



**Submission to the Department of Communications and the Arts
Policy Consultation Paper on the Captioning Regulatory Framework**

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11 February 2016

Introduction

ASTRA welcomes the opportunity to respond to the Department's Policy Consultation Paper on the Captioning Regulatory Framework (**Consultation Paper**) and strongly supports the Consultation Paper's statements regarding the importance of reducing unnecessary regulation so as to enhance productivity, growth and investment.

ASTRA's members remain committed to closed captioning, which promotes inclusion and accessibility for Australians. Subscription TV licensees and channel providers spend a significant amount each year on captioning—currently providing captioning (at different levels) across 90 channels—as well as on demonstrating compliance with legislative requirements.

Putting to one side the financial cost of creating captions (which the industry is not contesting), the current regulatory framework for subscription TV is inefficient and unnecessarily complex, leading to excessive compliance costs and arbitrary outcomes which do not necessarily benefit the caption user. There are a range of reforms which can be made which will greatly improve the framework—including by making it clearer for consumers—without any detrimental impact on overall captioning levels.

This submission outlines deregulatory proposals designed to streamline and simplify compliance and service delivery consistently across broadcasting sectors. Our recommendations are built on the options set out in the Discussion Paper.

We are confident that the communities that make use of captioning will see that, while ASTRA's proposals do nothing to diminish the level of captioning, they do improve the workability and transparency of the system.

Our submission is structured as follows:

Section A: Executive Summary and Overview of the Reform Proposal

Section B: Principles for Reform

Section C: Background Information

Section D: Detailed analysis of the ASTRA reform proposal and response to other issues identified in the Consultation Paper

Section E: Conclusion

Appendix 1: About ASTRA

SECTION A – EXECUTIVE SUMMARY AND OVERVIEW OF REFORM PROPOSAL

1. Executive Summary

- ASTRA's members remain committed to closed captioning, and to the fundamentals of the current regulatory scheme for subscription TV captioning.
- The regulatory scheme for subscription TV captioning has been in place for over three years. In that time it has become apparent that there is considerable scope to streamline the scheme, reduce its compliance impact and increase transparency and consistency for industry and consumers. ASTRA submits this can be done without any impact on overall levels of captioning, and whilst retaining the key mechanism of yearly increases in captioning levels.
- We set out below a set of reforms which would evolve the regulatory scheme in line with the current operational realities of subscription TV. ASTRA's proposals would result in a greater role for channel providers, consistent captioning levels across platforms, greater transparency for consumers, appropriate exemption provisions and competitive neutrality across broadcasting sectors.
- These reforms are fully consistent with the Government's welcome commitment to reduce red-tape and regulatory compliance burdens. Freeing the industry from unnecessarily complex and burdensome regulation will help it continue on its path of growth, investment and job creation.

2. Overview of ASTRA's Reform Proposal

In considering the options canvassed in the Consultation Paper, ASTRA proposes a set of reforms which together will deliver meaningful improvement to the administration of the subscription TV captioning regime without detracting from the spirit of the existing framework.

Our proposal includes the following key reforms:

- A. Channel Provider Role:** Simplify channel captioning obligations and deliver a single subscription TV captioning plan by expressly recognising the role of channel providers under the captioning framework. The scheme should enable channel providers to:
 - maintain a single captioning target for their channel whatever subscription TV platform they broadcast on;
 - report once to the ACMA on compliance with captioning targets for their channels; and
 - seek individual exemptions and target reduction orders for their channels, irrespective of platform.
- B. Movies and GE Categories:** Simplify the genre targets by collapsing the categories in Movies and General Entertainment (**GE**) so that there is a single target for Movie channels and a single target for GE channels. These single

targets would be based on an average of the targets for the 3 existing categories in each genre. Sport, news and music targets would remain the same.

C. **Exemptions:** Remove s.130ZX of the *Broadcasting Services Act 1992 (BSA)* (nomination of exempt channels based on a minimum number of channels in the same genre meeting captioning targets) and introduce three new statutory exemptions:

- (1) Audience share exemption: where viewership for a channel is below a defined percentage, introduce the right for a channel provider to submit an application for exemption based on viewership at or below this agreed level prior to the publication of the next financial year's subscription TV captioning plan.
- (2) International pass-through exemption: an automatic exemption for international pass-through channels broadcast in Australia where the feed provided into Australia is not captioned for any other international market.
- (3) Racing channel exemption: an automatic exemption for racing services where live racing and the replays of live racing represent at least 70% of the channel's content (except for Christmas Day and Good Friday).

Retain all other existing exemption mechanisms under Part 9D of the BSA.

D. **Single Subscription Captioning Plan:** By collapsing the categories in the Movie and GE genres; recognizing channel providers under the regulatory scheme; and adopting statutory exemptions based on objective criteria (such as audience share), the Australian Communications and Media Authority (**ACMA**) can publish a prospective and single subscription TV captioning plan ahead of each financial year for the benefit of caption users and channel providers alike. The Plan could be published subject only to any later individual exemptions, new channel exemptions or target reduction orders.

