Investigation report no. BI-580

| Summary |  |
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| **Licensee** | Channel Seven Sydney Pty Ltd |
| **Station** | 86 || SEVEN || ATN |
| **Type of service** | Commercial Television Broadcasting |
| **Name of program** | *7 NEWS (Sydney)* |
| **Dates of broadcasts** | 2 November 2020 and 28 November 2020  |
| **Date finalised** | 18 February 2022 |
| **Relevant Legislation/Standard** | *Broadcasting Services Act 1992* (**the BSA**):* Paragraph 130ZR(1)(a) of Part 9D [licensee must provide a captioning service for programs transmitted on main channel between 6 am and midnight daily].
* Subsection 130ZUB(1) of the BSA (disregard breach).
* Subsection 130ZZA(4) of the BSA [compliance with

captioning standard by a commercial broadcaster].* Subsection 130ZZA(7A) of the BSA (disregard breach).
* Paragraph 7(1)(o) of Schedule 2 [licence condition to comply with Part 9D of the BSA].

*Broadcasting Services (Television Captioning) Standard 2013* (**the Standard**):* Sections 7 [readability of captions], 8 [accuracy of captions] and 9 [comprehensibility of captions] of the Standard.
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| **Findings** | * Breach of sections 7, 8 and 9 of the Standard.
* Breach of paragraph 130ZR(1)(a) of Part 9D of the BSA.
* Breach of subsection 130ZZA(4) of the BSA.
* Breach of paragraph 7(1)(o) of Schedule 2 to the BSA.
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| **Attachments** | A – Complaints to the ACMA B – Relevant provisions of the Broadcasting Services (Television Captioning) Standard 2013 C – Tables of distinct segments, approximate duration and associated key issues D – Extracts from the Licensee’s submissions to the ACMA  |

**Background**

*7 NEWS (Sydney)* (the program) is broadcast by Channel Seven Sydney Pty Ltd (the licensee). The Australian Communications and Media Authority (the ACMA) received two complaints from the same complainant that the captioning service for the program broadcast on 2 November 2020 and 28 November 2020 was inadequate.

The complaint of 2 November 2020 alleged that the captions for the program broadcast on 2 November 2020 were ‘non-existent’ in the sport segment and, in the next segment, the captions were ‘delayed about a minute […] with missing sentences throughout, then sped up so quick’ there was ‘not enough time to read’ and was ‘skipping words and sentences’.

The complaint of 28 November 2020 alleged that segments of the program broadcast on 28 November 2020 were not captioned.

A copy of the complaints to the ACMA is at **Attachment A**.

On 18 January 2021, the ACMA commenced an investigation into the complaints under the BSA.

Under Part 9D subsection 130ZZA(4) of the BSA, the licensee is required to comply with the Standard determined by the ACMA under subsection 130ZZA(1).

Accordingly, the ACMA has investigated:

* the licensee’s obligation to comply with the requirements relating to quality under sections 7, 8 and 9 of the Standard, respectively;
* the licensee’s obligation to comply with the Standard under subsection 130ZZA(4) of the BSA;
* the application of subsection 130ZZA(7A) which specifies circumstances in which a breach of the Standard can be disregarded;
* the licensee’s obligation to provide a captioning service in accordance with paragraph 130ZR(1)(a) of Part 9D of the BSA;
* the application of subsection 130ZUB(1) which specifies circumstances in which a breach of subsection 130ZR(1) can be disregarded; and
* the licensee’s compliance with the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

The program

The program is broadcast at 6.00pm daily and comprises news, sport and weather. Each broadcast is approximately 60 minutes in duration.

The programs broadcast on 2 November 2020 and 28 November 2020 were live captioned on the licensee’s primary commercial television broadcasting service (7 Sydney).

Legislative framework

*Relevant provisions of the BSA[[1]](#footnote-2)*

Paragraph 130ZZA(1)(a) and subsections 130ZZA(2) and (4) of Part 9D of the BSA state:

1. The ACMA may, by legislative instrument, determine standards that relate to:
2. the quality of captioning services provided by commercial television broadcasting licensees for television programs [...]

(2)  For the purposes of subsection (1), **quality** includes:

(a)  readability; and

(b)  comprehensibility; and

(c)  accuracy.

[…]

(4) A commercial television broadcasting licensee must comply with a standard determined under subsection (1).

Paragraph 130ZZA(7A) of the BSA states:

(7A) A failure by a licensee or broadcaster to comply with a standard determined under subsection (1) is to be disregarded to the extent to which the failure is attributable to significant difficulties of a technical or engineering nature for the licensee or broadcaster, which it could not reasonably have foreseen.

Paragraph 130ZR(1)(a) of Part 9D of the BSA states:

(1) Each commercial television broadcasting broadcaster […] must provide a captioning service for:

1. television programs transmitted during viewing hours; […]

Subsection 130ZL(2) of Part 9D of the BSA provides:

*Programs transmitted on or after 1 July 2014*

(2) For the purposes of the application of this Part to programs transmitted on or after 1 July 2014, ***designated viewing hours*** are the hours:

1. beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
2. ending at midnight on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

Subsection 130ZUB(1) of Part 9D of the BSA states:

(1) If:

1. apart from this subsection, a commercial television broadcasting licensee has breached a provision of this Division; and
2. the breach is attributable to significant difficulties of a technical or engineering nature for the licensee; and
3. those difficulties could not reasonably have been foreseen by the licensee;

then the breach is to be disregarded in determining whether the licensee has complied with the provision.

Importantly, paragraph 7(1)(o) of Schedule 2 to the BSA states:

(1) Each commercial television broadcasting licence is subject to the following conditions:

[…]

(o) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that provision.

*Relevant provisions of the Standard*

The Standard establishes minimum requirements relating to the quality of captioning services on television.

