



# Captioning Rules for Subscription Television

Submission by the Australian Communications Consumer Action Network to the Department of

1<sup>st</sup> November 2021

## About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

## Contact



ACCAN Disability Officer

PO Box A1158,  
Sydney South NSW, 1235

Email: [info@accan.org.au](mailto:info@accan.org.au)

Phone: (02) 9288 4000

Contact us through the [National Relay Service](#)

# Contents

1. Introduction .....	5
1. Responses to .....	6
1.1. Proposal 1 - Should the 5 categories of STV services listed in Table 5 be adopted in the Scheme? If so, is it appropriate to average the captioning levels for the movie and general entertainment categories? .....	6
1.2. Proposal 2 - What is an adequate level of captioning for STV services to commence on 1 July 2022? .....	6
1.3. Proposal 3 .....	7
A. Is it appropriate that annual STV captioning levels be frozen or should captioning levels continue to increase by 5 per cent per annum as under the existing rules at subsection 130ZV(2) in the BSA? .....	7
B. If STV annual captioning levels are frozen, should this freeze be permanent or reviewed after a period of time? If the latter, what should that period of review be? .....	7
1.4. Proposal 4 .....	7
A. As audience share or the difficulty in captioning racing channels are factors in applications for exemption or target reduction orders based on hardship, is it necessary to retain these exemptions or target reduction orders based on hardship for STV licensees, given the proposed introduction of new exemptions based on objective and transparent criteria (see Proposal 4 and 5)? .....	7
B. If these exemptions and target reduction orders are retained, should their: .....	8
i. availability be limited to circumstances where other exemptions do not apply? .....	8
ii. assessment criteria be amended? If so, how? .....	8
1.5. Proposal 5 - Is it appropriate for this exemption to be retained until such time as the proposed new exemptions set out at proposals 4 and 5 can be claimed? .....	8
1.6. Proposal 6 - As the criteria for this new proposed exemption is objective and self-evident, it is proposed that STV licensees do not apply for racing exemptions but should publish the channels to which this exemption applies each financial year. Options for the publication of exemptions are raised for comment at Proposal 6. Is it appropriate that this exemption be “claimed” by publication only? .....	8
1.7. Proposal 7 .....	9
A. Is there any evidence that a threshold other than less than 0.1% is a more appropriate threshold level for a low audience share exemption? What is the alternative threshold and the evidence of its appropriateness? .....	9
B. Where available, is the OzTAM measurement used in the “A2” report appropriate for determining the low audience share for the purposes of this exemption? Are there are measures that are more appropriate? .....	9
C. Is an exemption period of 2 years appropriate for this exemption? If not, what alternative period is more appropriate and why? .....	9

D.	Should the low audience share exemption be claimed by “publication”, where both the details of the exemption and the data relied upon to demonstrate the low audience share are published? .....	9
1.8.	Proposal 8 - What information should be published? .....	10
A.	Should the overall, actual percentage of captioning proposed to be delivered by STV licensees for each channel for the current financial year be published? .....	10
B.	Should a list of services that are not captioned and the relevant exemption and/or target reduction orders be published? .....	10
C.	Should information about whether individual programs are captioned or not be published? .....	10
D.	Should a requirement to include information on whether a program is captioned or not be included in the Electronic Program Guides of STV Licensees? .....	10
1.9.	Where should information be published? Should information about the captioning levels and applicable exemptions and target reduction orders at a service (channel) level be published on: .....	10
A.	i. the ACMA website.....	11
B.	ii. the website of each STV licensee .....	11
C.	iii. both the ACMA website and on the website of each STV licensee?.....	11
1.10.	Should information about individual programs be published in the program guides (electronic and otherwise) of STV licensees? .....	11
1.11.	Proposal 9 - Should the modified formula for STV services be modified in any way? If so, why and how?.....	11
2.	Conclusion.....	12

# 1. Introduction

The Australian Communications Consumer Action Network, ACCAN, appreciates the opportunity to submit to the Department of Infrastructure, Transport, Regional Development and Communications issues paper on A Captioning Scheme for Subscription Television.<sup>1</sup>

ACCAN, in support of our members, has long advocated for simplification of the subscription television captioning rules.<sup>2</sup> Our position has always been predicated on the expectation that easy to interpret and informative captioning rules will benefit consumers in making informed choices about subscription TV services. Simplification of the STV rules must not decrease the current captioning quotas or hinder the current legislated mandate of 100 per cent of captioned programming by July 2033.

