

A Captioning Scheme for Subscription Television

Submission by the Deafness Forum of Australia

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The Deafness Forum of Australia welcomes an opportunity to provide a response on behalf of consumers to the Government options paper, 'A Captioning Scheme for Subscription Television'.

Deafness Forum was the lead consumer advocate from the early 2000s in discussions that resulted in captioning quotas being included in the Australian Broadcasting Services Act.

Deafness Forum is the peak national body representing the views and interests of the nearly 4 million Australians who live with hearing loss, those who have ear or balance disorders, people who also communicate in Australian Sign Language, and their families and supporters.

Captions are of great assistance to people who have diminished hearing, people whose first language is not English or spoken, and anyone who wants to follow TV broadcasts in noisy environments. It is estimated that 1.5 million Australians use captions.

"I use subtitles because I watch TV late at night and keep the sound down, also some dialect is mumbled or slurred by some actors so it helps understanding what's being said."

Deafness Forum appreciates that simplifying the captioning rules would benefit the subscription television licensees' profitability and convenience. It might help government administrators and others in their monitoring of the providers' compliance performance.

Consumers are not clamouring for administrative simplification. Their focus is on an outcome: they are entitled to expect that all programs broadcast in Australia be accompanied by captions.

Our overarching comment on the draft discussion paper is that changes to the Act or administrative arrangements, quotas, goals and targets should not directly or indirectly obstruct the agreed attainment of 100 percent captioning on subscription television services by 1 July 2033.

The subscription television licensees have argued that the continued progressive increase in captioning targets (towards the target of 100 percent in 2033) is unsustainable. We take this to mean, financially unprofitable:

Miranda Ward, writing for The Financial Review on 6 August 2021 reported, "News Corp (Ed. owner of Foxtel) has reported a net profit of \$US389 million (A\$525.6 million) in the last financial year, compared to a \$US1.55 billion loss in the previous year, as Foxtel contributes 40 percent growth in paid subscribers."

The argument goes that evidence for a progressive increase in captioning targets being unsustainable is in the level of claims for exemptions and target reduction orders by licensees. 406 applications were made by licensees in 2012-13 to 2019-20. Of these 406 applications, the Australian Communications and Media Authority approved 354. So, an alternative view is that the astonishing

success rate for applications is proof of the high probability and relative ease of minimising captioning obligations through an ongoing campaign of routinely sought exemptions.

An unfortunate side-effect of this tactic is that captioning is painted as an onerous option to be dodged, rather than treated as a human right to access information.

We are uncomfortable with the option paper's theme throughout of "hardship" for subscription TV licensees as the basis for minimising compliance. These organisations are not small family businesses trading on slim margins. They are large, profitable corporations in their own right, owned by or in partnership with even larger corporations.

And while the subject of the discussion paper is captioning quantity, we note that there remains the lofty challenge of attaining a high degree of readability, comprehensibility and accuracy in captions. Low-cost captions generated by artificial intelligence is a key means to achieve universal television captioning but it has some way to go.

In this next section we will respond to specific matters in the Government's options paper.

1. Number of Categories

Should the 5 categories of STV services listed in Table 5 be adopted in the Scheme? If so, is it appropriate to average the captioning levels for the movie and general entertainment categories?

Response

We have no issue with reducing the number of categories if there was to be no adverse effect on both the current captioning levels and the goal of attaining 100 percent captioning in 2033.

We do not support the proposed averaging of the captioning targets for amalgamated categories if it was to have adverse effects on captioning levels and the goal of 100 percent captioning in 2033.

Therefore, it must be made explicit that current captioning levels will not be diminished, and that the goal of 100 percent captioning in 2033 will not be prejudiced.

2. Levels of Captioning (Annual Captioning Targets)

What is an adequate level of captioning for STV services to commence on 1 July 2022?

Response

We do not support the proposed averaging because it is not in the consumer's best interest.

3. Freeze or Continued Annual Increases of Captioning Targets

3.a. Is it appropriate that annual STV captioning levels be frozen or should captioning levels continue to increase by 5 per cent per annum as under the existing rules at subsection 130ZV(2) in the BSA?

Response

It is not appropriate to freeze captioning targets. The current 5 percent per annum increase in captioning levels was designed to be relatively forgiving to licensees. A freeze would make it impossible to attain the agreed goal of attaining 100 percent captioning in 2033. The 5 percent per

annum increase should be maintained; and if a licensee falls behind it should be obliged to catchup with targets in the following year(s).

3.b. If STV annual captioning levels are frozen, should this freeze be permanent or reviewed after a period of time? If the latter, what should that period of review be?

Response

Freezing of captioning targets would be an injustice to consumers.

If the Government was to proceed with a change, a freeze must be treated as a short term and temporary means to allow a licensee to regain compliance; and not to avoid its obligation.

A freeze must be reviewed at 12 months and its continuance subjected to close public scrutiny.

