



Captioning Scheme for Subscription Television - Joint Response Paper

Deaf Services and the Deaf Society, Deaf Australia, Deaf Victoria, and Deaf Sports Australia

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ABOUT US

The **Deaf Society and Deaf Services Ltd (TDS & DSL)** are specialist service providers for Deaf, Deafblind, and hard of hearing Australians. We merged into one organisation in October 2020 and work with the Deaf community to see deaf people “empowered, connected, and achieving”.

Deaf Australia is a Deaf-led peak advocacy body representing Deaf, Deafblind, and hard of hearing people in Australia who use Auslan (Australian Sign Language) as their language of preference. We also recognise intersectionality in all of our work.

Deaf Victoria is the peak advocacy body representing deaf and hard of hearing Victorians. We aim to ensure deaf and hard of hearing people in Victoria experience equality, opportunity, and connection, and are valued for their unique contributions towards a diverse society. Deaf Victoria is funded by the Victorian Department of Health and Human Services (DHHS) to provide individual advocacy support for deaf and hard of hearing Victorians. We also undertake project work in areas of systemic advocacy or capacity building to promote a more accessible mainstream community and resilient Deaf community.

Deaf Sports Australia is the peak body for deaf and hard of hearing Australian recognised by the Australian Government as a national sport organisation for people with disabilities. We advocate, provide and support, participation, and access opportunities in sport, recreation, and physical activity.

We thank the Department of Infrastructure, Transport, Regional Development and Communications for the opportunity to participate in this consultation.



Response to proposals – Captioning Scheme for Subscription Television

1. Number of Categories

Should the 5 categories of STV services listed in Table 5 above be adopted in the Scheme? If so, is it appropriate to average the captioning levels for the movie and general entertainment categories?

Whilst the simplification of categories for STV services is welcomed, we do not deem it appropriate to average captioning levels for movie and general entertainment service categories, as this methodology reduces access to captions, in some cases, by 15%. The Department has also outlined that captioning levels in 2019-20 for the 12 movie services offered by Foxtel and its resellers ranged from 98.25 to 100%. Under the proposed changes, the simplified targets for movie services will be 95%, well below previously reported captioning levels, indicating that the proposed target is too low. Simplifying STV categories should not absolve STV licensees from adhering to previously mandated captioning targets, as the purpose of these targets is to facilitate improved access for Australia's Deaf, Deafblind, and hard of hearing communities, not diminish access to programming.

2. Levels of Captioning (Annual Captioning Targets)

What is an adequate level of captioning for STV services to commence on 1 July 2022?

- a. Resetting the annual captioning targets at 2020–21 levels?
- b. Remaining at the 2021–22 annual captioning targets?
- c. Moving to the 2022–23 annual captioning targets?
- d. Some other set of targets? Please explain why.

An adequate level of captioning for STV services to commence on 1 July 2022 is the corresponding target for that financial year, being 2022-2023. We also recommend fast-tracking the 100% captioning target, in alignment with the 2014 amended Broadcasting Services Act, which mandated 100% captioning for free-to-air television. We see no justification in waiting an additional 12 years for full access to captions, particularly as captioning technology advances each year.

3. Freeze or Continued Annual Increases of Captioning Targets

a. Is it appropriate that annual STV captioning levels be frozen or should captioning levels continue to increase by 5 per cent per annum as under the existing rules at subsection 130ZV(2) in the BSA?

We do not see any justification in freezing the annual STV captioning levels, and we do encourage 100% captioning levels as soon as possible. This has been demonstrated by major streaming



platforms, such as Netflix, who achieved 100% captioning in 2014¹. There are no technical or financial barriers to 100% captioning for STVs, only policy and attitudinal barriers.

4. Exemptions and target reduction orders (unjustifiable hardship)

As audience share or the difficulty in captioning racing channels are factors in applications for exemption or target reduction orders based on hardship, is it necessary to retain these exemptions or target reduction orders based on hardship for STV licensees, given the proposed introduction of new exemptions based on objective and transparent criteria (see Proposal 4 and 5)?

We do not see any justification in retaining exemption and target reduction orders, particularly given the newly proposed low audience share and racing exemptions.

However, given low audience share focuses on already existing audiences who can and do access the channels (i.e., hearing people who do not rely on captioning), it is unfair to cite this as a valid justification for exemption from captioning. Deaf, Deafblind, and hard of hearing communities will always be excluded from low audience share thresholds, given the inaccessibility of the channels, regardless of whether they wanted to be part of the audience or not.

It is also unconscionable for Foxtel and Fetch to be claiming financial hardship when revenues have risen. For instance, Foxtel has reported 10% revenue growth of US\$2 billion² and Fetch TV's revenue of S\$212 million (A\$210 million) in the last financial year. Providing 100% captioning services will likely only represent a relatively miniscule financial cost to current revenue levels.

5. Nominated exemptions

Is it appropriate for this exemption to be retained until such time as the proposed new exemptions set out at proposals 4 and 5 can be claimed?

This exemption type lacks consumer focus, is highly complex, and reduces certainty and transparency of captioning levels. Given the proposed new exemptions and lack of clarity and transparency regarding nominated exemptions, we do not see any justification or benefit in retaining this exemption type.

6. New racing exemption

As the criteria for this new proposed exemption is objective and self-evident, it is proposed that STV licensees do not apply for racing exemptions but should publish the channels to which this exemption applies each financial year. Options for the publication of exemptions are raised for comment at Proposal 6. Is it appropriate that this exemption be "claimed" by publication only?