Specifically, the Standard requires captions to be readable[[2]](#footnote-3),accurate[[3]](#footnote-4) and comprehensible[[4]](#footnote-5) (the requirements relating to quality). Section 3 provides that the object of the Standard is to specify mandatory requirements for broadcasters that relate to the quality of captioning services, to ensure that captioning services are meaningful to deaf or hearing-impaired viewers.[[5]](#footnote-6)

A ‘captioning service’ is defined in section 4 of the Standard as’ a service in which captions are provided for programs that enable the viewer to follow the speakers, dialogue, action, sound effects and music of a program’.

‘Captions’ are defined in section 4 of the Standard as ‘the visual translation of the soundtrack of a program in English, in word form’.

Section 6 of the Standard sets out factors that must be considered when determining the quality of a captioning service. It stipulates that the quality of a captioning service for a program must be considered in the context of the program as a whole.[[6]](#footnote-7) When determining the quality of a captioning service for a program, the cumulative effect of the readability, accuracy and comprehensibility of the captions must be considered.[[7]](#footnote-8)

Relevant provisions of the Standard are provided at **Attachment B**.

**Assessment of distinct program segments**

The definition of ‘program’ in section 4 of the Standard provides that ‘program’ includes a television program and a distinct program segment within a television program.

The definition of a 'distinct program segment’ under section 4 of the Standard includes a distinct segment that is unrelated to other program segments within that same television program.

Paragraph 6(b) of the Standard provides that:

when determining the quality of a captioning service for a program that is a distinct program segment within a television program, the captioning service must be considered in the context of that distinct program segment on its own.

The Explanatory Statement to the Standard states:

Paragraph (b) of section 6, and the definition of “program” in section 4, together have the effect that the quality of a captioning service for a program that is a distinct program segment within a television program will be considered in the context of that distinct program segment on its own, provided that the segment is unrelated to other program segments. So, for example, a current affairs program may consist of several segments which are each distinct from and unrelated to other segments in that program.

Similar to a current affairs program, a news program generally consists of segments which may be distinct and unrelated to other segments.

The ACMA has assessed the captioning quality in the broadcasts at the level of distinct stories in the news, sport and weather segments.

The ACMA found that many of the news stories in the broadcasts were unrelated to other news stories in the same broadcast and thus were distinct program segments in terms of the Standard.

The ACMA also considers that a more granular approach to assessing news programs is appropriate, given the importance placed on news in terms of the policy objectives of the captioning rules under the BSA, as reflected in the requirement that news programs to be captioned 24 hours a day, 7 days per week on free-to-air primary channels.

Thus, the way in which the ACMA applies the definition in determining the quality aspects of a news program is to consider whether each news item is meaningful to deaf and hearing-impaired viewers.

**Licensee’s submissions regarding ‘distinct program segments’**

In its submission of 14 January 2022 regarding the ACMA’s preliminary findings, the licensee expressed a view regarding the ACMA’s assessment of ‘distinct program segments’ that the quality of captioning should be measured against the 3 distinct program segments of News, Sport and Weather, rather than at the level of each individual story.

The ACMA considers that the licensee’s approach to assessing the quality of captioning in a news bulletin is inconsistent with the definition of a distinct program segment within a television program in the Standard and the policy objectives of the BSA.

**Assessment of live captioning**

The Explanatory Statement to the Standard states:

The ACMA recognises that broadcasters and narrowcasters may use different methods of captioning, such as live captioning and pre-prepared captioning. The ACMA takes the view that it is important to consider whether the captioning service provided with a program is what would be expected in the context of the program as a whole.

Factors to consider include the circumstances of the broadcast and the nature of the program being broadcast. For example, it is reasonable to expect that during the live broadcast of a fast-paced sporting match, there would be a time lag between the captions and the soundtrack, and the caption lines may not end at natural linguistic breaks.[[8]](#footnote-9)

In determining the quality of captioning, the ACMA takes into account, among other factors, the circumstances of the broadcast, including the nature of live captioning and the fact that delays and errors may occur. The ACMA also accepts that it may not be possible to caption spoken content verbatim during live captioning, without introducing other captioning issues (such as caption delays). Where it is not possible for the captions of spoken content to be verbatim, subsection 8(b)(iii) of the Standard requires the ACMA to consider whether the captions reflect the actual meaning of the spoken content. When undertaking this investigation, the ACMA has considered these factors, but also notes that regardless of the method of captioning, the captioning provided for a program must be meaningful to deaf and hearing-impaired viewers.[[9]](#footnote-10)

Assessment of broadcasts of 2 and 28 November 2020

The ACMA has assessed whether the captioning service for the program broadcast on 2 and 28 November 2020 complied with the requirements relating to quality in the Standard. The outcome of this assessment determines whether the licensee has breached the Standard and, therefore, the licence condition.

Captioned versions of the program were broadcast on the licensee’s primary commercial television broadcasting service, 7 Sydney. The ACMA understands that both broadcasts were live-captioned.

As part of its assessment, the ACMA reviewed copies of the broadcasts of the program provided by the licensee (on 3 files), both with and without sound, to assess the quality of the captioning service.

The broadcast of the program on:

* 2 November 2020 consisted of 38 distinct program segments (Broadcast One)
* 28 November 2020 consisted of 37 distinct program segments (Broadcast Two).

As Broadcast One and Broadcast Two have distinct program segments, the quality of the captioning service has been assessed in the context of each distinct program segment.

The tables at **Attachment C** list the relevant captioning issues identified by the ACMA in relation to the distinct program segments.

This investigation has also taken into account the licensee’s submissions (at **Attachment D**).

Issue 1: Did the licensee comply with the Standard and, accordingly, comply with subsection 130ZZA(4) of the BSA?

**Finding**

**Broadcast One: 2 November 2020**

The captioning service provided for 5 distinct segments of the program broadcast on 2 November 2020 did not meet the requirements in sections 7, 8 and 9 of the Standard relating to readability, accuracy and comprehensibility, respectively. Consequently, the licensee has contravened subsection 130ZZA(4) of the BSA.

