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**STATEMENT OF REASONS**

**DECISION TO MAKE A TARGET REDUCTION ORDER (STV-TRO-0077) FOR FETCHTV PTY LTD IN RESPECT OF THE SUBSCRIPTION TELEVISION SERVICE STYLE FOR THE 2018-19 and 2019-20 FINANCIAL YEARS**

Issued under section 205 of the *Broadcasting Services* *Act 1992*.

1. **DECISION**
   1. On 26 June 2019, for the reasons set out below, the Australian Communications and Media Authority (the ACMA) decided to make a target reduction order for FetchTV Pty Ltd (the Applicant) in respect of the subscription television General Entertainment Category B service Style (the Service), for the specified eligible period of 1 July 2018 to 30 June 2020 (the Specified Eligible Period).
2. **LEGISLATION**

**Annual captioning targets**

* 1. Subsection 130ZV(1) of the *Broadcasting Services Act 1992* (the BSA), requires a subscription television licensee, such as the Applicant, to meet annual captioning targets for its subscription television services for each financial year commencing from 1 July 2012. An annual captioning target for a financial year is a percentage of the total number of hours of programs transmitted on the subscription television service during the financial year. The annual captioning target for a financial year is dependent on the category of subscription television service provided by a licensee.
  2. There are nine categories of subscription television services: movie service (divided into three sub-categories – Movies A, B, and C); general entertainment service (divided into three sub-categories – General Entertainment A, B, and C); news service; sports service; and music service.
  3. Licensees that provide more than 18 general entertainment services in a financial year can nominate categories for their general entertainment services for that financial year to reduce their captioning obligations for some of their general entertainment services. Of the three categories of general entertainment services, Category A services have the highest captioning targets while Category C have the lowest captioning targets. For example, for the 2018-19 financial year General Entertainment A has a captioning target of 75%, General Entertainment B has 65% and General Entertainment C has 45%.

**Applications for exemption or target reduction orders**

* 1. Subsection 130ZY(1) of the BSA provides that a subscription television licensee may apply to the ACMA for:

1. an order that exempts from subsection 130ZV(1), a specified subscription television service provided by the licensee in a specified eligible period; or
2. a target reduction order that:
   1. is expressed to relate to a specified subscription television service provided by the licensee in a specified eligible period; and
   2. for each financial year included in the eligible period, provides that a specified percentage is the reduced annual captioning target for the service for the financial year.
   3. An exemption order, if granted, would exempt the service from the captioning target for each financial year in the specified eligible period.
   4. A target reduction order, if granted, would mean that the service would need to meet the reduced annual captioning target for each financial year in the specified eligible period of the target reduction order.
   5. Subsection 130ZY(4) provides that the ACMA must not make the exemption order or target reduction order unless the ACMA is satisfied that a refusal to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant.
   6. In determining whether a failure to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant, the ACMA must have regard to the matters specified in subsection 130ZY(5) (these are addressed individually below).
   7. Subsection 130ZY(3) of the BSA provides that, if an application under subsection (1) has been made for an exemption order or target reduction order, the ACMA must, after considering the application, either (by writing) make the order, or refuse to make the order.
   8. Subsection 130ZY(6) of the BSA provides that, before making an exemption order under subsection 130ZY(3) of the BSA, the ACMA must:
3. within 50 days after receiving the application for an exemption order, publish on the ACMA’s website a notice:
4. setting out the draft exemption order; and
5. inviting persons to make submissions to the ACMA about the draft exemption order within 30 days after the notice is published; and
6. consider any submissions received within the 30-day period mentioned in subparagraph 130ZY(6)(a)(ii) of the BSA.
   1. Section 204 of the BSA provides that an application may be made to the Administrative Appeals Tribunal (AAT) for a review of a decision to make an exemption order under subsection 130ZY(3) of the BSA, by a person whose interests are affected by the decision.
   2. Section 205 of the BSA provides that, if the ACMA makes a decision that is reviewable under section 204 of the BSA, the ACMA is to include in the document by which the decision is notified:
7. a statement setting out the reasons for the decision; and
8. a statement to the effect that an application may be made to the AAT for a review of the decision.

