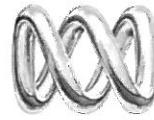


21 June 2012



Australian  
Broadcasting  
Corporation

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Senate Standing Committees on Environment and  
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Dear Sir/Madam

**Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012**

The Australian Broadcasting Corporation (ABC) welcomes the opportunity to comment on the Committee's inquiry into the Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012 (the Bill). The Corporation has a range of concerns regarding the Bill and despite the short timeframe allocated for this inquiry, seeks to bring these concerns to the Committee's attention.

The ABC's policy and approach to promoting access to its services and content via electronic media was outlined in its various submissions to the Government's review of *Access to Electronic Media for the Hearing and Vision Impaired*. The goal of universal access lies at the core of public broadcasting and the Corporation recognises the importance of providing all Australians with access to content that informs, entertains and that enriches their lives, including those with a hearing impairment.

The Corporation's long standing commitment to improving access to electronic media for the deaf and hearing impaired community through closed captioning remains strong. The Corporation has consistently increased the amount of captioned content on ABC1 and with the advent of digital multi-channelling has significantly expanded its captioning service to include ABC2, ABC3 and ABCNews24. In addition, the ABC provides a captioning service for programs available on iview that were previously broadcast in prime time on ABC1 or ABC2 with captions.

The ABC has also participated in an extensive series of consultations in recent years with deaf and hearing impaired stakeholder groups, the Australian Communications and Media Authority (the ACMA), captioning service providers and other broadcasters.

The Corporation continues to support the underlying objectives of the Bill and the ABC is not proposing any changes which would detract from these objectives. The ABC's comments on the Bill are designed to ensure the impact of increased captioning obligations is managed in a balanced way.

This submission highlights a number of issues which the ABC has with the Bill in its current format. The ABC has previously commented on an exposure draft process and also provided further comment to Government following introduction of the legislation. Some issues raised in relation to the exposure draft have been resolved however the ABC still holds concerns about elements of the Bill which do not adequately reflect the complexity inherent in the transmission of captioning services. These are noted below. The Corporation also proposes some amendments to the Bill to reflect these concerns. The ABC's proposed amendments would also provide consistency with the approach taken in the regulation of captioning services to date.

### **Impact of the expansion of captioning requirements**

The ABC notes that the Bill will significantly expand captioning requirements for the ABC.

Extending captioning on ABC1 will cost the ABC as much as an estimated \$800,000 extra annually by 1 July 2014. The increased cost occurs not just as a result of increasing the percentage of hours captioned to 100 per cent. Costs will increase as a result of new requirements to caption each of the regional (state and territory) break out programs through which the ABC delivers coverage of local events (such as regional sporting competitions or other state based events).

If the Bill's requirement to review multi-channel captioning results in increased requirements in future years this will also increase the ABC's captioning costs. While it is difficult to determine what increased requirements might be imposed, a modest increase of 10 to 15 per cent above current levels for the ABC's three multi-channels would add a further \$1 million to \$1.2 million annually to ABC costs.

It is estimated by the ABC that the combined impact could increase ABC costs by as much as \$2 million annually, in addition to already substantial existing captioning costs (some of which are explained in more detail below). The ABC does not receive funding from government specifically for captioning services.

In the absence of additional funding, the ABC would be required to find its own savings to comply with the Bill, reducing its ability to deliver existing services and content.

### **Definition of 'program'**

The ABC has concerns regarding the definition of 'program' in proposed new section 130ZK.

As drafted, the definition may incorporate a much wider range of broadcast material than is currently the case under *Disability Discrimination Act 1992* ('DDA') regulation of captioning. This would have a significant compliance impact for the ABC, and would result in an increase in captioning costs.

Under the terms of temporary exemptions issued by the Australian Human Rights Commission in relation to captioning on free-to-air television on 13 October 2008, captioning was not required for sports broadcasts. The exclusion of sport from captioning requirements to date reflects the high proportion of 'live' captioning needed and its impact on other on-screen information such as scores.

The ABC estimates the additional cost impact of captioning sport would exceed \$160,000 per year. In order to be consistent with regulation of captioning to date, the ABC considers that sport should be excluded from the new captioning requirements. This could be effected through an amendment to the definitions in section 130ZK of the Bill, specifically to exclude sport from the definition of 'program'.

The Australian Human Rights Commission temporary exemptions were also drafted to specifically provide the ABC with relief from state-based captioning requirements by only applying percentage quotas to nationally-transmitted programs. This approach should also be reflected in the Bill. This could be effected through an amendment to the definitions in section 130ZK of the Bill, to define 'program' as 'nationally transmitted programs' as regards the obligations applying to national broadcasters.

Otherwise, the ABC will be required to caption a number of state-based programming breakouts airing at the same time across the country. There will be instances where the ABC may be required to provide seven or eight separate feeds at once. The cost and resourcing requirements of eight simultaneous live broadcast streams will be considerable and the requirement to caption them all will place the ABC at a significant disadvantage compared to other broadcasters.

### **Strict liability**

Prior to 2007 amendments to the *Broadcasting Services Act 1992* (BSA), the captioning requirements therein applied 'as far as practicable'. However, this wording was removed in 2007 and since this time, captioning requirements have applied on a strict liability basis.

