



**Submission by
Free TV Australia**

Senate Environment and Communications
Legislation Committee

*Broadcasting and Other Legislation Amendment
(Deregulation) Bill 2014*

10 December 2014



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EXECUTIVE SUMMARY

- Free TV is supportive of the government's de-regulation agenda. The *Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014* (Bill) is a positive step to reducing the administrative burdens that apply to media and telecommunications industries, who are among the most heavily regulated in the Australian economy.
- The reference to the Committee cites significant concerns over the Bill's changes to captioning requirements. The Bill contains a number of changes to Part 9D of the *Broadcasting Services Act 1992* (Cth) (BSA), concerning captioning on television. However, the Bill does not alter commercial free-to-air broadcasters' substantive obligations regarding the amount or quality of captions they provide. There will be no practical impact on the viewer as a result of the changes proposed.
- The key changes in the Bill in respect of captioning on commercial free-to-air television are:
 - replacing the annual reporting requirements with a complaints based compliance system;
 - the correction of an anomaly relating to the exemption for unforeseen technical and engineering difficulties only applying to breaches of the quota and not to breaches of the quality standard; and
 - requiring the Captioning Quality Standard to distinguish between live and pre-recorded broadcasts (consistent with previous practices, and other jurisdictions).
- These proposals are all supported by Free TV.
- The current reporting requirements at section 130ZZC of the BSA are onerous, overly-detailed, and very resource intensive for broadcasters. A complaints based system is a more timely, responsive and efficient way to deal with any captioning compliance issues. A complaints based compliance system will bring captioning into line with a range of similar regulatory requirements on broadcasters, such as compliance with the Commercial Television Industry Code of Practice, and compliance with a range of licence conditions at clause 7 of Schedule 2 to the BSA.
- Under the proposed changes, broadcasters will be required to keep written records that demonstrate their compliance with captioning quotas, and audio-visual records that demonstrate compliance with the Quality Standards and rules about emergency warnings. These records must be made available to the ACMA on request. This means that broadcasters can still be held accountable in the event of any compliance issues.
- In addition to the changes proposed in the Bill there is scope for additional changes to be made to Part 9D to improve the operation of the captioning framework and recognise the practical realities of captioning provision, without compromising the captioning services that are provided to the community.
- The Bill contains a number of other provisions which are mechanical or consequential in nature, or are intended to reduce the regulatory burden on the regulator and Government. Free TV supports the other changes that are



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contained in the Bill, however the regulatory relief provided to industry is fairly modest.

- A number of areas where urgent reform is required are not dealt with by this Bill. Free TV recommends that these issues (set out at Appendix 1 of this submission) be addressed as part of the Government's de-regulation agenda at the earliest opportunity.



Introduction

Free TV welcomes the opportunity to make a submission to the Senate Environment and Communications Legislation Committee on the provisions of the *Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014* (Bill).

Free TV Australia (Free TV) represents all of Australia's commercial free-to-air television broadcasters, including all regional broadcasters. At no cost to the public, our members provide fifteen channels of content across a broad range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. On any given day, free-to-air television is watched by more than 13.5 million Australians.

Commercial free-to-air broadcasters support the Government's de-regulation agenda and these initial moves to repeal outdated or unnecessary regulations and reduce the red tape on their businesses. Commercial free-to-air television is the most heavily regulated media platform in Australia.

Free TV members recognise the importance of captioning services to the deaf and hearing impaired community and are committed to providing comprehensive, high quality captioning services, in line with and beyond their regulatory obligations. However, the current reporting requirements and administrative arrangements surrounding the provision of these services are unduly onerous and resource intensive. The Bill amends Part 9D of the *Broadcasting Services Act 1992* (BSA) to improve these arrangements, and reduce compliance costs for free-to-air broadcasters. The changes in the Bill do not alter the substantive obligations for free-to-air broadcasters in relation to captioning and will not have any impact on the viewing experience of audiences. These changes are supported by Free TV.

There are a range of significant outstanding matters in need of urgent reform which are yet to be addressed. This submission addresses the captioning provisions that formed part of the Committee's reference, and provides some comments on the remainder of the Bill and associated matters, as well as highlighting additional areas that must be addressed as part of the Government's deregulation agenda.