**Other categories of exemption**

* 1. In addition to the facility to apply for exemption and target reduction orders as detailed above, the captioning framework also provides for two other types of exemptions:

1. **New services** - Subsection 130ZV(6) provides an exemption from the captioning target obligations for new subscription television services that predominantly consist of programs not previously transmitted in Australia before, for a period of at least one year and possibly up to almost two years, depending on the date the new service commences broadcasting.
2. **Exempt nominations** - Section 130ZX allows subscription television licensees that have met the captioning targets for a threshold number of services in a genre in a financial year to nominate a percentage of their remaining channels for exemption. This is a transitional measure that is intended to assist licensees as they introduce captioning on all their subscription television services in order to comply with their captioning target obligations. It will end in July 2022, at which time it is expected that subscription television licensees will provide captioning services on all their subscription television services in compliance with their captioning obligations (save for the possibility of exemptions or target reductions being granted under section 130ZY).
3. **LEGISLATIVE OBJECTIVES** 
   1. The purpose of captioning target requirements, introduced in 2012 by legislative amendments to the BSA, is to facilitate improved access to free-to-air and subscription television by Australia’s deaf and hearing-impaired community, by requiring broadcasters to caption speech and other sounds during television broadcasts.
   2. The overall legislative obligation for subscription television services to meet the captioning target requirements will increase over time to 100%. The captioning target for Category A general entertainment services will reach 100% in the financial year, 2023-24. The captioning target for a Category B general entertainment service will increase to 100% by 2025-26, while the captioning target for a Category C general entertainment service will reach 100% by 2029-30.
   3. The Second Reading Speech for the 2012 Amendment Bill[[1]](#footnote-2) noted that a gradual, incremental increase in captioning targets is intended to assist Australia’s broadcasters to adjust to the increasing costs associated with the changes. The cost of providing captioning services by subscription television licensees is a business expense which must be borne by licensees, except where, on an application under section 130ZY of the BSA, a licensee can satisfy the ACMA that compliance with the captioning obligations would impose an unjustifiable hardship on the licensee. Paragraph 63 of the Explanatory Memorandum to the 2012 Amendment Bill states: “The priority for government is for television services to be broadcast, and where possible for those services to be broadcast with captions. It is not the intention of the government that services not be shown because captioning obligations result in unjustified hardship on broadcasters.”
4. **APPLICATION**
   1. On 1 April 2019, the Applicant applied for a target reduction order under paragraph 130ZY(1)(b) of the BSA in relation to the Service for the Specified Eligible Period (the Target Reduction Order).
   2. The proposed Target Reduction Order would reduce the Applicant’s annual captioning targets for the Specified Eligible Period as set out below.

|  |  |  |
| --- | --- | --- |
| Period | Annual captioning target | Proposed reduced annual captioning target |
| 1 July 2018 to 30 June 2019 | 65% | 45% |
| 1 July 2019 to 30 June 2020 | 70% | 50% |

* 1. The Service has previously been broadcast with captions to meet reduced captioning targets, as the Applicant has been granted target reduction orders for the Service. This is the Applicant’s third application for a target reduction order for the Service. The last target reduction order (STV/TRO-64) was made for the Service for the period of 1 July 2016 to 30 June 2018.
  2. On 20 May 2019, the ACMA published on its website a notice setting out the draft target reduction order for the Service and invited persons to make submissions to the ACMA by 19 June 2019.