Reasons

The ACMA considers that the captioning services provided during the program broadcast on 2 November 2020 did not comply with the requirements relating to quality in the Standard as a result of a number of issues which would have made it difficult for viewers relying on captions to readily follow or comprehend the identified 5 distinct program segments. The captioning issues relate to the readability, accuracy and comprehensibility of these 5 distinct program segments, as discussed below.

The licensee submitted on 14 January 2022 in relation to the ACMA’s preliminary finding that:

… Seven does not dispute the ACMA’s findings that the captioning did not meet the quality requirements of the Standard (Issue 1) at least in respect of the distinct Sport and Weather segments.

Seven acknowledges the 2 November 2020 Broadcast suffered quality issues in both the Sport and Weather sections, and we accept the findings in respect of those two distinct segments. Seven does not, however, agree that quality issues in the 3 remaining stories (Star Charged, Jail Sentence and Chris Reason special report), when measured as part of the News segment as a whole (comprising 3 out of 36 stories) should be similarly characterized. When applying the Standard to the broader segments of News, Sport and Weather, and having regard to the above circumstances including the nature of live captioning in a fast-paced news environment and the acknowledgment that delays may occur, Seven respectfully submits that the Standard was met in respect of the News segment (comprising the remaining 36 stories), when considered as a whole.

As discussed above, the ACMA’s considers that the licensee’s approach to assessing ‘distinct program segments’ is inconsistent with the definition of a distinct program segment within a television program in the Standard. The ACMA considers that many of the news stories in the program are distinct in themselves, and thus are distinct segments the purposes of the Standard.

Table 1 at **Attachment C** lists all the program segments and the relevant captioning issues.[[10]](#footnote-11)

Segment 2. Star charged (Dylan Walker)

The following comprehensibility issues were identified in the ‘Star charged(Dylan Walker)’ segment of the program:

* The captions ran through quickly before disappearing and were not displayed for a sufficient length of time, making it difficult to read and follow the segment (subparagraph 9(b)(ii) of the Standard).
* There was approximately 3 seconds of latency at the beginning of the segment. Additionally, the captions appeared before the spoken content, for example, ‘after a pizza pickup allegedly turned violent’ at timestamp 1:26 and ‘Appearing agitated and …’ at timestamp 1:31 (subparagraph 9(b)(iii) of the Standard).

Segment 19. Jail sentence

The following readability, accuracy and comprehensibility issues were identified in the ‘Jail sentence’ segment of the program:

* Readability
* Captions were repeated, interrupting the natural flow of the captioning such that the captions did not form an understandable segment, for example, ‘All the boys on the bus I think were very brave’ is repeated at timestamp 25:12 (subparagraph 7(b)(ii) of the Standard).
* Accuracy
* Captions for spoken words were omitted, for example, ‘on bail’ at timestamp 25:32 (subparagraph 8(b)(i) of the Standard).
* Captions were not verbatim and, if it was not possible for the captions to be verbatim, they did not reflect the actual meaning of the spoken content, for example, ‘walked free on bail’ was captioned as ‘walked free’at timestamp 24:06 (subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).
* Comprehensibility
* Captions appeared before the words were spoken throughout the segment, which made it difficult for the viewer to follow the story, for example:

‘A year 9 student has been called a hero’ appeared at timestamp 23:56 before the words were spoken between timestamp 24:56 and 24:59.

‘During a terrifying road rage incident’ appeared at timestamp 24:02 but the words were spoken between timestamp 24:03 and 24:04.

‘for nine months’ appeared at timestamp 24:05 but was spoken at timestamp 25:10.

‘and with no opposition from the prosecution’ appeared at timestamp 25:27 but was spoken between timestamp 25:29 and 25:31.

(subparagraph 9(b)(iii) of the Standard).

Segment 38. Sport Report

The following readability, accuracy and comprehensibility issues were identified in the ‘Sport Report’ segment of the program:

* Readability
* Captions were repeated, which interrupted the natural flow of the captioning such that the captions did not form an understandable segment, for example, ‘All the boys on the bus I think were very brave’ was repeated at timestamp 25:12[[11]](#footnote-12), and ‘I’m no expert but I can’t imagine punching somebody in a helmet’ was repeated at timestamp 20:15[[12]](#footnote-13) (subparagraph 7(b)(ii) of the Standard).
* Accuracy
* Captions were omitted for part of the spoken content at timestamp 19:13 to 19:53. Additionally, the spoken phrase ‘Ejected lost by 3 points, I bet you his coach was thrilled’ was uncaptioned at timestamp 20:10. The lack of captioning in this segment made it difficult for viewers to follow what the speaker was saying (subparagraph 8(b)(i) of the Standard).
* Captions were cut off before a sentence was finished, for example, ‘I’m no expert but I can’t imagine punching somebody in the helmet’ at timestamp 20:13. This made it difficult for viewers to follow what the speaker was saying (subparagraph 8(b)(i) of the Standard).

Captions were not verbatim and, if it was not possible for the captions to be verbatim, they did not reflect the actual meaning of the words spoken, for example, ‘Then Blues leggie’ was captioned as ‘Then Bulls leggie’ at timestamp 17:22 (subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).

* Comprehensibility
* Captions appeared before the spoken content and disappeared too quickly to allow the viewer to read them, for example, ‘I’m no expert but I can’t imagine punching somebody in a helmet’ at timestamp 20:15 (subparagraph 9(b)(ii) of the Standard).
* The captions did not coincide with the onset of speech; there was latency of between 7 and 12 seconds between speech and captions appearing in this segment (subparagraph 9(b)(iii) of the Standard).
* Captions over-ran the end of the segment and appeared in the next segment, for example, ‘A bit of ice around the hand would have gone down well’ at timestamp 20:23 (subparagraph 9(b)(viii) of the Standard).
* The appearance of captions did not coincide with the relevant scene, for example, ‘Hamilton said it tasted like toe jam’ at timestamp 19:54 related to the previous story ‘Ricciardo Snares another podium shares a ‘Shoey’ with Lewis Hamilton after race’ at timestamp 19:19 to 19:42. Also, the captions for the next story were delayed in commencing by 12 seconds (subparagraph 9(b)(ix) of the Standard).

