However, in this circumstance, Nine would respectfully submit that there has not been a breach of any captioning obligations in this instance, and to the extent that any such breach is found, it should be disregarded pursuant to [subsection 130ZZA(7A) of the BSA].

Extract from Licensee submission to the ACMA dated 29 September 2022:

[...]

1. Nine takes its obligations regarding captioning extremely seriously and acknowledges the importance of providing same to all members of our community, particularly in light of the COVID-19 pandemic.
2. Nine does note the ACMA's findings on the applicability of section 130ZZA(7A) to this investigation. Relevantly, the Report indicates the ACMA is of the view that this section does not apply because *'the difficulties were not of a technical or engineering nature'* and *'in the context of the Victorian Government's practice of providing reasonably regular press conferences on the COVID-19 pandemic at the time, the ACMA considers that these difficulties could reasonably have been foreseen by the Licensee'*.
3. Nine does not dispute the foreseeability of the Victorian Government engaging in press conferences during the relevant period of the COVID-19 pandemic. However, this is not the crux of the unforeseeable technical issue on which Nine seeks to rely. Rather, Nine respectfully submits that it was the ambiguity in commencement time of these conferences which gave rise to the specific unforeseeable technical limitations in this instance. Not knowing the actual commencement times of the press conferences necessarily leads to very short windows in which to action the relevant technical requirements to facilitate the readiness of live captioning services for breaking news events.
4. Again by way of comparison, Nine would draw the ACMA's attention to the commencement time of similar press conferences by the New South Wales Government were able to be foreseen as they all commenced at 11am each day. Accordingly, this allowed for the relevant technical preparations to be attended to. This is not always possible when the precise commencement times of the Victorian Government's press conferences were only made known to Nine on very short notice. In these circumstances, Nine would submit the actual commencement time of the press conferences could not have been reasonably foreseen.
5. Furthermore with respect to the characterisation of these issues as not being of a 'technical' nature, as previously raised in our submission dated 11 November 2021, Nine notes that in the wake of the pandemic, a number of unprecedented difficulties and limitations have arisen which have dramatically affected the efforts of organisations such as Nine to comply with its regulatory obligations, and in particular live captioning requirements. Live captioning has been impacted by virtue of the restrictions imposed upon workers during the pandemic – working from home, internet speed, connectivity and not having access to the same systems and equipment available in the workplace have impacted the practical ability of broadcasters to comply with live captioning requirements. Nine therefore submits these issues do constitute technical issues for the purpose of section 130ZZA(7A).
6. Nine also notes these issues have previously been raised on several separate occasions with the ACMA, including the need for regulatory forbearance given the ongoing impact of the pandemic. Moreover, noting Nine is required to maintain a 100% captioning compliance rate, Nine submits there are significant and insurmountable hurdles (such as the pandemic and other limitations in the relevant technology) which are beyond its control and which render such an unyielding target effectively impossible to attain. Nine has also, through its industry representative Free TV, voiced the need for reform and forbearance in this area.
7. Finally, in considering the quality of the captioning throughout the broadcast, Nine notes the Report does make reference to the live nature of the broadcast as a factor to be considered with respect to assessing compliance with the Standard. While Nine acknowledges the Standard does not permit the ACMA to accept lower quality captioning (per section 130ZZA(2B)), Nine would submit that such contextual factors may be taken into account which assessing the exercise of the ACMA's discretion to disregard a breach under section 130ZZA(7B).
8. Nine submits that the latency and quality of captions can be influenced by a number of factors beyond Nine's control and indeed the capacity of the relevant technology - for example the speed and diction with at which a speaker talks during a live press conference

as well as an individual speaker's accent and/or pronunciation (and in some cases mispronunciation) of certain words, Nine submits these elements cumulatively amount to significant and insurmountable technical issues.

9. Furthermore, and notwithstanding these insurmountable issues, Nine submits that in a practical context, the substance of the captioning broadcast did convey the relevant information to viewers who may be deaf and hard of hearing, particularly noting that there was an AUSLAN interpreter visible to viewers for the press conference (save for 11 seconds at its commencement). Nine submits this too constitutes a relevant contextual consideration under section 6 of the Standard which may be taken into account with respect to the application of section 130ZZA(7B).
10. In light of the above, Nine would respectfully request that the ACMA reconsider this aspect of its findings and disregard any breach finding in accordance with section 130ZZA(7A). If, however, the ACMA is not minded to reconsider the findings in the Report, Nine would make no submissions as to publication of the Report.

[...]