Applicant

* 1. The Applicant is a subscription television licensee. The Applicant is an indirect wholly owned subsidiary of Media Innovations Pte Ltd (MIPL).
  2. The Applicant has provided a total of 63 subscription television services in the English language in 2018-19, including 32 general entertainment, 10 news, 18 sports and three music services. Of these services, approximately two-thirds included captioning that is provided by its channel providers. The Applicant does not, itself, provide captioning on any of its services and does not have the infrastructure to do so. The Applicant does not have the scale of services to nominate any of its subscription television general entertainment services to be exempt from the annual captioning target for 2018-19 under section 130ZX of the BSA.
  3. The Applicant is primarily a wholesaler of subscription television services and also has a small direct-to-retail distribution. The customers of the Applicant are Australian Internet Service Providers (ISPs) and direct customers. ISPs typically offer access to the Applicant’s services as part of a bundle of products, while direct customers sign up for the Applicant’s services via the Applicant’s website or selected consumer electronic stores.
  4. The Applicant also provides access to apps to watch movies on demand.

Service

* 1. The Service delivers content relating to fashion, home and beauty, with an emphasis on attracting female viewers.
  2. The Service is available as part of the following packages provided by the Applicant:
     + Fetch ‘Entertainment’ package –a ‘legacy’ package of programming that contains a large number of English language channels, which has not been available to new subscribers since the Applicant re-packaged its channel offerings in February 2017;
     + Fetch ‘Ultimate’ package, which contains 47 channels available in each of the four ‘Premium’ packs (‘Kids’, ‘Knowledge’, ‘Vibe’ and ‘Variety’) provided by the Applicant; and
     + Fetch ‘Vibe’ package (one of the ‘skinny’ packs), which currently has 12 channels, with an emphasis on edgier, younger skewing entertainment and sport.
  3. The Service is provided by NBCUniversal International Networks Australia Pty Ltd (the Channel Provider) and is also available on the Foxtel subscription television platform in Australia.
  4. Like every channel provided through FetchTV, the Service is obtained under licence wholly from the Channel Provider, which compiles the channel and then delivers it to the Applicant (‘pass-through’ service). The Applicant picks up the signal of the Service and displays it on its platform but provides no input to the content of the Service.
  5. The Service’s genre is General Entertainment Category B, which would normally attract an annual captioning target of 65% for the financial year commencing 1 July 2018, increasing by five percent each financial year thereafter.
  6. The Service is one of the 32 general entertainment services provided by the Applicant.

1. **EVIDENCE AND REASONS FOR DECISION**

5.1 As noted above, the ACMA must not make a target reduction order unless the ACMA is satisfied that a refusal to make the target reduction order would impose an unjustifiable hardship on the Applicant.

* 1. In determining whether a failure to make a target reduction order would impose an unjustifiable hardship, the ACMA must have regard to each of the matters specified in subsection 130ZY(5), assessing their relative weight and significance.
  2. The term ‘unjustifiable hardship’ is not a defined term in the BSA and is to be given its ordinary and natural meaning as appropriate to the legislative context. The ACMA considers that the test requires it to assess the weight and significance of any hardships to the Applicant made out in the material before the ACMA, and to assess whether or not the imposition of those hardships on the Applicant is unjustifiable, having regard to the criteria specified in subsection 130ZY(5) and the purpose and objects of the relevant statutory provisions.
  3. In reaching a decision to make the Target Reduction Order, the ACMA has considered the following:
     + written representations and supporting evidence submitted by the Applicant;
     + information provided by the Channel Provider in support of the application; and
     + the submission received by the ACMA during the consultation period for the draft order.
  4. The submission is published on the ACMA website[[2]](#footnote-3), and the ACMA’s responses are set out below. Information provided to the ACMA on a confidential basis by the Applicant or Channel Provider has been taken into account by the ACMA in reaching its decision, but has not been reproduced in these reasons for decision.

