



**Community & Public Sector Union**  
Michael Tull • National President

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Committee Secretary  
Standing Committee on Environment and Communications  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

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Dear Committee Secretary

### **Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 (Senate)**

The CPSU welcomes the opportunity to make a submission to the Senate Standing Committee on Environment and Communications inquiry into the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014.

The PSU Group of the Community and Public Sector Union (CPSU) is an active and progressive union with approximately 55,000 members. The CPSU represents employees in Commonwealth government employment including the Australian Public Service (APS), the telecommunications sector, and broadcasting including the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS). The CPSU also represents employees in the captioning industry.

The CPSU is concerned about the impact of proposed changes to captioning on deaf and hearing impaired Australians. If passed, the Bill would:

- remove compliance reporting for free-to-air television so they no longer have to publically report that they are meeting the captioning obligations;
- result in more complex calculations for determining how much captioning sports channels should provide;
- water down the measurement and regulation of caption quality; and
- remove the legal requirement to review the operation of captioning obligations before 31 December 2015.

The CPSU is also concerned that the requirement for reports, provided to the ACMA under the New Eligible Drama Expenditure Scheme, to be independently audited will be removed. The removal of auditing requirements for Australian content has the potential to impact the amount of Australian content shown by local broadcasters.

### **Captioning reform**

The basic principle of captioning is to allow deaf and hearing impaired Australians access to television. The provision of captioning must be fair, transparent and properly monitored. This ensures that subscription television viewers receive what they expect and have paid for and broadcasters know that its competitors are complying with the regulations.

It is not clear how the Bill will improve captioning services for deaf or hearing impaired Australians. This should be the primary focus of any reforms to captioning regulation. Rather, the proposed changes will make it easier for broadcasters to provide less captioning and water down captioning quality while still meeting obligations.

The proposed Bill removes current annual reporting requirements for free to air broadcasters and replaces it with a complaints based process.

Furthermore, subscription television licensees will be able to vary how they meet their captioning obligations by:

- Allowing the annual captioning target for channel providers to be “averaged” over associated sports channels;
- Granting 12 month exemptions from captioning obligations for new subscription television channels;
- Restricting repeat captioning obligations to programs provided by the same channel provider.

There are also implications for the quality of captioning as the Bill:

- requires the Captioning Quality Standard to differentiate between live and pre-recorded broadcasts, and
- introduces a new exception to captioning quality breaches where the breach is due to engineering or technical failures.

The enforcement of captioning obligations ensures that deaf and hearing impaired Australians are provided with quality captioning. The proposed changes will lead to a decline in standards, stringency and the quality of output by the captioning industry will suffer. As one member told the CPSU:

*The captioning industry is competitive, and we already don't have enough prep time. Whoever can satisfy the requirements for the lowest price will get the contract, and captioning companies undercut each other on price. There is no possible world where reduced requirements in volume and accuracy won't be passed on to captioning companies in the form of pricing pressure.*

### *Compliance reporting*

The proposed Bill will mean that free-to-air broadcasters will no longer have to report annually on their compliance with captioning obligations, replacing it with a complaints-based approach.

The CPSU notes that there already is a “complaints-based approach” where ACMA can hear and investigate complaints.<sup>1</sup> Annual reporting obligations require broadcasters to compile this information to help guarantee the quality of captioning. Removing the annual reporting requirement would remove scrutiny and result in less accountability and could lead to the elimination of records of poor quality captioning as reporting will no longer be required.

CPSU members indicate that broadcasters (and in some cases contracted captioning companies) are best placed to collect data on captioning quality to provide to the ACMA to ensure compliance with captioning obligations. There would be problems with reliance on a complaints-based model as viewers may not know their rights with respect to captioning. For example, if a show is not captioned, they cannot be sure that it is required to be. Viewers may complain only to find it exempt from captioning requirements, they may not complain because they do not know they can or do not know who to contact, or what know what level of accuracy to expect.

### *Splitting of captioning target*

Under present arrangements, each individual channel on subscription television must meet its target. The splitting of a quota across associated sports channels makes calculating quota requirements more complicated, and it removes the requirement for an individual channel to have a certain level of captioned broadcast. The proposal treats subscription television sports channels differently. Further, there may be adverse outcomes for individual consumers as they will have no ability to make purchase decisions with full knowledge of the level of captioning to be provided.

CPSU members indicated that during events such as the Olympics or Soccer World Cup, broadcasters voluntarily exceed their captioning requirements on associated sports channels. This change would let broadcasters use large events where extensive captioning is commercially attractive to cut back on formal captioning obligations. At present, sports networks tend to have a predictable weekly schedule and caption accordingly, the proposed changes may increase viewer uncertainty about when to expect captions. A sport which required captions last week to meet the quota might not this week, solely because the Commonwealth Games is on the other associated channel.

### *Restricting repeat captioning obligations*

The Bill proposes that programs previously captioned on a subscription television channel will no longer have to be captioned if previously shown on another subscription channel. The CPSU is concerned that it may discourage networks from including caption files with programs they sell or repeat screenings.

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<sup>1</sup> ACMA, Complaints about captioning, 10 April 2014, <http://www.acma.gov.au/Citizen/Consumer-info/Rights-and-safeguards/Captioning/complaints-about-captioning-i-acma-1>

### *Exemptions from captioning obligations*

The present system allows licensees to designate new channels as being excluded and not subject to captioning requirements. The proposed Bill takes it a step further, making a new channel automatically exempt for at least a year.

It is unclear why this change is necessary. The current arrangements already allow a new channel to be exempt from caption requirements. The CPSU is concerned it will only reinforce the treatment of captioning as an afterthought. Rather than making it easier to get an exemption, broadcasters should be encouraged to include captioning from the establishment of a new channel and to build-in systems and procedures that can be scaled up to make sure that captioning is part of the production process from the beginning.

### *Differentiating between live and pre-recorded broadcasts*

The CPSU acknowledges the differences in captioning between live and pre-recorded broadcasts.. CPSU members have indicated that standards do and should vary between pre-recorded and live content, however, they are concerned that live broadcasts by networks may be used as an excuse for poor quality captioning. Members also expressed a concern that there may be less incentive to provide early access to files, or to make scripts and other resources available which improve live captioning.

### *New exception to captioning quality breaches*

The Bill proposes an exemption from breaches of quality standards if it is due to a technical or engineering difficulty which could have not been reasonably foreseen. CPSU members are concerned there may be less incentive for broadcasters to build and maintain backup plans, and to exceed their captioning requirements to meet obligations in case something goes wrong.

### **New Eligible Drama Expenditure Scheme auditing requirements**

Currently certain subscription television channel providers and licensees are required to spend at least 10 per cent of their total programming expenditure on new Australian or New Zealand drama productions or co-productions. Channel providers are required to report their annual eligible drama expenditure for the financial year and it must be accompanied by a certificate from a registered auditor stating that the return is correct.

While the Bill does not affect the level of Australian drama expenditure required by subscription television licensees, the CPSU is concerned it may impact on the currently high level of compliance. The CPSU does not believe that a spot check approach by ACMA to ensure compliance will be sufficient.

### **Consultation**

The CPSU notes that existing statutory requirement for the ACMA to review the operation of captioning obligations before 31 December 2015 will be repealed which will not give the public a chance to comment. A public consultation process has not been undertaken and there is an opportunity to review the captioning regulations to ensure best practice.

Yours sincerely

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