Segment 39: Chris Reason special investigation

The following readability, accuracy and comprehensibility issues were identified in the ‘Chris Reason special investigation’ segment of the program:

* Readability
* Captions were repeated, which interrupted the natural flow of the captioning such that the captions did not form an understandable segment, for example:
* ‘The 42-year old’s injuries were life-changing’ was repeated and disappeared quickly at timestamp 22:27.
* ‘She didn’t know how to fix it’ was repeated at timestamp 22:01.
* ‘How does that make you feel’ (captioned incorrectly as ‘However make you feel’ at timestamp 22:27) was repeated and captioned correctly as ‘How’d that make you feel?’ at timestamp 22:52.

(subparagraph 7(b)(ii) of the Standard).

* Accuracy
* Captions were omitted for part of the spoken content, for example, ‘It wound up in court, the judge ruling the accident had aggravated pre-existing medical conditions’ at timestamp 21:55 to 21:56 (subparagraph 8(b)(i) of the Standard).
* Captions were not verbatim and, if it was not possible for the captions to be verbatim, they did not reflect the actual meaning of the words spoken, for example, ‘How did that make you feel?’ was captioned as ‘However make you feel’, ‘Insignificant’ was captioned as ‘It significant’ and ‘From NRMA insurance’ was captioned as ‘From and I remain’ at timestamp 22:27. Also, ‘Sharon’s’ at timestamp 22:23 was not part of the spoken content (subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).
* Comprehensibility
* The captions appeared and disappeared too quickly for the viewer to read them, for example, ‘The 42-year old’s injuries were life-changing’ at timestamp 22:27 (subparagraph 9(b)(ii) of the Standard).
* There was latency of between 8 and 37 seconds between speech and captions appearing and the captions continued into the next segment (subparagraph 9(b)(iii) of the Standard).
* The captions for this segment over-ran into the next segment from timestamp 23:07 to 23:17, for example:

‘The accident has led to calls for medical cases to be heard by a judge and doctor to hold insurers to account. They don’t give a care about the patient whatsoever. All they’re interested in is how much it is going to save them.’

‘I guarantee you, Chris, I am not the only person this has happened to and I won’t be the last.’

(paragraph 9(b)(viii) of the Standard).

* The captions did not coincide with the relevant scene throughout the segment. This made it difficult for the viewer to keep up with the spoken content and to match it with the on-screen images (subparagraph 9(b)(ix) of the Standard).

Segment 44:Weather

The following readability, accuracy and comprehensibility issues were identified in the ‘Weather’ segment of the program:

*>* Readability

* The captions were repeated throughout the segment, and this affected the natural flow of the story such that the captions did not form an understandable segment, for example, ‘on the cool side of normal’ at timestamp 28:28, ‘A stable south-easterly that has been running across the Sydney’ at timestamp 28:29, ‘Upstream a thundery change’ at timestamp 28:47, ‘no impact for us. That will change. Manning fine threats the day’ at timestamp 28:55 and ‘unfold in the western half of the state’ at timestamp 29:00 (subparagraph 7(b)(ii) of the Standard).
* Accuracy
* The captions were not verbatim, although, if it was not possible for the captions to be verbatim, they still reflected the actual meaning of the spoken content**,** for example,‘that is about 1 degree on the cool side of normal’ was captioned as ‘that is 1 on the cool side of normal’ at timestamp 28:24 (subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).
* The captions were not verbatim and, if it was not possible for the captions to be verbatim, they did not reflect the actual meaning of the spoken content, for example:
* ‘cool and clear’ was captioned as ‘call and clear’ at timestamp 28:16
* ‘Latest satellite data’ was captioned as ‘Latest satellite starter’ at timestamp 28:38
* ‘great Australian Bite’ is captioned as ‘greatest of the invite’ at timestamp 28:50
* ‘remaining fine throughout the day’ was captioned as ‘manning fine threats the day’ at timestamp 28:55
* ‘Interstate we will start to see temperatures building with summer-like heat’ was captioned as ‘Interstates, we will seek damages with someone like heat’ at timestamp 29:06
* ‘A bit cooler along the coast’ was captioned as ‘call along the coast’ at timestamp 29:32
* ’19 degrees at best right on the coast but temperatures increasing inland’ was captioned as ’10 on the coast but stamp it is increasing inland’ at timestamp 29:43
* ‘Southerlies at 10 to 15 knots’ was captioned as ‘Someone at 10 to 15 kn.’ at timestamp 29:55
* ‘getting to 10 knots at times’ was captioned as ‘getting to tend knots and times’ at timestamp 29:58
* ‘A beautiful day. For the city fine and clear skies’ was captioned as ‘A pitiful day. For the city finance clear skies’ at timestamp 30:04
* ‘I’m Mike Ferguson, from all the team, I hope you have a great night’ was captioned as ‘I’m Mike Ferguson, denined’ at 30:37

(subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).

* Comprehensibility
* The captions ran too quickly throughout the segment, making it difficult for the viewer to read them and follow the stories (subparagraph 9(b)(ii) of the Standard)
* There was latency of approximately 4 seconds between speech and captions appearing throughout this segment (subparagraph 9(b)(iii) of the Standard).

**Conclusion**

The ACMA has found that the cumulative effect of the captioning issues for 5 distinct segments (amounting to 14 minutes 04 seconds) meant that the captions failed to meet the requirements of the Standard relating to readability, accuracy and comprehensibility under sections 7, 8 and 9, respectively, such that the captioning service for the program broadcast on 2 November 2020 was not meaningful for deaf and hearing-impaired viewers. By not complying with the Standard, the licensee has contravened subsection 130ZZA(4) of the BSA.

**Finding**

**Broadcast Two: 28 November 2020**

The captioning service provided for 8 distinct segments of the program broadcast on 28 November 2020 did not meet the requirements in sections 7, 8 and 9 of the Standard relating to readability, accuracy and comprehensibility, respectively. Consequently, the licensee has contravened subsection 130ZZA(4) of the BSA.

