

Australian Greens Dissenting Report

Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014

The Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 is another piece of the Government's deregulation agenda that has been introduced with insufficient consultation and without consideration of its impacts on viewers.

The Australian Greens thank all of the submitters to the inquiry, and acknowledge their efforts given the relatively short submission period. The submissions, particularly those from the hearing impaired and deaf community, have identified a range of problems with the Bill that are outlined below.

Given the range of concerns identified, the Australian Greens do not support passing this Bill without substantial amendments.

Section 1: Captioning

One in six Australians are hearing impaired and as our population ages this will increase to one in four, meaning that there is likely to be an increased reliance on television captioning in the future. It is clear from the submissions to this inquiry that TV broadcasters and caption suppliers are keen to respond to the increasing demand. Captioning frequency and quality has improved significantly over the past decade and the commitments to 100% captioning during 6am and 12pm on free-to-air broadcasts are welcome ones.

However, the deregulation agenda of the current Liberal Government is again impacting on those who least deserve and are least able to bear the costs of it; in this case, the deaf community.

Furthermore, the lack of consultation has meant that this legislation has been produced without appropriate consideration of the impact that it will have on consumers, broadcasters or the suppliers of captions. The Australian Greens have identified a number of concerns that must be addressed before the Bill is passed.

Monitoring and reporting

The Bill proposes shifting from an annual reporting compliance scheme, in which broadcasters are required to demonstrate that they meet their captioning obligation, to a consumer complaints mechanism. In doing this, the Bill does not provide sufficient guarantees that the ACMA will continue to consistently monitor compliance with the captioning quantity and quality requirements or that broadcasters will continue to review and address systemic failures, unless a consumer makes a specific complaint.

Effectively, the burden of reporting is shifted from the broadcasters and onto the individual consumer. A number of consumer representative bodies have argued that this is unacceptable, as it makes consumers responsible for policing the broadcasters

rather than making broadcasters responsible for demonstrating that they have met their obligations.

The Australian Greens share the perspective of Media Access Australia, that reporting is a 'fundamental feature of compliance, consumer protection and efficient market operation, and should be maintained.'¹

An effective consumer complaints mechanism can complement this statutory reporting requirement, but should not replace it.

Some submissions noted the current annual reporting process means that there are delays of up to a year in identifying captioning breaches and that in many cases the issues have been resolved by the time the report is submitted.² However, they did not demonstrate that a viewer complaints mechanism would result in more timely resolution of systemic failures.

On the weight of the evidence provided to the committee, the Australian Greens believe that the responsibility for reporting non-compliance with captioning quality requirements should remain with the broadcaster because, as Media Access Australia noted in their submission, the broadcasters and caption suppliers have the complete records of the programs they have captioned and the technical issues that have occurred.³

Nevertheless, the Australian Greens recognise that the current reporting regime is overly complex – as demonstrated by AI Media in their submission.⁴

To ensure that there are still reporting obligations while reducing the regulatory burdens on broadcasters, AI Media proposes amending the reporting framework to focus on easier to generate yet still verifiable reports such as 'percentage of captioning target' achieved.⁵ This could make reporting simpler for broadcasters, and timely and transparent for consumers, without losing the regulatory oversight.

Simplified reporting is preferable to removing reporting requirements altogether and should be considered further.

For these reason, the Australian Greens recommend not passing schedule 6 (section 130ZZD) in its current form. The burden of reporting should remain on broadcasters, rather than consumers, but simpler reporting frameworks should be considered.

1 Media Access Australia, Submission 6, p. 3.

2 Free TV Australia, Submission 19, p. 6.

3 Media Access Australia, Submission 6, p. 3.

4 Access Innovation Media, Submission 11, p. 7.

5 Access Innovation Media, Submission 11, p. 7.

Live captioning standards

A number of submitters, including ASTRA and the Australian Communications Consumer Action Network, expressed concern that that proposed subsections 130ZZA(2A) and (2B) are contradictory.⁶

Some submitters, such as Free TV Australia suggested the removal or clarification of proposed subsection 130ZZA(2B) 'because it seems at odds with the recognition that live captioning has particular constraints and challenges'.⁷

However, the Australian Communications Consumer Action have expressed concern that the effect of 130ZZA(2A) is to allow ACMA to distinguish between the quality of captioning based on the method used (live versus pre-prepared) without regard to whether the lower quality, live method was the most appropriate method to use.⁸

The Australian Greens support the move to clearly articulate different quality expectations for live versus pre-recorded captioning; and recognise that the quality of live captioning will always be lower than pre-recorded captioning.

However, the legislation does not yet effectively address the concerns of consumers that the most appropriate captioning method will be used by broadcasters. The Australian Greens recommend that section 130ZZA(2B) be amended to better reflect these concerns, without undermining the ability of the ACMA to distinguish between live and pre-prepared caption quality, as outlined in section 130ZZA(2A).

Averaging of captioning targets across subscription sports channels

The lack of clarity among submitters about the operation, and impact, of the proposed quote averaging amendment highlights the inadequacy of the consultation undertaken prior to introducing this legislation.

The evidence provided to the committee demonstrated that if a consumer subscribes to a sports package on subscription TV they will receive all the sports channels, and therefore access the same amount of captioning if the averaging of quota requirements is passed.

