



**Submission by  
Free TV Australia Limited**

Department of Broadband,  
Communications and the Digital Economy

Access to Electronic Media for the Hearing  
and Vision Impaired

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## 1 Executive Summary

- Broadcasters have made significant gains in recent years to reach very high levels of program captioning, delivering a significant and valued service to the deaf and hearing-impaired community.
- Broadcasters are committed to working cooperatively with the Government and the deaf and hearing impaired community to agree appropriate future targets for captioning on commercial free to air television.
- In recognition of the significant financial and operational impact of providing captions for television content, escalating minimum targets must be phased-in over time and must focus on those areas of programming where captioning will be of most benefit to audiences.
- It is an established principle of broadcasting regulatory policy that regulatory requirements must balance public interest considerations with their financial and administrative burden on broadcasters.
- To this end, Free TV is willing to work with Government on phased-in increases in captioning of 6.00am to midnight programming on the primary channel, in the lead-up to digital television switchover in 2013.
- This will represent a significant commitment of resources for broadcasters. The high levels of captioning already provided would mean that to deliver further increases in captioning levels, broadcasters will need to consider programs that are particularly difficult or costly to caption.
- Free TV supports the existing provisions of the *Broadcasting Services Act 1992* for captioning on digital multi-channels, and propose these exemptions continue through until a review is conducted one-year after digital switchover in 2013, rather than being matched to the end of the simulcast period. These are new and emerging services, set to play an important role in driving television consumers to switch to digital television.
- It is only once digital multi-channels are truly established that a proper impact assessment of further captioning requirements can be undertaken.
- Regulatory certainty is a vital issue for commercial free to air broadcasters. In setting future targets and timeframes for captioning on television, the Government must make statutory provision for the primacy of those targets through a specific statutory exemption from the *Disability Discrimination Act 1992* in regards to commercial free to air television captioning.
- Free TV does not support the introduction of minimum requirements for audio-describing of television content, due to the significant technical and financial barriers associated with such services at this time. The access needs of blind and vision-impaired audiences have been acknowledged, with guidelines in place to ensure that important text based information is also presented orally.



## 2 Introduction

Free TV Australia is the peak industry body representing all of Australia's commercial free to air television licensees.

Free TV welcomes the opportunity to comment on the Department of Broadband, Communications and the Digital Economy (DBCDE) Discussion Paper *Access to Electronic Media for the Hearing and Vision Impaired*. This submission addresses the Key Issues raised in the Department's Discussion Paper as relevant to commercial free to air broadcasters.

Free to air commercial television broadcasters are committed to making Australian television accessible to the hearing and vision impaired. However, this objective must be balanced with what is feasible and practicable.

Television broadcasters have been providing captioning services for deaf and hearing-impaired viewers since the 1980s. The industry does not receive government funding for captioning.

The commitment was formalised in clause 38 of Schedule 4 of the *Broadcasting Services Act 1992* (BSA) which requires broadcasters to provide closed captioning for all prime time programming (6.00pm to 10.30pm) and all news and current affairs outside this period. Broadcasters have complied with and exceeded the requirements under the BSA.

Further captioning commitments subsequently arose out of negotiations with the Human Rights and Equal Opportunity Commission (HREOC) under the *Disability Discrimination Act 1992* (DDA). As part of a 2003 exemption granted by HREOC under section 57 of the DDA, broadcasters committed to a wide range of significant captioning requirements:

- Caption all programs (other than sport) which commence in prime-time until their conclusion;
- Staged increase in hours to reach minimum goals – 55% by end 2005 and 70% by end 2007 (6am to midnight programming); and
- Priority is given to captioning of pre-school and children's programming – by end 2007, over 1400 hours of pre-school, children's and schools programs will be captioned each year.

Broadcasters have met these captioning targets, delivering a significant and valued service to the deaf and hearing impaired community. In meeting these captioning targets, broadcasters have committed millions of dollars each year in direct expenditure. The exemption issued by HREOC has now expired and Free TV, in conjunction with the ABC and SBS, has applied to HREOC for a further, short-term exemption to cover the period of the DBCDE review.