E. **Parity with FTA Multi-channels:** Free-to air (**FTA**) multi-channels should adopt the subscription TV captioning framework with the same genre targets, the same increasing increment and the same exemption availability (including an audience share threshold).

SECTION B – PRINCIPLES FOR REFORM

In formulating its plan for captioning regulatory reform, ASTRA has had reference to a number of key principles which are based around minimising the regulatory compliance burden and increasing the efficiency of the captioning scheme.

1. **Audience share is important**—captioning obligations should be targeted to the channels with a reasonable level of viewers.
2. **Financial hardship remains relevant**—financial considerations should remain relevant to captioning obligations and should be appropriately targeted at the relevant provider, being the channel provider. The cost of providing captioning should not be a barrier to entry into subscription TV broadcasting in Australia, and channels should not be forced to withdraw from Australia on the basis of captioning costs.
3. **Confusion and complexity must be removed**—including by setting one captioning level for a channel regardless of the platform on which it appears; and permitting individual exemptions or target reduction orders for a channel to apply regardless of the platform. This will not only deliver a simpler and more transparent regime for consumers but reflects the practical realities of captioning. Captioning is and should be provided by channels, not distributors of channels.
4. **Reporting should be more efficient**—where reporting is required, remove duplication, including by moving reporting obligations to subscription TV channel providers, not licensees—so that one report is provided in relation to one channel regardless of the licensee or platform provider.
5. **Compliance checking should be complaints-driven**—as is the case with issues of compliance under ASTRA Codes, it is appropriate to give broadcasters the first opportunity to resolve a complaint before it is escalated to the regulator. This also reduces burden on the ACMA.
6. **Captioning regulation should be competitively neutral and consistent**—there is no logical reason for different approaches for subscription TV and FTA multi-channels:
 - a. FTA multi-channels channels should not escape substantive captioning obligations while subscription TV channels are regulated for the same genres (particularly since those subscription TV channels have a lower audience share).
 - b. Reform to reporting requirements should be consistent across sectors (or at least cohesive—for example, channels with less than 100 per cent captioning treated the same).
 - c. Any move to have complaints dealt with first by FTA broadcasters (before being escalated to the ACMA) should apply also to subscription TV.

SECTION C – BACKGROUND INFORMATION

Subscription TV licensees have demonstrated not only a high level of compliance with captioning requirements, but also a high level of commitment to working with caption users to improve their viewer experience.¹

According to reports released by the ACMA,² subscription TV licensees achieved a high level of compliance with their captioning target requirements for 2014–15:

- approximately 99.5 per cent of subscription TV services (644 out of 647) met their annual captioning targets for the year
- approximately 69 per cent of subscription TV services exceeded the captioning target
- captioning services were provided on 457 subscription TV services (or 93 distinct subscription TV channels)
- subscription TV services carry over 4 times the number of hours of captioning on FTA services (based on ACMA 2014–15 captioning compliance reports).

These results demonstrate that the subscription TV sector is delivering captioning results well above the legislative requirements. As noted above, the subscription TV 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, and only for part of the day.



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

¹ ASTRA convenes a regular Subscription TV Industry Captioning Roundtable with Media Access Australia, the Deafness Forum and Deaf Australia, which allows members to better understand the needs of caption users.

² <http://www.acma.gov.au/theACMA/2014---2015-annual-captioning-compliance-results-subscription-television>.



³ 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.

Channels subject to greater captioning requirements

STV	Metropolitan FTA
<p>48 channels</p>  <p>50–80% captioning across 24 hours in FY16, increasing over time to 100% over 24 hours</p>	<p>5 channels (core/primary channels)</p>  <p>100% captioning across 18 hours (6am to midnight) – no regulatory pathway to 100% over 24 hours</p>

* Bio ceased broadcasting on 1 November 2015

Channels subject to medium or lower captioning levels

STV	Metropolitan FTA
<p>28 channels</p>  <p>10–30% captioning across 24 hours in FY16, increasing over time to 100% over 24 hours</p>	<p>14 channels (multi-channels)</p>  <p>Minimal captioning, except for repeat programs⁴</p>

Note: News and sports channels have different targets due to the large proportion of live programming

Subscription TV broadcasters have also sought out and responded to feedback from deafness stakeholder groups regarding the caption users' experience of subscription TV. As an example, Foxtel has recently published an online guide to expected and actual captioning levels on each of its captioned channels⁵, an initiative developed directly in response to feedback from stakeholder groups that consumers sought additional transparency.

The reforms we propose are intended to streamline administration and compliance with captioning requirements, whilst providing greater transparency and predictability for caption users. The key fundamentals of the scheme, including the yearly 5 per cent increases, remain unchanged under our proposal.