Changes to captioning framework

Commercial free-to-air broadcasters recognise that captioning is a much-valued service within the deaf and hearing-impaired community and continue to work diligently to ensure the ongoing provision of high-quality captioning services.

The reference to the Committee cites concerns about changes to the captioning framework contained in the Bill.

The Explanatory Memorandum to the Bill, in the Statement of Compatibility with Human Rights, notes:

The amendments to the closed captioning arrangements made by this Bill ...will not reduce existing captioning quality standards or targets or legislated future captioning targets. As such the Bill will not have any impact on people with a disability in regards to seeking or receiving information via television broadcasting services or programming.

Free TV supports the changes and agrees with the statement in the Explanatory Memorandum, that the Bill will not result in any reduction in the quantity or quality of captions on free-to-air television.

The captioning obligations for commercial free-to-air broadcasters are extensive:

- Captions must be provided for 100% of programs between 6 am and midnight on the primary commercial television broadcasting service¹;
- All news and current affairs programs on the primary commercial television broadcasting service must be captioned, regardless of the time they are shown²;
- All programs shown on multi-channel services that have aired with captions on the primary commercial television broadcasting service must be captioned when aired on the multi-channel service;³
- All captioned programs must comply with the *Broadcasting Services (Television Captioning) Standard 2013* (Quality Standard).⁴

Compliance with Part 9D of the BSA is a licence condition, pursuant to clause 7(1)(o) of Schedule 2 to the BSA.

In addition to their legislative captioning obligations, Free TV members also caption a wide range of programs on their multi-channels voluntarily. These programs include first release Australian drama⁵, first release Australian lifestyle programs⁶, first release, fast-tracked programs from the US⁷ and sport⁸. All commercial free-to-air

¹ Subsection 130ZR(1) of the BSA

² Subsection 130ZR(2) of the BSA

³ Section 130ZS of the BSA

⁴ Section 130ZZA of the BSA

⁵ For example, *Neighbours* on Eleven

⁶ For example, *Recipes that Rock* and *Alive and Cooking* on GEM

⁷ For example, *Once Upon a Time* on 7Two

⁸ For example Seven provides captions for all AFL matches regardless of whether they are shown on the primary channel or a multichannel.

television broadcasters also caption all C (Children) and P (Preschool) programs, regardless of which channel they are shown on.⁹

According to the ACMA, all 51 commercial television broadcasters (providing 75 services in total) reported that they had exceeded their annual captioning target requirements for 2012/13. From 1 July 2014, captions must be provided for 100% of programs between 6 am and midnight on the primary channel.

Broadcasters are investing millions of dollars and making every effort to provide viewers with high quality captioning services, however, the administrative arrangements surrounding the delivery of these captioning services are inefficient and cumbersome.

While the changes proposed in the Bill do improve these arrangements, there are also further steps that can and should be taken to reduce the administrative burden on broadcasters, without compromising the delivery of captioning services to viewers.

1. Accountability - Reporting and record keeping

Move from annual reports to a complaints based system

Current arrangements are inefficient

Item 13 of Schedule 6 to the Bill repeals the current reporting arrangements for captioning (a new record keeping system is implemented in Item 15). In practical terms, this means that captioning compliance will be assessed using a complaints based system, with reports available to the ACMA in the event of a complaint or another concern regarding a broadcasters' compliance.

Free TV supports this change. The current reporting requirements at section 130ZZC of the BSA are onerous, overly-detailed, and very resource intensive for broadcasters.

The compliance report forms include the requirement for broadcasters to identify all known captioning errors and interruptions - including where there is an outage for the entire service (not just captions), or the fault is very minor (such as a few seconds, or is only experienced in a small part of what are, especially for regional broadcasters, large licence areas), or there have been no viewer complaints.

This approach does not reflect the BSA requirement to enable public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services (section (4)(2)(a)).

Complaints based system is preferable

A complaints based compliance regime is a more efficient, sensible and responsive mechanism for measuring compliance with captioning obligations, particularly as commercial free-to-air broadcasters are now required to caption 100% of the programming on their primary service between 6 am and midnight.

In the event of a compliance issue, caption users will be able to complain to the ACMA (as they do now), or provide feedback to the broadcaster concerned. The hearing impaired community and other users of captions are best placed to determine whether a relevant captioning fault or interruption has materially impacted on the viewing experience.

