



**Submission to the Inquiry into the Broadcasting and Other
Legislation Amendment (Deregulation) Bill 2014**

10 December 2014

1. Executive summary

- The Australian Subscription Television and Radio Association's (**ASTRA**) members have shown a strong commitment to Australian content over many years and in particular the production of Australian drama. Subscription television (**STV**) licensees and channels spend more than **\$600 million** annually on Australian content across a range of genres.
- In particular, the STV industry has a very strong commitment to the production of high-quality Australian drama productions like *Devil's Playground* and *Wentworth* and the upcoming productions *Banished*, *Deadline Gallipoli* and *The Kettering Incident*. STV remains committed to Australian content which reflects Australian culture and identity and tells Australian stories.
- ASTRA members also remain committed to closed captioning which promotes inclusion and accessibility for Australians. STV licensees and channel providers currently provide captioning across **86 channels**, enhancing access to information and entertainment in many program genres.
- The *Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014* (the **Bill**) does not purport to, nor does it in practice, reduce the substantive obligations on STV licensees and channel providers to:
 - meet a certain level of expenditure on Australian content; or
 - provide certain levels of captioning across a variety of program genres.
- The Bill merely seeks to deliver efficiencies and cost savings for Government and STV broadcasters, and correct some unintended consequences in the practical application of certain captioning obligations—such as the obligation to caption repeats of previously captioned programming across a platform of 90 or more discrete channels provided by a number of different channel providers.
- ASTRA strongly supports the proposals contained in the Bill that would improve administration and provide greater flexibility in relation to captioning obligations for STV licensees and channel providers, as well as reduce costs associated with the administration of the New Eligible Drama Expenditure Scheme applicable to STV.

2. Introduction

ASTRA welcomes the opportunity to comment on the Bill, which was referred to the Senate Environment and Communications Legislation Committee (the **Committee**) for inquiry on 30 October 2014.

The Bill has been referred on the basis that proposed amendments to Australian content provisions of the *Broadcasting Services Act 1992* (**BSA**) may impact the amount of Australian content broadcast, and because amendments relating to closed captioning provisions of the BSA may impact the viewing experience of local audiences.

To this extent the Committee should be assured that, if passed, the amendments contained in the Bill would not reduce the amount of Australian content in the local broadcast media landscape. Nor would they reduce the amount or quality of captioning broadcast on STV.

ASTRA and its members remain fully committed to the production of Australian content and the delivery of closed captioning across the largest range of broadcast channels in Australia.

The significant amount of captioning that will continue to be provided on STV channels makes an important contribution to increasing accessibility for audiences. In so doing, ASTRA members assist viewers with a hearing impairment to better participate in democratic processes—through access to news and information services—and enjoy access to premium entertainment and sport.

The STV reforms set out in the Bill primarily relate to the removal or amendment of administrative provisions, which will have no negative impact on the amount of captioning or Australian content produced. The Bill also proposes to amend certain captioning provisions to deliver a more workable compliance regime.

ASTRA's submission is structured as follows:

- **Section 3** provides background about ASTRA
- **Section 4** gives background on the STV industry's strong record of compliance with Australian content and captioning regulatory obligations
- **Section 5** sets out comments on specific aspects of the Bill

3. About ASTRA

ASTRA is the peak industry body for subscription media in Australia. ASTRA's membership includes the major STV operators, as well as more than 25 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

ASTRA's broad membership is also drawn from the industries that support STV, such as technology providers Cisco, BSA, PACE and Globecast; and, importantly in this context, Ai-Media, one of Australia's leading captioning service providers.

A list of ASTRA members is provided at **Attachment A**.

4. Subscription television's substantial investment in Australian content and captioning

We provide the following background about the STV industry's substantial investment in both Australian content and captioning as context for our specific comments about the Bill in the following section.

Australian content

The STV industry is committed to producing and providing high quality and diverse Australian content, with thousands of hours of Australian content produced each year across all program genres. In 2013–14 (**FY14**), ASTRA members broadcast 252,427 hours of Australian produced content, including 54,331 hours of first-run Australian produced content (across all genres).

Under the BSA, broadcasting licensees and drama channel providers are required to spend at least 10 per cent of total drama program expenditure on new eligible (Australian) drama programs in each financial year. Importantly, the BSA permits drama producers to carry shortfalls from one year to the next, in recognition of the reality that drama requires high expenditure in concentrated periods that may not necessarily align with financial years. The requirement has been in effect since 1 July 1999.