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 <https://www.foxtel.com.au/got/support/tv/how-to-use/foxtel-remote/closed-caption-channels.html>.

SECTION D – DETAILED RESPONSE TO CONSULTATION PAPER

1. Captioning and the role of the channel provider

At the centre of ASTRA's proposed reforms is a refocussing of the captioning regulatory scheme around subscription TV channel providers:

- Channel providers would report on captioning levels.
- Targets would apply to channel providers, not platforms, meaning the same target would apply regardless of which platform on which the channel appeared.
- Channel providers would have the right to apply to the ACMA directly for exemptions and exemptions would be valid across platforms.

This is a logical evolution of the current scheme; would deliver benefits for caption users; and would drive efficiencies for industry and the regulator. A scheme based around channel providers better reflects the structure of the subscription TV industry and better reflects the operational reality of caption delivery.

ASTRA welcomes the Consultation Paper's consideration of a greater role for channel providers.

The reality of captioning is that the decision-making, operational management, budgeting and scheduling of captioning occurs at the channel provider level. This means channel providers are best placed to manage compliance in terms of record-keeping, reporting and exemption applications based on hardship.

It is worth noting that the current regulatory scheme was designed around a single platform (Foxtel) at a particular point in time (2011–12). This has had unintended consequences for other platform operators when trying to impose the current scheme onto different service delivery arrangements.

The current requirement that licensees alone may apply for exemptions or reduction orders has the perverse result that some channels are exempt from captions when provided on one platform, but not others. There is no sound policy justification for this discriminatory outcome.

A scheme based on channel providers will be platform neutral, ensuring less regulatory discrimination and more transparency for consumers. As far as caption users and the public policy objectives of captioning regulation are concerned, there is no benefit to having different levels of regulation apply across platforms for the same channel. Caption users will gain additional clarity and certainty through the knowledge that a channel carries the same level of captioning regardless of the platform on which they choose to access it.

Having a single compliance report required for each channel and a single target set for each channel, regardless of platform on which that channel is delivered, will also greatly reduce the compliance burden for the industry, obviating the need for multiple reports and applications. Consequently, it would also lessen the administrative burden on the ACMA.

Importantly, recognising the role of the channel provider will solve multiple inconsistencies, chief amongst which is the inconsistent regulatory treatment across platforms. It is inequitable and illogical that one platform provider can successfully apply

for an exemption for a channel, whilst another platform provider can have an application for exemption for the same channel refused.

We do not propose a change to the current arrangements whereby licensees are ultimately responsible for compliance with the scheme.⁶ There are also precedents for regulatory recognition of channel providers—the New Eligible Drama Expenditure scheme in Part 7 of the BSA, and the captioning aggregation provisions for sports channels in Part 9D of the BSA both operate successfully to recognise channel providers, whilst still retaining ultimate responsibility for compliance with the licensee.

2. Reforms to streamline the regulatory framework

2.1 *Create single captioning targets for Movies and General Entertainment channels*

Movies and general entertainment targets	
Now	Proposed
<ul style="list-style-type: none"> GE and Movies targets apply in three categories 	<ul style="list-style-type: none"> GE and movies categories collapsed
<ul style="list-style-type: none"> In FY17 GE targets are between 35 and 65% 	<ul style="list-style-type: none"> In FY17, all GE channels required to caption at 55%
<ul style="list-style-type: none"> In FY17 movies targets are between 55 and 85% of total programs on each service 	<ul style="list-style-type: none"> In FY17, all movies channels required to caption at 75%

Under the present scheme, platform providers hold responsibility for nominating channels into the three categories—each with different captioning targets—set down for GE and Movies channels. The legislation does not set out objective criteria for selecting which of these channels is allocated to which category within the genre. It is very difficult for a caption user to understand this system and it is also complex to administer. Each platform provider is entitled to set the categories as it sees fit which has resulted in some cases with the same channel being nominated in different categories across distinct subscription TV platforms. These channels have been required to achieve different targets depending on their subscription TV distribution.

The proposed simplification of captioning targets for the GE and Movies genres would help reduce complexity in compliance and improve transparency and certainty for subscription TV viewers.

ASTRA's proposal to set a single target of 55 per cent in FY17 for GE channels and 75 per cent in FY17 for Movies channels is based on averaging the targets for each of the three existing categories in each genre, rounded up. Overall, this would result in **no overall loss of captioned** hours across GE and Movie channels and targets would continue to increase over time, consistent with the existing regulatory framework.