4. Exemptions and target reduction orders (unjustifiable hardship)

4.a. As audience share or the difficulty in captioning racing channels are factors in applications for exemption or target reduction orders based on hardship, is it necessary to retain these exemptions or target reduction orders based on hardship for STV licensees, given the proposed introduction of new exemptions based on objective and transparent criteria (see Proposal 4 and 5)?

Response

The pace of racing requires skilled captioners to match the call but on what grounds should it be exempted when for example, other live events are captioned?

Gambling is a multi-billion-dollar industry. It can solve this problem of its own accord to meet the captioning standards. Indeed, the industry should perhaps be the innovator in this space.

4.b. If these exemptions and target reduction orders are retained, should their:

i. availability be limited to circumstances where other exemptions do not apply?

ii. assessment criteria be amended? If so, how?

Response

With the limited information available we feel that *i. availability be limited to circumstances where other exemptions do not apply* is the least potentially damaging option, but any retrospective exemptions should not be granted except in extreme circumstances.

5. Nominated exemptions

Is it appropriate for this exemption to be retained until such time as the proposed new exemptions set out at proposals 4 and 5 can be claimed?

Response

We endorse the recommendation by the Australian Communications Consumer Action Network that if the Government was to introduce the change it should be from the commencement of the scheme and immediately supersede existing rules.

Importantly, exemptions should not be granted except in extreme circumstances.

6. New racing exemption

As the criteria for this new proposed exemption is objective and self-evident, it is proposed that STV licensees do not apply for racing exemptions but should publish the channels to which this exemption applies each financial year. Options for the publication of exemptions are raised for comment at Proposal 6. Is it appropriate that this exemption be “claimed” by publication only?

Response

If the Government was to introduce the change, we agree with the Australian Communications Consumer Action Network’s recommendation that it is appropriate for exemption to be promoted by widely-publicised publication.

It is expected that there will be substantial advances in the next 2-5 years in captioning by artificial intelligence systems: reviews of exemptions should be conducted at 2 years from introduction of a change.

7. New low audience share exemption

7.a. Is there any evidence that a threshold other than less than 0.1% is a more appropriate threshold level for a low audience share exemption? What is the alternative threshold and the evidence of its appropriateness?

Response

A human right exists regardless of whether it affects 1 or 1million souls. Low audience share is immaterial. We reject the notion of a low audience threshold on human rights grounds.

7.c. Is an exemption period of 2 years appropriate for this exemption? If not, what alternative period is more appropriate and why?

Response

We endorse the Australian Communications Consumer Action Network’s position that an “... exemption period should not exceed twelve calendar months from commencement. ACCAN supports the target of 100 per cent captioning by 1 July 2033 and believes achieving this target will be significantly more difficult if providers are allowed lengthy exemption periods.”

7.d. Should the low audience share exemption be claimed by “publication”, where both the details of the exemption and the data relied upon to demonstrate the low audience share are published?

Response

On human rights grounds, we are compelled to reject the notion of an audience-share threshold.

8. Publication of captioning information

8a. What information should be published?

i. Should the overall, actual percentage of captioning proposed to be delivered by STV licensees for each channel for the current financial year be published?

Response

Yes.

In addition, comprehensive information in plain language should be readily available to enable consumers to easily understand the captioning targets, exemptions and their reasons and time period; and how targets will increase over time to attain the goal of 100 percent captioning by 1 July 2033.

ii. Should a list of services that are not captioned and the relevant exemption and/or target reduction orders be published?

Response

Yes. And it should be highly visible and accessible according to the standards of peak consumer bodies.

iii. Should information about whether individual programs are captioned or not be published?

Response

Yes. And it should be highly visible and accessible according to the standards of peak consumer bodies; and included in the program description and in the provider's program guide.

iv. Should a requirement to include information on whether a program is captioned or not be included in the Electronic Program Guides of STV Licensees?

Response

Yes. It should be highly visible and accessible according to the standards of peak consumer bodies.

8.b. Where should information be published? Should information about the captioning levels and applicable exemptions and target reduction orders at a service (channel) level be published on:

i. the ACMA website

ii. the website of each STV licensee

iii. both the ACMA website and on the website of each STV licensee?

Response

Information should be published on *iii. both the ACMA website and on the website of each STV licensee* **and** as the Australian Communications Consumer Action Network recommends, "... in other formats, such as printed programme guides, to allow consumers who have restricted access to technology to be fully empowered and informed."

8.e. Should information about individual programs be published in the program guides (electronic and otherwise) of STV licensees?

Response

Yes.

9. Retention of certain captioning rules

Should the modified formula for STV services be modified in any way? If so, why and how?

Response

No. There is no compelling reason to modify the formula. An advantage to consumers has not been demonstrated.

Further information

Stephen Williamson

Chief Executive

DEAFNESS FORUM of AUSTRALIA

Representing Australia as a Foundation Member of the World Hearing Forum, a program of the World Health Organization

 steve.williamson@deafnessforum.org.au  www.deafnessforum.org.au <https://www.facebook.com/deafnessforum/>