As noted in the EM to the Bill, the Australian Communications and Media Authority (the **ACMA**)—the regulator responsible for overseeing both Australian content and captioning obligations—has recognised the STV industry's high level of compliance with its Australian content obligations over time.¹

Captioning

STV licensees and channel providers also spend a significant amount each year on captioning—currently providing captioning (at different levels) across **86 channels**—as well as on demonstrating compliance with legislative requirements.

The regulatory scheme for captioning as it applies to STV licensees is complex, recognising that STV comprises more channels and smaller audiences than free-to-air (**FTA**) television.

Key features of the scheme are as follows:

- Annual captioning targets are applied to individual channels on a STV platform.
- Different targets apply in a given year depending on the channel's genre, with a minimum number of channels in the same genre required to meet the target.
- Genres include: movies (split into three categories, A, B and C); general entertainment (split into three categories, A, B and C); news; sport; and music.
- Captioning targets have been set in the BSA until 30 June 2015. After that time, targets then increase year-on-year until they reach 100 per cent. Currently, higher targets apply to movie services and general entertainment services than the other genres.
- The total number of channels supplied by a STV platform that are required to be captioned is capped at 70 for the financial year 2014–15, but will increase over time until **all channels** are subject to captioning targets.

¹ Explanatory Memorandum, *Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014* (**Explanatory Memorandum**), page 3.

- The legislation provides a pathway which will result in **all channels** being subject to **100 per cent** captioning targets.
- For STV platforms like Foxtel, this could mean between 90 and 100 distinct channels will be required to provide captioning 24 hours a day (unless they are subject to individual exemptions and/or target reduction orders—see below for further detail).

When considering the financial impact of captioning regulation on STV, it is important to compare the very extensive current and future STV captioning obligations with those that apply to our FTA competitors.

While the STV and FTA regulatory schemes have different characteristics,² the following tables provide a general comparison by reference to STV channels subject to captioning obligations and FTA broadcasters' current captioning requirements.³

Channels subject to greater captioning requirements

STV	Metropolitan FTA
<p>25 channels</p>  <p>50–75% captioning across 24 hours, increasing over time to 100%</p>	<p>5 channels (core/primary channels)</p>  <p>100% captioning across 18 hours (6am to midnight)</p>

² Part 9D of the *Broadcasting Services Act 1992* sets out captioning obligations—requirements for commercial free-to-air and national broadcasters are in Division 2; requirements for STV are in Division 3.

³ The STV channels depicted are those reported to the ACMA for FY14. Note that some STV channels included in the tables have since been re-branded or are no longer on the platform.

Channels subject to medium or lower captioning levels

STV	Metropolitan FTA
<p style="text-align: center;">45 channels</p>  <p style="text-align: center;">5–45% captioning across 24 hours, increasing over time to 100%</p>	<p style="text-align: center;">12 channels (multi-channels)</p>  <p style="text-align: center;">Minimal captioning, except for repeat programs⁴</p>

Notwithstanding the legislated limit for STV channels being capped at 70 channels in FY14, Foxtel, a member of ASTRA, provided captioning in excess of this limit. For FY14, Foxtel not only delivered captioning on a number of additional channels—for example, Foxtel Movies Disney, Disney XD, Smooth, and Foxtel Store channels 903–914—but it also exceeded its captioning target for a significant number of its channels.⁵

This commitment to captioning services over and above legislative requirements was recently recognised at the 2014 Deafness Forum of Australia Captioning Awards where Foxtel won the TV Captioning Award for its Foxtel Anytime (pay-per-view) service.⁶

Indeed for the preceding year, FY13, the ACMA noted in its compliance reporting that across the STV sector:

⁴ Captioning required *only* when replaying content on these channels that first screened on a core/primary channel with captions, or where replaying content that first screened on another multi-channel with captions.

⁵ For example, Foxtel Movies Disney, which launched in April 2014, met a captioning target of 98 per cent for FY14 notwithstanding the fact that this channel was not subject to a legislated target for that year. Similarly, in this financial year, Foxtel will provide captioning on BBC First and on the Box Sets channel, independently of regulation.

