

1.6 CAPTIONING MATTERS

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The Australian Communications and Media Authority (ACMA) has concluded its review of the Captioning Quality Standard, which was remade and then registered on 7 September 2023. We will liaise with key stakeholders in the coming months to discuss issues that arose during the review including the potential trial of a metric model for assessing captioning quality and developing ACMA captioning guidelines.

KEY ISSUES

Review of the Standard

- Part 9D of the *Broadcasting Services Act 1992* (the BSA) sets out captioning rules for free-to-air broadcasters and subscription television licensees. There are minimum captioning targets and a requirement to comply with quality standards in the Broadcasting Services (Television Captioning) Standard 2023 (the Standard) made and enforced by the ACMA.
- The previous Standard (the 2013 Standard) was due to sunset on 1 October 2023.
- In line with arrangements for sunseting instruments, the ACMA conducted a 12-month review to assess whether the Standard remains an effective and efficient instrument.
- The review included undertaking targeted consumer research, discussions with key stakeholders and international regulators, a public consultation process, captioning site visits, and assessing the outcomes of captioning compliance audits.
- The review concluded that the Standard, where complied with by broadcasters, is achieving its objective to make sure captioning services are meaningful to viewers who are deaf or hard of hearing. Accordingly, the ACMA remade the Standard, with only minor and machinery changes.

Public consultation

- The ACMA ran a six-week public consultation from 2 May 2023 to 13 June 2023 inviting comments on the remaking of the 2013 Standard in response to a consultation paper.
- The consultation paper presented evidence and sought views on whether the Standard should be remade without changes. The paper also proposed and sought views on:
 - the need for additional ACMA guidance on the interpretation of key elements of the Standard
 - an industry-led trial to further examine and test a metric measurement model (such as the NER model) for assessing captioning quality.
- We received 15 submissions:
 - 9 from organisations including captioning providers, broadcasters and groups representing the interests of the deaf and hard of hearing community, and;
 - 6 from individuals who identified as either deaf or hard of hearing.
- Overall, most submitters supported remaking the Standard. However, some industry submissions qualified their support subject to:
 - removing requirements that the ACMA consider font, colour and positioning of captions when assessing readability and whether captions clearly identify individual speakers when assessing comprehensibility, and;
 - addressing concerns about the interpretation of ‘distinct program segments.’

- While the ACMA considered industry’s proposals, submitters did not provide sufficient evidence in support of these changes, and we concluded that it would be premature to remove certain quality considerations without fully understanding the impact of the changes on the viewing experiences of deaf and hard of hearing people.
- Additionally, in most cases, the concerns raised by industry (such as requirements around colour) appear to be the result of confusion about the interpretation of key elements in the Standard, which we propose to address through additional interpretive guidelines.

Next steps

- There was strong support for the development and publication of guidelines by the ACMA, that would benefit both industry and audiences in improving their understanding of how the ACMA interprets key elements of the Standard.
- In response, the ACMA is developing guidance focussed on assisting broadcasters to comply with the Standard, including addressing matters raised by broadcasters (such as font, colour and speaker identification). The ACMA expects to release draft guidelines for public consultation later in the year.
- There was also broad support from submitters regarding an Australian trial of a metric model, like the NER¹, for assessing captioning quality. The NER is one of several metric-based models employed internationally to test captioning quality. It involves a two-stage process of first quantifying the number and severity of captioning errors using mathematical calculations, and then subjectively assessing how the errors would impact the viewer’s comprehension. This second stage is conducted by human evaluators trained in applying the model. Notably, the NER model does not include measures for assessing certain elements of quality, such as reading rates or synchronicity.
- The ACMA is interested in exploring the feasibility of a joint trial with industry to test the appropriateness of a metric-based model, noting that:
 - the international experience with metric models suggests that further scoping work, including additional research on viewer expectations, is likely to be required before an appropriate model could be agreed and implemented
 - currently under the BSA, implementation of a metric model would be difficult because the ACMA is required to apply the same measure of quality to both live and pre-prepared programs. We have raised this issue with the Minister for Communications, the Hon Michelle Rowland MP, for consideration (letter sent 17 April 2023).
- We intend to liaise with key stakeholders, including industry and groups representing the interests of deaf and hard of hearing people, in the coming months to discuss what a trial might look like and how it would be conducted.
- Broader changes in captioning policy and legislation are matters for the government.

