



9 December 2014

Senate Standing Committee on Environment and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**RE: Inquiry into the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014**

The Australian Communications Consumer Action Network (ACCAN) thanks the Environment and Communications Legislation Committee for the opportunity to contribute to its inquiry into the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014.

ACCAN is the peak consumer representative organisation in the communications sector. As such, our priority is to ensure that consumer interests are taken into account in the current regulatory revisions contemplated by the Government. Our previous submissions to the Government on deregulation have acknowledged that while there is a need for audit and review of regulation, this must be balanced against broader remedial costs to the community as a whole when markets fail.<sup>1</sup> These parameters frame our comments in relation to proposed changes to closed-caption reporting requirements.

## Introduction

### *Access to information is a fundamental human right<sup>2</sup>*

Closed captions on television provide access to essential information for viewers who are deaf or hearing impaired; providing the audio-equivalent information that is an integral part of any television broadcast. Additionally, closed captions provide great economic and social benefit to all Australians. They allow access to news, information and entertainment for over 300,000 deaf or hearing impaired Australians, improve literacy for children, migrants and people with cognitive impairments as well as being useful for all television viewers in noisy environments. Supporting longstanding claims by Deaf Australia and Deafness Forum, a 2010 Australian Institute survey

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<sup>1</sup> ACCAN, 2014, 'Telecommunications Deregulation Bill No. 1', available at: <http://accan.org.au/our-work/submissions/785-telecommunications-deregulation-bill-no-1-2014>

<sup>2</sup> Universal Declaration on Human Rights (1947) Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. See also United Nations Convention on the Rights of Persons with Disabilities (2006) Article 9 Accessibility Article 21 Freedom of expression and opinion, and access to information Article 30 Participation in cultural life, recreation, leisure and sport ([www.un.org/disabilities](http://www.un.org/disabilities))

commissioned by ACCAN and Media Access Australia (MAA) revealed that 33 percent of television viewers used captions some of the time.<sup>3</sup>

The Australian Bureau of Statistics reports that one in six Australians has hearing loss<sup>4</sup>. Furthermore, as the incidence of hearing loss increases with age, given Australia's ageing population more people will become reliant on closed captions when viewing television. Demographic projections indicate that 1 in 4 Australians will be affected by hearing loss in 2050, with the proportion of people over 70 affected being 3 in 4.<sup>5</sup> This indicates that closed-captioning will become increasingly critical for a significant percentage of the television viewing audience. Given the increasing importance of closed-captions in the provision of news, information and entertainment, ensuring compliance of the legislated closed-caption quotas will correspondingly become all the more vital for all stakeholders.

ACCAN has been participating with our member organisations and individuals to promote increased closed captioning across all Australian television. We have also participated in a number of Government inquiries on access to electronic media for people with disability and the Australian Communication and Media Authority's (ACMA) Co-Regulatory Captioning Committee to develop the *Broadcasting Services (Television Captioning) Standard 2013*.

ACCAN is disappointed that the closed-caption amendments included in the *Broadcasting and Other Legislation (Deregulation) Bill 2014* were developed without consumer consultation. People with disability need to be involved at the early policy formulation stage to get the policy settings right, and it is inappropriate that a Bill like this had to be referred to a parliamentary committee in order for consultation to occur. Australia's disability sector has long promoted the inclusion of people with disability in matters which affect them, adopting the international slogan of 'Nothing about us without us'. As a signatory to the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD) it is fundamental that all Government disability policies be developed in consultation with the disability community.

It is unclear to ACCAN why these amendments to the *Broadcasting Services Act (1992)* (BSA) have been introduced prior to the complete implementation of the 2013 closed-caption amendments to the BSA. The 2013 amendments sought to ensure that consumers who rely on closed-captions have greater and more meaningful access to our foremost medium for news, information and entertainment. Given that the BSA specifically mandates that the closed-caption requirements be reviewed by the ACMA in 2015 (Subsection 130ZZE) we believe these current amendments are premature. Our preference is that the current amendments be rejected in whole and that the legislated 2015 ACMA review be used to fully and transparently consider the closed captioning requirements.