As such, ACCAN, in our submission to the Senate Environment and Communications Committee review of the Broadcasting Legislation Amendment (2021 Measures No.1), recommended that the STV captioning rules continue to be included in the Broadcasting Services Act to provide the greatest level of consumer safeguard<sup>3</sup>.

The proposals presented in the Discussion Paper reinforce ACCAN's initial concerns that STV captioning quotas may in fact be reduced under this new scheme.

Acknowledging both the statements in the discussion paper regarding financial sustainability of the STV industry as well as the industry's submission and presentation to the Senate Committee,<sup>4</sup> the proposals outlined in the discussion paper raise questions about the Government's commitment to increased access to broadcast media as enshrined in Article 30 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

The argument put forward in respect to the financial sustainability of the Australian subscription TV industry is not supported by the most recent financial reports, as is discussed in the submissions to this inquiry by Deafness Forum and the Centre for Inclusive Design.

ACCAN's submission is therefore focused on recommending a STV scheme which provides streamlined captioning rules and does not decrease the level of captions now or into the future. We support the proposal to decrease the number of captioning categories in both the Movie and General Entertainment genres, however we have concerns that some of the proposals may result in decreases in the amount of captioned programming and may also undermine the desired target of 100 per cent captioned programming by July 2033. These are discussed below and appear in the same order as laid out in the issues paper.

---

<sup>1</sup> <https://www.infrastructure.gov.au/have-your-say/captioning-rules-subscription-television>

<sup>2</sup> See: <https://accan.org.au/accans-work/submissions/1276-captioning-review-submission-16>

<sup>3</sup> <https://accan.org.au/our-work/submissions/1855-broadcasting-legislation-amendment-bill-2021>

<sup>4</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/BLAB/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/BLAB/Submissions)

# 1. Responses to Proposals

## 1.1. Proposal 1 - Should the 5 categories of STV services listed in Table 5 be adopted in the Scheme? If so, is it appropriate to average the captioning levels for the movie and general entertainment categories?

ACCAN supports the proposed reduction of the number of categories and recommends the adoption of the categories as listed in table 5 of the issues paper. Combining the three movie categories into one and the three general entertainment categories into one as proposed will make comprehension of the captioning rules easier for consumers and will simplify compliance and oversight of STV providers.

ACCAN does not support the averaging of the captioning targets for the amalgamated General Entertainment genre. We recommend that the captioning target for the amalgamated General Entertainment genre be set at 90 per cent. There are scenarios in which the proposed target of 80 per cent will result in a decrease in captioned programming. For example, under the present system, if an STV service has 35 general entertainment channels, the average level of captioning on them is 90 per cent. The current Foxtel program guide indicates 40 general entertainment channels (excluding HD and time shifted). Under the current rules this means the captioning levels are currently 86.5 per cent. Thus, averaging the three existing categories to set targets for the proposed combined single category could be seen as allowing for an overall reduction in captioning targets and providing a less satisfactory experience for consumers.

Article 30, sub-section 1B of the United Nations Convention on the rights of persons with disability holds that People with disabilities shall “Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats.”<sup>5</sup> As a signatory to this convention, the Australian Government has an obligation to ensure that people who are deaf or hearing impaired, or who rely on captions for any other reason, have the same level of access enjoyed by other consumers. Implementing a STV captioning scheme which results in decreased captioned programming will undermine the intent of the CRPD.

ACCAN considers that anything which could allow for a reduction of the targets on subscription television channels is not in keeping with the spirit of the Convention or the regulations as outlined in the Broadcast Services Act. Further, ACCAN is concerned that any form of reduction in captioning targets will impede the potential of reaching the current legislated goal of 100 per cent captioning by 1 July 2033.

## 1.2. Proposal 2 - What is an adequate level of captioning for STV services to commence on 1 July 2022?

ACCAN asserts that there can be no justifiable reason to reduce the captioning targets regardless of the acceptance of proposal one as laid out in the discussion paper. ACCAN’s position is that

---

<sup>5</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-30-participation-in-cultural-life-recreation-leisure-and-sport.html>

captioning targets should be set, from the commencement of the new scheme, at the appropriate level for the 2022-23 financial year, and should commence on July 1, 2022. For clarity, the targets should be as per the table below:

Category Name	Caption Target
STV Movie Service	95 per cent
STV General Entertainment Service	90 Per Cent
STV News Service	55 per cent
STV Sports Service	55 Per Cent
STV Music Service	45 per cent

As subscription television providers are expected to meet their legislative obligations by reaching 100 per cent of programs and services captioned by 1 July 2033, it is vital that they maintain an increase year-on-year. ACCAN contends that if the proposal for averaging the captioning targets across the combined categories as proposed, coupled with resetting the targets to 2020 or 2021 levels, would bring about a significant reduction in captioning, resulting in severe negative impacts for consumers who rely on this vital service, particularly as they pay the same amount for access to subscription television.

