



Review of Captioning Obligations, Broadcasting Services Act 1992

Submission by the Australian Communications Consumer Action
Network to the ACMA

22 July 2016

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body representing all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

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

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General comments

ACCAN has contributed to a number of inquiries and reviews on broadcast television captioning. ACCAN also contributed to the ACMA Captioning Standard development. A significant proportion of ACCAN's organisational membership is made up of disability organisations and a number of these organisations represent the interests of Deaf, hearing-impaired and other consumers who benefit from captions on television. ACCAN and Media Access Australia research indicates that more than 30 per cent of Australians use captions some of the time¹.

ACCAN promotes greater access to information for all consumers. However, of particular interest to ACCAN is greater access to information for people with disability. ACCAN strongly promotes accurate and comprehensible captioning on all audio/visual media regardless of the delivery platform and also promotes greater provision of Audio Description on all audio/visual media. ACCAN supports the introduction of Audio Description on Australian broadcast television as a matter of priority.

ACCAN notes that the discussion paper indicates the ACMA will pay close attention to submissions made to the Department of Communications and the Arts 2016 Captioning Regulatory Framework Review (the DoCA review). It is regrettable that the final report from the DoCA review is not available, as knowledge of any recommendations or proposals to come from the DoCA review would assist stakeholders in making informed responses to this review by the ACMA.

As such, we have limited our response to questions in the discussion paper where we have further comments in addition to those made in our submission to the DoCA review and to issues in the discussion paper which are not being considered as part of the DoCA review.

7. Captioning obligations—free-to-air television

7.1 The basic rule

Relevant provisions:

- s130ZL definition of designated viewing hours
- S130ZR the basic rule²

ACCAN comment:

ACCAN has consistently advocated for increased access features, both captioning and Audio Description, on free-to-air television. Furthermore, ACCAN reiterates its recommendation made in the DoCA review, that captioning on free-to-air television be extended to cover the entire broadcast day.

¹ https://accan.org.au/index.php?option=com_content&view=article&id=298:research-on-caption

² ACMA Discussion Paper page 16

Our Deaf and hearing-impaired membership indicates that this is the community preference. In the Deafness Forum of Australia’s 2008 submission to the Review of Access to Electronic Media for the Hearing-impaired and Vision-impaired³ this was a key recommendation supported by the view that “People with hearing loss watch TV at all hours of the day and night, just like people without hearing loss. They do not watch TV only between 6am and midnight.”⁴

Captioning provides equity of access. As such, the current requirement unjustly discriminates against those people who rely on captions when viewing free-to-air television outside of the 6am to midnight designated viewing hours.

In response to industry comments in the DoCA review submissions that extending the captioning designated viewing hours will be financially burdensome, ACCAN notes the Turnbull Government’s intention to rebate 25 per cent of commercial free-to-air licence fees as part of the 2016-2017 Budget⁵. This publicly funded financial windfall to the commercial free-to-air sector will certainly more than cover the cost of providing increased access features across the free-to-air television market. In Free TV’s submission to the DoCA review, cost estimates were provided based on extending captioning on free-to-air channels⁶. Using these figures, the Government’s licence rebate would cover Free TV’s estimated additional costs.

Recommendation:

s130ZL be amended to increase the designated viewing hours to cover a 24 hour broadcast schedule, up from the current 6 am to 12pm provision.

7.2 Special rules for multi-channelled services

Relevant provisions:

- s130ZR (4)—exceptions to the basic rule
- s130ZS—special rules for multi-channelled services⁷⁸

ACCAN comment:

ACCAN has consistently been advocating for free-to-air multi-channels to be subject to the same captioning requirements as free-to-air ‘primary channels’. ACCAN’s position has not changed from our recommendation made to the DoCA review.

³ http://deafnessforum.org.au/pdf/posted_files/8 - Access to Electronic Media Captions v2.doc

⁴ <http://accan.org.au/our-work/submissions/1152-captioning-regulation-review>

⁵ <http://www.budget.gov.au/>

⁶ <https://www.communications.gov.au/have-your-say/improving-captioning-regulation>

⁷ ACMA Discussion Paper page 17

⁸ ACMA Discussion Paper page 17

Additionally, in response to industry stakeholder comments to the DoCA review that popular programs on multi-channels are already being captioned in excess of the requirement, ACCAN notes the recent cuts to voluntary captioning made by the Australian Broadcasting Corporation (ABC)⁹. From a consumers view, relying on the ‘goodwill’ of industry has resulted in very little improvement in accessibility. The underpinning premise of Section 9D of the Broadcasting Services Act (1992) is to ameliorate market failure. While there may indeed be additional programming captioning on multi-channels there is no guarantee that this will increase or indeed remain.