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<sup>3</sup> ACCAN and MAA, 2010, 'Research on caption awareness', available at:

[https://accan.org.au/index.php?option=com\\_content&view=article&id=298:research-on-caption](https://accan.org.au/index.php?option=com_content&view=article&id=298:research-on-caption)

<sup>4</sup> ABS, 2012, 'Four million Australians have a disability', available at:

[http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4429.0~2009~Media%20Release~Four%20million%20Australians%20have%20a%20disability%20\(Media%20Release\)~10024](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4429.0~2009~Media%20Release~Four%20million%20Australians%20have%20a%20disability%20(Media%20Release)~10024)

<sup>5</sup> Access Economics & Cooperative Research Centre for Cochlear Implant and Hearing Aid Innovation (Australia) & Victorian Deaf Society, 2006, 'Listen hear! The economic impact and cost of hearing loss in Australia', East Melbourne.

Notwithstanding our preference that these current closed-caption amendments be rejected in whole, we make the following comments.

## **Comments on Proposed Amendments**

### ***Section 130ZK***

ACCAN supports this amendment to clarify the definition of ‘Channel’, ‘channel provider’ and ‘incidental matter’. We do not anticipate any detriment to consumers who rely on closed captions from the adoption of this amendment.

### ***Subsection 130ZUA(3)(c)***

ACCAN supports this amendment to extend the time allowed to make an application for a closed caption target reduction or exemption order based on the grounds of unjustifiable hardship. Given that the criteria for review of an application will not substantively change as a result of this amendment we do not see that it will have any detrimental impact on consumers.

### ***Subsections 130ZV(1) -(4)***

ACCAN is concerned that this amendment will further complicate the already confusing and convoluted rules for subscription television closed captions. Subscription television consumers who rely on closed captions are already significantly disadvantaged, with no up-front information on which programs will be closed captioned. We believe the ambiguity for sports channel closed caption quotas included in this amendment will further undermine consumer certainty.

Informed consumers encourage a well-functioning competitive market. ACCAN asserts that this amendment will create confusion for consumers of subscription television. ACCAN recommends that this amendment be rejected.

### ***Section 130ZV***

ACCAN is concerned that this amendment provides an unnecessary exemption to subscription television channels. Under current legislation subscription television broadcasters have flexibility to exempt channels. Industry has not provided any evidence that this is needed or that the current legislation is not providing adequate flexibility. Subscription television closed caption quotas fall well below free-to-air broadcast quotas and this amendment will further exacerbate this disparity. ACCAN recommends this amendment be rejected as it provides no remedial legislative purpose and further excludes consumers who rely on closed captions from functional equivalence to subscription television services.

### ***Subsection 130ZVA(2)***

ACCAN supports this amendment. We do not expect any detriment to consumers as a result of this amendment.

### ***Subsection 130ZY(2)(c)***

ACCAN supports this amendment to extend the time allowed to make an application for a closed caption target reduction or exemption order based on the grounds of unjustifiable hardship. Given that the criteria for review of an application will not substantively change as a result of this amendment we do not see that it will have any detrimental impact on consumers.

### ***Subsection 130ZYA(2)***

ACCAN supports this amendment. We do not believe that simplifying and clarifying the determination of closed caption quotas under a target reduction order will have a detrimental impact for consumers.

### ***Section 130ZZ***

ACCAN supports this amendment. We do not expect any consumer detriment as a result of this amendment.

### ***Section 130ZZ***

ACCAN supports this amendment as it clarifies closed caption requirements for repeat programming on subscription television. ACCAN does not believe that this amendment will have any detrimental impact on the amount of repeat closed caption programming.

### ***Subsection 130ZZA(2)***

ACCAN is concerned that this amendment is so unclear it is in fact meaningless because it is contradictory. In subsection 2(a), the amendment allows the ACMA to determine a standard with consideration to different programming (live and pre-recorded), while in subsection 2(b) the amendment stipulates that there is to be no different level of closed caption quality. ACCAN asserts that this amendment implies that the ACMA should consider the method of closed caption production when evaluating 'quality' compliance.

ACCAN is concerned that this amendment may in fact create different levels of quality for different programming, specifically for programming which is closed captioned using live captioning techniques. It is clear from discussion with industry that live closed caption techniques will be used increasingly for non-live programming. If the ACMA is to consider closed caption quality based on the delivery method of the captions, it is reasonable to expect that caption quality, particularly comprehensibility, will deteriorate proportional to the extent of usage of live captioning, which is generally of lesser quality. In order for closed captions to be meaningful, closed captions must be readable, accurate and comprehensible. Comprehensibility, as defined in the *Broadcasting Services (Television Captioning) Standard 2013*, includes the "extent to which the appearance of the caption coincides with the onset of speech of the corresponding speaker, sound effect or music".<sup>6</sup>

ACCAN recommends that this amendment be rejected.