*Nature of the detriment likely to be suffered by the Applicant (paragraph 130ZY(5)(a) of the BSA*)

* 1. The Applicant submits that its application for the Target Reduction Order for the Service seeks a reduction in the captioning percentage from the requirement for a Category B General Entertainment to the equivalent of a Category C General Entertainment Service.[[3]](#footnote-4)
  2. The Applicant submits that, if the Target Reduction Order is not made, the Applicant would need to cease providing the Service because:
  + the Channel Provider captions the Service to meet the lower captioning targets (of a Category C service) that are required for its broadcast on the Foxtel platform[[4]](#footnote-5);
  + the Service will therefore not meet the higher annual captioning targets (of a Category B service) required by the Applicant in the Specified Eligible Period;
  + the Channel Provider will not increase the captioning for the Service to meet the Category B captioning targets for the Applicant; and
  + the Applicant is not in a financial position to provide additional captioning for the Service to meet the prescribed captioning targets.
  1. The Applicant submits that a refusal to make the Target Reduction Order would impose an unjustifiable hardship on the Applicant as the refusal would either:
  + subject the Applicant to the ‘impost’ of costs, which its competitors that also broadcast the channel are not required to bear; or
  + result in the removal of the Service from the Applicant’s channel offerings, which would in turn diminish the overall value and appeal of the Applicant’s package offerings and may affect the Applicant financially.
  1. Without the Target Reduction Order, the Applicant would need to cease providing the Service, as captions are provided by the Channel Provider, and the Channel Provider has indicated it will only meet the requirements of a Category C General Entertainment service. In addition, the Applicant is not in a financial position to pay for the additional captioning to meet the target for Category B General Entertainment services.
  2. The ACMA considers that a refusal to make the Target Reduction Order in this instance would impose an unjustifiable hardship on the Applicant because requiring the Applicant to meet a higher captioning target, and in turn face additional captioning costs, is likely to mean that it is not financially viable for the Applicant to continue broadcasting the Service.
  3. The ACMA accepts that, if the Target Reduction Order is not made, the Applicant will need to cease providing the Service. The ACMA considers that, if it is not possible for the Service to be captioned to the relevant annual captioning target, then some captioning on the Service is preferable to the Service being removed altogether.

*Impact of making the target reduction order on deaf or hearing-impaired viewers, or potential viewers, of the broadcasting service concerned (paragraph 130ZY(5)(b) of the BSA)*

* 1. The Applicant submits that, if the ACMA made the Target Reduction Order, the captioning requirements on the Applicant will be at the same level as for the other subscription television licensees. The Applicant submits that the impact on deaf and hearing-impaired viewers or potential viewers is likely to be negligible, because the viewers will receive the same amount of captioning that is currently being provided by the other subscription television licensees.
  2. The Applicant also submits that the anticipated impact of making the Target Reduction Order is likely to be limited, as the Service has a small viewing audience.
  3. The ACMA accepts the evidence provided by the Applicant about the number of viewers of the Service; however, the ACMA also considers that making a target reduction order will generally have some detrimental effect for viewers, or potential viewers who are deaf or hearing-impaired. In forming this view, the ACMA notes that around one in six Australians are affected by total or partial hearing loss[[[5]](#footnote-6)] [[[6]](#footnote-7)].
  4. However, the ACMA considers that having some captioning on the Service is preferable to having no Service at all. While making the Target Reduction Order will mean less captioning than is prescribed will be shown in the Specified Eligible Period, the ACMA considers that this is outweighed by the retention of the Service with the opportunity for a progressive increase in captioning to appear on the Service in future years.

*Number of people who subscribe to the subscription television service (paragraph 130ZY(5)(c) of the BSA)*

* 1. The Applicant provided a breakdown of the:
  + total number of subscribers to its platform;
  + the number of subscribers who would be able to access the Service because they are subscribers to one of the Applicant’s packages that contain the Service; and
  + the number of subscribers who actually viewed the Service in February 2019.
  1. Although there is no evidence before the ACMA as to how many subscribers to the FetchTV platform do so primarily to access the Service, the ACMA accepts that the number of viewers is low.
  2. Further, while the Service has a low number of viewers, the ACMA considers that it is preferable for those viewers to have some captioning available on the Service rather than for those viewers lose access to the Service through its cancellation or suspension.

