

**Age and Disability  
Discrimination Commissioner**

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**The Hon Susan Ryan AO**

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Standing Committee on Environment &  
Communications Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
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Dear Senators

**Inquiry into the Broadcasting and Other Legislation Amendment Bill 2014**

***Introduction***

I welcome the opportunity to provide comment on the draft Broadcasting and Other Legislation Amendment Bill 2014 in my capacity as Disability Discrimination Commissioner.

My comments have been informed by the views of consumers who are deaf or hearing impaired who have raised concerns in relation to the amendments outlined in the draft bill, as well as the provisions outlined under Articles 9, 30 and 33 of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD).

The Australian Human Rights Commission (AHRC) has analysed the amendment bill and explanatory memorandum and wishes to draw the Committees' attention to several areas of concern in regards to the changes outlined under items 4, 5 and 13 of the explanatory memorandum.

***Changes to Reporting Requirements (Item 13)***

Item 13 of the explanatory memorandum proposes the repeal of sections 130ZZC (1) to (4) of the *Broadcasting Services Act 1992* (Cth) (BSA). These sections establish a reporting mechanism for broadcasters to demonstrate compliance with the requirements of the BSA.

***Background***

These measures were originally implemented following negotiations between the AHRC, deafness consumer groups and the Australian Communications and Media Authority (ACMA).

Historically, consumers were able to lodge complaints in relation to television captioning with the AHRC under Section 24 of the Disability Discrimination Act (Goods, Services and Facilities). Over time, it was observed that this mechanism had not proven effective in ensuring compliance with captioning targets.

The Media Access Review Final Report, published by the Department of Broadcasting, Communications and the Digital Economy in 2012 recommended that the Government prescribe the sections of the BSA that establish mandatory targets for captioning under subsection 47(2) of the *Disability Discrimination Act 1992*. These changes were subsequently legislated, and the responsibility for investigating complaints regarding breaches of the code shifted from the AHRC to the ACMA.

At the time that the provisions in the BSA were being negotiated, the Commission sought a number of safeguards to ensure that the rights of consumers who are deaf or hearing impaired would be adequately protected under the BSA. The current mandatory reporting requirements were intended to meet this objective by mitigating risks of non-compliance, and have done so.

#### *Additional factors*

As of July this year, all free view broadcasters have been required to caption 100% of content aired between 6:00 AM and midnight. The 100% quota makes it easy for a consumer to identify whether or not a breach has occurred between these hours. It may therefore be assumed that a complaints mechanism alone would provide adequate protection for consumers, as they could lodge a complaint if they noted that a breach had occurred. But given that captioning requirements for programmes broadcast outside these hours are of a sporadic nature, it may be difficult for consumers to monitor compliance with these requirements in the absence of mandatory reporting.

Further, the Commission expects that not all consumers will be aware of the complaints mechanism available under the ACMA or know how to pursue a complaint through this process. Consumers frequently express concern that the process of lodging a complaint can be daunting and time-consuming.

These circumstances restrict their ability to address instances of non-compliance that they may have noted.

**Considering these matters, the Commission's view remains that mandatory reporting plays an important role in mitigating risks of non-compliance and serves to uphold and protect the right of equal access to television services as outlined in the CRPD.**

**Recommendation:** The Commission recommends investigating options for simplifying and unifying regulations, rather than removing reporting requirements altogether.

#### ***Access to Subscription Sports Services (Item 4)***

The Commission also holds concerns in relation to the proposal to repeal subsections 130ZV (1) to (4) and replace those subsections with new subsections 130ZV (1) to (3). This amendment would introduce a new captioning formula for subscription sports services to allow broadcasters to apply the target to the total hours on all relevant sports services. This change would replace the current requirement for broadcasters to meet the target on each separate service.

These changes appear to be intended to allow broadcasters greater flexibility to caption events that may attract a larger audience, or to move captioned programs between channels at short notice. The Explanatory Memorandum notes that as a safeguard, broadcasters will still be required to meet two thirds of the current 15% quota on each separate sports channel.

While the Explanatory Memorandum states that the proposed changes would provide broadcasters with 'increased flexibility to direct captioning towards events of greater interest to viewers', the Commission notes the concerns expressed by consumers who are deaf or hearing impaired that these changes do not reflect the needs of the deaf community.

**Recommendation:** the Commission recommends that a strict reporting mechanism be established to monitor compliance with the proposed requirement to meet two thirds of the 15% quota on each separate sports channel. This is necessary to ensure that consumers are not disadvantaged as a result of these new arrangements.

### ***Exemption for New Subscription Services (Item 5)***

Item 5 of the explanatory memorandum proposes the addition of subsection 130ZV (6) following section 130ZV. This change would exempt any new subscription services from meeting captioning targets for a period of 1 – 2 years.

**Recommendation:** The Commission recommends that no further exemptions be granted, as broadcasters have been aware of captioning obligations for an extensive period of time.

### ***Concluding Remarks***

The Commission notes that in its recent report on this bill, the Parliamentary Joint Committee on Human Rights identified many of the same concerns that the Commission holds with the amendment bill.

The Commission agrees with the Committee that the bill's accompanying statement of compatibility did not adequately demonstrate that the proposed amendments have been established for the purpose of satisfying a legitimate objective.

In summary, the Commission retains concerns with those amendments outlined in Items 4, 5 and 13 of the explanatory memorandum and believes that their implementation may not retain the amount of captioning currently available to people who are deaf or hearing impaired.

**Recommendation:** The Commission recommends that the draft bill not be proceeded within its present form.

**Recommendation:** The Commission proposes the draft be amended to achieve compatibility with Australia's human rights obligations under Articles 9 and 33 of the UN CRPD.

The Commission believes that the recommendations made throughout this submission will assist in retaining an adequate level of captioned content on Australian television, and that these measures are therefore essential in ensuring that the right of equal access to television, as outlined under Article 30 of the CRPD is upheld.

Yours sincerely  
The Hon Susan Ryan AO  
**Age and Disability Discrimination Commissioner**