### ***Subsection 130ZZA(7)***

ACCAN sees no value in adopting this amendment. Under the current legislation broadcasters are already exempt from closed captioning breaches resulting from unforeseen technical problems.

ACCAN recommends that this amendment be rejected.

### ***Subsections 130ZZC(1)-(4)***

ACCAN is concerned that removing reporting requirements for caption quotas by free-to-air broadcasters will place the burden of monitoring captioning obligations unduly on consumers, and potentially lead to deterioration in delivery of captioning.

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<sup>6</sup> *Broadcasting Services (Television Captioning) Standard 2013 clause 9(b)(iii)*

Without further evidence, it is unclear to ACCAN how the annual reporting requirement can be considered unduly onerous on broadcasters once closed-caption requirements are 100 per cent of non-exempt programming between the hours of 6 am and midnight. We assume that free to air broadcasters have in place internal monitoring and quality assurance mechanisms to flag any non-captioned programming within these viewing hours.<sup>7</sup> If standardised, this should make the identification and reporting of any program broadcast without closed-captions a simple automated process. Given that the 100 per cent closed-caption quota has only come into effect in 2014 it seems to ACCAN that the broadcaster's assertions are presumptuous.

ACCAN is concerned that removing annual reporting requirements for broadcasters will create poor compliance standards and undermine the objective of the legislation.<sup>8</sup> This legislation was introduced because the market failed to provide closed-captions on Australian free-to-air television. It is only through legislation that broadcasters have provided this essential public service, and we are concerned that by removing the reporting requirement there is a real risk of service failure. As indicated above, ACCAN is unclear how the reporting requirements under the Act (section 130ZZC of the Broadcasting Services Act 1992) can be evaluated prior to the implementation of the 100 per cent closed-caption quota during designated viewing hours.

Additionally, ACCAN is unsure how removing annual reporting against closed-caption requirements can assist the ACMA in its role of regulator. One of the fundamental roles of the ACMA is to protect consumer interests.<sup>9</sup> In view of the concerns outlined above, without having annual reporting from broadcasters it is unclear to ACCAN how the ACMA will be in a position to evaluate compliance with the Captioning Standard, and ultimately to protect the interests of the growing numbers of consumers who need closed-captions.

Whilst we understand the need to balance competing objectives, ACCAN is strongly of the view that it is in the public interest that free-to-air broadcasters continue to have an obligation to assist the ACMA by reporting on how they meet their legislated closed-caption requirements.

ACCAN recommends that this amendment be rejected.

### **Section 130ZZD**

ACCAN recommends this amendment be rejected in line with our above recommendation that the amendment to Subsections 130ZZC(1) to (4) be rejected.

## **Conclusion**

As indicated in our introduction ACCAN recommends that the closed caption amendments included in the proposed *Broadcasting and Other Legislation Amendments (Deregulation) Bill 2014* be

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<sup>7</sup> See Commercial Television Code of Practice - 1.23.2 exercise due care in broadcasting closed captioning, and ensure that there are adequate procedures for monitoring closed captioning transmissions;

<sup>8</sup> *Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012* "The purpose of the Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012 (the Bill) is to amend the Broadcasting Services Act 1992 (the BSA) to improve access to free to-air and subscription television for the hearing impaired.", available at: [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1112a/12bd168](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1112a/12bd168)

<sup>9</sup> ACMA, 2014, 'Client service charter', available at: <http://www.acma.gov.au/theACMA/About/Corporate/Accountability/client-service-charter-acma>

rejected in whole. A full and transparent public consultation of the closed caption regulatory framework should be undertaken by the ACMA in 2015 as mandated in the *Broadcasting Services Act*. This will provide sufficient time for the latest round of amendments to be fully implemented and assessed by industry, the ACMA and consumers.

ACCAN is available to further explain or elaborate on our comments if requested.

Sincerely,

Wayne Hawkins  
Disability Policy Advisor