**Reasons**

The ACMA considers that the captioning services provided during the program broadcast on 28 November 2020 did not comply with the requirements relating to quality in the Standard as a result of a number of issues which would have made it difficult for viewers relying on captions to readily follow or comprehend the identified 8 distinct program segments. The captioning issues relate to the readability, accuracy and comprehensibility of these 8 distinct program segments, as discussed below.

The licensee submitted on 14 January 2022 in relation to the ACMA’s preliminary finding that:

In respect of the 28 November 2020 Broadcast, Seven notes that the Sport and Weather segments at the end of the Broadcast were unaffected by captioning quality problems. Looking at the remaining stories in the third ‘distinct program segment’, the News segment, 8 out of 37 stories suffered quality issues. Again, for the same reasons outlined above, Seven would respectfully submit that, viewed as a whole, the quality Standard was met in respect of the News segment.

 As discussed above, the ACMA considers that the licensee’s approach is inconsistent with the definition of a distinct program segment within a television program in the Standard.

Table 2 at **Attachment C** lists all the program segments and the relevant captioning issues.

Segment 3*. Weather update*

The following readability, accuracy and comprehensibility issues were identified in the ‘Weather update’ segment of the program:

* Readability
* Captions were repeated, which interrupted the natural flow of the captioning such that the captions did not form an understandable segment, for example, ‘It will whip up 70km/h winds’ at timestamp 4:06 (subparagraph 7(b)(ii) of the Standard).
* Accuracy
* Captions were omitted, for example, ‘hitting 42 degrees in the Western Suburbs’ at timestamp 3:38 and ‘We’ll see temperatures drop by as much as 20 degrees in an hour’ at timestamp 4:06 (subparagraph 8(b)(i) of the Standard).

Captions were not verbatim, although, if it was not possible for the captions to be verbatim, they still reflected the actual meaning of the spoken content**,** for example, ‘Penrith and Springwood will stay at or above 26 degrees’ was captioned as ‘Penrith will sit on or above 26 degrees’ at timestamp 3:14, and ‘Tonight though we have severe storms around Canberra and to the west, Sydney will potentially see some of those storms tomorrow evening’ is captioned as ‘severe storms in Canberra further to the west potentially will see some storms into tomorrow evening’ at timestamp 4:07 (subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).

Captions were not verbatim and, if it was not possible for the captions to be verbatim, they did not reflect the actual meaning of the words spoken, for example, ‘There’s certainly a lot going on at the moment weather-wise Michael. I’ll have a full forecast for the start of summer a little later’ is captioned as ‘Into going on at the moment weatherwise. For forecast later’ at timestamp 4:06 to 4:12. Also, the following captions were not spoken:

* ‘At 27 degrees Springwood is also on track’ at timestamp 3:21
* ‘to have their hottest ever November night’ at timestamp 3:22
* ‘Kempsey looks likely to break a record’ at timestamp 3:37

(subparagraphs8(b)(ii) and 8(b)(iii) of the Standard).

* Comprehensibility
* Captions were not displayed for a sufficient period of time to allow the viewer to read them. The effect of this was exacerbated by the fact that the captions ran into the next segment (subparagraph 9(b)(ii) of the Standard).
* There were approximately 16 seconds of latency between speech and captions appearing at timestamp 3:50 and 4:07. This resulted in captions running into the next segment: ‘Covid crackdown’ with a different speaker and it became unclear who was speaking (subparagraph 9(b)(iii) of the Standard).

Segment 4: Covid crackdown

The following readability, accuracy and comprehensibility issues were identified in the ‘Covid crackdown’ segment of the program:

* Readability
* Captions were repeated, which interrupted the natural flow of the captioning such that the captions did not form an understandable segment, for example, ‘Patrons need to… Patrons need to take responsibility to provide accurate details when signing and because they can face a $1000 fine’ at timestamp 4:42 to 4:47 (subparagraph 7(b)(ii) of the Standard).
* Accuracy
* Captions were not verbatim, although, if it was not possible for the captions to be verbatim, they still reflected the actual meaning of the spoken content**,** for example, **‘**the inspections are part of a renewed effort to keep customers and venues infection free’ was captioned as ‘the crackdown part of a renewed effort to keep customers and venues COVID-safe’ at timestamp 4:16 to 4:18 (subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).
* Comprehensibility
* The captions ran too fast, making them difficult for the viewer to read them between timestamp 4:42 and 4:47 (subparagraph 9(b)(ii) of the Standard).
* There was latency of between 3 to 5 seconds between speech and captions appearing throughout the segment (subparagraph 9(b)(iii) of the Standard).

Segment 28: Lego Satellite

The following accuracy and comprehensibility issues were identified in the ‘Lego Satellite’ segment of the program:

* Accuracy

Captions were not verbatim, although it was not possible for the captions to be verbatim, they still reflected the actual meaning of the spoken content**,** for example, ‘First Leftenant Jacob Lutz built the model to help demonstrate the satellite at conferences. It is an accurate representation of the NTS-3 satellite, you can actually point out basically every single major component. It took more than 30 hours to build with the help of his wife who’s also a scientist’ was captioned as:

‘First Lieut’enant Jacob Lutz built the model with the help of his wife. Also a scientist, to help demonstrate the satellite at conference. It is an accurate representation of the NTS-3 satellite, you can actually point out basically every major component. It took more than 30 hours to build’ at timestamp 32:38.

(subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).

Captions were not part of the spoken content, for example, ‘Lieutenant Jacob Lutz and his wife are still married’ at timestamp 32:55 (subparagraphs 8(b)(ii) and 8(b)(iii) of the Standard).

* Comprehensibility
* Captions disappeared too quickly to allow the viewer to read them, for example, ‘experimental air-force navigation satellite’ at timestamp 32:35 (subparagraph 9(b)(ii) of the Standard).
* Captions appeared before the actual spoken words, for example, ‘First Lieutenant Jacob Lutz built the model with the help’ at timestamp 32:35, and ‘of his wife’ at timestamp 32:38 (subparagraph 9(b)(iii) of the Standard).