⁶ Deafness Forum of Australia noted that *'Foxtel's achievement is outside the legal requirements, has immediately high levels of product and is a genuine alternative to DVD releases. Clearly a planned, well-executed approach to dealing with the captioned audience'* – see <http://www.deafnessforum.org.au/index.php/events/captioning-awards>.

[o]ne in four (25%) of those captioned services (involving 37 distinct channels) exceeded their annual captioning target by over 20 per cent.⁷

These results demonstrate that the STV sector is delivering captioning results well above the legislative requirements. As noted above, the STV scheme will eventually require **100 per cent** captioning on **all** channels (albeit a number of years away). Each of our FTA competitors on the other hand is only subject to significant captioning obligations on one of their channels.

Additionally, ASTRA questions the logic of applying lesser obligations to FTA multi-channels when their audiences frequently far exceed the audiences of STV channels. For example, even some of Foxtel's most watched channels, such as FOX8 and The Lifestyle Channel, have an average audience that is significantly lower than the least popular FTA multi-channel.⁸

5. Comments on specific sections of the Bill

STV Eligible Drama Program Expenditure Audits (Division 2A of the BSA)

Recommendation

- Support the amendment to remove an unnecessary auditing requirement.

Division 2A of the BSA requires STV drama channel providers and licensees to spend at least 10 per cent of their total programing expenditure on new Australian or New Zealand drama productions. The reform proposed in the Bill does not reduce or amend this substantive obligation in any way.

The reform proposed is that the audit requirement that falls on relevant STV channel providers and licensees be removed from the annual reporting obligations. Importantly, relevant STV channel providers and licensees will continue to be required to submit annual reports to the ACMA at the end of each financial year. These annual reports will include data on the total drama expenditure incurred by relevant channels/licensees, and detailed reporting on their eligible drama expenditure.

The submission of these annual reports must not be false or misleading. Licensees and channel providers take their legal obligations in this regard very seriously. Indeed, the industry regards the telling of Australian stories as crucial to its appeal to subscribers.

The EM notes that:

The ACMA has advised that since the Scheme became mandatory in 1999, subscription television licensees and channel providers have reported a high level of compliance.⁹

Section 103ZC of the BSA will remain and provides that:

[t]he ACMA may make whatever inquiries it thinks necessary or desirable in order to determine whether a return given to it under [the scheme] contains correct information.

⁷ ACMA Annual Captioning Compliance Results – subscription television – 2012–2013 – available at <http://www.acma.gov.au/theACMA/annual-captioning-compliance-results>.

⁸ In Q1 FY15, FOX8 had an average audience in any given minute throughout the day of 21,836 and The Lifestyle Channel had an average audience of 14,198. In the same period the average audience for FTA multi-channels was between 31,115 (for ABC3) and 98,983 (for ABC2). Source: OzTAM 5 City Metro Data. Consolidated. Total People. Q1 FY15 (01/07/2014–30/09/2014).

⁹ Explanatory Memorandum, page 3.

The EM to the Bill states that the ACMA will maintain compliance strategies, including the use of this power, in order to retain confidence in industry compliance.

There is no suggestion, nor should there be, that the removal of the audit requirement (a significant administrative and financial burden on the STV sector) would result in less Australian content being produced. The obligation to meet the terms of the scheme remains, and STV licensees and channel providers remain subject to the same expenditure requirements.

ASTRA supports this reform which aims to reduce an existing administrative burden which, in our view, is not warranted in light of the high levels of compliance in this area and which may be a barrier to entry for smaller channel providers.

Aggregation of captioning targets for sports channels (s130ZV(3))

Recommendation

- Support the amendment to allow providers of a group of sports channels to, within limits, 'average' captioning levels across channels.
- ASTRA proposed an amendment to the Bill to set the minimum captioning level per channel in an associated group of sports channels at **one half**, instead of two thirds.

ASTRA welcomes the proposed amendments to section 130ZV and associated provisions of the BSA which allow annual captioning targets to be aggregated across a group of sports channels. The amendments would assist sports channel providers such as FOX SPORTS (which produces a suite of seven sports channels) to direct captioning to programming which is of the greatest interest to audiences, providing an obvious consumer benefit.