Further requirements are also set down by the Commercial Television Industry Code of Practice. The Code requires commercial free-to-air television broadcasters to:

- Ensure that closed-captioning is clearly indicated in station program guides, in press advertising, in program promotions and at the start of the program;
- Exercise due care in broadcasting closed captioning, and ensure that there are adequate procedures for monitoring closed captioning transmissions;
- Provide adequate advice to hearing-impaired viewers if scheduled closed captioning cannot be transmitted. If technical problems prevent this advice being provided in



closed captioned form, it must be open captioned as soon as reasonably practicable; and

- When broadcasting emergency, disaster or safety announcements, provide the essential information visually, whenever practicable. This should include relevant contact numbers for further information.

The significant financial impact upon broadcasters of any additional regulatory requirements in relation to captioning must be a central consideration for Government. This is consistent with the legislated regulatory policy for broadcasting, which requires that public interest considerations be balanced against their financial and administrative burden on broadcasters.<sup>1</sup>

The Government's consideration of this issue must also note that captioning is just one of a wide range of public service outcomes that broadcasters are required to comply with and fund without government subsidy.

Broadcasters must also meet a range of statutory obligations including providing adequate and comprehensive coverage, meeting minimum quotas of Australian content including sub-quotas applying to adult drama, children's programming and documentaries, and meeting local content requirements that apply to regional broadcasters. Broadcasters are also subject to other requirements concerning the content of programming delivered to children, restrictions on the types of programs that can be shown at certain times of the day, and limits on amounts and types of advertising and many others.

Free TV also urges the Government to exercise caution before applying overseas experiences to the Australian environment. Australia's small population and large geographic area mean that the economic impacts of captioning overseas have only limited usefulness in policy discussions in the Australian environment. Simply because amounts captioned overseas may be higher than in Australia is not a rationale for imposing unreasonable burdens on Australian broadcasters. Obligations in the Australian context must be based on current levels of captioning in Australia and the broader regulatory settings. They must be increased in a measured and practical way, and in a way that does not result in an undue burden on broadcasters.

A discrete approach to the regulation of captioning on multi-channels must also be taken. These are new and emerging services. They will play an important role in driving television consumers to switch to digital television. To require increased captioning on these services would have a significant financial impact despite their precise nature being as yet unknown. The need to take a 'light-touch' approach to regulating these start-up services was acknowledged at the time of the introduction of the digital television legislation in 2006, and is consistent with broadcasting regulatory principles.

It is also vital that any changed regulatory requirements for television captioning take a more consistent approach across broadcasting platforms, subject to reasonable phase-in periods. To date, commercial free to air television has led the way in providing television captioning, with lesser requirements for subscription television. Subscription television is no longer a new service in Australia and has established its profitability. It must now reasonably share the burden of providing captioning services into the future.

Of primary importance to broadcasters is the need for regulatory certainty regarding captioning commitments. At present, despite the Parliament enacting specific legislative obligations for

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<sup>1</sup> Paragraph 4(2)(a) *Broadcasting Services Act 1992*



television captioning, the provisions of the *Disability Discrimination Act 1992* have been applied. This has resulted in two sets of conflicting obligations for broadcasters in regards to an issue that gives rise to material financial burdens. This is unacceptable for broadcasters and inconsistent with best practice regulation.

### 3 Key Issues

#### 3.1 The current levels of captioning on free to air television including digital multi-channels, subscription television, DVDs and films in cinemas, including cinemas in regional areas, in Australia

As noted above, free to air television broadcasters are subject to minimum captioning requirements under the BSA, which require closed captioning for all prime time programming (6.00pm to 10.30pm) and all news and current affairs outside this period. Broadcasters have complied with and exceeded the requirements under the BSA.

Further minimum targets were also set as part of an exemption granted by HREOC under the provisions of the DDA. The conditions on which the exemption were granted specified phased-in captioning targets for programming between 6am and midnight, with annual reporting requirements.

Broadcasters consistently met these minimum requirements.

Captioning figures averaged for the year 2007 show broadcasters providing closed captions for over 70% of 6am to midnight programming:

- Seven Network 70.5%;
- Nine Network 72%;
- Network Ten 71.3%.

In particular, significant outcomes have been achieved in the captioning of children's programs, with over 1400 hours of pre-school, children's and schools' programs captioned under the terms of the exemption. These outcomes also include captioning many of the most popular programs on commercial free to air television.

These levels apply to broadcasters' primary channels. However, as required by clause 38 of Schedule 4 of the BSA, captions are provided for programming on digital multi-channels where that programming is a simulcast of the primary channel, or where the programming has first been shown on the primary channel with captions.

