

A submission to the Standing Committee on Environment and Communications, with regard to the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 (Senate)

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About Media Access Australia

Media Access Australia (MAA) is Australia's only independent not-for-profit organisation devoted to increasing access to media and digital information for people with disabilities. Our role covers a wide-range of areas starting at information provision, to policy advice and professional consultancy. We cover media in the broadest sense, from traditional services such as television, DVD and cinema, to digital media, including website accessibility and online media. Our approach is always based on mainstream technology and with a practical, real-world focus.

Whilst MAA's work is predominantly in Australia, we have an extensive international reputation and have worked with governments, international agencies and suppliers on a range of media access issues across the globe. We are able to draw on detailed knowledge of the access industry and developments in access to media from all parts of the world.

MAA is based in Sydney with a satellite office in Perth, and works in collaboration with consumer organisations, government and industry across the country.

The issues dealt with in this submission

The *Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014* appeared unexpectedly with no broad consultation across the range of stakeholders.

In many cases, the amendments proposed in the bill are simplifying unnecessary complexity or removing redundant requirements. However, there are five consequences of the amendments which MAA believes will have an adverse effect on consumers:

- An end to free-to-air television caption compliance reporting
- Different treatment for subscription sports channels
- Blanket caption exemptions for new subscription channels
- A change to record keeping requirements
- The cancellation of a scheduled captioning review

This submission looks at each of these issues in detail. It also makes recommendations for reforms to the current captioning requirements which would both reduce regulatory burden *and* be beneficial for consumers.

An end to the free-to-air television caption compliance reporting

The amendment: Repeal 130ZZC(1) to (4) and a change of wording to 130ZZC(7)

Impact: This amendment would remove the requirement for free-to-air broadcasters to report to the ACMA on their compliance with caption quotas after the end of each financial year. This will be replaced, according to the explanatory notes, with a "complaints based system". In other words, it will become the job of the consumer to police the system.

It has been suggested that reporting is no longer necessary as free-to-air primary channels must now caption 100% of programming from 6am–12pm, making it obvious to consumers what should be captioned. This ignores the fact that free-to-air channels must also caption any news programming and repeated programming from 12pm–6am, and any repeat programs on multichannels which were originally captioned for the same network's primary channel. The average consumer will not be able to identify such programs and make the appropriate complaints.



Furthermore, some multichannels caption in excess of the required repeat quotas. This is something that should be made public and celebrated rather than hidden away.

MAA also questions whether the move to a complaints-based system will lead to greater efficiencies. When a consumer lodges a complaint with the ACMA, and the latter deems it worthy of an investigation, it will commence a lengthy process which can take several months.

The reporting of compliance achieves two things:

1. Consumers know that a regulated quota is being met and that the regulations designed to protect their interests are being properly and fairly enforced.
2. Broadcasters know that they are competing on a level playing field where none of their competitors are attempting to gain an unfair financial advantage through not complying with a required regulation.

Compliance reporting can work very effectively to properly regulate and improve the industry. For example, broadcasters in the UK are required to provide sixth-monthly access reports to the communications regulator, Ofcom, outlining the levels of captioning, signing and audio description. Ofcom then publishes these reports, which generally show that most broadcasters have exceeded their minimum targets.¹ The result is a completely transparent access regime.

It is not onerous for broadcasters to compile such reports. Both they and their caption suppliers have records of all programs that have been captioned, while the suppliers submit reports about any program which has not been captioned, or only partially captioned, due to technical or other issues.

MAA believes that the proposed amendment and move to a complaints-based system misunderstands the range of captioning that a free-to-air channel has to provide. Reporting is a fundamental feature of compliance, consumer protection and efficient market operation, and should be maintained. It also provides the opportunity to highlight additional captioning outside of quotas, showing that parts of the industry are interested in pursuing more access, which is an excellent social (and business) outcome.

Different treatment for subscription sports channels

The Amendment: Repeal existing subsections 130ZV(1) to (4) and replace with new text

Impact: This subsection covers subscription television only and simplifies the explanation for quotas going forward (the old version had interim quotas up to 2014 that no longer apply). The one change is a different treatment for sports channels whereby a channel provider can split the quota across sports channels that it controls, so long as the aggregate total is the same across all of the sports channels, and each channel that has to meet a quota meets at least 2/3 of that quota on an individual basis.

This makes the quota more complicated and confusing for consumers, and presumably adds to the administrative and regulatory cost. Furthermore, it means that it is not clear what level of captioning a channel should have.

¹ The reports can be downloaded from: <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/>



Under present arrangements, a subscriber to sports channels would receive all of the covered channels, but different subscribers like different sports and there is potential for their chosen sport to be the one that is “under captioned”.

We understand that the amendment is based around ensuring that particular types of sport are captioned when they switch to other channels to ensure consistency of captioned product, but this needs more explanation and investigation to ensure that it is clear to consumers what they are being offered and what they will receive match closely.