⁹ For example, *Wurrawhy* on Eleven, *Hairy Legs* on 7Two, and *Kitchen Whiz* on GO!

A complaints system is the most efficient way to ensure that any captioning errors are rectified. A reporting system that identifies errors which occurred more than a year ago is not a practical way of addressing captioning faults. If faults are identified at the time, then steps can be taken to rectify the issue as soon as possible, to restore captioning services to viewers.

A complaints based compliance system will also bring captioning into line with a range of similar regulatory requirements on broadcasters, such as compliance with the Commercial Television Industry Code of Practice, and compliance with a range of licence conditions at clause 7 of Schedule 2 to the BSA.

Overall, a complaints based system is a more balanced approach that still ensures that broadcasters are held accountable for instances of non-compliance, particularly when taken in conjunction with the record keeping obligations (discussed below).

Record keeping provides additional accountability

Item 15 sets out rules for keeping records in relation to captioning services that are provided on television.

Free TV supports this item, which clarifies and refines the record keeping rules for free-to-air broadcasters in relation to their captioning compliance.

Under the changes proposed, broadcasters will be required to keep:

- written records enabling the ACMA to ascertain compliance with captioning quotas for 90 days after the end of the relevant financial year; and
- audio-visual records enabling the ACMA to ascertain compliance with the Quality Standards, and the rules regarding emergency warnings, for 30 days after the broadcast (unless a complaint is received, in which case the records must be kept for 90 days).

These records must be made available to the ACMA on request.

These rules ensure that compliance with captioning obligations can be effectively monitored by the ACMA, and investigated further if concerns about compliance arise. They represent a sensible and balanced approach to compliance management, without imposing unnecessary administrative and reporting burdens on broadcasters.

Taken together, the complaints system and these record keeping requirements will ensure that broadcasters continue to be held accountable for compliance with their obligations under Part 9D.

2. Other captioning changes in the Bill

Recognition of live captioning in the Quality Standard

Free TV supports the proposed change at clause 2A of Item 11 of Schedule 6 to the Bill, which requires the ACMA to consider the differences between live-captioned programs and pre-prepared captioning in the Quality Standard.

Such an approach is consistent with measures developed by a working group of stakeholders, which was in place before the introduction of Part 9D of the BSA. It is also consistent with the approach in other jurisdictions, such as the United States and the United Kingdom. For example, Federal Communications Commission guidance on new captioning rules for the United States (set in February 2014) state that:

The rules distinguish between pre-recorded, live, and near-live programming and explains how the new standards apply to each type of programming, recognizing the greater hurdles involved with captioning live and near-live programming.¹⁰

Where possible, broadcasters caption programs before they go to air. Programs with pre-prepared captions will generally produce a better result for viewers. However, pre-captioning programs is not possible in all cases. A program may be live captioned for a range of reasons, including:

- topical productions delivered a few hours before broadcast;
- uncaptioned programs from overseas with a short turnaround time;
- programs that are broadcast live or near live; or
- when pre-recorded captions fail to broadcast due to file corruption or another irregular occurrence.

Live captioning is very difficult and often involves transcribing the aural elements of a program in real time. Live captioning is not limited to stenography and re-speaking, and can also involve captioning scripted material as it is broadcast. With live captioning there is no scope for corrective action when errors occur.

While broadcasters and their captioning service providers make every effort to ensure the quality of live captions, it is not reasonable or realistic to expect live captioned programs to attain precisely the same level of quality as a pre-captioned program. The Quality Standards must acknowledge these differences, and the ACMA must take into account that a program has been live-captioned when investigating complaints under the Quality Standard, so that certain allowances can be made on key issues such as synchronisation and accuracy of spelling.

The proposed change at Item 11 of Schedule 6 to the Bill, introducing subclause (2A), implements this approach. Proposed subsection (2A) at Item 11 in the Bill is consistent with the guidance notes in the Quality Indicators developed by the ACMA's Co-Regulatory Captioning Committee. This Committee comprised a range of stakeholders, including broadcasters, captioning service providers, and advocacy groups representing captioning users.

Free TV is however concerned about the wording of proposed clause (2B) because it seems at odds with the recognition that live captioning has particular constraints and challenges. This section should be removed, or clarified to ensure that the quality of live captioned programs is measured in an appropriate and realistic manner.

