



Captioning Regulatory Framework

Policy consultation submission by the Australian
Communications Consumer Action Network to the
Department of Communications and the Arts

29 January 2016

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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1. Response to Discussion Paper

The Australian Communications Consumer Action Network is pleased to have the opportunity to respond to the Captioning Regulatory Framework consultation. ACCAN has participated in a number of previous captioning consultations and continues to call for greater access and inclusion for all consumers in the communications environment. ACCAN is keenly aware of the ongoing barriers people with disability encounter when viewing both free-to-air (FTA) and subscription television (STV). Meaningful access to television provides all Australians with greater social and cultural participation. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Article 30 includes that States Parties “...ensure that persons with disabilities... Enjoy access to television programs, films, theatre and other cultural activities, in accessible formats.”¹

1.1. Annual captioning compliance reporting requirements

Proposed Options

Option 1: Remove annual captioning compliance reporting requirement for FTA broadcasters

Option 2: For STV services, allow compliance reports to be provided by channel providers

Option 3: No change to current arrangements

Free-to-air broadcasters;

ACCAN’s position on the requirement for FTA broadcasters to report on their annual captioning compliance has not changed. The concerns we raised in the Senate Environment and Communications Legislation Committee inquiry into the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014² remain that:

- ACCAN is concerned that removing reporting requirements for caption quotas by free-to-air broadcasters will place the burden of monitoring captioning obligations unduly on consumers, and potentially lead to deterioration in delivery of captioning.
- ACCAN is concerned that removing annual reporting requirements for broadcasters will create poor compliance standards and undermine the objective of the legislation.³ This legislation was introduced because the market failed to provide closed-captions on Australian free-to-air television. It is only through legislation that broadcasters have provided this essential public service, and we are concerned that by removing the reporting requirement there is a real risk of service failure.
- Additionally, ACCAN is unsure how removing annual reporting against closed-caption requirements can assist the ACMA in its role as regulator. One of the fundamental roles of

¹ <http://www.un.org/disabilities/default.asp?id=150>

² http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Broadcasting_Deregulation/Submissions

³ *Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012* “The purpose of the Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012 (the Bill) is to amend the Broadcasting Services Act 1992 (the BSA) to improve access to free to-air and subscription television for the hearing impaired.”, available at: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1112a/12bd168

the ACMA is to protect consumer interests.⁴ In view of the concerns outlined above, without having annual reporting from broadcasters it is unclear to ACCAN how the ACMA will be in a position to evaluate compliance with the Captioning Standard, and ultimately to protect the interests of the growing numbers of consumers who need captions.

Furthermore, the discussion paper reports that “ACMA has consulted with FTA broadcasters and STV licensees to streamline compliance reporting arrangements and decrease the reporting burden on industry”. It seems prudent to ACCAN that it is in the best interest of all stakeholders that these new improved and streamlined reporting requirements be given the opportunity to prove their worth.

Therefore in regard to annual reporting requirements for FTA broadcasters ACCAN supports Option 3: No change to current arrangements.

Subscription Television services;

ACCAN sees no consumer detriment regarding the captioning compliance reporting by channel providers. Therefore, for STV services ACCAN supports Option 2.

1.2. Emergency warnings captioning obligations

Proposed Options

Option 1: Remove reporting and/or record-keeping requirements for emergency service warnings
 Option 2: No change to existing arrangements

ACCAN considers the current BSA Emergency Service warning requirements as being inadequate remedies for ensuring that Deaf or hearing impaired viewers have full and equitable access to vital safety information. The BSA requires emergency warnings to be provided in text and speech, and captioned when reasonably practicable. ACCAN has undertaken wide consultation with our relevant members regarding the importance of open captions on all emergency warning broadcasts. Ensuring that viewers who rely on captions for full understanding of television broadcasts is not something that should be considered as optional, which is how the current legislative requirement can be interpreted. Therefore, ACCAN recommends that Part 9D of the *Broadcasting Services Act* (BSA) be changed to include the provision of captions as mandatory for all emergency warning broadcasts.

Additionally, ACCAN is concerned that Australians whose first or preferred language is Auslan are not being provided with the same potentially lifesaving information as other viewers. Increasingly Auslan interpreters are being included in emergency warning press conferences and public announcements yet these interpreters are often cut out of the broadcast. ACCAN asserts that broadcasters have an obligation to ensure that whenever an Auslan interpreter is present at an emergency warning event the interpreter be included in the broadcast. Therefore, ACCAN recommends that Part 9D of the BSA include specific requirements that whenever Auslan interpreters are present at an emergency warning event the Auslan interpreters be included in any television broadcast of that event.

Under ACCAN’s recommended update of Part 9D of the BSA, the existing reporting and record keeping requirements will need to be updated to reflect these changes. ACCAN supports compliance

⁴ ACMA, 2014, ‘Client service charter’, available at: <http://www.acma.gov.au/theACMA/About/Corporate/Accountability/client-service-charter-acma>

reporting for both captioning and Auslan under these new provisions.

2. Other stakeholder proposals—regulatory measures for the FTA sector

2.1. Multichannel captioning

Proposed Options

Option 1: Extend FTA television broadcasters' captioning requirements to a full 24-hour period

Option 2: Increase captioning requirements on FTA broadcasters' multichannels

Option 3: No change

ACCAN supports Option 2 incorporating the implementation of Option 1. ACCAN's consultation with our Deaf and hearing-impaired membership indicates that this is the community preference. In the Deafness Forum of Australia's 2008 submission to the Review of Access to Electronic Media for the Hearing-impaired and Vision-impaired⁵ this was a key recommendation supported by the view that "People with hearing loss watch TV at all hours of the day and night, just like people without hearing loss. They do not watch TV only between 6am and midnight."

In consideration of Option 2, ACCAN recommends that the same captioning quotas be required across all of a FTA network's channels. ACCAN's view on the inadequacy of current captioning requirements for FTA multichannels has not changed over the numerous submissions we have made on captioning on Australian FTA television. FTA multichannels have been part of our television landscape for more than a decade, yet the captioning quotas for digital multichannels remain capped at the requirement to only caption programming previously broadcast on the network's primary channel with captions. It is unclear to ACCAN why these digital multichannels are treated differently with regard to captioning requirements. It is clear from the Department of Communications 2015 Digital Television Regulation review discussion paper that the Government no longer sees a distinction between digital channels.⁶ Australia has signed on to a multitude of both domestic and international instruments designed to ameliorate disability discrimination yet those viewers who rely on captions for meaningful access to television are being routinely denied access to the majority of FTA programming. This continuing exclusion contravenes the principles of access and inclusion enshrined in these anti-discrimination instruments.

⁵ http://deafnessforum.org.au/pdf/posted_files/8 - Access to Electronic Media Captions v2.doc

⁶ See Department of Communications 'Consultation Paper: Digital Television Regulation' (January 2015) <https://www.communications.gov.au/have-your-say/digital-television-regulation>

2.2. Captioning obligations for the STV sector

Proposed Options

Option 1: Channel Plan

Option 2: Threshold model

Option 3: Channel provider responsibility

ACCAN is concerned that the caption requirements for STV are overly complicated and do not provide consumers with certainty when subscribing to a subscription television service. Option 1 and 3 appear to make an already complicated regime more complex with minimal improvement for consumers. As such ACCAN recommends that Option 2 be adopted. Using a threshold model to determine captioning requirements will simplify captioning for STV licensees and consumers. ACCAN recommends that the threshold be based on a percentage of gross revenue, thereby exempting a channel from captioning requirements if the expenditure on caption compliance exceeds 2.0 per cent of gross revenue for that channel.