BACKGROUND

Part 9D captioning obligations on free-to-air broadcasters and subscription TV licensees

- Free-to-air broadcasters and subscription television licensees are required to comply with captioning obligations at Part 9D of the BSA. The captioning obligations include:
 - a ‘basic rule’ and ‘special rules’ that apply to free-to-air broadcasters
 - requirements for subscription television licensees to meet annual captioning targets in relation to movie, general entertainment and news services.

¹ NER stands for Number, edition error and recognition error

- More detail about free-to-air and subscription broadcaster captioning rules is in **Attachment A**.
- Both free-to-air broadcasters and subscription television licensees are also required to meet the captioning quality requirements set out in the Standard, which requires minimum levels of captioning quality, in terms of readability, accuracy and comprehensibility. Details about the Standard are in **Attachment A**.
- Broadcasters that would like to reduce a captioning target for a service can apply to the ACMA for a captioning order. A 'target reduction order' will reduce the captioning target for a service and an 'exemption order' will remove the obligation to provide captioning on a service. The duration of a captioning order can be for 1 to 5 years.
- The ACMA must not make a captioning order unless it is satisfied that a refusal to make one would impose unjustifiable hardship on the applicant.
- Free-to-air broadcasters and subscription television licensees are also required to provide annual captioning compliance reports to the ACMA. These are due within 90 days after the end of a financial year and the ACMA is required to publish the annual reports on its website.

Captioning investigations

- Over the past 4 years, the ACMA conducted 14 investigations. Of these, all have been finalised: 2 in 2019–20, 3 in 2020–21, 5 in 2021–22, and 4 by 31 August 2023. There are currently no captioning investigations on foot.
- Of the 14 investigations finalised, 13 (93%) resulted in a breach finding and 1 in a no-breach finding.
- The 14 investigations took between a minimum of 1.5 months and a maximum of 16 months to complete. On average, investigations were finalised in 7.7 months over the 4 years.
- We acknowledge that captioning investigations over this period have taken longer than we, broadcasters, and complainants, might like. Drivers of this include the time it takes to assess each distinct program segment, with and without audio, against each of the factors relating to readability, accuracy and comprehensibility in the Captioning Quality Standard², transcribing the assessment into a table, and preparing an investigation report.
- Additional factors affecting timing over the period was re-deployment of resources to enable completion of other tasks with tight statutory deadlines. The ACMA has, over the past 12 months, undertaken a review of our standard operating procedures and is seeking to implement efficiencies across our many activities, including upgrades to captioning databases and improvements to content investigation processes.

Formal enforcement actions for non-compliance

- The licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA requires commercial television broadcasting licensees to comply with the captioning requirements at Part 9D of the BSA (the captioning licence condition).
- Formal enforcement actions available to the ACMA for breaches of a licence condition include accepting an enforceable undertaking, issuing a remedial direction, suspension or cancellation of a licence, civil penalties or referral to the Director of Public Prosecutions.

² There are 20 factors in total in the Captioning Quality Standard – 5 for readability, 6 for accuracy, and 9 for comprehensibility.

- Subsection 142(1) of the BSA provides that a person commits an offence if a person has been given a remedial direction under section 141, and the person is a commercial television broadcasting licensee and engages in conduct that contravenes a requirement in the remedial direction. The maximum penalty is 20,000 penalty units (\$6,260,000).
- Subsection 142A(1) provides that a person must comply with a remedial direction under section 141. Subsection 142A(2) provides that subsection 142A(1) is a civil penalty provision. Subsection 142A(3) provides that a person who contravenes subsection 142A(1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.
- Subsection 205X(1) of the BSA provides that if a person has been given an enforceable undertaking under section 205W, and the ACMA considers that the person has breached the enforceable undertaking, the ACMA may apply to the Federal Court for an order to, among other actions, comply with the enforceable undertaking.

Seven Network – recent enforcement action

- 5 investigations related to non-compliance with Part 9D of the BSA by licensees of the Seven Network. On 23 February 2023, the ACMA issued remedial directions to Seven Brisbane and Seven Sydney and, on 18 April 2023, the ACMA accepted an enforceable undertaking offered by Seven Melbourne, in relation to their respective breaches.
- The remedial directions and the enforceable undertaking require the respective licensees to take the following actions:
 - arrange for an independent audit relating to current captioning processes, implement any audit recommendations and provide a report to the ACMA
 - arrange for independent audits of 2 live and near-live programs at 6-monthly intervals against the captioning quality standard and provide reports to the ACMA to demonstrate ongoing compliance with the captioning licence condition
 - provide copies of training material to the ACMA and conduct training for captioning staff.
- Implementation of the actions are on track. The licensees have completed the training component and are currently in the process of implementing recommendations made by the independent auditor to improve their captioning processes.