Correction of anomaly regarding unforeseen technical difficulties

Free TV supports the proposed change at Item 12 of Schedule 6 to the Bill, which applies the existing exception regarding “unforeseen difficulties of a technical or engineering nature” in relation to compliance with the Quality Standards.

The current exception at subsection 130ZUB(1) is intended to accommodate situations where unforeseen technical or engineering difficulties interfere with the provision of captions. However, the section currently only operates to excuse licensees from breaching the captioning quota provisions. It does not apply to

¹⁰¹⁰ <http://www.fcc.gov/guides/closed-captioning>



excuse licensees in relation to captioning quality. The proposed change at Item 12 rectifies this anomaly.

There have been instances where the ACMA has accepted that a broadcaster has experienced unforeseen technical difficulties and excused the breach, but has still gone on to find a breach of the licensee's requirement to comply with the Quality Standard (section 130ZZA).¹¹

If technical difficulties occur, it is inevitable that this will affect the quality of the captioning service. For example, if a television picture experiences significant interference then it is likely that the captions will not be comprehensible.

Unforeseen technical and engineering difficulties are not something that a broadcaster can anticipate, and must be accommodated as part of any compliance regime.

Item 12 of Schedule 6 to the Bill rectifies this situation and it is supported.

However, further changes should be made to both this section (and existing section 130ZUB) to reflect the fact that a captioning service may be disrupted due to an unforeseen event that is not of a technical or engineering nature, and it is beyond the control of the licensee or broadcaster. This suggested change is discussed further in section 2.

Statutory review

Free TV supports Item 16 of Schedule 6 to the Bill, which removes the requirement for a review of Part 9D.

The changes set out in the Bill reflect a consideration by the ACMA and the Department of the operation of Part 9D of the BSA since its commencement in July 2012. Free TV members have provided feedback to both the ACMA and the Department of Communications about the operation of Part 9D over this period.

No review is necessary until the changes in this Bill have been operationalised for a reasonable period of time, and an assessment can be made about the effectiveness of the amended Part 9D.

It is also relevant to note that the absence of a legislative requirement for a review does not preclude the Government or the ACMA from assessing the operation of the provisions. The Government is empowered to review and amend the legislation at any time.

Additional matters that should be addressed in Part 9D

There is scope for further changes to be made to improve the operation of Part 9D to the BSA, without compromising the provision of captioning services to the community. These recommended changes are set out below.

¹¹ See, for example, ACMA Investigation Report 2085, File number ACMA2013/1208 – *Rugby Union – Australia v British and Irish Lions*, Licensee Northern Rivers Television Pty Ltd (NRN), especially discussion at page 7 - <http://www.acma.gov.au/~media/Broadcasting%20Investigations/TV%20investigations/Word%20document%202014/3085%20NRN%20investigation%20report%20docx.DOCX>

Partial licence area failure

Free TV is concerned about the assessment of compliance with the quotas and targets where there is a captioning failure in only part of a licence area, and the cumulative effect on a licensee's overall compliance.

This issue has been raised in previous correspondence to the ACMA and is critical for all broadcasters who rely on more than one transmitter and translator in each licence area. It affects both regional and metropolitan broadcasters and without reform, it will continue to result in inevitable breaches that do not reflect the experiences of viewers.

There are two major areas of concern. Firstly, a technical fault at a small translator is treated under the legislation as having equal impact as a fault that affects the entire market. This means that even though the majority of the population in a licence area is receiving perfect service, a broadcaster will still have to record a lower level of overall compliance as a result of the partial failure. For example, a failure at Marysville in Melbourne does not mean that 4.2 million Melbournians will be disadvantaged.

Secondly, broadcasters are subject to an accumulation of such minor failures, which are not representative of the viewing experience of any single viewer. If three separate small translators in a licence area experience a captioning failure equal to 1% of the quota, a broadcaster will have to record a non-compliance figure of 3%, even though no single viewer has experienced more than a 1% failure.

Part 9D should be amended to include a provision stating that a broadcaster's compliance will be measured with reference to the majority of their licence area. That is, if the majority of a licence area experiences a captioning disruption, then an instance of non-compliance is recorded and counts towards the overall calculations for compliance purposes. However, if a captioning disruption only affects a minority of a market, then this disruption should not be counted for the purposes of the overall quota compliance measurement.