The effect of the amendments would be that a proportion of a channel's captioning target could be 'moved' to another sports channel within the same group. This may be done if, for example, the first day of a golf tournament is shown on FOX SPORTS 1, but the second day is shown on FOX SPORTS 2.¹⁰ There could be a scenario where the captioning target for FOX SPORTS 2 had already been met, whilst the target for FOX SPORTS 1 had not yet been met. Given that FOX SPORTS is likely to choose to apply its captioning investment in order to meet the regulated targets, it may be that (in the absence of amendment) the captioning would not 'follow' the tournament to FOX SPORTS 2 as FOX SPORTS would choose to caption other programming on FOX SPORTS 1 in order to meet the regulated target. Viewers who had watched the first day of the tournament with captions would then not have the benefit of captions for the second day.

As currently drafted, the Bill would permit one third of a sports channel's target to be met on other sports channels provided by the same channel provider, so long as the average of the captioning levels across all sports channels supplied by that channel provider met the annual target. That is, channels within the same group would be subject to a minimum captioning level per channel of two thirds of the annual captioning target, provided that the reduction in captioning on one channel was made up on another.

ASTRA fully supports the intent behind this reform but submits that a more appropriate minimum captioning level per channel in a group would be half of the annual captioning target. A minimum of one half would provide greater flexibility to broadcast more captioning where a particular channel may be dedicated to providing blanket coverage of a major event such as the Cricket World Cup or Rugby World Cup. Setting a minimum of one half rather than two thirds would have no impact on the amount of content captioned across STV sports channels.

¹⁰ Shifting tournaments between sports channels in this way is quite common on STV due to the nature of live sport. It allows a channel provider to deliver a wide range of live sports simultaneously by accommodating scheduling conflicts, simultaneous matches in multi-round tournaments, and last-minute changes due to weather and overruns.

New channel exemption (s130ZV(6))

Recommendation

- Support the amendment to provide a 12 month exemption from captioning requirements for new channels.
- To better reflect the realities of programming distribution in Australia, ASTRA proposes a minor amendment to the Bill to remove the qualification in subsection 130ZV(6) that a new service can only be eligible for a new channel exemption if it *'predominantly consists of programs not transmitted in Australia before...commencement'*.
- ASTRA's preference is that the exemption not be subject to a qualification other than to exclude channels which are merely re-named or re-branded versions of an existing channel—that is, where the content and operation of the service remain materially the same.
- However, if the Government is minded to retain a broader qualification we recommend that it be amended such that a new service can only be eligible for a new channel exemption if it predominantly consists of programs not previously transmitted *by the same channel provider* prior to commencement.

Proposed subsection 130ZV(6) accommodates the introduction of new STV channels by providing an exemption from the relevant captioning target for a minimum 12 month period (and up to almost two years, depending on the commencement date of the service). This proposal is welcome as it recognises that a reasonable period of time is required for a new channel to establish infrastructure and processes to deliver captioning.

ASTRA submits that it is reasonable for a new STV channel to have a short period of grace to build up its captioning infrastructure and processes as well as invest in the acquisition and/or production of captioning for its programming.

The STV sector encompasses a number of different channel providers and licensees, many of whom do not have the resources at launch to make the significant investment in captioning infrastructure. This grace period will enable a new channel provider to prepare for the provisioning of captioning in its first year of broadcast. Importantly, once this grace period has passed, the channel (if not otherwise exempt or subject to a target reduction order) would be required to jump straight to the specified annual captioning target for its genre without any further reduction being contemplated.

ASTRA welcomes the Government recognising this as a real issue for new channel providers in our sector and proposing reform. The adoption of this proposal will enable new channels to budget and plan resourcing of captioning in a reasonable fashion, and avoid multiple exemption applications being made to the ACMA. For smaller channel providers, this may remove a significant barrier to entry into the STV sector.

Notwithstanding our over-arching support for the reform, ASTRA is concerned about the restrictive nature of the qualification set out in subsection 130ZV(6)—that is, that the service can only be exempt if it *'predominantly consists of programs not transmitted in Australia before...commencement'*.

While it is accepted that the exemption should not apply to channels that are merely re-named or re-branded versions of an existing channel, the requirement that the channel's programming must predominantly be new to Australian audiences is unduly restrictive:

1. Firstly, it ignores the fact that a provider of a new channel will require time and investment to prepare the channel to support captioning through the implementation of captioning

infrastructure and processes. This is the case regardless of whether the programming it broadcasts has been shown in Australia before.

