

# A submission in response to the Department of Communications and the Arts' 'Captioning regulatory framework: Policy consultation paper'

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Submitted by  
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# About Media Access Australia

Media Access Australia is Australia's only independent not-for-profit organisation devoted to increasing access to media for people with a disability.

We promote inclusion by providing information and expertise on the accessibility of mainstream technologies to government, industry, educators, consumer organisations and individuals.

We work as a catalyst for change across television, video, cinema, the arts, education, digital technology and online media, with a primary focus on people who are blind or vision impaired, or Deaf or hearing impaired.

Media Access Australia (MAA) grew out of the Australian Caption Centre (ACC), which was founded in 1982. As the ACC we provided captioning services for all Australian television networks, as well as the captioning of live theatre, videos and DVDs. The captioning and other commercial operations of the ACC were sold to Red Bee Media in 2006.

## Annual captioning compliance reporting

The Department's consultation paper gives three options. Option 1 removes reporting requirements for free-to-air (FTA) broadcasters, Option 2 would allow reports to be compiled by subscription TV channels rather than licensees, and Option 3 maintains the current arrangements.

*Option 1: Remove annual captioning compliance reporting requirement for FTA broadcasters*

MAA has long argued about the importance of compliance reporting, which achieves two things:

1. Consumers know that a regulated quota is being met and that the regulations designed to protect their interests are being properly and fairly enforced.
2. Broadcasters know that they are competing on a level playing field where none of their competitors are attempting to gain an unfair financial advantage through not complying with a required regulation.

Compliance reporting can work very effectively to properly regulate and improve the industry. Broadcasters and their caption suppliers have records of all programs that have been captioned, while the suppliers submit reports about any program which has not been captioned, or only partially captioned, due to technical or other issues, and compliance reports can be prepared from these.



Broadcasters in the UK are required to provide sixth-monthly access reports to the communications regulator, Ofcom, outlining the levels of captioning, signing and audio description they have provided. Ofcom publishes these reports, which have usually shown that most broadcasters have exceeded their minimum targets.<sup>1</sup> The result is a completely transparent access regime.

The consultation paper notes that removing compliance reporting requirements would “effectively turn enforcement into a complaints-based model”. Furthermore, “Given FTA broadcasters are required to caption 100 per cent of non-exempt programming, it is relatively simple for the viewer to determine whether obligations have been met.” However free-to-air channels must also caption any news programming from 12 pm–6 am, and any repeat programs on multichannels which were originally captioned for the same network’s primary channel. The average consumer will not be able to identify such programs and make the appropriate complaints.

Relying on viewers to uphold a regulatory framework is inherently flawed, as there is no guarantee that there will be a complaint about any particular program that breaches the captioning rules. In MAA’s experience, consumers generally direct caption complaints to broadcasters rather than the ACMA (as they are not aware that they can do the latter). Broadcasters may take seriously a complaint from a consumer, and put in place measures that will prevent the issue arising again, but they may not. Unless the consumer also lodges a complaint with the ACMA, the regulator will never know that there has been a breach of the captioning rules.

#### *Option 2: For STV services, allow compliance reports to be provided by channel providers*

Under this option, subscription TV channels would compile and lodge compliance reports rather than subscription TV licensees (e.g. Foxtel). MAA has no objection to this, and we understand the figures are compiled on a channel basis anyway.

#### *Option 3: No change to current arrangements*

For the reasons outlined above, MAA opposes a change to the FTA reporting requirements, but would support a change to reporting by channel providers for subscription TV.

## Emergency warnings captioning obligations

The *Broadcasting Services Act* requires emergency warnings to be provided in text and speech, and captioned when reasonably practicable. Broadcasters are required to keep records of whether they have complied with the captioning component, but the ACMA has removed the requirement for them to report on their captioning of emergency warnings in annual captioning compliance reports. The consultation paper proposes two options: to remove reporting and/or record keeping requirements, or make no change to them.

