



**Submission by
Free TV Australia**

Department of Communications and the Arts

Captioning Regulatory Framework – Policy
Consultation Paper

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EXECUTIVE SUMMARY

- Free TV welcomes the opportunity to provide feedback on the *Captioning regulatory framework – Policy consultation paper* (Discussion paper).
- Commercial free-to-air broadcasters recognise that captioning is a valued service within the deaf and hearing-impaired community. Free TV members continue to work assiduously in providing high-quality captioning services, in line with and beyond their regulatory obligations.
- Free TV members support the government’s approach to deregulation in this area, noting that this has not resulted in a reduction of the quality or quantity of captioning on commercial free-to-air television. In particular, we support the changes that are in place following the commencement of the *Broadcasting and Other Legislation Amendment (Deregulation) Act 2015*, as well as recent changes to reporting requirements that have been made by the Australian Communications and Media Authority (ACMA).
- A number of key industry concerns regarding the existing captioning regulatory framework have been identified in Appendix A of the Discussion paper as being more appropriate for the statutory review of Part 9D of the *Broadcasting Services Act 1992* (BSA), which is due to occur later in 2016. It would be more efficient for all stakeholders if a single review were to consider all outstanding issues in relation to captioning regulation.
- In relation to the deregulatory response options raised in the Discussion Paper, Free TV’s position is as follows:

Discussion paper reference	Issue	Free TV position
Section 3, item a)	Captioning compliance reporting	Free TV supports Option 1, the removal of annual captioning compliance reporting for FTA broadcasters.
Section 3, item b)	Emergency warning captioning obligations	Free TV supports Option 1, the removal of reporting and record keeping requirements for emergency service warning requirements in Part 9D of the BSA.
Section 3, item c)	Additional captioning obligations on FTA broadcasters	Free TV supports Option 3, no change to existing arrangements.

Reasons for each of these positions are outlined in detail below.

Introduction

Free TV Australia (Free TV) represents Australia's commercial free-to-air television broadcasters. At no cost to the public, our members provide content across a broad range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. On any given day, free-to-air television is watched by more than 13.6 million Australians.

Commercial free-to-air broadcasters support the Government's de-regulation agenda, and the recent repeal of a number of unnecessary regulations and administrative requirements. Commercial free-to-air television is the most strongly regulated media platform in Australia.

The de-regulation agenda is an important part of ensuring commercial free-to-air broadcasters have a more level playing field, particularly in relation to new, online media entrants who do not contribute to the Australian economy on the same scale.

Free TV members recognise the importance of captioning services to the deaf and hearing impaired community and are committed to providing comprehensive, high quality captioning services, in line with and beyond their regulatory obligations.

Broadcasters commit significant resources to provide viewers with high quality captioning services, however, the administrative arrangements surrounding the delivery of these captioning services are inefficient and cumbersome.

While recent changes have improved these arrangements, there are additional steps that can and should be taken to reduce the administrative burden on broadcasters, without compromising the delivery of captioning services to viewers.

Free TV does not support an increase to captioning obligations at this time, either on the multi-channels or on the primary channel. Placing additional regulations on broadcasters in the current media climate is not sustainable.

The changes sought by Free TV will not reduce the quality or quantity of captioning services available on commercial free-to-air television.

Captioning obligations and compliance levels

The captioning obligations for commercial free-to-air broadcasters are extensive:

- Captions must be provided for 100% of programs between 6 am and midnight on the primary commercial television broadcasting service¹;
- All news and current affairs programs on the primary commercial television broadcasting service must be captioned, regardless of the time they are shown²;
- All programs shown on multi-channel services that have aired with captions on the primary commercial television broadcasting service must be captioned when aired on the multi-channel service;³
- All captioned programs must comply with the *Broadcasting Services (Television Captioning) Standard 2013* (Quality Standard).⁴

Compliance with Part 9D of the BSA is a licence condition, pursuant to clause 7(1)(o) of Schedule 2 to the BSA.

Captioning compliance reports published by the ACMA for 2014/15 indicate that compliance levels are very high for free-to-air broadcasters:

- Ninety-two free-to-air television services each achieved between 99.75% and 99.99% captioning on their primary channels in 2014–15. The captioning shortfalls were approximately four hours per service, across the 6,570 hours between 6 am and midnight each day in 2014–15.
- The remaining three services exceeded their reduced annual captioning target of 90% each for 2014–15. These three services had target reduction orders in place for the year, on the grounds of unjustifiable hardship.
- On average 99.63% of all non-exempt programming broadcast on each free-to-air primary channel was captioned during 2014–15 (6 am to midnight). This figure is up from 97% in 2013–14 (when the captioning target was 95 per cent); and up from 93% in 2012–13 (when the target was 90 per cent).
- In total 588,853 hours of television programs were broadcast with captioning on the primary channels of free-to-air television services (including the ABC and SBS) between the hours of 6 am and midnight in 2014–15. This is an increase of 15,501 hours compared to the same period in 2013–14; and an increase of 42,213 hours compared to the same period in 2012–13.⁵

¹ Subsection 130ZR(1) of the BSA

² Subsection 130ZR(2) of the BSA

³ Section 130ZS of the BSA

⁴ Section 130ZZA of the BSA

⁵ These figures include national broadcasters, ABC and SBS. Source:

<http://www.acma.gov.au/theACMA/2014-15-annual-captioning-compliance-results-free-to-air-television>

These results demonstrate that Free TV members have a consistently high level of compliance with their captioning obligations.

