

**Senate Standing Committee on Environment and Communications**  
**Answers to Legislation Committee Questions on Notice**  
**Inquiry into the *Broadcasting and other Legislation Amendment (Deregulation) Bill 2014***  
**Public Hearing – Monday 2 February 2015**  
**Australian Communications and Media Authority**

**Topic: Schedule 6, *Broadcasting and other Legislation Amendment (Deregulation) Bill 2014***

**Hansard Ref: Pages 41 and 42**

**Question 1.**

**Senator URQUHART asked:**

**Senator URQUHART:** You mentioned that 41 out of the 41 exemption orders were approved by ACMA in December 2013. That is in your submission. Could you elaborate on the nature of the requests and the amount of content that was approved to go uncaptioned?

**Ms Ritter:** We have regard to a range of criteria, including the impact on deaf and hearing impaired viewers, the financial circumstances of the applicant and the cost of providing captions. I think it is fair to mention that over 500,000 hours of television programs are broadcast with a captioning service.

**Senator URQUHART:** Is that per annum?

**Ms Ritter:** Yes. I am advised that we do not have with us the exact number of hours in those 41 exemption orders, but we are happy to take that on notice and provide that information.

**Answer:**

In 2012-13 and 2013-14, the ACMA received a total of 148 applications for exemption orders (EOs) and target reduction orders (TROs). The applications for exemption were made on the grounds of unjustifiable hardship for the television broadcasting licensees concerned if the EOs and TROs were not granted. The nature of the unjustifiable hardship related to the financial cost of meeting the annual captioning targets or significant technical difficulties in providing captioning during the periods specified in the applications.

Of the 148 applications received, the ACMA refused to grant nine applications for EOs and seven applications for TROs, as well as rejecting four applications as being invalid. Of the 123 EOs and five TROs granted by the ACMA over that same period, a total of 284,400 hours of captioning were exempted for the five financial years from 2012-13 to 2016-17. A breakdown of the captioning hours exempted in each of these financial years is provided in the table below.

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Financial year in which EOs and TROs were made	Service type / no. of EOs and TROs granted	Total captioning hours exempted during each financial year (distinct channels) <sup>1</sup>				
		2012-13	2013-14	2014-15	2015-16	2016-17
2012-2013	Commercial TV 3 TROs <sup>2</sup>	1,971	1,971	1,971	n/a	n/a
	Subscription TV 82 EOs & 2 TROs, (involving 68 distinct channels) <sup>3</sup>	112,566	46,866 <sup>4</sup>	3,942 <sup>5</sup>	5,256	6,570
2013-14	Subscription TV 41 EOs (involving 39 distinct subscription TV channels)	n/a	97,155	6132 <sup>6</sup>	n/a	n/a
<b>Subtotal</b>		<b>114,537</b>	<b>145,992</b>	<b>12,045</b>	<b>5,256</b>	<b>6,570</b>
<b>Grand total</b>						<b>284,400</b>

**Question 2.**

**Senator URQUHART asked:**

**Senator URQUHART:** That would be great, Thank you very much. How many target reduction orders were granted in 2013?

**Dr Pelling:** Would it assist if we took the detail on notice?

**Ms Ritter:** The short answer is that we have not finalised our 2013-14 figures. We are currently considering 63 applications for exemption. I think it would probably be better if we could have a careful look and give it to you properly with a nice table and—

<sup>1</sup> The same subscription television channel provided by different subscription television licensees is considered to be different subscription television services under the captioning obligations in the *Broadcasting Services Act 1992*. Therefore, more than one EO or TRO may relate to the same channel, but for different licensees. The calculation of the exempted captioning hours in this table is based on distinct channels, their service categories (and corresponding captioning levels required) and the assumption that each discrete channel broadcasts for 24 hours daily.

<sup>2</sup> Three TROs, each for three financial years (2012-13 to 2014-15), were granted to three commercial services.

<sup>3</sup> There were 19 channels for which EOs or TROs were granted to more than one subscription TV licensee.