*Financial circumstances of the Applicant (paragraph 130ZY(5)(d) of the BSA)*

* 1. The Applicant provided details of its financial circumstances on a confidential basis.
  2. The ACMA notes the Applicant’s submission that the Applicant’s business proposition is to provide a low-cost but full-service subscription TV offering. Consequently, the content must be largely available to the Applicant at a low price point, and cover a diverse range of services. Retail customers pay $449 (Mighty) or $169 (Mini) for the Fetch TV box and pay a $1 one-off activation fee. Premium channel packs, such as the ‘Vibe’ pack, on which the Service can be accessed, are added at $6 each per month or $20 per month for all four packs.
  3. The Applicant has indicated that, if the Target Reduction Order is not granted, the Service will be removed from its platform as the Channel Provider will not provide additional captioning for the Service and the Applicant is not in a financial position to incur the captioning cost for additional captioning to meet the Category B captioning target.
  4. Having regard to paragraph 63 of the Explanatory Memorandum to the 2012 Amendment Bill (see paragraph 3.3 above), the ACMA considers that requiring the Applicant to caption the Service to a 65% target in 2018-2019 and a 70% target in 2019-20 would impose a severe financial burden on the Applicant, which it does not have the capacity to pay. A failure to grant the Target Reduction Order will result in the removal of the Service from the Applicant’s platform and this will have associated impacts on the Applicant’s business model and financial circumstances.

*Expenditure that would be required to caption the Service if the relevant order was not made (paragraph 130ZY(5)(e) of the BSA)*

* 1. The Service is categorised by the Applicant as a General Entertainment Category B Service, which attracts a captioning target requirement of at least 65% for the 2018-19 financial year and 70% for the 2019-20 financial year.
  2. The Applicant noted that, if it was required to caption the Service to the annual captioning target, it would be required to live caption it, as it is a pass-through service. The Applicant has no ability to compile the Service or carry out post or pre-production by the addition of pre-prepared captions on the content.
  3. The Applicant provided a third-party quote of the costs to provide an additional 20% captioning for the Service to meet the annual captioning targets, amounting to $709,400. The costs include the following:
  + $120,000 non-recurring costs;
  + $59,000 recurring annual costs from the first year; and
  + $530,400 to live caption an additional 20% of the Service each year.
  1. As noted above, the Applicant submits that it is not in a financial position to incur the captioning expenditure.
  2. The Channel Provider submits that it currently provides captioning for the Service to meet the lower captioning target of 45% for the 2018-19 period as required by the Foxtel platform.
  3. The Channel Provider submits that it will not be able to include additional captioning on the Service to meet the prescribed captioning targets for the Applicant.
  4. The Channel Provider supplied, on a commercial-in-confidence basis, its financial statements showing revenues and profit for the Style Channel for the calendar years 2018 and 2019.

*Extent to which captioning services for television programs are provided by the Applicant (paragraph 130ZY(5)(f) of the BSA)*

* 1. In providing information about the number of services it broadcasts with captioning, the Applicant referred to the information provided to the ACMA with respect to its captioning compliance in the last financial year.
  2. Captioning was provided on 34 of the Applicant’s 65 subscription television services during the period of 1 July 2017-30 June 2018. All the captioning was provided by third-party channel providers of those services. The ACMA acknowledges that, where the captioning services were provided by third-party channel providers, the Applicant exceeded the annual captioning targets.
  3. The remaining 31 services were exempt from the captioning targets in 2017-18. Of these, 17 had obtained exemption orders, and 14 were exempted by a ‘new service exemption’ under subsection 130ZV(6). The Applicant did not have a sufficient number of subscription television services, or captioned services, to nominate any exempt services under section 130ZX.
  4. Of the 36 general entertainment services provided by the Applicant in 2017-18, seven services were exempted from the captioning target under exemption orders and five other services had reduced captioning targets under target reduction orders.
  5. In order for the Applicant to nominate a subscription television general entertainment service to be an exempt service under section 130ZX for the financial year 2018-19, the Applicant must have met the captioning target for at least 43 of its other subscription television general entertainment services in the year.
  6. Based on the information available, the Applicant has broadcast fewer than 43 general entertainment services in 2018-19. Therefore, the Applicant is not eligible to nominate any of its subscription television general entertainment services to be exempt services for the financial year under section 130ZX of the BSA.