Blanket caption exemptions for new subscription channels

The Amendment: Adding a new clause at the end of section 130ZV that exempts new subscription television channels from any captioning quota for a period of up to one year and 364 days

Impact: This is a new concept for the legislation giving blanket exemption to a new channel. At present, the licensee has to fill a minimum number of genres of channels and everything else is exempt. The drafting allows for an extended exemption process of at least 1 year and up to one day short of 2 years.

The present channel quota system allows licensees to designate new channels as being excluded and not subject to captioning requirements. This takes it a step further and makes it so a new channel is automatically exempt for at least a year. Furthermore, the drafting of the clause is very loose in defining a new channel and would be subject to dispute.

The current arrangements already give the licensees freedom to choose which channels they want to caption. If they feel a new channel needed to be exempt from caption requirements for whatever reasons, they can do this. We believe this amendment is unnecessary and should be removed.

A change to record keeping requirements

Amendment: Repeal and substitute with new 130ZZD

Impact: Currently, compliance records (basically the record of what has been captioned) must be kept for at least 90 days after an annual compliance report has been submitted by a licensee. Under the amendment, they would only need to be kept for at least 90 day after the end of the financial year. There is a further requirement that audio-visual records must be kept for at least 30 days after broadcast or 90 days if a complaint has been made.

This amendment appears to have been proposed with the assumption that reporting requirements will end, to be replaced by a complaints-based system. As the deadline for a consumer complaint to be investigated effectively becomes 90 days (after which the associated audio-visual records may not exist), then compliance records will no longer be required after 90 days.

As argued above, MAA believes that the reporting requirements should remain in place, and this amendment should therefore be rejected.

The cancellation of a scheduled captioning review

Amendment: Repeal Division 7 of Part 9D

Impact: This section requires the ACMA to undertake a review of the operation of the captioning requirements under the act by 31 December 2015. That review stipulates that it must include public



consultation and report to the Minister by 30 June 2016, and that report to be tabled within 15 sitting days

The explanatory memorandum states that the repeal process is a substitute for this statutory review and therefore it is unnecessary. The repeal process has not engaged in any public consultation and has not covered the full range of issues described in the existing paragraph. MAA contends that the repeal process has been very one-sided and a proper review by the regulator with public consultation would lead to a range of improvements and reflect what is happening in captioning in 12 months' time.

Captioning is a very dynamic industry that operates on a worldwide basis of supply, and to cut off a review of the regulations is short-sighted and may lock the broadcasters, regulators and consumers into antiquated, unworkable systems of operation, such as the repeat regime or consumer-driven monitoring of a quota.

We would particularly emphasise the huge amount of work being done internationally around caption quality, most of which relates to live or near-live programs. These are wholly or partly captioned in two ways: by 'stenocaptioners' using stenographic keyboards, or by captioners 'respeaking' the dialogue, which is converted to captions by speech-to-text software. With both these methods, the captions appear on screen one word at a time (rather than as 'block captions' which are easier to read), lag behind the dialogue and are prone to errors. A number of models have been developed to measure the accuracy of live captions in a practical and meaningful way.²

Recent developments which could potentially improve live captioning include the following:

- The UK regulator Ofcom is actively involved in monitoring live captioning. It is currently requiring broadcasters to do the same and submit reports on sample programs every six months, and making the results public. The second of four planned quality reports, released in November 2014³, also details efforts by broadcasters to increase the percentage of block captions in live programs.
- Ofcom is also trialling new techniques, such as delaying the broadcast by 25 seconds so that captioners can prepare synchronised captions (this is on Welsh-language channel S4C).
- In 2012, Red Bee Media in the UK introduced a new live captioning system which it had developed called Subito, which allows for a more seamless integration of captioning and newsroom operations, and offers the possibility of improving accuracy and reducing the time lag in live captions. Red Bee is working to increase the amount of block captions in news programs. Red Bee Media Australia (which provides captioning for the Seven network and SBS) is also using Subito.
- Deluxe (which owns CSI, the ABC's caption provider) is working on improving the captioning of fast speakers, such as sports commentators, by teaching respeakers how to condense speech on the fly.
- In January 2014, the Nine network moved to a news captioning model where as much of the program as possible has pre-prepared block captions (which are preferred by consumers),

² For more information, see MAA's white paper, *Caption quality: International approaches to standards and measurement* <http://www.mediaaccess.org.au/research-policy/white-papers/caption-quality-international-approaches-to-standards-and-measurement>

³ http://stakeholders.ofcom.org.uk/consultations/subtitling/sampling-results-2/?utm_source=updates&utm_medium=email&utm_campaign=qos-report-nov14



and only genuinely live elements are captioned live. Seven has been the only other Australian network to use this model in Australia in recent years.

- Nine has also begun to issue quarterly caption quality reports, based on a random sample of programs, and using the same quality measurement model as Ofcom.⁴

Furthermore, the Federal Communications Commission in the USA is also enacting a range of practical regulations covering captioning on television services and the interplay between television service and so called 'catch-up TV' where programs are then made available over the Internet, and which are now required to be captioned. It is also looking at caption quality issues.