### 1.3. Proposal 3

- A. Is it appropriate that annual STV captioning levels be frozen or should captioning levels continue to increase by 5 per cent per annum as under the existing rules at subsection 130ZV(2) in the BSA?

ACCAN contends that there is no justifiable reason to freeze captioning targets. Freezing targets would make it more difficult to reach the goal of 100 per cent captioning by 2033, as outlined in the paper. The five per cent annual increase should be maintained as has been the case for several years. Further, any freeze in captioning targets stands to further disadvantage people who are deaf or hearing impaired and is in breach of their human right to equal participation.

- B. If STV annual captioning levels are frozen, should this freeze be permanent or reviewed after a period of time? If the latter, what should that period of review be?

As stated above, ACCAN does not support freezing or target reduction in any form or in any circumstance.

### 1.4. Proposal 4

- A. As audience share or the difficulty in captioning racing channels are factors in applications for exemption or target reduction orders based on hardship, is it necessary to retain these exemptions or target

reduction orders based on hardship for STV licensees, given the proposed introduction of new exemptions based on objective and transparent criteria (see Proposal 4 and 5)?

ACCAN does not support the provision of exemptions to captioning rules except where captions could be considered unnecessary or impracticable for technical or logistical reasons. Examples of this could be where a service is providing live content where the information is conveyed visually and with textual information, such as racing and some live sport channels, and where the technology does not allow for real-time captioning, thus potentially creating confusion for viewers. Therefore, these exemption justifications should not be retained.

B. If these exemptions and target reduction orders are retained, should their:

i. availability be limited to circumstances where other exemptions do not apply?

ii. assessment criteria be amended? If so, how?

ACCAN holds that there is no justifiable reason for the retention of these exemptions. It is also important that exemptions should not be provided retrospectively. Retrospective exemptions should only be granted where the need has been clearly demonstrated, for instance, significant unforeseen circumstances.

**1.5. Proposal 5 - Is it appropriate for this exemption to be retained until such time as the proposed new exemptions set out at proposals 4 and 5 can be claimed?**

ACCAN strongly considers that the options for granting exemptions to captioning target rules should be extremely narrow, and the provision of exemptions under said rules should only be appropriate in extreme circumstances. If the process and options for applying for and receiving exemptions is to be changed, this should take place from the commencement of the scheme, in which case, the existing rules should not be maintained.

**1.6. Proposal 6 - As the criteria for this new proposed exemption is objective and self-evident, it is proposed that STV licensees do not apply for racing exemptions but should publish the channels to which this exemption applies each financial year. Options for the publication of exemptions are raised for comment at Proposal 6. Is it appropriate that this exemption be “claimed” by publication only?**

ACCAN accepts the inherent difficulties captioning a racing channel would present for providers, but strongly believes in the interests of consumers, that these reasons should be prescribed in the



scheme. It should not be assumed that reasons for not captioning a program or service are universally understood. As ACCAN understands that the reasons for this exemption are significant, we maintain it is appropriate for it to be claimed by publication only for the present. Any exemption provisioned under this rule must be publicised widely however to ensure maximum visibility for the target audience. Further, ACCAN calls for STV providers to ensure that as much information is conveyed on the service visually as possible, to ensure that people with hearing impairments can maximise their use and enjoyment of the service. Recognising that captioning technology is improving year on year, ACCAN recommends that this exemption be reviewed no later than five years from the commencement of the scheme to evaluate whether it should be maintained.

## 1.7. Proposal 7

- A. Is there any evidence that a threshold other than less than 0.1% is a more appropriate threshold level for a low audience share exemption? What is the alternative threshold and the evidence of its appropriateness?

ACCAN believes that the low-audience exemption threshold should be set at 0.05 per cent of total audience share in line with regulations regarding the provision of accessible television services in the UK<sup>6</sup>.

- B. Where available, is the OzTAM measurement used in the “A2” report appropriate for determining the low audience share for the purposes of this exemption? Are there are measures that are more appropriate?

ACCAN sees no reason why the OzTAM measurement should be considered inappropriate and is aware of no other device which should be used as an alternate means of determining audience share.