Annual captioning compliance reporting requirements

Free TV supports option 1: Remove annual captioning compliance reporting requirement for FTA broadcasters.

Free TV welcomes and supports Discussion paper's recognition that there are:

...strong arguments to support the repeal of annual compliance reporting currently required of the FTA broadcasters.⁶

Free TV members strongly agree with the three shortcomings of the current annual compliance reporting system identified at page 13 of the Discussion Paper:

- Annual reports do not aid viewer transparency;
- Annual reports provide limited incentive for compliance with captioning obligations; and
- Annual reports add an unnecessary administrative burden on broadcasters.

Complaints are most effective

A complaints based compliance regime is a more efficient, sensible and responsive mechanism for measuring compliance with captioning obligations, particularly as commercial free-to-air broadcasters are now required to caption 100% of the programming on their primary service between 6 am and midnight. In the event of a compliance issue, caption users will be able to complain to the ACMA (as they do now), or provide feedback to the broadcaster concerned.

A complaints system is also the most effective and practical means of rectifying a captioning error quickly. If faults are identified at the time, then steps can be taken to rectify the issue as soon as possible and restore captioning services to viewers.

In addition to viewers being able to complain directly to the ACMA, the Free TV online complaints system accepts complaints about captioning issues.

Information about the complaints system is incorporated into the community service announcement that is broadcast by all Free TV members in accordance with the requirements of the Commercial Television Industry Code of Practice.

Contact information for each broadcaster is also available on the Free TV website. Often contacting a broadcaster directly will be the most efficient and effective means of having a captioning error rectified.

⁶ Discussion paper, page 12

Record keeping requirements remain

It is also relevant to note that the record keeping requirements at section 130ZZD are not under review.

If the reporting rules are removed and the record keeping rules are retained, broadcasters will be required to keep:

- written records enabling the ACMA to ascertain compliance with captioning quotas for 90 days after the end of the relevant financial year; and
- audio-visual records enabling the ACMA to ascertain compliance with the Quality Standards, and the rules regarding emergency warnings, for 30 days after the broadcast (unless a complaint is received, in which case the records must be kept for 90 days).

These records must be made available to the ACMA on request. These rules ensure that compliance with captioning obligations can be effectively monitored by the ACMA, and investigated further if compliance concerns arise.

It is unnecessary to establish an additional requirement to promote captioning availability and complaints mechanisms, as suggested by the Communications Law Centre. Such a move would only act to create an additional administrative burden on broadcasters, with no positive impact on captioning services themselves.

Taken together, a complaints based system and the record keeping requirements represent a sensible and balanced approach to compliance management, without imposing unnecessary administrative and reporting burdens on broadcasters.

Emergency service warning compliance reporting requirements**Free TV supports Option 1 – Remove reporting and record keeping requirements for emergency warnings**

As with the general captioning reporting requirements, a responsive complaints system is the most effective way of dealing with compliance for emergency warnings. Reporting on an issue with an emergency warning up to a year after the event is not timely or useful. For this reason, a complaints system is the most appropriate compliance tool.

Further, because “emergency warning” is defined at section 130ZZB as a warning broadcast at the request of an emergency service agency, and it is an unusual occurrence, there will be high visibility of the broadcast. It will be immediately obvious whether or not a broadcaster has complied.

The separate record keeping requirements for emergency warnings are disproportionate to any benefit derived. Emergency warnings are rare and high profile. Further, an emergency warning will generally form part of a news or current affairs program, or a program airing between 6 am to midnight, which will be subject to the general record-keeping requirements (noting that the ACMA can request these records at any time).

There is no additional need to keep records and report on captioning of emergency warnings.

Other stakeholder proposals – regulatory measures for the FTA sector

Free TV supports Option 3 - no change to existing arrangements.

In section 3c), the Discussion paper canvasses an increase in captioning obligations for commercial free-to-air broadcasters, both in relation to the primary channel (extending obligations to 24 hours) and on the multi-channels (replacing the existing rules with the primary channel obligations).

Free TV does not support an expansion of the existing captioning obligations on FTA services.

Discretionary captioning already provided

Broadcasters already provide captioning services on multi-channels beyond their existing regulatory obligations where there is viewer demand, and it is commercially viable to do so. Allowing broadcasters this flexibility and discretion is a more appropriate and targeted way to improve captioning services on the multi-channels.

Programs which are currently provided on multi-channels with voluntary captioning include first release Australian dramas⁷, first release Australian lifestyle programs⁸, first release, fast-tracked programs from the US⁹ and sport¹⁰.