As stated by Fox Sport, the amendments would assist it to 'direct captioning to programming which is of the greatest interest to audiences and would have no impact on the amount of content captioned across [subscription television] sports channels.'⁹

However, Alex Varley, from Access Media acknowledged that this change 'needs more explanation and investigation to ensure that it is clear to consumers what they are being offered and what they will receive match closely.'¹⁰

6 ASTRA, Submission 15, p. 13. See also Australian Communications Consumer Action Network, Submission 10, p. 4; Access Innovation Media, Submission 11, p. 5.

7 Free TV Australia, Submission 19, p. 8.

8 Australian Communications Consumer Action Network, Submission 10, p. 5.

9 Fox Sport, Submission 26, p. 1.

10 Media Access Australia, Submission 6, p. 4.

On balance, the Australian Greens believe that allowing captioning targets to be averaged will not be detrimental to consumers, provided there is a commitment from subscription TV providers to produce information that accurately informs consumers about these changes.

Exemption for quality breaches due to technical or engineering failures

The Bill proposes to create an exemption to captioning quality standard breaches where the breach is due to technical or engineering difficulties which could not reasonably have been foreseen.

This would have the effect of addressing situations such as the one described by Free TV Australia:

There have been instances where the ACMA has accepted that a broadcaster has experienced unforeseen technical difficulties and excused the breach, but has still gone on to find a breach of the licensee's requirement to comply with the Quality Standard (section 130ZZA).¹¹

However, Deaf Australia argue that the proposed amendment 130ZZA(7) will give too much scope to broadcasters to shift the responsibility for breaches of captioning standards on to the captioning service provider and avoid penalties even if the technical and engineering failures are clearly systemic.¹²

The Australian Greens recommend addressing the concerns of Deaf Australia by amending the legislation so that the ACMA may rather than is to disregard these failures when considering whether a licensee or broadcaster has failed to comply with the captioning standards.

Statutory Review of legislation

The Australian Greens strongly disagree with the Government position, as outlined in the Explanatory Memorandum that, from December 2013, a review has been conducted by the Department and the ACMA resulting in it no longer being necessary or appropriate to conduct a comprehensive statutory review of the captioning arrangements set out under section 9D of the Broadcasting Services Act.¹³

The consultation around this Bill, and the broader reform, was inadequate and there is still a need to review captioning on Australian television against best practise, including the UN Convention on the Rights of Persons with Disabilities.

The Australian Greens recommend that Division 7 of Part 9D not be repealed.

Section 2: Local Content

The Australian Greens note and applaud the high level of compliance by the television industry with the New Eligible Drama Expenditure scheme, which requires a number of subscription television licensees, channel providers and part-channel providers to

11 Free TV Australia, Submission 19, pp 8–9.

12 Deaf Australia, Submission 13, pp 10–11.

13 Explanatory Memorandum, p. 45.

spend at least 10 percent of their total programming expenditure on new Australian or New Zealand drama productions or co-productions.

However, insufficient evidence has been presented that would indicate that the removal of auditing requirements for the scheme would not result in a degradation of compliance with the scheme.

The Australian Greens believe that the Government and the television sector must continue to strongly support the development of original Australian content. The industry has long enjoyed a favourable regulatory environment which has driven strong profitability by a number of companies. In this context, it is entirely fit that, in turn, it supports the broader Australian community by generating content that will highlight Australian culture.

The Australian Greens note comments by the Communications Law Centre at the University of Technology, Sydney, that argue that if auditing requirements around the New Eligible Drama Expenditure Scheme were removed, that the ACMA should undertake regularly compliant monitoring and that the provision of Australian content on a range of platforms is in the public interest.

The CLC states: 'Although there has been a high level of compliance with these regulatory requirements to date, this does not necessarily mean that these levels of compliance will be attained in the future in the absence of robust regulation.'¹⁴

The Australian Greens further note comments from Screen Producers Australia, which state that further analysis is needed to ascertain the impact of the removal of auditing requirements. The SPA states: 'The relative costs and benefits have not been clearly communicated and importantly, the degree to which the high-level of compliance has been achieved as a result of the auditing requirement remains unclear.'¹⁵

The Australian Greens recommend that the auditing requirements for the New Eligible Drama Expenditure scheme remain in place.

Conclusion

This Bill has a number of significant problems which will have a detrimental effect on deaf and hearing impaired consumers of free-to-air and subscription TV services.

The Australian Greens are not opposed to updating and simplifying the regulatory framework that governs TV captioning in Australia, provided this leads to better outcomes for consumers, rather than just broadcasters. The lack of consultation, and the proposed repeal of the statutory review, both point to an unwillingness to consider how the Bill will impact those who are reliant on captions to access the news and entertainment that other Australians take for granted.

Without significant amendment, this Bill will erode the quality of Australian TV captioning and contribute to the discrimination that deaf people face in accessing basic services.

14 Communications Law Centre, Submission 5, p. 4.

15 Screen Producers Australia, Submission 22, p. 2.

Similarly, insufficient evidence has been presented that would indicate that the removal of auditing requirements for the New Eligible Drama Expenditure scheme would not result in a degradation of compliance, which in turn has a detrimental effect on Australian actors, Australian production companies and Australian viewers.

The Australian Greens recommend that the Bill not be passed until it has been amended to address the concerns raised in this dissenting report.

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