2. Secondly, it appears to be based on the assumption that programming that has previously been broadcast in Australia, and which was captioned when it was previously broadcast, will be able to be broadcast on the new STV channel with the same captions—thereby reducing the impost of captioning requirements on the channel provider. This is not a valid assumption because the same programming may have previously been shown in Australia on a STV channel owned by a different channel provider, or indeed on a FTA network.¹¹ In the hands of the new channel provider, there is a cost which will have to be incurred—to either purchase the caption file for the program and re-time it, or to produce new captions for the program.

For example:

- The Foxtel channel UKTV (provided by BBC Worldwide) may show episodes of *Downton Abbey* that have previously been shown in Australia on the Seven Network, but this does not mean that the version broadcast on UKTV is the same version that went to air on the Seven Network with captions. An investment in new captions will need to be made by UKTV.
- Similarly, a program such as *The Walking Dead* may be shown on Foxtel both on the FX channel (which is owned by the FOX International Channels) and on the Box Sets Channel (which is operated and operated by Foxtel). Again, the fact that the program had previously been shown on another channel on the platform does not mean that the same captioned file can be used by both channels.

ASTRA submits that the exemption should not be subject to such a restrictive qualification.

Exemption applications (s130ZY(2)(c))

Recommendation

- Support the amendment to extend the application period for a target reduction order or exemption order from the end of December to the end of March in the financial year for which the order is being sought.
- Include in the Bill an obligation for the ACMA to consult with applicants in relation to a target reduction order or exemption order before making such orders.
- Clarify in the Bill that the ACMA has the power to vary the terms of an order sought by a STV licensee (or channel provider) for an exemption or target reduction, before the order is made.
- Alternatively, include in explanatory material clear guidance for the ACMA confirming that it has the flexibility to consult with the applicant on any issues raised in an application for a target reduction order or exemption order.

The media regulator, the ACMA, is empowered under the BSA to make orders which can temporarily reduce the level of captioning required on a channel or temporarily exempt a STV licensee from captioning obligations—these are known as target reduction orders and exemption orders.

- An exemption order exempts a specified STV channel from its annual captioning targets for a specified period of one to five financial years.

¹¹ It is important to note that STV platform owners do not own and operate all of the channels they broadcast. For example, on the Foxtel platform, around 60 per cent of channels are owned by parties other than Foxtel.

- A target reduction order specifies a new reduced annual captioning target for a channel for a specified period of one to five financial years.

Under the BSA, the ACMA must not make the order unless it is satisfied that refusing to do so would impose unjustifiable hardship on the licensee.

A number of ASTRA members have been through the complex and time-consuming process of applying to the ACMA for these orders and found that the current requirement under section 130ZY of the BSA to apply for an order by 27 December in any given financial year is unduly restrictive for the STV industry.

Therefore, ASTRA welcomes the proposed extension of the application period for a target reduction order or exemption order from the end of December to the end of March in the financial year for which the order is being sought. The proposed amendment in no way impacts the substantive elements of the exemption process; it merely recognises the reality of the STV operating environment in which STV licensees may need, or wish, to make multiple changes to their channel line-up during the course of the financial year.¹²

The process for application is burdensome, requiring extensive supporting information and, in most cases, the coordination and submission of at least two sets of information—from the relevant licensee and the channel provider. It is acknowledged that extensive evidence is required. However, it is our view that steps should be taken to limit the number of applications that need to be made. Currently, if one application fails, a further full application is required to be lodged seeking, for example, a target reduction order set at a different level.

In addition to the amendments currently proposed, ASTRA suggests that the ACMA should be required to consult with licensees on applications, and have the power to vary the terms of an order sought by a STV licensee (or channel provider) for an exemption or target reduction without requiring the entire process to begin again. This would avoid the need for multiple applications to be made in circumstances where an initial application is rejected for issues such as failing to provide certain information, applying for a target reduction which is considered too great, or applying for a period which is considered too long.

If further amendments are not made, ASTRA submits that the Government should at least give the ACMA guidance in explanatory material to confirm that it has the flexibility to consult with the applicant on any issues raised in the application. Currently, licensees must make one application and hope that it is accepted. It would be much more practical if the ACMA was free to discuss the terms of an application with the applicant prior to making a determination.

