



Captioning Regulatory Framework

Department of Communications and the Arts
Policy Discussion Paper
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Deaf Australia appreciates the opportunity to provide a submission to Australian Government's Department of Communications and the Arts' Policy Discussion Paper on the Captioning Regulatory Framework (December 2015).

Key Points:

- Captioning is the primary (and currently the only) effective tool for deaf and hard of hearing consumers to receive information from TV;
- Captioning is not currently equal in respect to the audio component but needs to be; and
- Captioning does not only benefit deaf and hard of hearing people, it also benefits others in the wider community including people from culturally and linguistically diverse (CALD) backgrounds.

INTRODUCTION

One in six Australians have a hearing loss and by 2050, one in four will have hearing loss¹. This represents between 3.8 and 5.7 million Australians who have a degree of hearing loss.

The Australian Census (2011) shows that there are 9,723 Australians that use sign language (an increase from 6,944 (2006) and 5,306 (2001)). Deaf Australia believes that the 2016 Census will show that there are around 13,500 Australians who use sign language.

For deaf and hard of hearing people, captioning on TV programs (Free to Air or Subscription TV) is equal to the program's audio component. This is an aspiration and work must be done to realise that aspiration, as captioning is central to deaf and hard of hearing people's access to TV content – in the same way as sound is for non-deaf people.

Deaf Australia (formerly known as Australian Association of the Deaf) has been heavily involved with captioning issues for many years through the Australian Human Rights Commission, utilising the Disability Discrimination Act which saw broadcasters implement captioning on programs and be exempted from further complaints under the Act.

The captioning section of the Broadcasting Services Act was introduced in 2012. It mandates captioning targets and associated record-keeping and reporting requirements, and sets out a framework for ACMA to determine captioning quality.

Since captioning became enshrined in the Broadcasting Services Act, deaf and hard of hearing people have expressed frustration and disappointment with the lack of a progressive and proactive approach by broadcasters, the Act's captioning standards, and the fact that they can no longer make complaints through the Australian Human Rights Commission because captioning is now part of the Broadcasting Services Act.

Deaf Australia sent a submission to ACMA's '*Review of TV Captioning Standard*'², in which we highlighted the need for metric standards to provide clear and tangible strategies in managing captions on the broadcasting system. Currently the captioning quality standard calls for ***readability, comprehensibility and accuracy, so that they are meaningful to viewers*** which we believe is neither clear nor useful for end users (caption users) or broadcasters.

Deaf Australia wishes to highlight that Australian Communications and Media Authority (ACMA) received eleven (11) submissions on the Review of TV Captioning Standards, eight (8) submissions supports existing standards were from organisations that are not caption users. They are either broadcasters or captioning service providers. The other two (2) submissions call for more consultations before caption standards can be agreed (and neither of these two organisations are caption users or service providers).

Deaf Australia, as representative organisation of deaf and hard of hearing people, is the only consumer organisation that called for metric-based standards.

Deaf Australia believes that the current complaint protocol is not user friendly and many members of the community are unaware of how to make formal complaints. Some members have reported that their experience with the complaint process has left them alienated due to broadcasters providing a 'standard' response, leaving consumers feeling that there is nothing they can do to improve the quality of captioning.

The Discussion Paper includes several options, mostly focusing on removing reporting and record keeping requirements. Deaf Australia is concerned that if reporting and record keeping are not required, then the

¹ Listen Hear!, The Economic Impact and Cost of Hearing Loss in Australia, Access Economics, February 2006.

² Deaf Australia's Review of TV Captioning Standards, December 2015 (ACMA Discussion Paper - November 2015).

<http://www.acma.gov.au/~media/Diversity%20Localism%20and%20Accessibility/Issue%20for%20comment/Review%20of%20TV%20Captioning%20Standard/Submission%209%20-%20Deaf%20Australia%20pdf.pdf>.

community will not be assured of any quality improvements. Our concerns are based on the evidence of the past few years during which complaints were made and broadcasters simply responded that there are 'broadcasting' issues or 'technical' difficulties that are outside the scope of the broadcasters. We believe this standard response provides no captioning quality assurance and fails to satisfy or even directly examine and address caption user's concerns.

In addition to these comments in response to the discussion paper, Deaf Australia calls for the Broadcasting Services Act to include a new section addressing the use of sign language interpreters in television broadcasts, especially for Emergency Warning Announcements. Deaf Australia refers to the Convention on the Rights of Persons with Disabilities (see Key References on page 4 of this submission) as the principles underpinning this call.

Deaf Australia reiterates that the Australian Government is a signatory to the United Nations' Convention on the Rights of Persons with Disabilities, which calls for dignity and respect for each person and for signatories to take all appropriate measures, including legislations, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities (Article 4, Section 1(b)), and to use Sign Language.

KEY REFERENCES

United Nations' Convention on the Rights of Persons with Disabilities (2007) (The Convention).

Article 2: Definitions

- Languages includes spoken and signed languages and other forms of non-spoken languages.

Article 4: General Obligations

- Section 1 (b): To take all appropriate measures, including legislations, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

Article 5: Equality and non-discrimination

- Section 1: State parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

Article 9: Accessibility

- Section 1 (b): Information, communications and other services, including electronic services and emergency services.

Article 21: Freedom of expression and opinion, and access to information

- All forms of communication of their choice, as defined in Article 2 of the Convention;
- Section 1: Providing information intended for general public of persons with disabilities in accessible formats and technology to different kinds of disabilities in a timely manner and without additional costs;
- Section 2: Accepting and facilitating the use of sign languages, Braille, augmentation and alternative communications and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- Section 2 (e): recognising and promoting the use of sign languages.