#### 3.2 The current levels of audio description on free to air television including digital multi-channels

As described by the DBCDE Discussion Paper, audio-descriptions consist of the:

*“presentation of the visual component of audio-visual content as additional verbal commentary that complements the underlying soundtrack.*

*“It is generally intended to assist people with a vision impairment. A narrator describes speakers, gestures, facial expressions, scene changes, text on screen and other visual*



*information on a separate pre-recorded digital file that is synchronised with the file of a television program or film.”*

As noted in the Discussion Paper, there is no regularly scheduled programming on commercial free to air television in Australia that is accompanied by this kind of service.

In September 2003, commercial free to air broadcasters finalised the Audio Captioning Guidelines (attached at Appendix A), which are designed to provide consistency of access to certain categories of on-screen textual information for the blind and vision impaired community.

Broadcasters follow these Guidelines and they are distributed to external producers. These Guidelines provide guidance for broadcasters to ensure that as much on-screen textual information as is feasible is replicated orally so that television is accessible to people who have a visual disability.

The Guidelines cover:

- Emergency announcements
- News flashes
- Competition entry details
- Lotto results
- Sports results

In addition, clause 2.21 of the Commercial Television Industry Code of Practice requires consumer advice about the content of programs to be provided in both text and spoken form.

In these ways, broadcasters have acknowledged and responded to the needs of the blind and visually impaired television audience.

### **3.3 The costs of providing captioning and audio-description on free to air television including digital multi-channels, subscription television, DVDs and films in cinemas, including cinemas in regional areas, in Australia**

As noted by the Discussion Paper, providing captioning costs each broadcaster several million dollars a year. This is clearly a significant and material commitment of resources, in an environment in which broadcasters are competing against an increasing range of entertainment choices and facing the substantial costs associated with digital television switchover. Increased levels will require greater resources.

The costs of providing captioned programs are widely recognised as being significant, given the limited availability of highly trained, experienced captioners and the considerable time taken to caption a single hour of programming. This is a particular concern for regional broadcasters, where there is a greater shortage of experienced captioners. These costs are particularly acute as regards regional news and current affairs, with regional broadcasters providing multiple different news bulletins daily across their operations.

The high levels of captioning already provided would mean that for any further increases to be made, broadcasters would need to consider programs that are particularly more



difficult or costly to caption. The recent trend for much reduced turnaround times between acquisition and broadcast in Australia of programming acquired from overseas means less lead time for the captioning of those programs offline and an increased reliance on live captioning of international programming. Live captioning of these programs is a more costly option and more resource intensive, requiring additional captioners to deliver acceptable quality captions.

Hence, the costs of reaching current captioning levels serve only as a limited guide to the financial impact of further requirements. Further requirements will have a material impact on broadcasters, disproportionate to the increased level of captioning provided.

### **3.4 Appropriate future targets for captioning and audio-description on free to air television including digital multi-channels, subscription television, Australian television and film productions made available on DVDs, and films in cinemas**

Free to air broadcasters recognise that captioning is a much-valued service within the deaf and hearing-impaired community and are committed to working with the community to improve these services. Broadcasters believe they have demonstrated their good faith in comfortably meeting the requirements of the outgoing HREOC exemption to reach a minimum of 70% captioning of programming from 6.00am till midnight by 2007.

Providing captioning costs each broadcaster several million dollars a year and the current level of captioning has been achieved at a great cost to broadcasters. Increased levels will require greater resources. As outlined above at 3.3, the high levels of captioning already provided would mean that for any further increases to be made, broadcasters would need to consider programs that are particularly more difficult or costly to caption.

Providing captioning is also becoming more logistically challenging with overseas programs increasingly being broadcast at the same time or very shortly after their release overseas. This allows a far shorter window of time for broadcasters to caption these programs before they air.

Whilst some captioning files are available for purchase for international programs, broadcasters are required to make modifications to these files before they can be used, such as changing timecodes or modifying text. The process for modifying these files is extremely time consuming and given the general shorter lead times for receiving this material, is increasingly impractical.

For these reasons, any increase in captioning targets will place pressure on the ability of broadcasters to deliver quality captions for the significant proportion of programming that is brought in from overseas.

It should also be noted that captioning of more programming may lead to later delivery of captioning files to/from captioning providers, which will result in less time to check the files prior to airing, and therefore greater risk of technical or operational issues going to air.