⁶ Licensees should retain the ability to seek exemptions

2.2 Exemptions

Exemptions	
Now	Proposed
<ul style="list-style-type: none"> For platforms, a complex formula is used to apply the s.130ZX exemption for channels over and above the minimum numbers of channels to be captioned in a genre 	<ul style="list-style-type: none"> s.130ZX exemption is removed. The selection process is arbitrary and does not focus on relevant objective criteria such as audience share Statutory exemptions apply if the channel (not licensee): <ul style="list-style-type: none"> Has an audience share, below an agreed percentage Meets the requirements of an international pass-through channel meets the requirements of a racing channel Individual exemption and target reduction orders, and the new channel exemption would remain

ASTRA acknowledges that the exemption process in s130ZX was included in the legislation to help subscription TV licensees manage the impact of captioning levels that increase year on year. ASTRA supported the inclusion of s130ZX at the time the legislation was being developed.

However, in seeking to apply the exemption in the years following the legislation coming into effect, it has become apparent that it is highly complex and administratively unwieldy. This exemption drives complexity and duplication and is not consumer-focused. The lack of objective criteria to set targets can give rise to results regarding which channels on a platform are exempt which may appear arbitrary to consumers. This is bad for the industry and for consumers, who have reduced certainty and transparency around captioning levels.

There is no good public policy reason to retain this complexity when alternative, more logical and transparent alternatives are available, as set out below.

For the avoidance of doubt, ASTRA would support the retention of s130ZX if the following proposed exemptions are not introduced.

2.2.1 Audience share exemption

ASTRA strongly supports the Consultation Paper's proposal for a threshold model for captioning exemption orders (p 22).

An exemption for channels which attract only a very small share of the overall viewership would ensure a better balance between accessibility and viability of smaller channel providers than is seen in the existing exemption process. In this instance, audience share acts as a proxy for the reduced financial capacity for small channels to provide captions without the cost of captions exceeding the ability of the channel to break even or make a profit.

One of the key benefits offered by subscription TV is the ability to offer increasingly specialised channels. Channels such as the Aurora Community Channel, Australian Christian Channel, and Australia's Public Affairs Channel

(APAC) deliver programs that the commercial and national FTA broadcasters are unable to offer.

Most of these channels attract a limited number of viewers and have a very low share of viewing. However, they provide a vehicle for community and other groups to deliver key messages to a national audience. Their ability to offset the high cost of captioning is extremely limited. It would be consistent with the existing regulatory policy to provide an exemption for these small channels based on their low audience share.

Ofcom in the UK has exempted channels with an average audience share of 0.05 per cent or less.⁷ A number of the channels on Australian subscription TV would fall into this category.

Introducing an objective test for exemption based on well-known existing metrics will also help ensure regulatory consistency across licensees—it is well known that exemption orders have been issued by the ACMA for channels on a particular platform, but refused in relation to the same channel on a different platform. This outcome makes no policy sense, is confusing for viewers and creates regulatory distortions.

An exemption based on audience share would also be consistent with the regulatory policy of the BSA, which states that different levels of regulation should be applied to services “according to the degree of influence” those services have on the Australian community.

An exemption based on audience share could be structured as follows:

- **Timing:** Channels would be entitled to apply to the ACMA by 31 March before the relevant financial year commences claiming the audience share exemption on the basis of filing audience share data (for an agreed prior period).
- **The Measurement Period:** we suggest that as at 31 March the measurement period be defined as the 12 month previous calendar year. Selecting a full year will take account of the seasonal audience changes for some channels such as sports channels.
- **The Threshold:** ASTRA notes an international approach, such as the UK, could inform the audience threshold exemption, but the threshold itself should be appropriate in the Australian context.
- **The Share Metric:** ASTRA proposes as the appropriate metric OzTAM/RegionalTAM audience share data, being a national all TV (FTA and subscription TV) measure across the Australian population. Channels/platforms with audience share too low to qualify for these panels should gain automatic exemption provided the channel files the application with the ACMA prior to 31 March confirming this.
- **The Duration of the Exemption:** ASTRA proposes that the exemption last for 2 financial years to provide some certainty to channels for operational and budgetary reasons.

⁷ See clause 13 of Ofcom's Code on Television Access Services at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/code-tv-access-services-2015/>.

2.2.2 International pass-through channel exemption

ASTRA represents a selection of news and sport channels where the business model is supported by producing a single channel for multiple countries or regions.

For example, the same BBC World News channel is supplied to all countries outside the UK. Where live news and sports channels are produced solely for markets outside of the US and UK, the international version of the channel is commonly distributed without any captions in any market.

A number of such channels are available in the Australian market and there is no opportunity for local insertion (of captions or any other program matter) by those entities that provide those channels. For these international “pass-through” channels, Australian subscription TV licensees are no more than transmission platforms for services received directly from international sources.

These international news and sport channels are important as they provide diversity in both news coverage and exposure to international sporting events. However, under the legislation, a number of these channels will in coming years be subject to captioning requirements (including Aljazeera, BBC World News, Bloomberg, CCTV News, CNBC, CNN, Eurosport, Eurosport news) if they are not the subject of successful exemption order applications.