Segment 31: *Keeping the lights on – Ausgrid*

* This segment was not captioned (subparagraph 8(b)(i) of the Standard).

Segment 32: *Oxford Street Future*

* This segment was not captioned (subparagraph 8(b)(i) of the Standard).

Segment 33 - Australian Museum Reopens

* This segment was not captioned (subparagraph 8(b)(i) of the Standard).

Segment 34: *Game Changer*

The following accuracy and comprehensibility issues were identified in the ‘Game Changer’ segment of the program:

* Accuracy
* Captions were omitted for part of the spoken content from timestamp 38:14 until timestamp 39:18, for example:

‘A revolutionary new blood test is being hailed a potential game changer when it comes to diagnosing cancer early a simple check is designed to detect more than 50 types of the disease before its too late. Margaret Chung knows the trauma of outliving a child she watched her daughter Annabelle die from bowel cancer at just 36 the diagnosis came too late. I’ll always remember the night before I put her to bed before she died, she said to me ‘Mum how did it get to this? Margaret knows just how vital it is to detect the insidious disease early. A revolutionary new blood test is offering that hope designed to spot more than 50 types of cancer years before diagnosis. What this test does is it looks in the blood for DNA which has been shed from the tumours into the blood stream in tiny quantities, a world first deal’

(subparagraph 8(b)(i) of the Standard).

* Comprehensibility
* There was approximately 5 seconds of latency between speech and captions appearing at the beginning of the segment at timestamp 39:18 (subparagraph 9(b)(iii) of the Standard).

Segment 35: Cher and Kavaan the Elephant

The following comprehensibility issue was identified in the ‘Cher and Kavaan the Elephant’ segment of the program:

* Comprehensibility
* The captions ran too fast and disappeared too quickly to be read, which made it difficult for viewers to keep up with the spoken content(subparagraph 9(b)(ii) of the Standard).
* There was approximately 3 seconds of latency between speech and captions appearing at the beginning of the segment (subparagraph 9(b)(iii) of the Standard).
* Captions appeared before the spoken content throughout the segment, for example:
* ‘of the country’s loneliest elephant to a new life’ at timestamp 40:09
* ‘The singer has been lobbying for years to have Kavaan’ at timestamp 40:12
* ‘moved from the Pakistani Zoo where he’s lived for 35 years’ at timestamp 40:18

(subparagraph 9(b)(iii) of the Standard).

**Conclusion**

The ACMA has found that the cumulative effect of the captioning issues for 8 distinct segments (amounting to approximately 5 minutes and 28 seconds) meant that the captions failed to meet the requirements of the Standard relating to readability, accuracy and comprehensibility under sections 7, 8 and 9, respectively, such that the captioning service for the program broadcast on 28 November 2020 was not meaningful for deaf and hearing-impaired viewers. By not complying with the Standard, the licensee has contravened subsection 130ZZA(4) of the BSA.

Finding

**Remaining program segments for Broadcasts One and Two (2 and 28 November 2020)**

The captioning service provided for 33 distinct segments of the program broadcast on 2 November 2020 and 29 distinct segments of the program broadcast on 28 November 2020 met the requirements in sections 7, 8 and 9 of the Standard relating to readability, accuracy and comprehensibility, respectively. Consequently, the licensee has not contravened subsection 130ZZA(4) of the BSA.

**Reasons**

While the ACMA identified a number of issues relating to the quality of the captioning service provided in the remaining distinct segments within the program, the captioning service for these segments was considered, on balance, to still be meaningful to deaf and hearing-impaired viewers and to comply with the requirements relating to quality in the Standard. The key issues identified are listed against each segment in **Attachment C**, with the fundamental issues highlighted below:

* **Delayed captions**: The captions for some segments were delayed, but this did not affect the overall comprehensibility of those segments.
* **Repeated captions**: The captions were repeated in several segments, but this did not affect the overall comprehensibility of those segments.
* **Missing captions**: Some captions were missing from some segments, but this did not affect the overall comprehensibility of those segments.
* **Inaccurate captions**: The captions were inaccurate in some segments, but this did not affect the overall comprehensibility of those segments.
* **Speed of captions:** The captions were not displayed for a sufficient period of time in some segments, but this did not affect the overall comprehensibility of those segments.
* **Identification of speakers:** There were some readability issues in some segments, relating to inconsistent colour coding for the identification of speakers, but this did not affect the overall readability and comprehensibility of those segments.

Issue 2: Did the licensee provide a captioning service for the program broadcast on 2 November 2020 and 28 November 2020?

Finding

**Broadcast One: 2 November 2020**

The licensee did not provide a captioning service for the program transmitted during designated viewing hours on 2 November 2020, in breach of subsection 130ZR(1) of the BSA. This breach cannot be disregarded under subsection 130ZUB(1), as it is not attributable to significant difficulties of a technical or engineering nature, and those difficulties could reasonably have been foreseen by the licensee.

**Reasons**

Under subsection 130ZR(1) of the BSA, licensees must provide a captioning service for programs transmitted during designated viewing hours between 6am and midnight.

The licensee transmitted the program on its primary television service during designated viewing hours, between 6pm and 7pm on 2 November 2020.

The complainant submitted on 2 November 2020:

Started with non-existent captions in sport segment. Then next segment, the captions were delayed about a minute after spoken word, with missing sentences throughout, then sped up so quick there was not enough time to read them, as well as skipping words and sentences.

A review of the recording of the broadcast provided by the licensee confirms that no captions were provided for approximately 40 seconds between timestamp 19:13 and 19:53.

In its submission of 17 November 2020, the licensee advised that due to an internet outage, there were a series intermittent losses and delays during the period identified by the complainant.

Accordingly, the licensee failed to provide a captioning service for the program broadcast on 2 November 2020, in breach of subsection 130ZR(1) of the BSA.

**Conclusion**

The licensee breached subsection 130ZR(1) of the BSA.