*Likely impact of a failure to make the Target Reduction Order on the quality and quantity of television programs transmitted on broadcasting services provided by the Applicant (paragraph 130ZY(5)(g) of the BSA)*

* 1. The Applicant submits that, if the ACMA does not make the Target Reduction Order, the Service would need to be removed from the Applicant’s platform to mitigate breach of the Applicant’s obligations under Part 9D of the BSA.
  2. The ACMA considers that a loss of the Service would reduce the quantity of television programs relating to fashion, home and beauty that are offered on the Applicant’s platform. As the Service has some captioning, the quantity of captioning on the Applicant’s platform would also reduce if the Service were removed from the platform.

*Applications or proposed applications for exemption orders or target reduction orders in relation to any other broadcasting services provided by the Applicant (paragraph 130ZY(5)(h) of the BSA)*

* 1. The Applicant has made 14 exemption order applications and three target reduction order applications for the two financial years 201819 and 2019-20; and two exemption order applications for the financial year 2018-19.

| **No.** | **Channel Name** | **Order Type** | **Exempt period sought** |
| --- | --- | --- | --- |
| STV/EO-367 | Bloomberg | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-368 | CGTN | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-369 | Channel News Asia | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-370 | Euronews | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-371 | France 24 | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-372 | NDTV News | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-373 | Australian Christian Channel | Exemption | 1 July 2018 - 30 June 2019 |
| STV/EO-374 | BBC World News | Exemption | 1 July 2018 - 30 June 2019 |
| STV/EO-376 | Fashion TV | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-377 | HGTV | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-378 | Food Network | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-379 | Travel Channel | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-380 | Horse and Country | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-381 | Zoo Moo | Exemption | 1 July 2018 - 30 June 2019 |
| STV/EO-382 | Baby TV | Exemption | 1 July 2018 - 30 June 2020 |
| STV/EO-383 | Al Jazeera | Exemption | 1 July 2018 - 30 June 2020 |
| STV/TRO-75 | Nat Geo Wild | Target reduction | 1 July 2018 - 30 June 2020 |
| STV/TRO-76 | TLC | Target reduction | 1 July 2018 - 30 June 2020 |

*Other matters as the ACMA considers relevant (paragraph 130ZY(5)(i) of the BSA)*

* 1. The Applicant has noted that competition in the market for content services has increased with the entry of subscription video on demand providers. These providers are not required to provide captioning services and face no penalty for removal of content if they do not caption.

The ACMA acknowledges a number of additional matters submitted by the Applicant; however, the ACMA does not consider that these matters are relevant in deciding whether a failure to make the Target Reduction Order would impose an unjustifiable hardship on the Applicant.

1. **RESPONSE TO SUBMISSION RECEIVED**

6.1 The ACMA received a submission from the Centre for Inclusive Design (CFID) in response to the draft target reduction order published on 20 May 2019 for the Applicant.

**CFID**

6.2 CFID has argued that, if the ACMA is to grant target reduction orders, it should follow a full and public process outlining clear reasons for the order made, so that both the public and Parliament are satisfied that it is truly an exceptional circumstance. The ACMA has followed the procedures prescribed by the Parliament, which have included publishing preliminary reasons for decision for public response, and taking into account submissions received. The ACMA’s final reasons for decision will also be published.

6.3 Applicants for exemption orders need to provide supporting information addressing the matters specified in subsection 130ZY(5), and both the Applicant and the Channel provider did so. The Applicant provided financial information and information about viewer numbers to the ACMA on a commercial-in-confidence basis. The ACMA considers the request for confidential treatment of this information to be reasonable, and will respect it. The information has been taken into account by the ACMA in reaching its decision, but will not be reproduced in these reasons for decision.