The requirement for very high captioning quotas (95% and 100%) raises the prospect of broadcasters being in breach of legislative requirements for events beyond their control, such as in the event of unavoidable disruptions to the delivery of captioning services caused by technical interruptions to the delivery of captions within the chain of supply from caption service providers. Broadcasters should not be held liable for such events.

Accordingly, the ABC submits that the new captioning requirements be drafted so that they apply 'as far as practicable.'

Alternatively, the ABC would support an amendment to section 130ZUB of the Bill to provide for relief in circumstances where a broadcaster has:

acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused.

The ABC considers that this amendment should be made so as to apply to all categories of broadcasters affected by the Bill. The amendment should also apply so as to excuse breach of the captioning quality provisions, not just the captioning quotas.

### **Captioning quality – ACMA standards-making power**

Proposed new section 130ZZA would provide the ACMA with a very broad power as regards the setting of captioning quality standards. The issue of captioning quality is extremely complex and involves a range of limiting factors, including human input, the performance of technical systems and the performance of user equipment. The setting of caption quality standards which do not allow consideration of these limiting factors could potentially result in unreasonable and unachievable standards and could result in a high rate of unavoidable or inadvertent breaches of the standards.

Over the course of the last 18 months, the ABC has participated in consultation workshops facilitated by the ACMA regarding captioning quality. The issues related to captioning quality and measuring quality have been considered in detail in this forum and the ACMA and the Department of Broadband, Communications and the Digital Economy (the Department) are aware of the many complex factors

which influence captioning quality. The ABC considers that these factors should be recognised in the Bill through the inclusion of a requirement for the ACMA to have regard to the technical limitations of captioning technology and the limitations inherent in live captioning which can influence captioning quality.

### **Targeted viewing hours**

The Bill defines 'targeted viewing hours' as 6.00pm to 10.30pm prior to 1 July 2014 and 6.00am to midnight after 1 July 2014 (section 130ZL). The ABC submits that captioned programs which commence prior to midnight but which finish shortly after midnight should count towards the calculation of 'total hours of captioned programs' in the Bill.

This could be effected through an amendment to section 130ZL as follows:

"For the purposes of the application of this Part to programs transmitted on or after 1 July 2014, if a captioned program begins before midnight and ends on the next day, the part of the program broadcast after midnight is taken to have been broadcast during designated viewing hours."

### **Captioning complaints process**

The proposed new section 150 establishes a complaints process in relation to compliance with proposed new Part 9. The provisions set a 30-day timeframe for complaints-handling after which time complaints may be referred to the ACMA.

The ABC submits that a 60-day timeframe would be more appropriate given the technical complexity of some captioning complaints. Resolution of a captioning issue can require detailed investigation of a range of broadcast systems and indeed the consumer's reception equipment. A 60-day timeframe would also be consistent with the timeframes set in the BSA as regards code complaints (section 150) and in the *Australian Broadcasting Corporation Act 1983* as regards technical complaints (section 79M).

### **Reporting requirement**

The proposed requirements in the Bill for reporting to the ACMA should be limited to reporting compliance with percentage captioning requirements. As drafted, the Bill sets out an extremely broad requirement to report on compliance with the relevant Divisions, and requires that reporting to be in a form required by the ACMA, with no further guidance on the specific kinds of information which will be required.

The ABC is concerned that as there are few indications as to the nature or scope of the required reporting, there is the potential for very onerous reporting requirements to arise. In relation to reporting of captioning quality, the Bill as currently drafted creates the potential for a running quality audit to be required for every program broadcast with captions. Given the volume of programming aired each day on the ABC across four channels and the very high rates of captioning of ABC programming, this is of concern to the Corporation. This degree of obligation proposed would impose a level of hardship on the ABC and is unjustified by the low level of complaints regarding quality of the Corporation's captioning services.

Such a requirement would not only have significant resourcing implications, it would also appear to be out of step with other compliance frameworks which clearly set out reporting targets and impose a

manageable compliance burden. For example, under the current Code of Practice, compliance for national and commercial broadcasters is assessed on a complaints-based model under which content is only assessed when a complaint is made. Broadcasters are not required to provide a running audit of every programming to assess compliance.

The ABC has been advised by other stakeholders that the intention of the Bill is not to require onerous reporting on quality issues, but rather to report on complaints received about captioning quality. If this is the policy intention, the ABC submits that an amendment to the Bill to limit the requirement is warranted.

An amendment to the Bill to provide greater clarity and boundaries around quality reporting would be in keeping with the Bill's broader approach of carefully managing the impact of increasing regulatory requirements.

Alternatively, the ABC would support an amendment to section 130ZZC to remove the requirement to report on compliance with Division 4.

### **Emergency warnings**

The Bill requires broadcasters to provide emergency warnings in text and oral form. In addition, broadcasters must provide captions where it is 'reasonably practicable to do so' (s 130ZZB). The ABC is concerned about instances in which captions might obscure important on-screen information and suggests an amendment to the provision to make clear that this can be taken into account when determining whether captioning of an emergency warning is reasonably practicable.

Yours faithfully

Michael Millett  
ABC  
Director, Corporate Affairs