<sup>4</sup> Thirty-three EOs and two TROs, each for two financial years (2012-13 and 2013-14). Twenty-four distinct channels were involved.

<sup>5</sup> Five EOs, each for five financial years (2012-13 to 2016-17). Three distinct channels were involved.

<sup>6</sup> Two EOs, each for two financial years (2013-14 and 2014-15).

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**Answer:**

The table below provides a breakdown of the number of EOs and TROs granted in 2012-13 and 2013-14.

	<b>2012-13</b>	<b>2013-14</b>	<b>Total</b>
<b>No. of EOs</b>	82	41	123
<b>No. of TROs</b>	5	0	5
<b>Total</b>	<b>87</b>	<b>41</b>	<b>128</b>

**Question 3.**

**Senator URQUHART asked:**

**Senator URQUHART:** That would great, and if you could let us know in terms of what were the main reasons for those exemptions and how did that actually affect the targets.

**Answer:**

The reasons for granting the 128 applications for EOs and TROs in 2012-13 and 2013-14 were on the claimed grounds of unjustifiable hardship for the television broadcasting licensees concerned if the EOs and TROs were not granted. As indicated in the answer to Q1, the nature of the unjustifiable hardship related to the financial cost of meeting the annual captioning targets or significant technical difficulties in providing captioning during the periods specified in the applications.

EOs exempt licensees from meeting annual captioning targets in periods specified in the applications. TROs reduce the annual captioning targets for licensees within the periods specified in the applications.

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**Question 4.**

**Chair asked:**

**CHAIR:** I asked earlier—this is probably a question for you, Ms Ritter: how many times have you determined that there has been noncompliance with captioning, with the 10 per cent expenditure or in relation to Australian content since 1999 when it became mandatory? Certainly it was mandatory for content; but since it has been mandatory for either captioning or content, how many times has the reporting has the annual reporting thrown up situations where there has been noncompliance? Once again, that may be easier for you to take on notice.

**Ms Ritter:** It might be useful to take that on notice, because we have investigations and a number of breaches are not broken down in terms of how much was raised with annual reporting and how much was complaints based. We will take that on notice and get the information for you.

**Answer:**

The Chair's question relates to non-compliance with captioning and new eligible drama expenditure (NEDE) requirements. Ms Ritter answered the NEDE question during the hearing. In relation to the question on captioning, taken on notice, the answer is as follows.

There was a high level of compliance with the annual captioning targets for the 2012-13 reporting period. For instance, 100 per cent of commercial broadcasting licensees and 99 per cent of subscription broadcasting licensees achieved their annual captioning targets during 2012-13. Non-compliance during 2012-13 was of a kind usually associated with the implementation of new broadcasting regulation. **Attachment A** provides details of non-compliance for the 2012-13 reporting period.

The ACMA is currently assessing compliance for the 2013-14 reporting period and the results are likely to be published in March 2015.

**Question 5.**

**Senator Rushton asked:**

**Senator RUSTON:** In terms of the amount of complaints or reporting that you get via your complaints mechanism, do you get many that report in relation to, say, captioning? That was one of the disability service's main concerns this morning. Do you get many complaints or reports? I mean the quantum of reports—you obviously get complaints about a myriad of different things coming to ACMA. How many or what percentage, give or take, would relate to captioning as an example?

**Answer:**

The tables below provide the proportion of captioning complaints received compared to all broadcasting complaints received, as well as the proportion of captioning investigations conducted compared to all broadcasting investigations conducted for the three financial years: 2011-12, 2012-13 and 2013-14.