There is no likelihood that captioning these channels will be commercially viable for the foreseeable future. Any insertion of captions into these channels will be required to occur locally on a live basis. This is a very expensive process and will significantly add to the cost of delivering these services into Australia. This is then likely to mean that it will become unviable to offer those services into Australia, resulting in a loss of diversity and differentiation.

A regulatory outcome which has the effect of forcing a licensee to cease broadcasting a pass-through channel because of local captioning requirements would be dramatically inconsistent with the Government's stated aims of minimising regulatory impacts and ensuring benefits to consumers are not reduced.

A specific exemption for these channels is required in light of the outcomes of exemption order applications in the years since the 2012 legislation came into effect. Prior to the passage of that legislation, ASTRA had argued for a specific exemption for international pass-through channels, for the reasons outlined above. The advice provided to ASTRA from Government was that if financial viability was at risk, an application for exemption could be made under the unjustifiable hardship exemption provisions.

However, ASTRA's platform members Foxtel and Fox Sports Venues, a wholly-owned subsidiary of Fox Sports Australia, have been unable to obtain an exemption for these channels, with the ACMA refusing applications even in circumstances where it has been demonstrated that the cost of captions exceeds the profit attributed to the channel in question. Fox Sports Venues has taken channels off its platform as a result of these outcomes.

2.2.3 Racing Exemption

The unique nature of racing channels (horse, harness and greyhound), which feature dense displays of on screen information and rapid, unstructured commentary make them inherently unsuited to captioning. To reduce red-tape and remove the onerous administrative burden of preparing and lodging individual exemption applications, an automatic exemption for these services should be introduced.

At times up to 75% of the screen view during coverage of a race is comprised of text information. With such a significant proportion of the screen being text and other graphics, adding captions would be highly distracting and would add little value.

The three screen shots examples below taken from coverage of the time before, during and after a race, demonstrate that a significant amount of information is already provided visually (ie, in a way accessible to deaf or hearing impaired viewers), rendering captions an unnecessary addition.

Screen shot before a race:

6 ROCKHAMPTON 1050m		1:51		GOOD3	
GIDDY GOAT CAFE & BAR 2YO MDN					
MARKET ORDER					
	Q3	JOCKEY	PRED	Tatts Win	NSW S-TAB
5	MYTHOLOGIST(10)	L Dillon	100	5.50	4.30 4.60 5.40
3	IRON JACKET(5)	A Coome	93	3.70	4.90 11 5.80
2	CURLEW(6)	C McIver	90	5.30	6.00 5.60 6.90
1	CRAIGLEA SEAL(1)	Dale Missen	97	10	6.80 5.70 6.40
6	CRAIGLEA KALBAR(9)	J P Stanley	93	8.30	7.40 6.70 7.10
8	OUR CON ARTIST(2)	A J Butler	93	9.30	10 7.10 10
7	NISEKO GOLD(8)	N Patchett	67	10	14 12 10
10	IF ONLY THEY KNEW(3)	S McCullum	70	22	20 27 12
5	POOL TOTALS			5.8K	9.8K 13K 12K

THIS IS EXAMPLE CLOSED CAPTIONING TEXT FOR SKY RACING.

6 Rockhampton 1:51 7 Tamworth 5:00 2 Cambridge 7:00 7 Grafton 10:00
COMING UP 5:00 7 Tamworth 1. Soho Eros \$5.80

Screen shot during a race:



Screen shot after a race:



If captioning was introduced on to a racing program it would be detrimental to both the hearing and non-hearing audience as it would obscure both the racing vision and the critical racing text displays. This is because it would not be possible to position the captions in a manner which would not obscure the other on-screen text or the racing vision.

The audio commentary before and after a race on a racing channel largely reflects the information that is already available as text on the screen, which means that captions add little to the viewing experience in these circumstances.

It should also be noted that the readability, accuracy and comprehensibility of the captioning service, which are crucial to delivering meaningful captions, would be very poor during coverage of a race. This is because:

- Races are, by their nature, extremely fast-paced events and the racecaller describes the action very rapidly. The number of words spoken by a racecaller during a race exceeds the rate at which a stenocaptioner can caption, meaning such a significant delay between progress of the race and delivery of the captions as to negate any potential benefit from captions.
- Racecallers speak in a rambling manner, with unstructured syntax and without pauses or punctuation, making it difficult for stenocaptioners to understand what is being said. This can lead to unavoidably inaccurate captioning.
- The terminology used by racecallers is difficult and the names of the entrants into races are unusual and forever changing, making it even more difficult for stenocaptioners, even where they are familiar with the racing industry.
- A large percentage of the vision of races is imported from overseas and the commentary features unusual vernacular, place names and entrants' names which are foreign. This adds even further difficulties for stenocaptioners.
- The speed of the race is such that it would not be possible for a viewer to simultaneously watch the vision of a race and read the captioning.
- An average race lasts approximately two minutes so the race would be over before any captioning was properly commenced.