When breaches should be disregarded

The provision of captioning services is very complex and involves both technical and human elements.

Section 130ZUB of the BSA should be expanded to reflect the complexities of providing a captioning service, and ensure that broadcasters are not subject to a breach for unforeseen errors, or where they have acted honestly and reasonably to ensure that a captioning service is provided. There are two matters that should be incorporated into the section, and the change proposed to section 130ZZA at Item 12 of the Bill.

Remove reference to "technical or engineering nature"

As noted previously, the provision of captioning is complex and relies on both technical and human aspects for seamless delivery.

There may be occasions where an unforeseen event occurs which is not technical or engineering in nature, but which nevertheless causes an interruption to a captioning service (such as an evacuation at a location where a program is being live-captioned), and is beyond the control of the licensee.

Section 130ZUB should therefore be amended to remove the words "of a technical or engineering nature" so that other reasonable unforeseen difficulties that impact a



captioning service are accommodated and taken into consideration when determining compliance. This change should also be made to Item 12 of Schedule 6 to the Bill.

Where reasonable efforts by a licensee demonstrated

Under Part 9D, a commercial free-to-air broadcaster will be in breach of their licence condition if they are unable to provide a captioning service (including a captioning service of a certain quality) for reasons that are beyond their control, even if they have acted reasonably and honestly.

Broadcasters should not be penalised for external difficulties beyond their control when they have otherwise acted reasonably and honestly in discharging their obligations. These difficulties occasionally arise, despite ongoing efforts by broadcasters to maintain a very high quality of service and ensure full compliance with their captioning requirements.

Section 130ZUB should be amended to require the ACMA to consider whether a licensee has acted reasonably and honestly in their provision of a captioning service, when it is determining whether a breach of the licence condition has occurred (or alternatively whether a licensee should be excused from the breach). This amendment could be framed in a similar manner to section 226 of the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010*), which provides a defence for a natural person for certain matters where “*the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused*”.

Other provisions in the Bill

The Bill makes a number of changes to the broadcasting planning powers of the ACMA. The Explanatory Memorandum to the Bill indicates that these are designed to reduce the administrative burden for the ACMA and streamline consultation processes (which are required in any event under the *Legislative Instruments Act 2003*).

Under the changes proposed at Schedule 1, the Minister will be able to direct the ACMA in relation to all licence area plans in the future. This is a change that is supported by Free TV as it will enable the Minister to respond quickly to identified problems if necessary.

While Free TV supports a general streamlining of these provisions, it is important that the changes do not reduce the rigorous and considered approach to licence area plans, particularly in relation to interference management issues. It would not be acceptable if there was a reduction in industry consultation as a result of these changes.

It is understood the Bill amends the BSA and the Radcomms Act to remove a number of requirements that were necessary during the initial planning phase, however, we do not believe there should be any constraints placed on the ACMA to meet ongoing variations to planning as required e.g. such as the variations to the Television Licence Area Plans now being undertaken in consultation with television broadcasters.

The changes in this Schedule are designed to remove and amend the planning and licensing provisions that enabled the transition to digital television, and the re-stack of television services.

There are a number of consequential changes to update references throughout the BSA and remove provisions that applied to services during the simulcast period (which has now expired), such as the High Definition quota.

Some of these changes are administrative in nature and remove only redundant provisions.

Some other proposed changes require detailed examination and these should be undertaken in alignment with the review being proposed by Government of Schedule 4 of the BSA e.g. the reference to "Teletext" in Items 132 to 134 should be changed to "closed captioning". "Teletext" is a 50 year old closed caption system which may be replaced in the future.

Schedule 4 – Requirement to review Codes of Practice

The proposed change at Schedule 4 to the Bill will remove the requirement for the ACMA to conduct a review of the Codes of Practice in relation to classification issues.

Free TV agrees the requirement to conduct a periodic review is redundant, as the ACMA has a number of alternative mechanisms to consider whether the Codes are operating in accordance with community standards. This change is supported, however it is very minor and does not address other provisions in Part 9 of the BSA which require reform.

The current media environment is very different than it was 22 years ago, when the co-regulatory scheme at Part 9 of the BSA was originally developed. The current extensive and prescriptive regulations are no longer an efficient way of regulating

broadcasting platforms. The Code development process has become more complex and has not been appropriately recalibrated to reflect the significant changes that have occurred in the media industry, including increased competition, new technology, and the different ways that people are now accessing audio-visual content.