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	<b>2011-12</b>		<b>2012-13</b>		<b>2013-14</b>	
<b>No. + % of non-captioning broadcasting complaints + enquiries</b>	2239	99%	2130	98%	1554	98%
<b>No. + % of captioning complaints + enquiries</b>	34	1%	48	2%	39	2%
<b>Total no. + % of broadcasting complaints + enquiries</b>	<b>2273</b>	<b>100%</b>	<b>2178</b>	<b>100%</b>	<b>1593</b>	<b>100%</b>
<b>No. + % of non-captioning broadcasting investigations</b>	219	94%	203	96%	167	93%
<b>No. + % of captioning investigations</b>	13	6%	9	4%	13	7%
<b>Total no. + % of broadcasting investigations</b>	<b>232</b>	<b>100%</b>	<b>212</b>	<b>100%</b>	<b>180</b>	<b>100%</b>

Source: ACMA Annual Reports – 2011-12, 2012-13, 2013-14.

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## **Clarifications**

**Hansard Ref: Page 42**

### **2nd paragraph**

**Ms Ritter: There has certainly been a high level of compliance [...]**

It may not be apparent to a reader that this paragraph refers to captioning only and not to NEDE, which is addressed in the paragraph following.

### **3rd paragraph**

**Ms Ritter: Regarding the NEDE, again, [...]**

To clarify the point being made:

- The non-compliance referred to as 100 per cent for subscription broadcasters is correct for the last five compliance periods, that is, from the 2009-10 reporting year.
- The last sentence is incomplete: So basically, as there has been 100 per cent compliance by subscription broadcasters for the last five reporting periods, the subscription television industry has met its obligation to spend 10 per cent of total program expenditure on new eligible drama.

### **9th paragraph**

**Ms Ritter: That would certainly be our experience. [...]**

By way of clarification, under the *Broadcasting Services Act 1992*:

- Complaints about captioning by commercial and subscription broadcasting licensees may be lodged directly with the ACMA.
- Complaints about captioning by national broadcasters must be made to the broadcasters in the first instance. If a national broadcaster does not provide a response within 30 days, or the complainant considers the broadcaster's response to be inadequate, the complainant may then refer the complaint to the ACMA.

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**Attachment A**

**Captioning breaches, 2012–13**

Total no. of free-to-air services = 95

Total no. of subscription services = 667

<b>Captioning obligations</b>	<b>Description of obligations in 2012–13</b>	<b>Free-to-air— number of services in breach</b>	<b>Subscription— number of services in breach</b>
Annual captioning target	Free-to-air: 90 per cent captioning 6 am to midnight across the year on primary services, with exceptions. Subscription: 5–60 per cent captioning across the year depending on service category, with exceptions. (See notes below.)	0	6
Emergency warnings	Transmit emergency warnings in text and speech and, if practicable, with captioning.	0	0
Basic rule — designated viewing hours (free-to-air)	Caption all programming between 6 pm and 10.30 pm each day (designated viewing hours) on primary service.	55  Average total duration of breaches per non-compliant service was approximately 2 hours (0.1% of the designated viewing hours in the year)	n/a
Basic rule — news and current affairs (free-to-air)	Caption all news and current affairs outside designated viewing hours on primary service.	54  Average total duration of breaches per non-compliant service was approximately 45 minutes	n/a
Multi-channel (free-to-air)	Caption repeated programs on a multi-channel if those programs have previously been broadcast with captioning on the broadcaster's primary service in the licence or coverage area.	17  Average total duration of breaches per non-compliant service was approximately 7 hours	n/a
Simulcast programming (subscription)	Caption simulcast programs on the second service if the programs are simultaneously transmitted with captioning on the first service.	n/a	5  Only one distinct channel involved

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Repeat programming (subscription)	Caption programs that have previously been transmitted with captioning and then repeated on the same or another subscription service provided by the licensee.	n/a	44 Only nine distinct channels involved
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Notes:

- Captioning obligations do not apply to exempt programs, which include programs not in English and music programs that do not contain any human vocal content.
  - In 2012–13, three commercial broadcasting licensees had reduced annual targets of 80 per cent, as a result of target reduction orders (unjustifiable hardship).
  - Some subscription broadcasting licensees were exempt from the annual captioning target in 2012–13, as a result of exemption orders and nominations under section 130ZX of the BSA (a transitional measure that allows exemption of certain services if the licensee has met the annual captioning target for the threshold number of services).
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