6.4 CFID also argued that the ACMA has not stated how it defines unjustifiable financial hardship, so there is no indication of how profitable a subscription service would need to become before it is required to meet captioning requirements. The ACMA notes that the relevant provisions of the BSA require the ACMA to be satisfied about “unjustifiable hardship” to an applicant, rather than merely unjustifiable financial hardship. In any event, the ACMA has addressed the issues raised by CFID in paragraphs 5.3 and 5.20 to 5.22 of these reasons for decision.

6.5 CFID suggested that the ACMA adopt a similar approach to the ones used in the UK and USA for determining whether an applicant can be excluded from meeting its captioning obligations based on the audience share and/or channel revenue. However, the ACMA must administer the legislative scheme enacted by the Australian Parliament, and has done so.

1. **CONCLUSION**

7.1 In summary, the ACMA is satisfied that a refusal to make the Target Reduction Order in this instance would impose an unjustifiable hardship on the Applicant because:

* it would require the Applicant to bear the significant financial costs of captioning the Service to higher captioning targets;
* the Applicant does not currently have the financial capacity to provide additional captioning for the Service to meet the higher captioning targets;
* a refusal to make the order is likely to result in the removal of the Service from the Applicant’s platform, as the Applicant would breach a licence condition in respect of the Service if it continues to provide it without captions; and
* removal of the Service would adversely affect the Applicant’s business model of providing a low-cost subscription television service with diverse content.

1. **APPEAL RIGHTS**

8.1 Under section 204 of the BSA, a person whose interests are affected by this decision to make the Exemption Order may apply to the AAT for a review of this decision.

8.2 The AAT is an independent body. The AAT can, among other things, confirm or vary the ACMA’s decision, or set aside the ACMA’s decision and replace it with its own decision.

8.3 Section 29 of the *Administrative Appeals Tribunal Act 1975* states that an application to the AAT for a review of a decision, shall be in writing and must contain a statement of the reasons for the application, identifying the respects in which the applicant believes that the decision is not the correct or preferable decision. The AAT has a form for this purpose which can be used. The application must be made within 28 days of the decision being made. The $920 application fee must be enclosed with the application, unless an application for waiver of the fee is made using a form which can be obtained from the AAT.

8.4 Further information about making an application for review can be obtained through the Administrative Appeals Tribunal website at www.aat.gov.au or by telephoning the Tribunal on 1800 228 333. The postal address for the AAT is GPO Box 9955 in each capital city.

1. Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012 – Second Reading Speech before the House of Representatives on 30 May 2012, available at <https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/4a17e30d-c43b-48b9-83ed-4280fc00314c/0029/hansard_frag.pdf;fileType=application%2Fpdf>. [↑](#footnote-ref-2)
2. <https://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/draft-exemption-orders-and-target-reduction-orders> [↑](#footnote-ref-3)
3. The captioning target for a General Entertainment Category B service in 2018-19 is 65% and in 2019-2020 is 70%. The captioning target for a General Entertainment Category C service in 2018-19 is 45% and in 2019-2020 is 50%. [↑](#footnote-ref-4)
4. Because more than 34 general entertainment services are broadcast on the Foxtel platform, the excess can be nominated as Category C services, which attract a lesser captioning obligation. Because the Applicant broadcasts only 32 general entertainment services, none of them can be nominated as Category C. [↑](#footnote-ref-5)
5. 2009-10 Year Book Australia, [www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/9B34B8C8BF2FDA34CA25773700169C83](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/9B34B8C8BF2FDA34CA25773700169C83) [↑](#footnote-ref-6)
6. Access Economics: Listen Hear! The economic impact and cost of hearing loss in Australia, February 2006 located at <http://apo.org.au/node/2755> [↑](#footnote-ref-7)