The scheduled review in 2015 would provide an opportunity to look at these and other developments. It would ensure that our caption regulations are framed in light of world's best practice and most efficient operations, and reflect that Australian broadcasting operates in a worldwide market, not in isolation. It also provides an opportunity to investigate other related issues that need time to be properly discussed and looked at in the overall context of how captioning works at a practical level.

The way forward

The bill includes some reasonable, useful changes but also incorporates some poorly conceived and impractical measures that are just detrimental to access for consumers needing captions. Furthermore there is so much more that could be achieved through looking at all of the issues and involving all of the interested parties, where a truly inclusive, practically workable and light touch regulatory system could be achieved. However, this is not likely to be achieved efficiently and thoroughly through a process of suggesting amendments and negotiating those through the Parliament. More input and consideration is needed that will take a little time.

There is a perfect opportunity to achieve these outcomes as the present legislation includes a statutory review by the ACMA during 2015 looking at all of the provisions of the legislation (which the bill is attempting to remove). This review requires a public consultation process and then a report which is tabled to the Parliament. MAA's recommendation is that the Committee plays a valuable role in drawing out the key issues and ensuring that the 2015 review properly considers those. We strongly support the Committee outlining those issues and making a series of recommended approaches that ACMA should take. This strategy should lead to a well-considered process that is supported by all sides and where the complexities and practicalities of captioning can be discussed and properly addressed. MAA looks forward with enthusiasm to being part of that process, particularly when we see the rapid developments in other markets (particularly the UK and USA) that will assist and inform that review and could lead to even better outcomes in Australia.

Captioning and deregulation – the real issues

There are a range of issues that could be dealt with which would reduce the regulatory burden and compliance effort, as well as further the interests of consumers who rely on captioning to access television services.

These issues include:

⁴ This is the NER Model, developed at Roehampton University. For more information:
<https://roehampton.openrepository.com/roehampton/bitstream/10142/141892/1/NER-English.pdf>



1. The need to have all TV stations/channels operating under a 24-hour quota, rather than one system for free-to-air and one for subscription television. No other country operates this way and consumers look at the different television products as competing channels.
2. All channels being covered by the legislation in a consistent manner. The free-to-air multichannels do not have a regulated quota, beyond having to show programs that are repeated and previously captioned. Yet some of them do additional programming (see table below) and this is ignored, not publicised and celebrated. Having equal treatment and a quota for the multichannels would allow sensible measures such as getting rid of the legislated need to caption repeats. If a channel has a quota to fill, the natural market behaviour is to fill that quota with repeated programs first, and if there are issues around that repeated program then they can substitute it with another captioned program.

Table 1 Captioning Levels on multichannels (April 2014)

Channel	ABC24	ABC2	ABC3	SBS2	7Two	7Mate	Go!	Gem	One	Eleven
Captioning 6am - midnight	96%	100%	100%	14%	35%	41%	33%	57%	23%	24%
Captioning midnight – 6 am	47%	90%	NA	17%	22%	21%	13%	40%	12%	24%
Total captioning over 24 hours	83%	84%	NA	15%	32%	36%	28%	53%	20%	24%

3. The separation of two issues – meeting a quota and adequate caption quality. At the moment the regulator appears to be running a system whereby if there are problems with quality on a particular program then it is deemed not to have been captioned and doesn't meet the quota. They are separate issues. In our practical experience most channels meet the quotas properly and in a lot of cases over-fill the quota, especially if there is timely, open and public reporting of compliance. If there is a systemic quality problem (as opposed to an occasional glitch) then that is when the regulator should intervene to isolate the causes of the problem and work with the channels to fix them, rather than always look for a legalistic, penalty-based system. This approach should reduce compliance burden as it stops channels from having to fill out forms every time a few seconds of captions are missed.
4. Switching the caption quota from a license holder to a channel. This is especially an issue with subscription television where a channel may be offered on multiple platforms and each one has a different quota because it is based on the license holder and how they have allocated the mix of quotas. From a consumer perspective, they expect a channel to have a quota and wherever you watch that channel, the quota applies. Our understanding is that this is what happens with Australian content and it should apply to access.
5. Simplifying the compliance system is a priority. Consumers are generally not interested in making complaints that then lead to a detailed, legalistic investigation and reporting system that can take up to 9 months to resolve. Generally they want the problem acknowledged, logged and hopefully fixed. If the regulator took a more pro-active, monitoring and spot-checking approach to compliance, then these sorts of issues could be dealt with in a more



effective way, including exploring how particular problems arise (as Ofcom is doing with its caption quality initiative detailed above) and how they might be dealt with. Again, in our practical experience, if there is an ongoing, systemic problem with quality then it is pretty obvious to identify and deal with and it is better to direct resources to those instances, rather than chasing one-off, never to be repeated issues with a full legal approach when notification, acknowledgement and being open about the issue is all that is really needed.

Further information and assistance

Media Access Australia would welcome an opportunity to expand on any of these issues and support the Committee in its review of the bill. There are many approaches to disability access for television services across the world and as a specialist not-for-profit organisation working in this field we have extensive contacts and engage in regular monitoring and analysis of the latest developments.

