

A public submission in response to the Australian Government's 'A Captioning Scheme for Subscription Television'.

Centre for Inclusive Design

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Submitted by:

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About Centre for Inclusive Design

Centre for Inclusive Design is a centre of excellence for inclusive design in Australia. Our network of industry experts and global partners bring innovation and global best practice ID so everyone has the opportunity to connect and be a part of our society. CFID delivers innovation and insight, events and partnerships and a practice that helps people reach you. We build inclusive platforms to create more value for industry, government and most importantly meaningful connection for and with the people who are marginalised.

Centre for Inclusive Design, formerly Media Access Australia (MAA), has a rich history in the traditional disability sector both advocating and providing solutions for over 35 years. MAA was formed out of the Australian Caption Centre (ACC), a not-for-profit organisation founded in 1982. The ACC aimed to promote and produce captioning for deaf or hearing impaired Australians. In 2005, the ACC sold its commercial operations including the captioning services, and formed Media Access Australia.

As MAA, the focus broadened to those disadvantaged in access to media. In the digital age, the role of media and communication grew to include accessibility across digital communication as well as traditional communication. MAA focussed strongly on advocating and providing digital accessibility for Australia in websites, documents and videos. As the role of technology in our lives has grown, MAA realised they needed to tackle design issues in the conception stage and thus created Centre for Inclusive Design.

Introductory remarks

CfID welcomes the opportunity to comment on proposed changes to the subscription television captioning scheme. The current scheme evolved out of a lengthy series of negotiations, beginning in the early 2000s, between the Australian Subscription Television and Radio Association (ASTRA), the Australian Association of the Deaf (now Deaf Australia) and Deafness Forum. These led to over 50 channels on Foxtel (and the now defunct Austar) providing some captioning. However the system became very complicated, with multiple genres of channels, and different levels of captioning on channels within these genres, with captioning levels on these services increasing annually by 5%. When captioning quotas were introduced into the *Broadcasting Services Act* in 2012, much of this unwieldy system was replicated.

As it stands, the system is difficult for consumers to understand, and we have long believed that it should be simplified. We therefore support many – but not all – of the proposals put forward in the discussion paper.

Proposal 1. Number of Categories

This proposal here is to merge the three categories of movie service, and the three categories of general entertainment service (each of which have different caption targets) into a single movie service and a single general entertainment service. It is

further proposed that the caption targets for the new movie and general entertainment services be an average of the previous targets for the individual services within those categories.

We support the proposal to merge categories as it creates a much simpler system which will be easier for consumers to understand, and for an STV provider to promote. Once it is introduced, a consumer will know, for example, the minimum percentage of all movies they can expect to be captioned on an STV service.

However, simply averaging the three general entertainment targets would result in a reduction in captioning levels, as these are determined by both the target percentages, and the actual number of channels in each category. There are currently approximately 40 general entertainment channels (not including HD and time-shifted channels) on Foxtel, so the actual average captioning level on these is 86.5%, higher than the proposed 80% target for all movies services. We therefore cannot support the proposed 80% figure, and recommend the target should be 90%.

The current average captioning level across the fourteen movie channels (not including HD and time-shifted channels) is 92.7%, so we support the proposal for an averaged movie channel target of 95%.

Proposal 2. Levels of Captioning (Annual Captioning Targets)

Under the captioning system currently in place in the BSA, captioning levels on individual channels increase by 5% annually until they reach 100%. The discussion paper makes four proposals for the targets to be set for 2022-2023.

- Resetting the target at 2020-2021 levels (i.e. reducing the captioning targets for 2022-2023 by 10%)
- Remaining at the 2021-2022 target (i.e. reducing the captioning targets for 2022-2023 by 5%).
- Moving to the current 2022-2023 target (i.e. maintaining the status quo of a 5% annual increase).
- Some other set of targets.

We know of no international precedent for a government to propose a reduction in captioning obligations for either free-to-air or subscription television services. As the discussion paper notes, captioning “supports access to television for the estimated 1 in 6 Australians who experience some level of hearing loss”, and for those with a significant hearing impairment it is essential for making a program accessible.

This discussion paper has been framed in the context of a decline in subscription TV revenues, and a perceived need for the Government to provide aid to the STV industry by cutting captioning costs. It states:

The STV sector has faced declining subscriber numbers and declining revenues since the introduction of streaming services to Australia in 2015. In particular, commercial revenues declined substantially in 2020 during COVID-19 restrictions,

attributable to closed or less frequented entertainment venues (such as licensed venues showing STV sporting services).

We note, however, that the situation outlined here has now changed significantly. With Covid-19 restrictions lifting, entertainment venues are opening again, and Foxtel has also introduced two streaming services which have proved very successful. In the 2020-2021 financial year, Foxtel's revenues increased by \$188 million, or 10%, compared to the previous year.¹ \$89 million of this increased revenue derived from its streaming services, Binge (a general entertainment service which provides captioning) and Kayo (a sports service which does not yet provide captioning).