These cost and operational factors mean that the next stage of television captioning, when compared with experience to date, will necessarily be more complex and give rise to a range of new technical, cost and operational issues. This must be taken into consideration when considering appropriate future captioning targets for free to air television and it can



not be assumed that future increases can be achieved at the same rate as increases to date.

The discussion below addresses appropriate future targets for captioning on broadcasters' primary channels and multi-channels, and also addresses the question of audio-description of television programming.

### **3.4.1 Captioning – appropriate future targets for commercial free to air television**

In the lead-up to digital television switchover in 2013, Free TV is willing to work with the Government to deliver phased-in increases in the level of captioning on the main channel between 6.00am and midnight.

In light of the difficulties surrounding further increases in the level of captioning, careful planning will be needed to ensure future captioning targets are realistic and achievable. If unattainably high targets or unfeasible timeframes are set, this is likely to necessitate trade-offs between quantity and quality, to the detriment of deaf and hearing impaired audiences.

Given the significant progress made to date by broadcasters, further phased-in increases would result in a significant commitment of resources by broadcasters, and the eventual delivery of captioned programming across popular viewing hours. The continued exclusion of the midnight to 6.00am period reflects the limited popularity of this programming, in contrast to the significant cost of captioning that content.

It is well recognised that captioning is not feasible or is particularly difficult and costly for certain kinds of programs. Therefore, a limited number of specific exemptions must apply to any future targets. The exclusions set out in Schedule 4 of the BSA should continue to apply to any future targets. The BSA currently excludes the following program types:

- Television programs that are not in English or mainly not in English;
- Non-vocal music-only programs;
- Incidental or background music; and
- Live sport coverage with unscheduled extended coverage that displaces a news program.

Consideration should also be given to excluding breaking news items that interrupt normal programming, where that interruption is genuinely unforeseeable. In these circumstances, best endeavours are employed to provide captions, and if the news coverage is likely to continue resources are redeployed to cover captioning requirements.



### **3.4.2 Captioning – digital multi-channels**

The BSA currently exempts standard definition (SD) and high-definition (HD) multi-channels from captioning requirements, except where a program has already been broadcast on the main channel with captions.

This will change following the end of the simulcast period, when captions will be required on HD and SD multi-channels (subject to the stated exemptions) between 6.00pm and 10.30pm, regardless of whether the programming has first appeared on the primary channel. The BSA also requires a review of these provisions one year prior to switch off (clause 60C of Schedule 4).

It is vital that a discrete regulatory approach to the provision of captions on multi-channels is taken by Government, due to the unique and emerging nature of these services. This would be consistent with the existing 'light touch' regulatory policy for multi-channels, which reflects the broader policy objective of encouraging a diverse range of new digital services.

This regulatory policy was articulated in the Explanatory Memorandum to the Broadcasting Legislation Amendment (Digital Television) Bill 2006, which noted that the initial smaller audience reach of digital multi-channels means "it is appropriate that a lighter regulatory burden be placed on [those channels]" (p 30). This is also consistent with the regulatory policy of the BSA more broadly, which states that different levels of regulatory control should be applied across broadcasting services, according to their level of influence within the community.<sup>2</sup>

Multi-channels are new services, whose final composition and nature are still unclear. This makes it particularly important to carefully consider the impact of regulatory settings for these services. Closer consideration of the current status of the digital multi-channels suggests it would be premature to impose additional captioning requirements until these services have become established.

Multi-channels pose a number of challenges for broadcasters. The market for HDTV program matter is still developing, resulting in high start-up costs for broadcasters in developing attractive and unique services for viewers. Broadcasters are yet to launch SD multi-channels, and programming line-ups are yet to be announced.

Given this start-up phase and the niche audiences attracted to specialised programming, broadcasters are currently building audiences for multi-channel content.

It is therefore extremely difficult to predict the future operating environment for these channels, for the purposes of assessing the impact of regulatory proposals.

Further, as noted by the Discussion Paper, captioning commitments on broadcasters' primary channels alone costs millions of dollars each year. With all digital multi-channels permitted to carry unique content from 2009, similar costs could arise from captioning requirements for each of the digital multi-channels.

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<sup>2</sup> Subsection 4(1) *Broadcasting Services Act 1992*



Hence, captioning on digital multi-channels is a policy issue with a potential direct financial impact for industry of millions of dollars each year, the real operating impact of which can not yet be assessed due to the start-up nature of the services. It is therefore impossible to undertake a robust and defensible assessment of the impact for broadcasters of any regulatory proposals as regards multi-channel captioning.