Repeats (s130ZZ)

Recommendation

- Support the amendment to limit the ‘repeats’ obligations to channels provided by the same channel provider.

Section 130ZZ of the BSA requires a STV licensee to ensure that all program repeats are captioned if the program was captioned when previously transmitted by the STV licensee. This provision is, we assume, an extension of the FTA obligations which apply within a group of three to four channels operated by one network.

In ASTRA’s view, the repeats obligation has been applied to STV without a proper assessment of the need, or an understanding of the manner in which a single television program may be

¹² Unlike our FTA counterparts, it is quite common for STV platforms to readjust their channel line-ups during the year as they respond to their subscribers’ viewing preferences.

purchased by multiple channels. With so many STV channels within scope of the current framework, and with all STV channels ultimately being subject to captioning obligations, the repeats obligation is ultimately redundant for STV.

Having said that, ASTRA and its members do not disagree with the principle encapsulated by this provision—that is, if a broadcaster has captioned a program, it is reasonable (indeed it is commercially sensible) that the broadcaster ensures that the captioning is provided on all repeats of that program that it broadcasts.

However, the issue faced by many of ASTRA's members is that the provision is triggered by the holding of a STV licence and is not limited to the provider of the programming. As previously noted, a STV licensee, such as Foxtel, provides a range of channels that may be produced by the licensee through its own channel group or sourced from third-party channel groups (such as FOX SPORTS, Disney, NBC International, Viacom, Discovery, and BBC Worldwide) or individual channel providers (such as the Australian Christian Channel and Aurora). Foxtel holds the relevant STV licences for all the channels provided over its platform even though the captioning is produced by the relevant channel provider. Section 130ZZ as currently drafted does not recognise this distinction.

ASTRA submits that across a platform with 70 or more captioning services provided by a number of different commercial entities, it is impractical to require the repeat obligation to apply across the entire platform. Different third-party channel providers may broadcast the same program at different times, sourced from different Australian or international content distributors. That same program may or may not be provided with captions, depending on the channel provider and the commercial agreements that the channel provider has in place. There is no feasible way for the STV licensee to ensure the co-ordination of the captioning of individual programs across the separate channel groups broadcast across its entire platform.

The practical effect of the existing repeat provisions on STV is equivalent to requiring, for example, the Seven Network to ensure a program that it broadcasts on 7MATE is captioned if that same program was previously broadcast with captions by the Nine Network. Under current legislation, the Seven Network need only ensure that programs broadcast with captions on its primary channel or a multi-channel are captioned when subsequently broadcast on one of its own secondary channels.

The reform proposed by the Government recognises this issue in the STV sector and merely proposes that the repeats obligation be limited to repeats across those channels provided by the same channel provider. ASTRA fully supports this proposal and submits that this amendment is crucial to enable ongoing compliance with the BSA captioning framework for STV.

Captioning quality standard (s130ZZA(2))

Recommendation

- Support the amendment to give welcome recognition to the circumstances in which live captions are prepared.
- Amend the Bill to require the ACMA to take into account the circumstances of the production of 'near-live' programs, as well as 'live' programs, when making a captioning quality standard.
- Include either in the Bill or its explanatory material a more general requirement that the ACMA, when determining the standard, include consideration of the technical and production circumstances in which captions are created when assessing compliance with the Standard.
- Remove proposed subsection 130ZZA(2B) from the Bill.

The quality of captions is governed by the *Broadcasting Services (Television Captioning) Standard 2013* (the **Quality Standard**), which was made by the ACMA under subsection 130ZZA(1) of the BSA and came into effect on 5 June 2013. The Quality Standard sets out rules relating to the readability, accuracy and comprehensibility of captions.

ASTRA members have consistently noted that captioning quality may be impacted by the circumstances in which those captions must be made. The most important distinction is between captions that are created live as the broadcast goes to air (for example, during a live sporting event) and those which are pre-prepared over a longer period (such as might appear during a pre-recorded drama program). ASTRA has previously noted that there must be appropriate recognition in the Quality Standard of the inherent technical and other production difficulties unavoidably associated with the delivery of live captions.

As such, ASTRA supports proposed subsection 130ZZA(2A) which gives welcome recognition to the fact that the circumstances in which live captions are prepared are very different to the circumstances in which pre-prepared captions are produced.