Finding

**Broadcast Two: 28 November 2020**

The licensee did not provide a captioning service for the program transmitted during designated viewing hours on 28 November 2020, in breach of subsection 130ZR(1) of Part 9D of the BSA. This breach cannot be disregarded under subsection 130ZUB(1), as it is not attributable to significant difficulties of a technical or engineering nature, and those difficulties could reasonably have been foreseen by the licensee.

Reasons

Under subsection 130ZR(1) of the BSA, licensees must provide a captioning service for programs transmitted during designated viewing hours between 6am and midnight.

The licensee transmitted the program on its primary television service between 6pm and 7pm on 28 November 2020.

The complainant submitted on 28 November 2020:

No captions for about 3 minutes, then came on displaying captions for the current news items, no captions at all for previous items.

A review of the recording of the broadcast provided by the licensee confirms that no captions were provided for approximately 2 minutes between timestamp 37:12 and 39:18.

In its submission of 15 December 2020, the licensee stated that ‘an unforeseen human error led to an unforeseen technical issue occurring’ in the broadcast on 28 November 2020, and that it led to a captioning failure for a period of approximately 2 minutes when no captions were provided.

Accordingly, the licensee failed to provide a captioning service for the program broadcast on 28 November 2020, in breach of subsection 130ZR(1) of the BSA.

**Conclusion**

The licensee breached subsection 130ZR(1) of the BSA.

**Issue 3: Should the breaches of section 130ZZA(4) and 130ZR(1) be disregarded?**

The ACMA has considered whether the breaches should be disregarded under subsections 130ZUB(1) and 130ZZA(7A) of the BSA.

Subsection 130ZZA(7A) provides for a failure by a licensee to comply with the Standard to be disregarded where:

* the failure was attributable to significant difficulties of a technical or engineering nature; and
* the technical or engineering difficulties could not reasonably have been foreseen by the licensee.

Subsection 130ZUB(1) provides for a breach of subsection 130ZR(1) to be disregarded if:

* the breach is attributable to significant difficulties of a technical or engineering nature; and
* the technical or engineering difficulties could not reasonably have been foreseen by the licensee.

**Broadcast One: 2 November 2020**

**Cause of the captioning failure**

The licensee submitted on 17 November 2020, that:

During the broadcast of the Program, an unforeseen technical issue occurred with a live captioner who was working from home as a result of COVID-19 protocols of our caption provider. This unforeseen technical issue was caused due to an internet outage affecting the live captioner, which led to a series intermittent losses and delays, starting at 18:49.

The licensee submitted on 14 January 2022 in relation to the ACMA’s preliminary finding that:

In considering section 130ZUB(1), the ACMA concluded that the internet outage was reasonably foreseeable and that for live captioning, it is reasonable to expect there would be alternative arrangements, such as a back-up captioner in the event of an internet outage.

In fact, … Seven did have in place arrangements for a back-up captioner, who stepped in as soon as possible to maintain continuity of the live captioning. Whilst internet outages as a general rule may be reasonably foreseeable, their timing is not, and accordingly it is not unreasonable to expect that when one occurs, there will be some interruption of service (which there was: no captions for 40 seconds, and quality of captions was also impacted). Seven respectfully disagrees with the ACMA’s view that an internet outage is not ‘sufficiently significant’ a technical difficulty. The outage caused a loss of service, and whilst Seven had a backup arrangement in place, it was not technically possible to avoid some level of interruption.

Accordingly Seven submits that in respect of Issue 2, the breach should be disregarded pursuant to section 130ZUB(1).

Seven equally submits that the failure to meet the quality standards in the Standard (Issue 1) should also have been disregarded for the same reasons, pursuant to section 130ZZA(7A).

The ACMA notes the licensee’s submissions.

**Significant difficulties of a technical or engineering nature**

The ACMA acknowledges that the requirement for captioning providers to work from home because of COVID-19 protocols may give rise to technical issues such as internet outages.

The ACMA also notes the licensee’s submission that, whilst the licensee had a back-up arrangement in place, it was not technically possible to avoid some interruption to the captioning service, even where there is a back-up arrangement in place.

However, the ACMA considers that the breach was attributable solely to difficulties of a technical nature and where the difficulties were not of a significant nature.

**Difficulties that could not reasonably have been foreseen**

The ACMA considers that the internet outage could have reasonably been foreseen by the licensee. For live captioning of programs, it is reasonable to expect that there would be arrangements in place, such as a back-up captioner, to take over the live captioning in the event of an internet outage to minimise its impact on deaf and hearing-impaired viewers.

The ACMA notes that the licensee had arrangements in place for a back-up captioner, who stepped in as soon as possible to maintain the continuity of captioning.

In regard the licensee’s submission that the timing of internet outages is not reasonably foreseeable, the ACMA does not consider that this is relevant to the question of whether the internet outage could have reasonably been foreseen.

**Conclusion**

Based on the evidence available, the ACMA does not consider that the failure to provide captions for 40 seconds from timestamp 19:13 to 19:53 in the program broadcast on 2 November 2020 was attributable to significant difficulties of a technical or engineering nature and that could not reasonably have been foreseen, such that the breaches could be disregarded under subsections 130ZUB(1) or 130ZZA(7A) of the BSA.

**Broadcast Two: 28 November 2020**

**Cause of the captioning failure**

The licensee submitted on 15 December 2020 that:

During the broadcast of the Program, an unforeseen human error led to an unforeseen technical issue occurring, when a live captioner incorrectly selected the wrong mode of captioning when transitioning between two different modes of captioning. This error led to the software being unable to accept pre scripted captions, causing captions to not be broadcast.

This resulted in a captioning outage between 18:36 and 18:38, at which point the incorrect setting was manually overridden and full-quality live captioning was restored to the Program.

The licensee submitted on 14 January 2022 in relation to the ACMA’s preliminary finding that:

The Report concluded that the outage was attributable to human error which was reasonably foreseeable, because for live captioning, it is reasonable to expect that captioners would be trained to a certain standard, where some errors may occur, but not the absence of captions altogether.