Free TV is conscious of the Government's publicly stated aim of encouraging the establishment of viable and attractive digital multi-channels, as part of an overall strategy towards accelerating digital television take-up. The imposition of financially burdensome captioning requirements for multi-channels at this time would appear inconsistent with these aims.

The appropriate time for the consideration of captioning requirements on multi-channels will come following their establishment in the marketplace.

Free TV notes that there is, built in to the BSA, a requirement for a review of the captioning provisions for digital multi-channels to be reviewed one year prior to digital television switch-off. Whilst this timing for the consideration of the issue would, to some extent, address the concerns outlined above, the operating environment of these services will only really be known once Australia has moved to a digital-only environment. That is, it is only once switch-over is complete, and all consumers are able to access the digital multi-channels, that their long-term place in the television environment will be clear.

It should also be noted that in the year leading up to switchover, broadcasters will be facing significant technical and operational commitments in delivering what the Government has described as the biggest change facing this country since decimal currency was introduced.

For these reasons, Free TV therefore supports the statutory review taking place one year after digital television switchover. The existing regulatory exemptions for captioning of multi-channels should be extended to match this timeframe, rather than being matched to the end of the simulcast period in each individual licence area. A review at this time would consider the appropriate regulatory settings for captioning on the digital multi-channels going forward.

### **3.4.3 *Captioning – the need for regulatory certainty***

Any government consideration of future captioning requirements must make provision for regulatory certainty.

Captioning requirements for free to air commercial television have been set through the BSA. However, due to the lack of any specific statutory exclusion, the DDA has also been applied as regards television captioning. Despite the legal uncertainty of this application, for certainty, broadcasters have had to engage in both processes.

This has resulted in additional requirements for broadcasters and considerable regulatory uncertainty. Given the financial and operational implications of captioning requirements, this uncertainty has been a significant concern for broadcasters and must be addressed through the current review.



In setting future targets and timeframes for captioning on television, the Government must make statutory provision for the primacy of those targets through the a specific statutory exemption from the DDA in regards to television captioning. If this does not occur, any Government decision as to appropriate future targets for captioning is at risk of being overridden by the DDA complaints process.

This issue is addressed in further detail in section 3.8 below.

#### **3.4.4 Captioning – strict liability requirements**

As originally drafted, the requirements in clause 38 of Schedule 4 to the BSA were to be followed “to the extent practicable.” This qualification was an important recognition of the fact that a strict liability in relation to captioning requirements is not feasible in all circumstances, due to the difficulties of providing captions for particular programming genres, particularly live programming or for unforeseen technical faults.

As an example of some of the difficulties faced in providing seamless captioning for an entire program comes through live sport. Sport involves rapid commentary, which is often difficult to understand by a live stenographer. The long duration of certain events adds to the logistical, operational and financial difficulties in captioning sport. Live stenographers are only able to accurately provide continual captioning for very limited periods of time without a break in proceedings. Sporting events, such as the long-form Bathurst motor races, may go for 10 hours or more.

Another example is visually centred programming, such as the weather segments of news, which are heavily loaded with graphic and text information, making the sensible placement of captions problematic in some circumstances.

These factors, and the high cost of providing captions, means that broadcasters must carefully target captioning resources. Strict liability requirements are likely to result in broadcasters taking decisions which prioritise quantity over quality, in an effort to comply with the strict letter of the law.

It is also important that provision is made for unforeseeable technical or operational difficulties that arise from time to time with the transmission of captions. These issues are of particular concern to regional broadcasters. With multiple local broadcast centres, and longer offset times for repairs and/or delivery of replacement equipment to distant locations, regional broadcasters are disproportionately affected by strict liability requirements.

Such difficulties should not automatically result in a breach of a commercial broadcasting licence condition regardless of the circumstances.

The justification for the removal of the “as far as practicable” phrasing is unclear and, for the reasons outlined above, Free TV supports its reinstatement as part of the Government response to this review.



### 3.4.5 Audio-description

Free TV does not support the introduction of minimum requirements for audio-describing of television content.

Whilst both captioning and audio-descriptions are services that seek to improve access to electronic media for people with a sensory disability, these services raise quite distinct issues for television broadcasters, regulators and users.

There are significant differences between audio-description and captioning in terms of costs, technical considerations and the nature of the services themselves.