For these reasons, the standard of any captioning of the audio commentary of a racecaller would be so low as to render the captioning unbeneficial.

Hence, because racing channels already present a great deal of information visually, and because the subject matter of racing channels means that captions will rarely be of a standard which improves access, an exemption for racing channels would not leave deaf and hearing impaired viewers at any significant disadvantage. Rather, an exemption would be consistent with the Government's stated aims of reducing red tape by obviating the need for repeated preparation of applications for exemptions and target reduction orders.

3. Reforms raised in the Consultation Paper

There are a number of other matters raised in the Consultation Paper which ASTRA would like to address.

3.1 *Channel Plan and viewer transparency*

ASTRA is fully supportive of the development of a prospective subscription TV captioning plan by the ACMA ahead of each financial year as set out in Option 1 of the Paper. To ensure regulatory complexity and burden is kept to a minimum, we strongly recommend that this be developed in conjunction with simplification of the subscription TV captioning framework, as set out in sections 1 and 2 above. It would not be possible

to implement a single plan using the existing s130ZX exemption framework due to the retrospective operation of s 130ZX.

We note the comments in the Consultation Paper that support additional transparency for subscription TV viewers regarding captioning levels (p 13).

The subscription TV industry agrees that a forward looking channel plan would enhance viewer certainty. The industry has been consulting regularly with representatives of caption users through its Subscription TV Industry Captioning Roundtable. One of the earliest pieces of feedback was that caption users need greater visibility of expected caption levels across the Foxtel platform, so that informed purchasing decisions can be made.

In response to this feedback, Foxtel now provides a [webpage](#)⁸ with information (presented in package tiers) about the past year's targets, actual captioning levels and the current year's targets. This information can be used in conjunction with EPG features for finding captioned programs.

MOVIES			
MASTERPIECE MOVIES	FY15 Target 75%	FY15 Actual 95%	FY16 Target 80%
ACTION MOVIES	FY15 Target 75%	FY15 Actual 99%	FY16 Target 80%
PREMIERE MOVIES	FY15 Target 75%	FY15 Actual 100%	FY16 Target 80%
Comedy MOVIES	FY15 Target 75%	FY15 Actual 100%	FY16 Target 80%
THRILLER MOVIES	FY15 Target 75%	FY15 Actual 100%	FY16 Target 80%
Disney MOVIES	FY15 Target 75%	FY15 Actual 99%	FY16 Target 80%
Romance MOVIES	FY15 Target 75%	FY15 Actual 99%	FY16 Target 80%
family MOVIES	FY15 Target 75%	FY15 Actual 99%	FY16 Target 80%
W WORLD MOVIES	FY15 Target 75%	FY15 Actual 80%	FY16 Target 80%
Pay Per-View New Release Movies*	FY15 Target 45%	FY15 Actual 89%	FY16 Target 50%

Presentation of captioning information on Foxtel website

However, in terms of a more rigid channel plan arising from regulatory requirements, this will not be viable for so long as s 130ZX remains in operation. This is because s 130ZX exemptions cannot be filed prior to the financial year—a channel change on a subscription TV platform during a financial year may result in a change to other channel targets. This means that changes to channel quotas on Foxtel are sometimes made during a financial year.

⁸ <https://www.foxtel.com.au/got/support/tv/how-to-use/foxtel-remote/closed-caption-channels.html>.

The only feasible way to deliver a simple and effective plan would be to adopt a threshold model (as outlined above in section 2.2.1) in conjunction with a greater role for channel providers (as outlined above in section 1).

We note that mechanisms for complaint handling are already effective in the subscription TV sector due to the existing subscriber relationship.

3.2 Compliance reporting

We note that Option 1 in the compliance reporting section of the Consultation Paper is to remove annual captioning compliance reporting requirements for FTA broadcasters. While there may be logic in removing compliance reporting for FTA primary channels, the same argument does not apply to FTA multi-channels.

A policy decision may be taken to remove captioning reporting obligations in relation to primary channels providing 100 per cent captioning during a set portion of the day—on the basis that a report is not necessary to show when captions are missing; this will be obvious to viewers who may then complain about the lack of captions. However, for so long as FTA multi-channels are not required to provide 100 per cent captioning during defined periods this logic requires that reporting obligations should remain for FTA multi-channels.

There would be regulatory imbalance if reporting requirements were removed for FTA multi-channels, but retained for subscription TV (where both caption at less than 100 per cent).

Further, in the event that reporting obligations for FTA primary channels are removed, provision should be made for reporting obligations for subscription TV channels to fall away once captioning reaches 100 per cent.