In the absence of a full reconsideration of the co-regulatory system, Free TV recommends two additional, immediate changes to Part 9 of the BSA to reflect the modern media environment. These changes will also bring the BSA into line with recommendations of the Australian Law Reform Commission (ALRC) in its report *Classification – Content Regulation and Convergent Media* and the Australian Media and Communications Authority (ACMA) in its report on the recent *Contemporary Community Safeguards Inquiry*.

The legislative changes recommended to section 123 of the BSA are as follows:

- **Remove “in consultation with the ACMA and taking account of any relevant research conducted by the ACMA” from 123(1).** This will give the regulated entities additional autonomy in the development of their Codes.
- **Repeal subsections (2) to (3D) of section 123.** This will significantly reduce the level of prescription in the Code development process, allowing flexibility and agility as technology and community standards develop. Subsection (2) sets out a number of matters which may be covered by the Codes, a number of which were found recently by the ACMA to be no longer relevant as regulatory interventions.¹² Subsection (3) sets out a list of matters which must be taken into account, and subsection (3A) – (3D) set special rules treatment of Films and adult material on television. The ALRC recommended that these rules be removed from legislation.¹³

The removal of these specified provisions will not lead to an erosion of community safeguards in regulated media. Rather, it will result in a more flexible and responsive system that can be adapted to suit the media landscape as it develops.

It is important to note that the ACMA must still be satisfied that a Code provides appropriate community safeguards for the matters that it covers before registering it under section 123(4) of the BSA. The ACMA also retains the power under section 125 of the BSA to make a program standard if the Code is not providing appropriate community safeguards (although a consequential amendment would be required to effect this if subsection 123(2) was removed).

Schedule 5 – Directorship notifications

Free TV welcomes and supports the changes proposed in Schedule 5 to the Bill.

For Free TV members, these changes will mean that:

- Licensees will not have to provide annual reports to the ACMA regarding directorships (noting that the same information is already report to ASIC); and
- Licensees will now have 10 business days to notify the ACMA if there is change of control (rather than 10 calendar days).

¹² Australian Communications and Media Authority (2014) *Contemporary Community Safeguards Inquiry – Consolidated Report*, page 67

¹³ Australian Law Reform Commission (2012) *Classification – Content Regulation and Convergent Media – Final Report*, pp 196



These changes are in line with recommendations made by Free TV to the Senate Finance and Public Administration Legislation Committee in relation to the *Omnibus Repeal Day (Autumn 2014) Bill 2014*.

Additional changes should be made to this section to improve the efficiency and operation of the provisions regarding changes in control. In particular, the Bill should be amended to remove the duplication of both the controller and the licensee notifying the ACMA about control changes. This will involve the repeal of section 63 and consequential amendments to section 64.

Often a licensee will not know if there has been a control change for some time due to the complexity of the relevant transactions and corporate structures, and technical reports on company structures can take a number of days to receive. The licensee may be reliant on the controller to provide information about their activities.

Hence the person entering the position of control or alternatively, leaving the position of control should be the one to notify the ACMA in both instances, rather than the licensee.

Other Schedules

The matters dealt with in Schedules 3, 7 and 8 do not affect Free TV members.

Schedule 9 does not have any material impact on Free TV broadcasters.

Appendix 1 Additional matters for reform

Late in 2014 the Minister for Communications sought feedback from industry stakeholders about the reforms that should form part of the Government's deregulation agenda.

A number of the reforms identified by Free TV have not been actioned. Many of these reforms, particularly those identified as priority areas, are urgently required to ensure that commercial free-to-air broadcasters can compete fairly and robustly with new media entrants and technologies, and continue to deliver their valued services to all Australians at no cost.