Recommendation:

130ZR Captioning obligations—basic rule Exemptions (4), (5), (6) and (7) be deleted from the Broadcasting Services Act (1992).

8. Captioning obligations—subscription television

8.1 Annual captioning targets

Relevant provisions:

- s130ZV—annual captioning targets
- s130ZVA—categories for subscription television movie services
- s130ZW—categories for subscription television general entertainment services
- s130ZX—exemptions for certain services before 1 July 2022¹⁰

ACCAN comment:

ACCAN holds that the current captioning provisions covering subscription television services are overly complicated and do not serve consumers. ACCAN made recommendations to the DoCA review supporting the proposal that a ‘threshold’ model be implemented to establish a subscription television service’s captioning obligation.

ACCAN has recently been in consultation with consumer groups and the subscription television industry association (ASTRA). We are of the view that the proposed amendments made in the ASTRA DoCA submission warrant further discussion and investigation¹¹. ACCAN believes that these amendments may indeed create better outcomes for consumers and simplify captioning regulation. ACCAN also notes that Media Access Australia is opposed to any amendments that will result in less captioning across subscription television services. ACCAN supports Media Access Australia’s position;

⁹ [Submission by Free TV Australia](#)

¹⁰ ACMA Discussion Paper page 18

¹¹ <https://www.communications.gov.au/have-your-say/improving-captioning-regulation>

while noting that the ASTRA proposal may indeed simplify the captioning provisions without leading to an overall reduction of captioning.

Recommendation:

ACCAN recommends the ACMA further investigate implementation of the ASTRA proposal with all stakeholders.

8.2 Modified formula for sports services¹²

Relevant provisions: s130ZV (3)—modified formula for subscription television sports services¹³

ACCAN comment:

ACCAN opposed any change to Subsection 130ZV (1 -4) in our response to the Senate Inquiry into the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014¹⁴ (the Senate Inquiry). However, there is a divergence of views here that warrants further discussion and investigation to determine if there is any consumer detriment as a result of the s130ZV(3) amendment. For example, ACCAN notes the Australian Human Rights Commission submission to the Senate Inquiry recommended that compliance monitoring and reporting be included as a means to safeguard consumers¹⁵. ASTRA's submission to the same inquiry recommended a reduction of the captioning average from two-thirds to one half across sports channels but recommended no change to sports channels in its submission to the DoCA review¹⁶¹⁷. ACCAN fundamentally opposed any change to the provision which would result in a reduction in captioning. However, as a result of our subsequent consultations with consumer groups and ASTRA, we now consider that the ASTRA proposal needs further examination.

Recommendation:

ACCAN recommends the ACMA further investigate implementation of the ASTRA proposal in consultation with all stakeholders.

¹² ACMA Discussion Paper page 18

¹³ ACMA Discussion Paper page 19

¹⁴

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Broadcasting_Deregulation/Submissions

¹⁵

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Broadcasting_Deregulation/Submissions

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http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Broadcasting_Deregulation/Submissions

¹⁷ <https://www.communications.gov.au/have-your-say/improving-captioning-regulation>

8.4 Exclusion for new subscription television services

Relevant provisions: s130ZV (6) exclusion for new subscription television service¹⁸

ACCAN comment:

As indicated in ACCAN's submission to the Senate review, ACCAN considers this provision to be unnecessary, providing subscription television providers a blanket exemption for new channels for at least 1 year when there are already provisions which allow licensees to nominate channels to be exempt from captioning requirements.

Recommendation:

This provision be removed from the BSA.