In relation to Option 2, as outlined in the Consultation Paper, ASTRA supports a transfer of reporting obligation to channel providers. This will deliver consistency and remove the current issue of multiple reporting of the same targets by separate licensees.

3.3 Captioning of FTA multi-channels

ASTRA supports the expansion of substantive captioning obligations to FTA multi-channels based on the existing subscription TV genre targets over a 24 hour period.

















The light-touch regulatory approach taken to commercial FTA multi-channels (including in regards to captioning regulation) was previously justified on the basis that the channels were new to the market and had very small audiences.⁹ An examination of the current multi-channel offering establishes this is clearly no longer the case, and in turn means there is no sound policy justification for their continued exemption from substantive captioning obligations.

This is especially the case when it is considered that substantial captioning obligations are placed on subscription TV channels which, as shown in the following table, target similar demographics and have significantly smaller audiences than FTA multi-

⁹ http://www.freetv.com.au/media/Submissions/2008-0010_SUB_Access_to_Electronic_Media_for_the_Hearing_and_Vision_Impaired_130608_FINAL.pdf, p 8.

channels. Indeed, on average, a FTA multi-channel draws an audience **7 times larger** than a subscription TV channel.¹⁰

FTA multichannels vs subscription TV channels: captioning and audiences

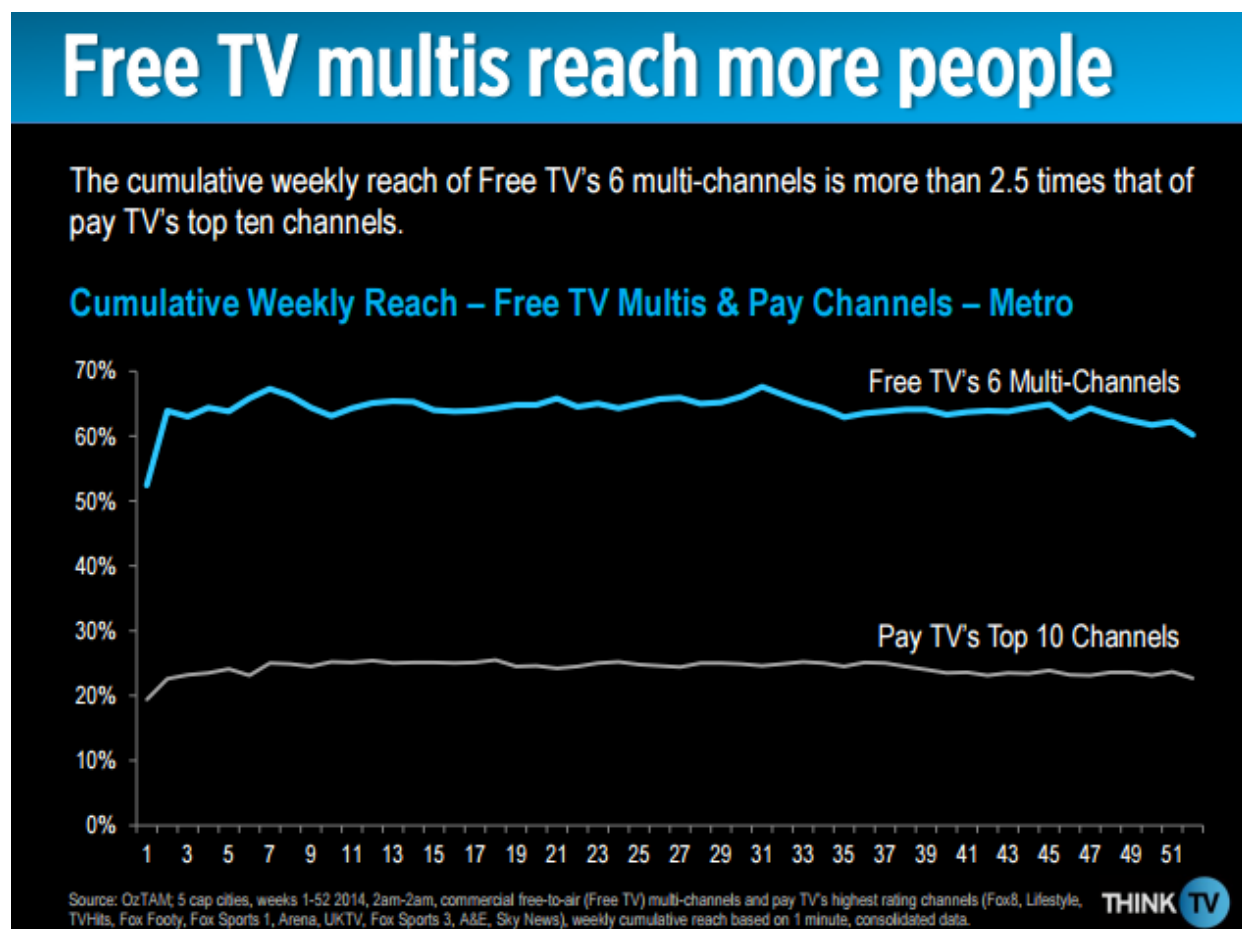
Channel	Description	Audience*	Captioning target**	STV comparison	Description	Audience*	Captioning Target (FY16)
	General entertainment & sport	93,700	0%		General entertainment	12,700	60%
	General entertainment & sport	80,700	0%		General entertainment	13,300	30%
	Movies	Launches 28.02.16	0%		Movies	15,600	80%
	General entertainment	93,800	0%		General entertainment	14,500	60%
	General entertainment & sport	76,000	0%		General entertainment	12,700	60%
	Lifestyle	36,900	0%		Lifestyle	24,200	60%
	Male-targeted programming	58,200	0%		Male-targeted programming	6,400	30%
	Youth-targeted programming	73,100	0%		Youth-targeted programming	28,400	60%