Issue	Description
Broadcasting Licence fees	Commercial television broadcasting licensees are required to pay licence fees of up to 4.5% of gross revenues, in addition to regular corporate taxes and transmitter licence fees. This represents an additional tax for commercial broadcasters, which is unjustified in the current media environment and taking into account broadcasters' other regulatory obligations. This must be addressed as a priority.
Retransmission	The current retransmission exception contained in section 212 of the <i>Broadcasting Services Act</i> allows pay television to retransmit free to air broadcasts without the consent of the broadcaster. This should be either removed or significantly reformed so that pay television cannot circumvent broadcast copyright protection for commercial purposes.
Anti-siphoning	<p>The anti-siphoning scheme ensures that nationally significant sporting events remain available free of charge for all Australians to watch. It recognises that nationally significant sporting events play an important role in Australia's cultural and social life and that Australians should not be denied access to these events based on their inability to afford the high cost of pay television services. In this way it effectively delivers a clear public policy goal.</p> <p>There is an inefficient administrative barrier to showing sport on the anti-siphoning list on a multi-channel. For an event on the anti-siphoning list to be shown on a digital multi-channel, the Minister must issue a notice removing it from the list shortly before broadcast, following a request from the broadcaster. This is an unnecessary administrative burden on both government and broadcasters and should be removed.</p>
Producer offset	Currently, the producer offset for television is only 20%, while for feature films the available offset is 40%. If the producer offset for television is increased to 40%, in line with the offset available for feature films, this would be consistent with the principle of regulatory parity, and in-line with a recommendation of the Convergence Review. It will create additional incentives for Australian content production. Successive Screen Australia Drama Reports indicate that the costs of production for television drama

Issue	Description
<p>Overlapping, inconsistent and duplicate restrictions</p>	<p>are increasing.</p> <p>As a general principle, the regulatory framework that broadcasters operate within should not impose duplicate or complex layers of legal and regulatory requirements on broadcasters in relation to the same conduct.</p> <p>The BSA should cover the field in relation to the matters which it regulates (including through the Code), so that broadcasters are not subject to different obligations in each state (for example, in relation to gambling, alcohol and food advertising).</p> <p>Similarly, legal requirements that broadcasters are subject to (including offence provisions) should not be replicated as licence conditions or incur additional penalties. Broadcasters should be subject to the law in the same way as any other business.</p> <p>A comprehensive review of these issues is required, including a repeal of clause 7(1)(h) of Schedule 2 to the BSA.</p>
<p>Main channel in HD</p>	<p>The current legislation prohibits broadcasters from broadcasting their primary service in HD. This is an outdated regulation in a post-switchover environment, particularly as new technologies develop in the delivery of broadcasting services.</p>
<p>Children's Television Standards</p>	<p>The Children's Television Standards (CTS) are outdated, overly prescriptive, and do not account for the way children are now consuming media, or how parents are managing viewing. Some recent changes made by the ACMA are an improvement, however significant advertising, scheduling and content restrictions still remain. The CTS should be revoked under direction from the Minister.</p>
<p>Reporting requirements – Australian content</p>	<p>Broadcasters must fill in detailed annual compliance forms demonstrating compliance with Australian program quotas and sub-quotas, in addition to programming expenditure. The Minister should direct the ACMA to revise section 21 of the <i>Broadcasting Services (Australian Content) Standard</i>, and associated forms, to simplify reporting and move to spot audit system. Streamlined reporting will require reduced resources, resulting in time and cost savings for business.</p>
<p>Prohibition on election advertising for period prior to polling day</p>	<p>Broadcasters are currently prohibited from broadcasting an election advertisement from midnight on the Wednesday before polling day in a licence area where an election to a Parliament will be held. These rules do not apply to other forms of electronic media such as internet or mobile advertising, creating significant regulatory disparity. These rules are no longer relevant or effective given the shift to a 24 hour news cycle and the popularity of online content services. Banning election advertising on TV and radio only is no longer effective in enforcing any real blackout as consumers still have ready access to election advertising (including audio-video advertising) online through popular news sites and apps. This rule should be removed.</p>

Issue	Description
Declarations of conformity – responsibility	<p>Under the <i>Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003</i>, apparatus licensees are required to obtain a declaration of conformity for each transmitter to certify that the electro-magnetic fields of the transmitter do not exceed the maximum levels set out in the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) standard.</p> <p>If the relevant reporting obligation was placed on the site controller (as opposed to the licensee), this measurement would be more accurate and undertaken more efficiently. Site controllers routinely survey their sites in any event, to ensure compliance with relevant work health and safety legislation. This approach would also result in a reduction of red tape for industry across the board.</p> <p>This change can be effected by a Ministerial Direction to the ACMA to amend the applicable Determination to shift the responsibility for this reporting from the apparatus licensee to the site controller. It does not require legislative amendment.</p>