Consumer research program associated with the review

- In late 2022, the ACMA commissioned the Social Research Centre (SRC) to conduct research into deaf and hard of hearing adults' perceptions of, and experiences with, the quality of captioning services. SRC was selected to conduct the research following a limited tender process. The value of the contract was \$179,604.01 (GST inclusive).³
- The primary objective of the research was to explore the incidence and usage of captioning and to identify the impacts of captioning quality on deaf and hard of hearing viewers. The research included a qualitative and quantitative component, and explored deaf or hard of hearing adults' use and experiences of captioning, expectations of and satisfaction with the quality of captions on live and pre-recorded broadcast TV and non-broadcast content.

³ This was within budget (the original procurement plan costed the research at \$180,000).

- Overall, the research shows that deaf and hard of hearing viewers who use captions are broadly satisfied with the quality of captions provided under the standard but that they still experience issues with captioning quality that affect readability, accuracy and comprehensibility particularly related to synchronisation.
- Despite efforts to recruit deaf participants, only a small number of participants in the quantitative research identified as completely deaf, either in one ear (n=49 or 9% of the total number of deaf or hard of hearing respondents) or deaf in both ears (n=4 or 1% of deaf or hard of hearing respondents). No participants in the qualitative research identified as completely deaf. It is therefore important to understand references to 'deaf and hard of hearing' respondents and the research findings, with this in mind.
- The research findings are discussed in the ACMA's consultation paper for the review of the Standard. A separate report about the consumer research was also released with the consultation paper.

Stakeholder sensitivities

- The ACMA is aware that there is a degree of stakeholder concern about the quality of captions and a divergence of views about how to best address these issues. We are aware that, broadly, broadcasters have identified the following issues as impacting their ability to comply with the Standard as being:
 - a preference for the application of the NER model to assess the quality of captions as opposed to the subjective criteria in the Standard
 - challenges of captioning live and part-live broadcasts
 - a perceived lack of clarity about the ACMA's interpretation of the Standard, particularly with the term 'distinct program segment' and the Standard's object of ensuring 'meaningful' captions.
- Some deaf and hard of hearing community and associated advocacy groups have expressed dissatisfaction during the review with the level of engagement and consultation from government. We understand that some of these concerns relate to challenges engaging with government processes in ways that suit their preferences and needs.
- In undertaking this review, the ACMA sought to engage broadly with the deaf and hard of hearing community, including through:
 - writing to, and meeting with, Deaf Australia and Australian Communications Consumer Action Network (ACCAN) at the commencement of the review seeking early insights
 - writing to key advocacy groups that represent the interests of deaf and hard of hearing people, notifying them about the public consultation process, and advising them about the outcome of the review
 - producing consumer focused materials, including videos featuring an Auslan interpretation, to assist deaf and hard of hearing viewers to participate in the consultation process, and raise awareness about the rules and how to make a complaint
 - undertaking broader public communications to raise awareness about captioning rules to coincide with the National Week of Deaf People (week commencing 18 September 2023)
 - proactively engaging with deaf and hard of hearing advocacy groups to encourage their input to the development of interpretative guidelines for the Standard and a potential future trial of a metric measurement model for captioning quality.

ATTACHMENTS

- Attachment A** Captioning 'basic rule' and special rules' / Annual captioning targets
Captioning quality requirements
- Attachment B** Answer to QoN – Supplementary Budget Senate Estimates – 14 February
2023 – ACMA – Captioning investigations undertaking a year
- Attachment C** Answer to QoN – Supplementary Budget Senate Estimates – 14 February
2023 – BI-580 Investigation Duration

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Captioning ‘basic rule’ and ‘special rules’ applicable to free-to-air broadcasters

- Free-to-air broadcasters are required to meet captioning targets on primary television channels—100% of transmission time between 6am and midnight each day (with exceptions, such as programs not in the English language).
- Caption news and current affairs on primary television channels at all times.
- Captions are required on television programs broadcast on multi-channels if those programs have previously been transmitted with captions on another free-to-air television multi-channel provided by the same broadcaster in the same licence area (this includes where a program is transmitted simultaneously on more than one multi-channel, and captions are provided on one of the multi-channels).