We note that removing record keeping requirements would not change the obligation to caption emergency warnings when reasonably practicable. Nevertheless, we feel emergency warnings are of such importance that a record of whether they were captioned or not should exist. While the basic emergency warning is required to be delivered in text format, added commentary delivered live as the warning is broadcast could provide vital extra information. It is therefore important that this be captioned when possible, and the requirement to keep records reinforces this. As the consultation

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<sup>1</sup> The reports can be downloaded from Ofcom’s [Television access services reports](http://bit.ly/1nQw3CO): <http://bit.ly/1nQw3CO>



paper suggests, these records also allow the ACMA to properly investigate any complaints from consumers.

Broadcasters will receive reports from caption providers as to whether emergency warnings were captioned or not, and these will be a valuable indicator of their flexibility and ability to caption live content at short notice. We do not believe it is onerous for broadcasters to retain these records, therefore support Option 2, to make no change to existing arrangements.

## Regulatory measures for the FTA sector

The consultation paper proposes changes to regulatory measures for FTA channels, an extension of captioning requirements to a 24-hour period, and an increase to requirements for multichannels.

### *Option 1: Extend FTA television broadcasters' captioning requirements to a full 24-hour period*

Australia is the only country in the world where FTA caption requirements are based on an 18-hour day (6 am to midnight). This formulation is a legacy of a series of agreements brokered by the Human Rights and Equal Opportunities Commission between the broadcasters and organisations representing Deaf and hearing impaired consumers. These agreements meant the FTA broadcasters would be exempt from complaints under the *Disability Discrimination Act* provided they agreed to meet annual caption quotas, and saw captioning on primary channels between 6 am and midnight increase from 55% in 2005 to 90% in 2012. In the same year, new caption quotas were introduced into the *Broadcasting Services Act* which continued this system of annual 5% increments, resulting in 100% captioning between 6 am and midnight in 2014. There is currently no mechanism in place for a further increase in caption requirements for primary channels.

This regulatory framework based on an 18-hour day is clearly obsolete. In the U.S., U.K and Canada, most channels have been required to caption 100% of programs over 24 hours for years.

In practice, a high percentage of programs broadcast between midnight and 6 am on the primary channels are already being captioned (chiefly news programs and repeats of previously captioned programs). A survey of captioning levels between 29 March and 11 April 2014 conducted by MAA found the following captioning levels.

**Table 1 Captioning on FTA primary channels between 6 am to midnight, March-April 2014**

<b>ABC1</b>	<b>SBS*</b>	<b>Seven</b>	<b>Nine</b>	<b>Ten</b>
67%	55%	60%	64%	25%

\*SBS figure based on programs eligible for captioning

Extending the FTA requirements to a 24-hour day would bring Australia into line with international access policies, and with Australian subscription TV policies. It would also, of course, benefit consumers whose viewing habits are not limited to 6 am to midnight.

Given that historically, in Australia and other countries, caption quotas have been introduced incrementally with annual percentage increases, MAA would support a similar approach here, provided that the initial quota takes into account the amount of programming that is already being captioned.



### *Option 2: Increase captioning requirements on FTA broadcasters' multichannels*

Multichannels were exempted from the normal captioning regulations after broadcasters argued that they were new channels which were not yet making a profit. They have now been broadcasting for a long time (Go! And 7Two commenced in 2009, and 11 in 2011), and since digital switchover was completed have been available to all TV viewers. At their inception, there was an assumption among broadcasters and regulators that these were auxiliary channels that would screen less popular programs and repeats, but some of them have now developed distinct genre identities, and programming regularly moves from primary channel to multichannels. For consumers the distinction between the two is irrelevant.

There was a review of the multichannel legislation scheduled to take place by the end of 2012, but this never took place. MAA believes that the anomaly of multichannel exemption needs to be dealt with as a matter of urgency.