* Average audience – Source: OzTAM & Regional TAM. 5 City Metro & Regional Combined Aggregate Markets. Consolidated Data. 0200-0200, 2015 (Calendar Year). Total Individuals.

** No captioning target percentages for FTA multichannels – requirement to caption repeats of primary channel captioned programs only.

¹⁰ Source: OzTAM & Regional TAM. 5 City Metro & Regional Combined Aggregate Markets. Consolidated Data. 0200-0200, 2015 (Calendar Year). Total Individuals.

As shown in the following chart, the FTA networks themselves promote the fact that their multi-channels achieve a much greater reach than subscription TV channels—and yet they continue to be regulated more lightly:



Source: http://www.thinktv.com.au/media/tv_trends.pdf

The FTA networks describe the multi-channels in terms which put them in the same category as subscription TV channels:

Free TV multi-channels provide advertisers with the opportunity to target specific audiences and connect with those audiences on a deeper level.¹¹

Further, the commercial FTA networks clearly no longer see these as start-up services, and boast of the increasing appeal of the services:

GEM's broadcast of the 2015 UK Ashes series live in HD resulted in three of the six highest rating Multichannel programs of all time.¹²

On any available metric, there is no justification for continuing the uneven regulatory approach to captioning on FTA multi-channels and subscription TV channels. A situation where subscription TV channels are on a path to captioning targets of 100 per cent over 24 hours, but where FTA multi-channels get a virtually free ride creates an unjustifiable regulatory distortion (especially when considered with other generous regulatory concessions enjoyed by commercial FTA broadcasters).

¹¹ http://www.thinktv.com.au/content_common/pg-more-reasons-why-tv.seo.

¹² <http://www.nineentertainment.com.au/media/5338/Nine-Entertainment-Co-2015-AR-web-.pdf>, p 11.

A sensible approach would be to introduce genre-based channel captioning targets for FTA multi-channels set at the same levels as equivalent genres in the subscription TV captioning scheme. Yearly 5 per cent increases could then apply, as they do for subscription TV channels.

In addition to addressing regulatory discrimination, this will address the anomaly for viewers who are faced with inconsistent captioning of similar programming depending on the platform on which they choose to view it.

SECTION E – CONCLUSION

ASTRA appreciates that its reform proposals address some issues, such as the collapse of the Movie and GE categories, which go further than the scope of proposals in the Consultation Paper. However, we believe that the conversation regarding captioning reform should be ambitious and that Government should take this opportunity to be expansive in its approach to red-tape reduction.

However, we seek to emphasise that ASTRA's reforms proposals are conservative with regards to the fundamentals of the captioning regulatory scheme. Captioning levels will continue to increase over time with 100 per cent as the eventual target. Our proposal merely seeks to streamline the scheme and deliver simplicity and consistency in the administration of the captioning framework.

We seek to work with the Department to deliver consensus support for what we believe are a set of sensible and workable proposals.

APPENDIX 1

About ASTRA

ASTRA is the peak industry body for subscription media in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multichannel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major subscription TV operators, as well as over 20 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 members provide a diverse range of news, information, sport and entertainment programs which deliver significant social benefits to a broad cross-section of the Australian community. In 2016, one third of Australians subscribe, along with millions more who watch subscription content in public venues. Every week more than 1000 hours of first-run locally produced content is broadcast, as well as the best international content.

The subscription TV industry also makes substantial economic contributions. In 2014/15 ASTRA members invested more than \$796 million in local content production, added \$2.083 billion to the economy, and created jobs for 8370 Australians.

Subscription TV is poised to continue to make great contributions in the new media landscape, growing the economy, creating even more jobs and delivering high-value services to consumers. However, in order to fully achieve our potential and ensure global competitiveness, regulatory imposts must be framed so as to avoid undue complexity and inefficiency, and in a way that ensures a level regulatory playing field across broadcasting sectors.