Article 30: Participation in cultural life, recreation, leisure and sport

- Section 1 (b): Enjoy access to television programmes, films, theatres and other cultural activities in accessible formats.
- Section 4: Persons with disabilities shall be entitled to, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign language and deaf culture.

Article 33: National implementation and monitoring

- Section 3: Civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process.

SPECIFIC COMMENTS ON THE DISCUSSION PAPER

A. Free to Air Television

Deaf Australia believes that programs on Free to Air channels (ABC, 7, 9 10 and SBS) must be 100% captioned 24 hours a day (not 6.00am to midnight).

B. Multichannel Television

Deaf Australia believes that multi-channel programs must be captioned in the same way as Free to Air channels.

Many programs brought from overseas for the purpose of multi-channel programs (e.g. ABC2, 7Mate, etc.) are already captioned but are not showing captions in Australia.

Deaf Australia refers to Article 4, Section 1(b) of The Convention: to take all appropriate measures, including legislations, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.

C. Subscription Television (STV)

Deaf Australia believes that each channel must have a minimum captioning quota.

The Broadcasting Services Act includes Subscription Television, however, the quota is based on platform, not per channel. What this means is that when a consumer subscribes to a plan, e.g., Foxtel, Fetch TV and others, they have access to a range of channels but these channels do not have a specific quota.

The Broadcasting Services Act requires platform providers to provide captioning on 50% of its content and this is dependent on a channel's capacity to bring the platform's quota. For example, Discovery Channel may caption 100% of its content while ESPN channel captions only 10% or music channel has no captions, averaging 50% for the platform provider.

Platform providers argue that they provide over 40 channels and hundreds of hours a day of captioned content and believe that this is more than the consumer expects.

For years, deaf and hard of hearing consumers have raised concerns with Deaf Australia that if they subscribe to subscription television, they do not have advance knowledge of what programs will be accessible. Instead, a blanket quota of 50% is their assurance. One may suggest that if they only receive 50% accessible content, then they should pay only 50% of the normal rate.

Deaf Australia believes that the Broadcasting Services Act needs to be amended to ensure that each channel is required to meet minimum quotas rather than aggregate quotas for subscription providers.

For these reason, Subscription Television should continue providing quarterly/ annual reports until all channels caption all programs, i.e. 100%, 24/7.

D. Captioning Quality

Deaf Australia believes that captioning quality requirements must be a metric based standard. The Australian Communications and Media Authority (ACMA) is responsible for monitoring the captioning quality. The current ***'readability, comprehensibility and accuracy, so that they are meaningful to viewers'*** standard is ambiguous and subjective.

The current standard makes it difficult for captioning viewers to ascertain whether they have valid complaints on captioning of programs, resulting in many captioning viewers not putting forward their complaints.

Deaf Australia has sent a submission to ACMA's Review of TV Captioning Standard and called for captions to be metric based standards rather the current standard that is ambiguous and unclear. Click to the following URL to preview Deaf Australia's submission to ACMA:
<http://www.acma.gov.au/theACMA/Consultations/Consultations/Current/review-of-tv-captioning-standard>

E. Captioning Complaints

Deaf Australia believes that there is no direct and active promotion from ACMA to consumers on how to make complaints. Nor are there helpful staff able to communicate with consumers. We believe that the complaint mechanism can be improved to ensure active participation.

The Australian Communications and Media Authority (ACMA) is a statutory body that oversees the Broadcasting Services Act and whether Broadcasters comply with the Act. ACMA also manages complaints.

The current Broadcasting Services Act allows for specific quotas which exempt broadcasters from providing full access. Deaf Australia believes this conflicts with Article 4 (1) of The Convention and calls for government to remove such restrictions that constitute discrimination.

Deaf Australia also refers to Article 21 Section 2 of The Convention that allows sign language users to lodge complaints in a '*language of their choice*'. The current mechanism does not allow this and is discriminatory for sign language users.

F. Emergency Warnings

a. Emergency Warnings – Captioning

Deaf Australia prefers that captioning for Emergency Warnings are 'Open Captioned'.

As deaf and hard of hearing people are unable to access other sources of information (e.g. radio, Internet) it is imperative that captions on emergency warnings must be provided at all times in the form of text at any place – any time.

Captions produced live are often riddled with errors and mistiming. More effort must be made to ensure captions are accurate and timely, hence our call for caption standards to be metric-based standards (see D: Caption Quality).

b. Emergency Warning – Interpreting

Deaf Australia calls for the Broadcasting Services Act to include the use of sign language interpreters in all emergency warning announcements.

The current Broadcasting Services Act does not include the use of sign language in any programs. However, there are increasing numbers of state governments who are utilising sign language interpreting in Emergency Announcements and including this as a requirement in their Emergency Management Policy or Acts.

Currently Vicdeaf is undertaking a project '*All Hands on Deck: Preparing Signers for an Emergency*' that will develop national guidelines and strategies for improving engagement and building resilience for deaf, deafblind, and hard of hearing people whose first or preferred language is Auslan.

Deaf Australia believes that the lack of inclusion of sign language interpreting in the Broadcasting Service Act means the Act does not meet The Convention's requirements, specifically, Articles 9 and 21, which call for information to be accessible in the communication of the disabled person's choice.

G. Implementation and monitoring

Deaf Australia calls for greater participation by people who are deaf and hard of hearing and by Deaf Australia in the captioning monitoring process.

The current practice involves representative organisations providing advice through submissions and/ or correspondence and for a policy development team to put forward draft documentation for further action.

The Australian Communications and Media Authority has a captioning advisory group but Deaf Australia, the only national representative organisation actually managed by deaf people, is not part of this group.

Deaf Australia believes that the current practice does not comply with The Convention which calls for particular persons with disabilities and their representative organisations, to be involved and participate fully in the monitoring process.