Preparing live captions is a fast-paced process in which time is of the essence because, for example, a viewer with a hearing impairment is keenly interested to keep up with commentary of a live sporting event. It would be a sub-optimal viewing experience for the captions of live commentary to be delayed while they are checked to ensure the same quality as captions broadcast with, for example, a pre-recorded drama program.

ASTRA suggests that consideration is also given to expanding the requirement in subsection 130ZZA(2A) to take into account the circumstances of the production of 'near-live' programs. 'Near-live' programs are pre-recorded but are broadcast within a timeframe which is too short for pre-prepared captions to be produced.¹³ This is the case for many programs broadcast by FOX SPORTS such as *The Golf Show*, *The Back Page* and *Santo, Sam and Ed's Total Football* where, like broadcasts of live sports events, the speed with which the program is broadcast is relevant to the currency of its content, and so enjoyment for the audience.

ASTRA also recommends that the Government include either in the Bill or the EM a requirement that the ACMA more generally consider the technical and production circumstances in which the captions must be created. This would give the ACMA leeway to take into account the production of captions for 'near-live' programs, as well any other currently unforeseen circumstances in which captions are produced.

ASTRA does not support the inclusion of the new subsection 130ZZA(2B). This provision states that the ACMA is not authorised to determine that a lower standard of captioning quality is acceptable for a kind of program or program material. It is presumed that the intention of this subsection is that the ACMA not be permitted to determine that a lower quality is acceptable for live captions.

It is illogical to insert subsection 130ZZA(2A), which provides that the ACMA must consider the differences between live and pre-recorded programs when determining a standard, and at the same time propose to insert subsection 130ZZA(2B), which provides that the ACMA is not permitted to determine a lower quality of captioning is acceptable for such program material.

The EM is not helpful in that it suggests that the latter provision makes it clear that broadcasters must 'aim' to achieve the same captioning quality irrespective of whether the program was live or pre-recorded. This aspirational objective is distinct from the very real issue faced by broadcasters in ensuring compliance with an enforceable standard where the standard of quality of the captions produced in a live environment is expected to be the same as the standard of quality of the captions produced in a pre-recorded environment. ASTRA welcomes the inclusion of subsection 130ZZA(2A) but strongly recommends that the Government remove subsection 130ZZA(2B) or amend the provision to provide clarity on its intent.

¹³ It takes approximately 8 hours to produce captions for a one-hour program.

ASTRA submits that it is a logical extension of the requirement that the ACMA consider the differences between live and pre-recorded programs when determining a standard that it also be free to determine different quality standards for each circumstance.

Record keeping (s130ZZD)

Recommendation

- Support the amendment to reduce the burden of record keeping requirements.

ASTRA supports the amendments to the record keeping framework in section 130ZZD. The proposal provides clarification of the record keeping rules, without removing any substantive obligations on licensees to retain records to demonstrate compliance. The rules better reflect the records that are in practice held by STV licensees.

Breaches due to technical and engineering difficulties (s130ZZA(7A))

Recommendation

- Support the amendment to provide clarity on the issue of compliance with the Quality Standard where a breach is attributable to significant difficulties of a technical or engineering nature which could not have been reasonably foreseen.

ASTRA supports the proposal that a failure by a broadcaster to comply with the Quality Standard is to be disregarded to the extent to which the failure is attributable to technical or engineering difficulties which could not reasonably have been foreseen.

ASTRA members

Distribution platforms

Foxtel
PRESTO
Telstra

Content providers

Aurora Community Channel
Australian Christian Channel
Australian News Channel (SKY NEWS)
BBC Worldwide Channels Australasia
Discovery Networks Asia Pacific
Eurosport
Foxtel Channels Group
FOX International Channels
FOX SPORTS Australia
NBCUniversal
SBS
Setanta Sports Australia
SKY Racing Channel Pty Ltd
Thorough Vision Channel (TVN)
Turner International Australia
TVSN & Expo Channel
Viacom International Media Networks Australia NZ (MTV Networks Australia & Nickelodeon)
Walt Disney Company Australia Pty Ltd (Disney channels & ESPN)

Other members

Ai Media
CASBAA
Multi Channel Network (MCN)
Holding Redlich
Cisco
BSA
PACE
Globecast