¹ https://mediaaccess.org.au/latest_news/tv-video/netflix-launches-in-australia-with-captions

² <https://www.afr.com/companies/media-and-marketing/foxtel-s-kayo-and-binge-drive-growth-as-news-corp-posts-profit-20210806-p58gcz>



We understand the inherently difficult nature of providing captions for race callers. Captions in this instance are rendered ineffective given the speed at which races are called and the amount of racing information already displayed on screen. Evidently, it is appropriate for this exemption to be claimed by publication only.

7. New low audience share exemption

a. Is there any evidence that a threshold other than less than 0.1% is a more appropriate threshold level for a low audience share exemption? What is the alternative threshold and the evidence of its appropriateness?

We recommend following the UK's approach to low audience share and decreasing the threshold to 0.05%³ to determine low audience share exemptions. STV licensees should consider that services lacking captions could be influencing audience share data; providing captions could in fact attract and increase Deaf, Deafblind, and hard of hearing communities' viewership.

b. Where available, is the OzTAM measurement used in the "A2" report appropriate for determining the low audience share for the purposes of this exemption? Are there are measures that are more appropriate?

As OzTAM is the official measurement tool used in Australia, we deem it appropriate for determining low audience share for the purposes of this exemption. It would be appropriate, however, to regularly engage and consult with Deaf, Deafblind, and hard of hearing communities about programming preferences, as a lack of captions could be distorting viewership and audience share results.

We also recommend that the agreed low audience share threshold needs to be consistent across all STV services. Public applications need to be made to ACMA, and consumer groups should be provided 6 months to approve or reject the application.

c. Is an exemption period of 2 years appropriate for this exemption? If not, what alternative period is more appropriate and why?

We do not recommend an exemption period of 2 years for new programming. As previously stated, the data demonstrating low audience share already excludes Deaf, Deafblind, and hard of hearing communities, given the content is inaccessible. Regular consultation about programming preferences should be conducted with Deaf, Deafblind, and hard of hearing communities; preferences should not be assumed.

d. Should the low audience share exemption be claimed by "publication", where both the details of the exemption and the data relied upon to demonstrate the low audience share are published?

³ https://www.ofcom.org.uk/__data/assets/pdf_file/0035/179954/tv-access-services-code.pdf



All data and information related to exemptions should be made publicly available to consumers in an easily found location. Additionally, we request that this is made accessible and easily understood by all consumers, delivered in accessible, plain English and in Auslan.

8. Publication of captioning information

a. What information should be published?

i. Should the overall, actual percentage of captioning proposed to be delivered by STV licensees for each channel for the current financial year be published?

The overall, actual percentage of captioning proposed to be delivered by STV licensees should be made publicly available and broken down into channels. This confirms how much content consumers can expect to access and informs decision making for potential consumers before subscribing to the service. In addition to this, consumers should also expect to receive specific information outlining which programs and channels will be accessible.

ii. Should a list of services that are not captioned and the relevant exemption and/or target reduction orders be published? Should information about whether individual programs are captioned or not be published?

As we do not see any need to retain exemption and target reduction orders, this information does not require publishing. However, all other exemptions should be clearly listed and referenced to in all sales material so all customers, regardless of if they are Deaf, Deafblind, or hard of hearing, can make informed decisions. Captioning is for everyone⁴, and increases audience engagement of STV platforms.

iv. Should a requirement to include information on whether a program is captioned or not be included in the Electronic Program Guides of STV Licensees?

As this is a simple and convenient feature, EPGs must include accessibility information for consumers.

b. When should information be published?

i. For information about the captioning levels and applicable exemptions and target reduction orders at a service (channel) level, should information be published before the start of every financial year (noting that the new, proposed exemptions will apply from the beginning of each financial year)?

Information should be published at the start of each financial year, along with its respective annual captioning targets.

c. If retrospective exemptions remain in place or new services become available during the financial year, how should published reports be amended?

⁴ <https://www.ai-media.tv/4-reasons-you-definitely-need-to-caption-your-videos/>



As previously stated, retrospective exemptions should not remain in place, however new services should include consultation and engagement with consumers, including Deaf, Deafblind, and hard of hearing communities, who are generally excluded from low audience share thresholds.

d. Where should information be published? Should information about the captioning levels and applicable exemptions and target reduction orders at a service (channel) level be published on:

- i. the ACMA website**
- ii. the website of each STV licensee**
- iii. both the ACMA website and on the website of each STV licensee?**

Information should be published on both the ACMA and STV licensees' websites in accessible, plain English formats.

e. Should information about individual programs be published in the program guides (electronic and otherwise) of STV licensees?

Information should be made readily available across multiple platforms, including websites and EPGs. By extending the reach of information, this provides assurance that Deaf, Deafblind, and hard of hearing communities can obtain necessary details about captioning.

9. Retention of certain captioning rules

Should the modified formula for STV services be modified in any way? If so, why and how?

We do not see any justification in setting sports captioning targets so low at 55%. We recommend captioning levels of 100% for major sporting events, including the Olympic, Paralympic, Commonwealth Games as well as national sporting events such as AFL, NRL, Cricket, Netball Championships, etc. In addition to this, the proposed racing exemption will allow captioning resources to be redirected to more popular sporting programs. Given sporting events are generally broadcasted in loud venues, captioning will benefit all people by providing access to programming. It should also be noted that Foxtel's streaming service, Kayo, does not yet have closed captions. As digital streaming services attract more subscribers, Deaf, Deafblind, and hard of hearing communities must be provided full access, on an equal basis with others, as per the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) of which Australia is a signatory.

10. Additional comments

We recommend that STV captioning rules align more closely with free-to-air captioning rules, including 100% captioning targets and quality standards including accuracy, synchronicity, appropriate placement, and completeness.

We also consider that subscription fees are not truly reflective of accessible content. Deaf, Deafblind, and hard of hearing communities deserve equal access to programming given they pay equal amounts for the service.