Annual captioning target requirements of subscription television licensees

- Subscription television licensees are required to meet annual captioning targets for different categories (movies, general entertainment, news, sport and music) that increase annually until they reach 100% of transmission time.
- In 2023-24, the targets for the different categories are as follows: movies (at least 90%), general entertainment services (70%), news (60%), sports (60%) and music (50%). The targets increase by 5% each year.
- In October 2021, the Department undertook consultation about a draft legislative instrument to be made by the Minister in accordance with Schedule 2 to the *Broadcasting Legislation Amendment (2021 Measures No. 1) Act 2021* (Schedule 2), to replace the existing subscription television captioning rules. However, no instrument was made, and Schedule 2 expired on 28 June 2022. The existing captioning requirements for subscription television broadcasters remain in place.
- The ACMA’s submission to the Department’s consultation is publicly available on the Department’s website. The ACMA’s submission focuses on implementation and administration of proposed changes. The ACMA supported proposals that would have maintained appropriate levels of captioning and simplified and improved the current framework, including:
 - reducing the number of STV captioning categories for movie and general entertainment services and therefore removing the need for category nominations
 - if additional options for STV captioning exemptions (as proposed by the Department) were adopted, the existing system of captioning orders based on ‘unjustifiable hardship’ should also not be retained
 - introducing a ‘low audience share’ exemption as proposed by the Department, if a suitable metric for calculating audience share was adopted.

Captioning quality requirements in the in the Captioning Standard

- Free-to-air broadcasters and subscription television licensees are required to meet the captioning quality requirements set out in the Captioning Standard. When determining the quality of a captioning service provided for distinct program segments, the cumulative effect of the following factors must be considered:
 1. the readability of the captions
 2. the accuracy of the captions
 3. the comprehensibility of the captions.

Environment and Communications

QUESTION ON NOTICE

Supplementary Budget Estimates 2022 - 2023

Infrastructure, Transport, Regional Development, Communications and the Arts

QoN Number

Departmental Question Number: SQ23-003192

Division/Agency Name: Australian Communications and Media Authority

Hansard Reference: Spoken, Page No. 59 (14 February 2023)

Topic: ACMA - Captioning investigations undertaking a year

Senator David Pocock asked:

Senator DAVID POCOCK: Do you have an estimate of, over that 14 months, how many hours would have been spent on that one investigation?

Ms Zurnamer: I'd have to take that on notice. But I can say that, as a general rule, the captioning investigations are quite resource-intensive, for ourselves and for the broadcasters, because of that multilevel reviewing and writing up of those reports.

Senator DAVID POCOCK: How many captioning investigations would you be undertaking a year?

Ms Rainsford: I don't think I've got that material on hand. We could take that on notice for you.

Senator DAVID POCOCK: That would be great...just the total cost that you'd estimate for that single report, if you can work out the hours and what that equates to, out of interest.

Ms Rainsford: Yes, we'll do our best to give you something meaningful on that.

Answer:

The table below sets out the number of captioning investigations that have been commenced in the 2 financial years from 2020-21 (the year that BI-580 was commenced).

Financial year	No. captioning investigations commenced
2020-21	5
2021-22	7

The ACMA does not keep granular records of the number of hours spent on a specific task and cannot meaningfully calculate the cost of a single investigation up to and including the preparation of the investigation report. However, an average of 0.5 to 1 FTE staff work on captioning investigations in any given month.

Environment and Communication

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Budget Estimates 2022 – 2023

Infrastructure, Transport, Regional Development, Communications and the Arts

Departmental Question Number: SQ23-003191

Division/Agency Name: Australian Communications and Media Authority

Hansard Reference: Spoken, Page No. 58 (14 February 2023)

Topic: ACMA - BI-580 Investigation Duration

Senator David Pocock asked:

Senator DAVID POCOCK: Thank you. And the complaints for this BI-580 report? What were the complaints?

Ms Zurnamer: I haven't got the report in front of me, but my recollection is that they were about news programs and segments within news programs that the viewer felt were not meaningful, and there were bits and pieces missing, and that's what brought the complaint to us. In general, the complaints we get are about the quality of captioning rather than that there weren't captions at all. So, I'm making an assumption—which I think is correct—that this would have been about the quality.

Senator DAVID POCOCK: The quality of a single morning news program?

Ms Zurnamer: It could have been one segment. It could have been more than one segment. But we look at it segment by segment, on the basis that, for a news program, each story is its own story.

Senator DAVID POCOCK: So, you're breaking it up into segments and checking each one. What year was that test developed that you've just described?

Ms Zurnamer: The quality standard was introduced at sunset—2013.

Senator DAVID POCOCK: How long did this investigation take?

Ms Rainsford: I think we'd have to take that question on notice.

Answer:

Investigation BI-580 took 13 months to complete. It commenced on 18 January 2021 and was finalised on 18 February 2022. The investigation looked at complaints about two 7News broadcasts comprising, collectively, 75 separate program segments.