

30 November 2014

Submission on Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014

Thank-you for the opportunity to make a submission on this Bill. As a deaf person reliant on captioning to be able to access television and other media it is good to have an opportunity to comment.

Closed captioning of television (in which a device is used to access captions) started in 1982 as a way for deaf and hard of hearing (HOH) people to access television programmes.

Captioning was slow to take off in Australia and, by 2001, most TV programmes were still uncaptioned. It was only after the Australian Human Rights Commission (AHRC) conducted a captioning enquiry in 1998 that Deaf and HOH Australians started to use the Disability Discrimination Act (DDA) to push for more captioned content.

Part 9D of the Broadcasting Services Act 1992 (BSA) aimed to assist deaf viewers, or those with a hearing impairment, by requiring Australian free-to-air broadcasters and subscription television licensees to meet specified levels of captioning for television programs. Under Part 9D, free-to-air broadcasters and subscription television licensees were also required to meet targets for quality, record-keeping and reporting requirements.

Exemptions were available from the Australian Communications and Media Authority (ACMA) if providing captions would cause a broadcaster unreasonable hardship. Apart from that, broadcasters have been required to increase captioning by a target of 5% per annum, with the ultimate target being 100% captioning compliance.

Impacts

Part 9D has worked very well. In the 2012/13 reporting period ACMA reported that 100% of commercial and free to air, and 99% of subscription broadcasters achieved their annual captioning target.

Generally there have been between 30-40 complaints each year. This year there have been 8 complaints but, in all cases, the station has found to have not been in breach of the standards.

Part 9 D of the BSA has opened up good quality access to television broadcasting for the more than 3 million deaf and hard of hearing Australian viewers who need captions to access television. For this reason it is hard to understand why government, instead of celebrating a success story, is now seeing this good level of captioning provision as a “red tape” problem that needs to be fixed.

The proposed amendment plans to:

- a) increase flexibility for free-to-air broadcasters and subscription television licensees in complying with captioning regulation.
- b) Reduce costs associated with the captioning regime

- c) Ease the regulatory compliance burden for television broadcasters by simplifying administrative and reporting requirements
- d) Substantially increase a broadcaster or licensee's flexibility when meeting their captioning obligations.
- e) Better support the ability of television licensees to provide captioning services that benefit Australians with a disability that would otherwise restrict their ability to access television services.

It is hard to see how aims a) – d) above could lead to a benefit for Australians with a disability as outlined in e) above. The proposed amendments seem more likely to result in deterioration in the amount and quality of captioning provided, due to the following changes:

Reporting Requirements. The proposed Bill will remove the annual reporting requirements for free to air broadcasters that have worked so well in improving captioning provision and quality. In effect they send a signal to broadcasters that they no longer need to take captioning provision seriously because they are no longer considered accountable.

Complaints based process introduced. Instead of the onus being on broadcasters to show that they are meeting their requirements, deaf and hard of hearing viewers would now need to make complaints about lack of captioning, or poor quality captioning. This change is of particular concern because captions describe things "in the moment" in the same way a motorist may see another motorist behaving dangerously but not act because it is over before the first motorist had time to decide to object to it. Captioning provision is similar. Viewers may be upset, even enraged, but in the time it takes to contact the broadcaster through the National Relay Service, or write, the moment is lost and, with it, the motivation to complain.

I have tried to complain to broadcasters once or twice myself when something really interesting is on and captions have broken down, but it is virtually impossible to get through to a real person at the stations after business hours. I have been grateful that, although I have never complained, there is an agency working behind the scenes to ensure a good level of access. In this proposed new system, I would be on my own.

Reduced reporting requirements. This Bill would see lesser requirements for record keeping and repeal the existing statutory requirement for the ACMA to review the operation of captioning obligations before 31 December 2015. These changes would make it hard for people to measure the impacts of any changes to levels of captioning. Deaf and HOH people are going to be left to try and maintain the same levels of captioning access so recently attained.

This Bill risks having a detrimental effect on the millions of deaf and hard of hearing Australians who need captions to access television. It is at variance with the aims of the Disability Discrimination Act 1992 (DDA) that provides for reasonable levels of access to community life for all Australians with a disability.

Also, deaf and hard of hearing people are often loathe to complain. Elizabeth Hastings, Australia's first Disability Discrimination Commissioner, noted in her review of the first five years of the DDA in December 1997, that deaf people had been slow to use the DDA to increase access to captioning. Introduction of this Bill is likely to impact negatively on captioning provision while simultaneously putting the onus for trying to claw back access, onto a group of people for whom the requirement to complain is going to be a significant barrier.

The Broadcasting and Other Legislation Amendment (Deregulation) Bill also runs counter to the National Disability Strategy 2010-2020 (NDS). This agreed policy framework represents a commitment by all levels of government, industry and the community to a unified, national approach to policy and program development. Key areas for action in the NDS include access to digital information and communications technologies as well as access to civic life and to rights protection. This bill risks reducing access to communications for a particular group and is an infringement of the right to participate.

Concerns about the proposed amendment:

1. This amendment benefits broadcasters by reducing accountability, while reducing access to captions for deaf and HOH consumers.
2. Deaf and HOH viewers are likely to experience a decrease in captioning provision and quality.
3. Introduction of a complaints based process to replace reporting requirements is highly problematic given the lack of engagement that Deaf and HOH consumers already exhibit with complaints mechanisms.
4. Lack of captioning, or poor quality captioning, are less likely to be formally complained about because of the “in the moment” nature of captions - what has been missed cannot always be regained.
5. Annual reporting requirements keep the eyes of broadcasters firmly on expectations of them by government. Removal of annual reporting requirements for free to air broadcasters sends a signal that providing access is now optional.
6. Plans to give subscription television licensees “more flexibility” when meeting their captioning obligations” runs contrary to existing legislation and government policy such as the NDS that aim to improve access to community life.

Conclusion

The Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 aims to reduce red tape but threatens to undo the access to broadcasting that deaf and HOH have fought so hard to win over many years. This is particularly so in the ever tightening fiscal environment in which broadcasters operate.

Deaf and HOH Australians need more support from government to embed attitudes towards access that will contribute to a more inclusive society.

Please don't introduce these amendments as they will reduce the access of deaf and HOH viewers to television.