The substantive differences between captioning and audio-description are quite marked. Television is an inherently visual medium. The visual content is an integral component of the program content and does not simply supplement the dialogue and other sound effects. This in turn means that there are inherent difficulties in trying to communicate all information broadcast both visually and orally.

There is a clear difference between captioning, which is an alternate means of presenting program content (ie, a translation of spoken dialogue into text form), and audio-descriptions, which necessitate the creation of new content.

The difference between the two services has been considered at a very high level in the United States. In judicial review of Federal Communications Commission rules requiring video-descriptions (audio-descriptions), the US Circuit Court of Appeals considered the two services:

*Closed captioning displays the audio portion of television signals as words displayed on the screen and can be activated at a viewer's discretion. Video descriptions change program content because they require the creation of new script to convey program details, whereas closed captions present a verbatim transcription of the program's spoken words.*

*Ultimately, video descriptions require a writer to amend a script to fill in audio pauses that were not originally intended to be filled. Not only will producers and script writers be required to decide on what to describe, how to characterise it, and the style and pace of video descriptions, but script writers will have to describe subtleties in movements and mood that may not translate easily. And many movements in a scene admit of several interpretations, or their meaning is purposely left vague to enhance the program content. In short, it is clear that the implementation of video descriptions invariably would entail subjective and artistic judgments that concern and affect program content.<sup>3</sup>*

There are significant technical considerations which significantly impact on the capacity to provide audio-descriptions and which distinguish this service from the provision of closed captioning. Whilst small amounts of audio-descriptions are provided in some overseas markets, there are significant technical considerations in the Australian market that limit the usefulness of overseas comparisons. At

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<sup>3</sup> Motion Picture Association of America, Inc., et al., Petitioners v Federal Communications Commission and United States of America, Respondents. National Television Video Access Coalition, et al., Intervenor



present, Australian broadcasters are unable to broadcast opt-in audio-described programming.

The provision of opt-in audio-descriptions for television programming requires a separate, dedicated audio-channel. At present, broadcasters do not have sufficient bandwidth to support an additional audio-channel and so could not carry optional audio-descriptions for any programming.

Ultimately, the costs of implementation are likely to depend on the amount of audio-descriptions to be broadcast, however preliminary investigations suggest significant fixed and unavoidable capital costs would arise before any audio-descriptions could be broadcast on commercial free to air television. These costs would arise from the requirement to replace, upgrade or convert receivers, transmission presentation servers, multiplexers and transmission encoders through the entire network system. This is at a time when free to air broadcasters have been required to commit significant amounts of capital expenditure to upgrade and/or replace transmission facilities as part of digital-switchover.

Free TV also notes that the current digital receiver and transmission standards (AS 4599 and AS 4933) do not make provision for the transmission or reception of audio-description services. Hence, even if audio-description services were transmitted, it is likely that a significant proportion of the population would not be able to receive these services without investing in additional equipment, if available.

Further, given the requirement to create new content, the cost of producing audio-descriptions can be distinguished from the cost of producing captions. The production of audio-descriptions requires a trained expert to preview the program and mark-up cue points, generate a new script and select and cast the talent to perform the script. Rehearsals are required before the narration can be recorded and post-production and finishing work must also be undertaken (sound-matching and edits, review and trim, add associated fade and pan data).

Whether the creation of audio-descriptions is undertaken in-house or outsourced, the costs and logistics of meeting quotas of audio-descriptions would represent a significant operational impost for broadcasters. For episodic programs with tight turnaround times, the operational impact could potentially be quite serious.

### **3.5 The captioning and audio description of advertising content on these media**

Whilst there are currently no regulatory requirements relating to the captioning of advertisements, advertisers are encouraged to be responsible and responsive to viewer needs in their approach to this issue.

### **3.6 The captioning and audio description of audio-visual content that is distributed via the internet**

There is an extremely diverse range of audio-visual content distributed on via the internet, from user-generated content and file-sharing, through to internet-only entertainment platforms. Free TV is not aware of any widespread provision of captioning or audio-description of audio-visual content on the internet. However, we understand there



may be technical barriers for internet content providers in making captioning available on an opt-in basis.

### **3.7 The extent to which the quality of captions and audio-description can be effectively measured and standardised for different types of content, including 'live' content**

Free TV is not aware of any general level of dissatisfaction with the quality of captioning its members provide. Commercial free to air broadcasters closely monitor the complaints they receive regarding captioning, so that they can be promptly addressed.