9. Exemption and target reduction orders

Relevant provisions:

Free-to-air television

- s130ZUA—exemption orders and target reduction orders—unjustifiable hardship
- s130ZUAA—effect of target reduction order

Subscription television

- s130ZY—exemption orders and target reduction orders—unjustifiable hardship
- s130ZYA—effect of target reduction order¹⁹

ACCAN comment:

ACCAN had no objection to this amendment in its submission to the Senate Inquiry²⁰. Additionally, in response to the DoCA review ACCAN supported the proposal of a 'threshold' model. However, we recommended that the threshold be based on a percentage of gross revenue, thereby exempting a channel from captioning requirements if the expenditure on caption compliance exceeds 2.0 per cent of gross revenue for that channel.²¹

¹⁸ ACMA Discussion Paper page 21

ACMA Discussion Paper page 24¹⁹

²⁰

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Broadcasting_Deregulation/Submissions

²¹<http://accan.org.au/our-work/submissions/1152-captioning-regulation-review>

ACCAN notes the ASTRA submission to the DoCA review proposes a similar ‘threshold’ model as does Media Access Australia, noting however, that there is not currently a consistent benchmark across all stakeholder recommendations²².

Recommendation:

ACCAN recommends that further discussion and investigation be undertaken with all stakeholders to determine an appropriate ‘threshold’.

11. Emergency warnings

Relevant provision:

s130ZZB—emergency warnings²³

ACCAN comment:

As noted in the discussion paper ACCAN has previously made recommendations to amend this provision. Noting that the DoCA review’s focus is limited to the reporting of captioning for emergency warnings, ACCAN reiterates our recommendations for consideration in this review.

Recommendation:

ACCAN recommends Sub Section 130ZZB—emergency warnings be amended to;

- require closed-captioning of all emergency warning broadcasts, and
- require that Auslan interpreters are included in emergency warning broadcasts when they are present.

13.3 Compliance—linking captioning targets to compliance with the Captioning Standard

Relevant provisions:

- s130ZZA (4), (5), (6), (7)—free-to-air television broadcasters and subscription television licensees must comply with the Captioning Standard
- s130ZR—each free-to-air television broadcaster must provide captioning as specified by the basic rule
- s130ZV—each subscription television licensee must meet annual captioning targets²⁴

²² <https://www.communications.gov.au/have-your-say/improving-captioning-regulation>

²³ ACMA Discussion Paper page 27

ACCAN comment:

From a consumer's perspective captions which are inaccurate or otherwise incomprehensible can indeed be worse than no captions. For example, if news broadcast captioning is inaccurate or incomprehensible it may in fact endanger consumers who are reliant on captions for accurate and timely information.

Recommendation:

Therefore ACCAN recommends that 9D be amended to include an explicit link between compliance with the captioning targets to compliance with the Captioning Standard.

13.4 Compliance—treatment of breaches

Relevant provisions:

- s130ZUB—disregard certain breaches of Part 9D (applies to the obligation for free-to-air television broadcasters to provide captions in accordance with the basic rule)
- s130ZZAB—disregard certain breaches of Part 9D (applies to the obligation for subscription television licensees to meet annual captioning targets)
- s130ZZA (7A)—disregard certain breaches of the Captioning Standard²⁵

ACCAN comment:

ACCAN asserts that Section 9D provides broadcasters with the necessary safeguards regarding unforeseen technical difficulties and there is no need to provide greater flexibility in evaluating captioning compliance.

Recommendation:

ACCAN recommends that there be no changes to these provisions.

13.5 Complaints process²⁶

ACCAN comment:

²⁴ ACMA Discussion Paper page 34

²⁵ ACMA Discussion Paper page 35

²⁶ ACMA Discussion Paper page 37

ACCAN has made previous comments on the captioning complaint process as noted in the discussion paper²⁷. These concerns about the onerous nature and long investigation timeframe indicate that the captioning complaints process is in need of investigation and streamlining.

Recommendation:

ACCAN recommends the ACMA undertake stakeholder consultation on how best to develop a rigorous and effective complaints process.

14. Part 9D drafting

The ACMA notes there is an inherent complexity to the provisions in Part 9D. There may be²⁸ an opportunity during this review to amend or simplify how some provisions are drafted.

ACCAN comment:

ACCAN supports proposed evaluation of the current drafting of Part 9D with the intent to clarify clauses which are unclear or possibly ambiguous and open to interpretation. However, any redrafting of Part 9D should be undertaken with participation of all stakeholders, including consumers. Additionally, any redrafting of Part 9D must not result in a lessening of consumer protection.

²⁷ <http://accan.org.au/our-work/submissions/1152-captioning-regulation-review>

²⁸ ACMA Discussion Paper page 39