Given these changed circumstances, we believe the argument that the STV sector, which is dominated by Foxtel, requires financial relief is much less compelling. Captioning is an essential service for many Australians, and moves by the Government to reduce caption levels will be seen as a retrograde step and an affront in the disability sector.

We therefore recommend that caption levels for 2022-2023 are maintained at the current levels mandated by the BSA, and these continue to be maintained in future years.

Proposal 3. Freeze or Continued Annual Increases of Captioning Targets

For the reasons outlined in the above section, we oppose the proposal to temporarily or permanently freeze the 5% annual captioning increases which currently apply for STV services. It would be an unprecedented, retrograde step by a government which does not take into account the need for the Deaf and hearing impaired community to have access to media. And it is also a step not justified by the current financial situation of the STV industry.

Proposal 4. Exemptions and target reduction orders (unjustified hardship)

Note, there seems to be a misprint in this section, and the following section, of the discussion paper. When it states "(See Proposals 4 and 5)" it should read "(See Proposals 6 and 7)". Our comments on Proposals 4 and 5 are on the basis that this is the case.

While we support the principle of exemptions and target reduction orders on the grounds of financial hardship, we believe a major flaw of the current system is the fact that there is no definition of "unjustified hardship". This contrasts with the situation in the UK and US.

In the UK, Ofcom expects each channel (or channel owner) to provide access services to the highest level it can within a budget equating to 1% of their relevant

¹ [Foxtel's Kayo and Binge drive growth as News Corp posts profit \(afr.com\)](https://www.afr.com/technology/foxtel-kayo-binge-drive-growth-as-news-corp-posts-profit-20210615)

turnover. Only those channels or channel owners which cannot achieve Level Three by spending this amount are exempt from access requirements.

In the US, the Federal Communications Commission has determined that “No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous calendar year.” In addition to this, providers are generally exempt from captioning provisions if they have gross revenues of less than \$3,000,000 during the previous calendar year.²

In Australia, however, an ACMA draft exemption or target reduction order will simply state, for example, “Having regard to the financial information provided by the Applicant (including revenue from subscribers), and the quoted costs of providing live captioning, it is not commercially viable for the Applicant to provide live captioning for the Service.”³

This means that it is impossible for anyone outside the exemption or target reduction granting process to judge whether the exemption or target reduction is justified. It may very well be, but it is not objectively clear.

Given this nebulous situation, we agree that, in most cases, additional new exemptions and target reductions should be granted on the basis of the objective and transparent criteria of Proposals 6 and 7. Once these are in place, we do not believe that exemptions and target reductions based on “unjustifiable hardship” should be retained.

Proposal 5. Nominated Exemptions

We believe that all aspects of the current exemption system should be retained until the proposed exemptions in Proposals 6 and 7 can be claimed.

Proposal 6. New racing exemption

We agree that racing channels are a special case, where there are significant difficulties in creating useful captions, and positioning them onscreen (given the significant amount of on-screen text already there). We therefore agree with the proposal that a channel be given an automatic exemption “where 70 per cent of the program content will consist of horse racing, harness racing or greyhound racing”.

However, we believe that the granting of an exemption should involve more than STV licensees simply publishing that a channel is exempt, and that it should be up to the ACMA to investigate and confirm that a channel meets the proposed 70% content threshold for exemption.

² [Self Implementing Exemptions From Closed Captioning Rules | Federal Communications Commission \(fcc.gov\)](https://www.fcc.gov/self-implementing-exemptions-from-closed-captioning-rules)

³ [STV-EO-392 Bloomberg TV FetchTV Preliminary SOR Publication 0.docx \(live.com\)](#)

Proposal 7. New low audience share exemption

We support the concept of exemptions based on low audience share, as is the case in the UK. However, we believe that it would be more appropriate for the audience share threshold to be 0.05%, which is the figure identified in Ofcom's Code on Television Access Services⁴. This figure has been in place for many years, and to our knowledge it has never been challenged. This can therefore be argued to be an "appropriate threshold level" which would be acceptable to Deaf and hearing impaired consumers.

Proposal 8. Publication of captioning information

We agree with the proposals that STV licensees should publish actual percentages of captioning by licensees for the current year, as well as a list of services that have received exemption or target reduction orders (and the basis on which they have granted).

We do not believe that licensees should have to publish whether individual programs are captioned or not, as in practice this would be impossible to do accurately, and certainly impossible over a financial year.

Information about captioning levels and applicable exemptions and target reductions should be published before the start of the financial year.

If retrospective exemptions remain in place, or new services become available, published reports should be amended to note this.

Although we acknowledge that relatively few consumers will be searching the ACMA website for information about captioning levels on STV services, we think it would be appropriate that this information be published on the websites of both STV licensees and the ACMA.

Information about whether individual programs are captioned or not should be identified on electronic program guides, and we note that this is the case with Foxtel's online EPG, which is available to everyone whether they are a Foxtel subscriber or not.

Proposal 9. Retention of certain captioning rules

We believe that all the rules listed in this section should be retained.

⁴ [tv-access-services-code.pdf \(ofcom.org.uk\)](https://www.ofcom.gov.uk/consult/condocs/tv-access-services-code/tv-access-services-code.pdf)