In the absence of legislation, the ABC has elected to provide high levels of captioning on its multichannels, but levels on the FTA channels are considerably lower. A survey conducted by MAA in April 2014 found the following levels:

**Table 2 Captioning Levels on multichannels, April 2014**

Channel	ABC24	ABC2	ABC3	SBS2	7Two	7Mate	Go!	Gem	One	Eleven
Captioning 6am - midnight	96%	100%	100%	14%	35%	41%	33%	57%	23%	24%
Captioning midnight – 6 am	47%	90%	NA	17%	22%	21%	13%	40%	12%	24%
Total captioning over 24 hours	83%	84%	NA	15%	32%	36%	28%	53%	20%	24%

We believe that it is appropriate that caption quotas for multichannels should be introduced incrementally, and that an appropriate quota in the first year would be 40% across 24 hours, followed by annual increases of 5%.

Should such a quota be introduced, we believe that it would be feasible to end the requirement to caption repeats on multichannels. This will reduce the administrative burden on broadcasters, while in practice, they will use previously captioned repeat programs as far as possible to meet quotas anyway.

## Captioning obligations for subscription TV

The consultation paper sets out a number of options for modifying the regulations applying to subscription TV services, including two options for a 'channel plan'.

Caption quotas for subscription TV services are based on a complicated system with different quotas assigned to channels according to their genre, and the number of services within each genre



that a licensee broadcasts. Above a certain number of channels in each genre (e.g. the figure is 11 for movie channels), channels are exempt from captioning requirements.

#### *Captioning channel plan model A*

Under this model, caption targets would be assigned to channels, regardless of which subscription TV service offers them.

The paper notes that under the current system, a channel that has been assigned a caption quota when offered by one subscription TV licensee may attract a higher quota when offered by another licensee which has fewer channels in that genre. To eliminate this anomaly, it is proposed that “the annual captioning target for a channel would be the lowest target that would apply to a licensee providing that channel as a result of category or exemption nominations by STV licensees”.

We believe that this proposal cannot be justified. It essentially means Deaf and hearing consumers who rely on captions would be penalised by having captioning reduced on a channel just because it happens to be offered by two different subscription TV licensees.

We note that no subscription TV services currently have channels with higher captioning targets than those applied to the same channels on other services. This is because the smaller subscription TV services offering channels that are also screened on Foxtel (such as Fetch TV) have all successfully applied to the ACMA for caption exemptions or target reductions.

We also note that there is no indication in the consultation paper of how the ACMA would decide on the appropriate levels for captioning under a channel plan.

#### *Captioning channel model B*

This model proposes a further variation to the current system, whereby subscription TV licensees could average captioned content across two channels in the same genre which have different targets. As this would not lead to any decrease in the overall levels of captioning, MAA does not have a serious objection to this. However, it creates a more complex system for the channels to administer and for ACMA to police, so we would question the benefits of it.

There is also a suggestion that a channel plan (where captioning targets for all channels are announced by the ACMA at the beginning of each year) means increased transparency, and this justifies a review of annual captioning reporting requirements. MAA believes that caption compliance reporting by subscription TV providers is essential, for the same reasons it is essential for free-to-air broadcasters, and having the captioning targets announced upfront will make the compliance program more transparent and easier to monitor.

#### *Option 2: Threshold model*

This option proposes a threshold model whereby a channel with a viewing audience that falls below a certain threshold, or has captioning costs which would exceed a certain percentage of its revenue, or both, would be exempt from captioning obligations.

The paper notes that a similar approach is taken in the U.K. (where there is an audience share threshold of 0.05%, and a cost threshold of 1% of ‘relevant turnover’) and the U.S. (where there is a cost threshold of 2% of gross revenue).

We would support the introduction of such a system, so long as it was in line with the U.S and U.K. models. We believe this would be more open and transparent than the current system, where the ACMA grants captioning exemption applications to television services on the grounds of



'unjustifiable hardship', but does not release the financial information upon which its decisions are based.

*Option 3: Channel provider responsibility*

This option proposes that channels, rather than subscription TV licensees, should be responsible for record keeping and compliance reporting (although licensees would continue to be ultimately responsible for compliance obligations). As stated above, MAA has no objection to this, provided that annual compliance reporting requirements are maintained.