Although Free TV's members are committed to the delivery of the highest quality captioning service, a rigid or inflexible quality standard is not the best means to address quality issues surrounding captioning. Captioning, by its nature, requires a great deal of skill and judgement and cannot be governed by a set of absolute rules. Formal requirements specifying particular visual outcomes may not offer sufficient flexibility to deliver the best outcome for viewers.

Strict rules would frequently require compromise, in a live captioning environment in particular, in order to meet opposing objectives. For example, it is often not possible to achieve synchronicity between captioning and the relevant vision, while at the same time ensuring that captions are as close as possible to the original wording, ensuring viewers have the time to absorb the captions contents and keeping captions to only one or two lines. In these circumstances, the best outcome for viewers is often provided by allowing the captioner to exercise discretion and judgment, particularly in the live captioning environment.

In particular, the viewer's desire to receive as much information as possible needs to be balanced against the practical constraints of how quickly captions can be read and how much visual information can appropriately be displayed on the screen at any one time.

The adoption of such standards could unintentionally give deaf and hearing impaired viewers unrealistic expectations about what is actually achievable, resulting in a higher level of dissatisfaction regarding the quality of captioning.

Nevertheless, Free TV has worked cooperatively with deaf groups to understand and address quality considerations in the presentation of captions. To this end, lengthy negotiations have occurred in recent years regarding the development of minimum quality guidelines for captioning on free to air television.

The guidelines set out general principles for best practice captioning, as well as more detailed guidance on matters such as general grammar and presentation, timing and editing, colour and font, positioning, sound effects, live captioning and pre-recorded captioning.

The guidelines would also address the need for regular and constructive feedback to broadcasters regarding the quality of captions. Broadcasters would agree to:

- respond to written complaints;
- make switchboard staff aware of the importance of captions;
- ensure that feedback received by switchboard staff is directed to appropriate personnel within the broadcaster; and



- resolve technical issues concerning the broadcast of captions as quickly as practicable.

However, it should be noted that there are often technical problems associated with the way decoders receive captions, which broadcasters have no control over, or ability to correct.

Broadcasters would also suggest that representatives of broadcasters, caption providers and deaf groups meet on a 6-monthly basis to discuss issues concerning quality of captions.

The increase in quantity of captions over the last 5 years has inevitably put pressure on captioning resources. However, we believe that with the assistance of guidelines quality will improve over time.

Whilst the final drafting of the guidelines is yet to be finalised, the key concepts and principles have been largely agreed between broadcasters and key deaf groups.

### **3.8 The appropriate roles for the Human Rights and Equal Opportunity Commission and the Australian Communications and Media Authority in relation to access requirements under the *Disability Discrimination Act 1992* and the *Broadcasting Services Act 1992***

In line with its statutory obligations, HREOC has, in recent years, had a role in facilitating agreement between broadcasters and the deaf and hearing-impaired community in relation to captioning targets.

The input of HREOC and the application of the DDA would seem appropriate in the absence of specific government regulation addressing television captioning. However, specific rules for television captioning have been enacted by the Parliament through broadcasting legislation. It has consistently been the view of broadcasters that this positive exercise of the Parliament's will to set down express and specific regulatory obligations in relation to television captioning should be seen as taking primacy over the generalised and non-specific obligations under the DDA.

However, the absence of a specific statutory exclusion of the operation of that Act has resulted in two separate but conflicting sets of statutory obligations. This has created an unacceptable level of regulatory uncertainty for broadcasters in relation to a service that costs several million dollars each year.

Broadcasters are supportive of the Government's review into access to electronic media as the best means to build on the significant achievements made to date in terms of television captioning and to provide certainty into the future for broadcasters and the deaf and hearing impaired community.

Whatever the findings and outcomes of the Government's review, the issue of regulatory certainty must be addressed as a priority. Whilst the HREOC-managed process under the DDA has facilitated significant progress in this area, broadcasters will not support an outcome from the present review that does not exclude the operation of the DDA.

It is clear from past experience that unless the operation of that Act is excluded, it will be utilised to override any other regulatory obligations that might be put in place by the



Government. Hence, a review outcome that does not incorporate a positive exclusion is likely to have limited application or usefulness in the longer-term.

To this end, Free TV supports the implementation of any future captioning targets for commercial free-to-air television through the *Broadcasting Services Act 1992*, to be administered by the Australian Communications and Media Authority (ACMA), through its existing suite of broadcasting enforcement powers.