All commercial free-to-air television broadcasters also caption all C (Children) and P (Preschool) programs, regardless of which channel they are shown on.¹¹ This is in response to feedback regarding the importance of early literacy for hearing impaired children and young people.

Transparency of multichannel captioning

Information about captioning on multi-channels is readily available to viewers through a range of ways.

Broadcasters will indicate to all Electronic Program Guide (EPGs) providers and to printed guides when a program is provided with captioning. EPGs are now available on all televisions following the conversion to digital from analogue.

Broadcasters also display the [CC] symbol at the start of every captioned program.

This allows viewers to quickly and easily establish whether a program on a multichannel will be provided with captions.

⁷ For example, *Neighbours* on Eleven

⁸ For example, *Recipes that Rock* and *Alive and Cooking* on GEM

⁹ For example, *Once Upon a Time* on 7Two

¹⁰ For example, Nine broadcast over 240 hours of discretionary captioning on GEM during the Ashes cricket tour of the UK in 2015.

¹¹ For example, *Totally Wild* on Eleven, *Hairy Legs* on 7Two, and *Kitchen Whiz* on GO!

Additional obligations will be costly, with limited benefit

As the Discussion paper notes, the resources required to satisfy these additional obligations would mean that broadcasters would have to invest less in providing other services, such as news and current affairs, or Australian drama or children’s programming.

Currently, captioning obligations are appropriately focused on the services and times that are most popular, and have the highest number of viewers.

Viewer levels between 12 midnight to 6 am are very low, so any viewer benefit resulting from the significant additional costs will be negligible.¹² It is also relevant to note that viewing on the primary channel still far exceeds viewing on the multi-channels. In 2014, Free TV multi-channels had a combined viewing share of 16.6%.¹³

Free TV estimates the costs of options 1 and 2 as follows:

Option	Average estimated cost per service ¹⁴
1 – Extend primary service hours to include midnight – 6 am	\$845,000
2a – Extend multi-channel obligations to current designated viewing hours (6 am to midnight)	\$2,130,000
2b – Extend multi-channel obligations to 24 hours per day	\$3,100,000

It is also relevant to note that in addition to direct costs, broadcasters will bear indirect costs of compliance.

Extending the captioning obligations in any of these ways would be prohibitive for commercial broadcasters, particularly as they face challenging market conditions and the continuing fragmentation of audiences. It would also create a disincentive for broadcasters to innovate and provide additional services.

The commercial free-to-air broadcasters in Australia are the most heavily regulated media operators, and pay licence fees of up to 4.5% of gross revenue in addition to their regular Australian taxes. The latest PricewaterhouseCoopers analysis from the report *Australian Entertainment and Media Outlook 2015-2019* states that free-to-air advertising revenues are forecast to stagnate through to

¹² For a graph of viewing across the day, see: http://www.thinktv.com.au/Media/Stats_&_Graphs/Library/mass_audiences_any_time_of_the_day.pdf

¹³ Source: OzTAM, 5 cap cities, 1 January – 31 December 2014, 2am-2am, commercial free-to-air (Free TV) multi-channels, over the period, consolidated data.

¹⁴ This figure is conservative and does not include Seven West Media’s racing channel (78), which will have significantly higher captioning costs as it is almost exclusively live sport.

2019, with a zero Compound Annual Growth Rate (CAGR) forecast over the next five years.¹⁵ Free TV members also have significant obligations in relation to Australian content and are the foundation of the Australian screen production sector, investing more than \$1.5 billion in FY13-14.¹⁶

In this context, it is neither appropriate nor sustainable for the Government to increase the regulatory burden on Free TV members.

It is relevant to note that in New Zealand, accessibility measures for broadcast media are fully funded by NZ On Air, a government broadcasting funding agency. This may be an approach that the government may wish to explore for future consideration of accessibility measures on television, if any additional obligations are to be imposed.

Other recommended reforms to the captioning regime

The Discussion paper sets out a range of issues at Appendix A which it identifies as more appropriate for consideration as part of the statutory review to be conducted before December 2016.

The requirement to caption 100% of programs on the primary commercial television broadcasting service, coupled with the inherent complexity in providing a captioning service, means that in any given year, most (if not all) commercial free-to-air broadcasters will breach their licence condition requiring compliance with Part 9D. There is no room for error.

At present, broadcasters are reliant on the ACMA using discretion and regulatory forbearance for minor breaches of these licence conditions. This is an unsatisfactory situation which leaves commercial free-to-air broadcasters exposed to very serious sanctions for breaches that may well be unavoidable.

A number of these issues, including the treatment of captioning breaches, the assessment of captioning quality and the captioning obligations for regional broadcasters are issues which continue to expose broadcasters to significant regulatory risk and should be addressed as a priority.

¹⁵ PricewaterhouseCoopers *Australian Entertainment & Media Outlook 2015-19*; at page 113

¹⁶ Australian content expenditure figures compiled by Free TV. See: http://www.freetv.com.au/SiteMedia/W3SVC751/Uploads/Documents/RECORD_1.54_BILLION_DOLLAR_COMMITMENT_TO_FREE_AUSSIE_CONTENT.pdf