- C. Is an exemption period of 2 years appropriate for this exemption? If not, what alternative period is more appropriate and why?

This exemption period should not exceed twelve calendar months from commencement. ACCAN supports the target of 100 per cent captioning by 1 July 2033 and believes achieving this target will be significantly more difficult if providers are allowed lengthy exemption periods. Further, audience shares can change over time and allowing lengthy exemption periods could disadvantage people for whom captioning is their only means of enjoying subscription television.

- D. Should the low audience share exemption be claimed by “publication”, where both the details of the exemption and the data relied upon to demonstrate the low audience share are published?

In ACCAN’s opinion this exemption should only be granted upon application, where the appropriate and complete data used to determine audience share can be clearly demonstrated. This information

---

<sup>6</sup> <https://www.ofcom.org.uk> › assets › pdf\_file › tv-...

should be published widely to maximise consumers' opportunity to locate and comprehend the data and understand why a particular channel is not captioned.

## 1.8. Proposal 8 - What information should be published?

- A. Should the overall, actual percentage of captioning proposed to be delivered by STV licensees for each channel for the current financial year be published?

It is important that information about proposed captioned services be widely published. This information is essential to enable consumers to make informed choices about which channels or services they wish to subscribe. This information should be published prominently on provider websites and programme guides. Overall information about the captioning scheme should also be readily available to enable consumers to easily understand the targets, any exemptions which apply to specific services and how the targets will increase over time.

- B. Should a list of services that are not captioned and the relevant exemption and/or target reduction orders be published?

Information about captioning exemptions and target reduction orders should be published as above. Clearly, this is essential information for consumers, and it should be made readily available and accessible.

- C. Should information about whether individual programs are captioned or not be published?

Information about captioning on individual programs should be published. This information should be published on the programme description, to enable the consumer to decide whether a programme will be accessible to them. This should be done on each listing in the provider's programme guide, both electronic and printed.

- D. Should a requirement to include information on whether a program is captioned or not be included in the Electronic Program Guides of STV Licensees?

ACCAN believes that it is not necessary for requirements around captioning targets, exemption, and other issues encapsulated within the scheme to be published on the provider's program guide, however, this must be published prominently where it is reasonable to expect consumers who require captions to locate and read it. Examples could be the provider's website, the Australian Communications and Media Authority website, reference to the captioning scheme in brochures etc.

## 1.9. Where should information be published? Should information about the captioning levels and applicable exemptions and

target reduction orders at a service (channel) level be published on:

- A.           i.       the ACMA website
- B.           ii.      the website of each STV licensee
- C.           iii.     both the ACMA website and on the website of each STV licensee?

Information about exemptions, target reduction orders and other necessary information to assist consumers to be informed should be made available through the provider's website and the ACMA website, but it is also essential that information about where to find relevant information be provided in other formats and other places, such as printed programme guides, to allow consumers who have restricted access to technology to be fully empowered and informed. Consumers who rely on captions must have access to information to assist them to determine to which services they will have access, and which providers will best meet their needs.

#### 1.10. Should information about individual programs be published in the program guides (electronic and otherwise) of STV licensees?

ACCAN argues that information about specific programmes should be published alongside the description of the programme in question, whether that is in electronic form or otherwise.

#### 1.11. Proposal 9 - Should the modified formula for STV services be modified in any way? If so, why and how?

ACCAN sees no reason to modify the formula for captioning sports services at present. However, it is expected that any captioning exemption provided under this formula will be done on a fully transparent basis, ensuring that consumers who pay for these services are at the heart of the decision and are kept fully informed. Further, any exemption processes must be interrogated regularly to ensure that any exemptions are provided for valid and justifiable reasons, and to ensure a high-quality output for subscribers.

## 2. Conclusion

ACCAN is committed to advocating on behalf of consumers with a disability for high-quality products and services which are accessible, affordable, and fit for purpose. With this in mind, we broadly support the new scheme for captioning on subscription television. It is vital however that Subscription Television providers do not lose ground in meeting their legislative obligations by reaching 100 per cent captioning by July 2033 and that consumers' basic human right under the UN Convention on Human Rights of People with a Disability are strengthened and maintained. the provision of accessible services and reaching the ultimate goal of 100 per cent captioning on subscription television services by 1 July 2033 is attainable. ACCAN believes that this scheme stands a good chance of simplifying captioning provision for STV providers and consumers and appreciates the value of community consultation in these matters.

I remain available should you have any questions regarding this submission.