### **3.9 How changes to the regulatory requirements for access to electronic media should be implemented**

As noted above, Free TV supports the implementation of changed regulatory requirements through the *Broadcasting Services Act 1992*, to be administered by the broadcasting regulator, ACMA.

However, before any such changes are implemented, further consultation with broadcasters and the deaf and hearing impaired community on specific proposals should be undertaken.

### **3.10 The extent to which standards for digital television transmission and domestic digital television receivers should provide for captioning and audio-description**

Free TV notes that ACMA has recently conducted a consultation process in relation to its new digital codes and standards making powers. Free TV made a submission to that consultation process, which is available from the ACMA website<sup>4</sup> and should be referenced when considering this issue.

Free TV considers that the most appropriate forum for the consideration of transmission and receiver standards is through the ACMA process already underway. Free TV notes that some submissions to that review have specifically addressed the issue of captioning.

As noted in our submission to ACMA, it would be desirable for any mandated specifications for DVB-T receivers in Australia to require decoding of closed captions in accordance with ETSI EN 300 472, EN 300 706 and industry Operational Practice 42.

In relation to the transmission standard, Free TV notes that the current edition of AS4599.1 (2007) references Operational Practice 42: Distribution, Transmission, and Monitoring of Closed Captions on line 21/334.

Free TV's members have also developed and comply with Operational Practice 47: Storage and Distribution of Teletext Subtitles and VBI Data for High Definition Television. OP47 ensures that closed captioned High Definition program material, in accordance with the appropriate Australian and international standards will be successfully delivered to end users via the broadcasters' storage and distribution processes.

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<sup>4</sup> [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_310890#submissions](http://www.acma.gov.au/WEB/STANDARD/pc=PC_310890#submissions)

# Audio-Captioning Guidelines

**Set out below are Audio-Captioning Guidelines that have been adopted by Networks Seven, Nine and Ten. In order to provide consistency across stations, Free TV recommends that all stations apply these Guidelines.**

These Guidelines apply to the following types of textual information:

- Emergency announcements
- News flashes
- Competition entry details
- Lotto results
- Sports results

These guidelines do not apply to advertisements.

For the purposes of these guidelines, audio-captioning means the provision of basic voice-overs of textual information displayed on screen.

Audio-captioning does not refer to or include the insertion of verbal descriptions about the setting, action or other non-textual visual content of a program.

These guidelines apply only to programming on the Networks' primary channel.

Wherever reasonable and practicable, the Networks will distribute these guidelines both internally and externally to the producers of the relevant programming.

## **1. Emergency announcements**

Wherever reasonable and practical in the circumstances, the Networks will provide audio captioning of any on-screen textual information appearing in emergency announcements.

Emergency information that is provided textually without breaking from regular programs, such as information provided in the form of a crawl, will not be provided orally.

Where it is not possible to provide audio captioning of emergency announcements, the Networks will attempt to ensure that any textual information that is not provided orally is available by ringing the station.

## **2. News flashes**

Wherever reasonable and practicable in the circumstances, the Networks will provide audio captioning of on-screen textual information appearing in a news flash.

News information that is provided textually without breaking from regular programs (such information provided in the form of a crawl) will not be provided orally.

### **3. Competition entry details**

Wherever reasonable and practical in the circumstances, the Networks will provide audio captioning of basic competition entry details.

Basic competition entry details include:

- How to enter – (e.g. what information is required and where/how to submit entries); and
- When entries close.

Detailed textual information such as competition permit numbers may not be provided orally.

Information regarding telephone call costs may not be provided orally, unless the competition is directed towards children.

Where entry details vary from state to state or are not known at the time of production, it may not be practical to provide competition details orally.

Where it is not possible to provide audio-captioning, the Networks will endeavour to make basic competition entry details that are not provided orally available by ringing the station.

### **4. Lotto results**

Wherever reasonable and practical in the circumstances, the Networks will provide audio captioning of Lotto results.

However, Lotto results that are merely textually superimposed during a regular program will not be provided orally.

### **5. Sports results**

Wherever reasonable and practical in the circumstances, the Networks will provide audio captioning of final sports results.

There are instances where this will not be practicable – for example, where sports results are shown on the screen and viewers are told to “look away now if you don’t want to know,” these results will not be provided orally, in order not to spoil the enjoyment of the game for those who intend to watch the delayed telecast.

There may also be time constraints where the outcome of the sporting contest may only be orally provided, not the full details of the score displayed on the screen.