Seven respectfully disagrees with this view. Seven agrees that captioners are trained to exacting standards, and none more so than live captioners. Nevertheless, some level of human error is unavoidable, indeed understandable under the high pressure of a live environment. It does not follow that such error should be limited to quality issues only, and not issues of omission. Such error can equally lead to both.

In this case, the error (which was unforeseen) led to the incorrect selection of the applicable software, which then resulted in the technical difficulty leading to the absence of captions during approximately 2 minutes.

In these circumstances Seven submits that the breach should be disregarded pursuant to section 130ZUB(1).

Seven equally submits that the ACMA should have disregarded the quality issues required by the Standard pursuant to section 130ZZA(7A) (though as we mention above, we submit that the Standard was met in this case …).

**Significant difficulties of a technical or engineering nature**

The ACMA notes the licensee’s submission that the lack of captioning was caused by an unforeseen human error which resulted in a technical issue which led to the absence of captions. The ACMA considers that the lack of captioning in this instance was not caused by a significant difficulty of a technical or engineering nature, but by human error.

Thus, subsections 130ZUB(1) and 130ZZA(7A) do not apply to the breach of section 130ZR(1).

**Conclusion**

Based on the evidence available, the ACMA does not consider that the failure to provide captions for approximately 2 minutes from timestamp 37:12 to 39:18 in the program broadcast on 28 November was attributable to significant difficulties of a technical or engineering nature, such that the breaches could be disregarded under subsection subsections 130ZUB(1) or 130ZZA(7A) of the BSA.

**Issue 4: Did the licensee comply with the licence condition set out in paragraph 7(1)(o) of Schedule 2 to the BSA?**

Finding

By failing to comply with subsection 130ZZA(4) and subsection 130ZR(1) of Part 9D of the BSA, the licensee breached the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

**Reasons**

The licensee failed to meet therequirements relating to quality imposed by the Standard in 5 distinct segments in the broadcast of 2 November 2020 and 8 distinct segments in the broadcast of 28 November 2020, in breach of subsection 130ZZA(4) of the BSA.

The licensee also failed to provide a captioning service for approximately 40 seconds in the broadcast on 2 November 2020 and approximately 2 minutes in the broadcast of 28 November 2020, in breach of subsection 130ZR(1) of the BSA.

The breaches of subsections 130ZZA(4) and 130ZR(1) cannot be disregarded under subsections 130ZZA(7A) and 130ZUB(1), respectively, as they are not attributable to significant difficulties of a technical or engineering nature, and those difficulties could reasonably have been foreseen by the licensee.

By failing to comply with subsections 130ZZA(4) and 130ZR(1) in Part 9D of the BSA, the licensee has breached the licence condition at paragraph 7(1)(o) of Schedule 2 to the BSA.

**Attachment A**

**Complaints dated 2 November 2020 and 28 November 2020**

1. **Extract from complaint to the ACMA of 2 November 2020**

**Broadcast date: 2/11/2020**

Accuracy, delay, missing

Started with non-existent captions in sport segment. Then next segment, the captions were delayed about a minute after spoken word, with missing sentences throughout, then sped up so quick there was not enough time to read them, as well as skipping words and sentences.

1. **Extract from complaint to the ACMA of 28 November 2020**

**Broadcast Date: 28/11/2020**

No captions

No captions for about 3 minutes, then came on displaying captions for the current news items, no captions at all for previous items.

Attachment B

### **Relevant provisions of the Broadcasting Services (Television Captioning) Standard 2013**

**4 Definitions**

In this Standard:

Terms that are defined in the Broadcasting Services Act 1992 have the same meaning as in that Act, unless the contrary intention appears.

[…]

**captioning obligations**means the legislative obligations under Part 9D of the Act that require:

(a) commercial television broadcasting licensees and national broadcasters to provide a captioning service for programs transmitted under subsection 130ZR(1) of the Act;

[…]

**5 Quality of captioning services**

Broadcasters and narrowcasters must, when providing a captioning service in accordance with their captioning obligations, comply with the requirements relating to quality in this Standard.

[…]

### **6 Determining the quality of captioning services**

* 1. Subject to paragraph (b), when determining the quality of a captioning service for a program, the captioning service must be considered in the context of the program as a whole.
	2. When determining the quality of a captioning service for a program that is a distinct program segment within a television program, the captioning service must be considered in the context of that distinct program segment on its own.
	3. When determining the quality of a captioning service, the cumulative effect of the following factors must be considered:
		1. the readability of the captions;
		2. the accuracy of the captions; and
		3. the comprehensibility of the captions.

[…]

### **7 Readability of captions**

1. When providing a captioning service for a program, broadcasters and narrowcasters must use captions that are readable.
2. When determining whether captions are readable, the following factors must be considered in the context of the program as a whole:
	1. whether colour and font are used in the captions in a way that makes them legible;
	2. whether the caption lines end at natural linguistic break and reflect the natural flow and punctuation of a sentence, so each caption forms an understandable segment;
	3. whether standard punctuation of printed English has been used in the captions to convey the way speech is delivered;
	4. whether the captions are positioned so as to avoid obscuring other on- screen text, any part of a speaker’s face including the mouth and any other important visuals where possible; and
	5. whether the captions are no more than three lines in length.

### **8 Accuracy of captions**

1. When providing a captioning service for a program, broadcasters and narrowcasters must use captions that accurately recreate the soundtrack of a program.
2. When determining whether captions accurately recreate the soundtrack of a program, the following factors must be considered in the context of the program as a whole:
	1. whether spoken content has been captioned;
	2. whether the captions of spoken content are verbatim;
	3. where it is not possible for the captions of spoken content to be verbatim, whether the captions reflect the actual meaning of the spoken content;
	4. where the intended target audience of a program is children and the captions are not verbatim, whether the captions reflect the actual meaning of the spoken content;
	5. whether the manner and tone of voice of speakers has been conveyed, where practical and material; and
	6. whether sound effects and/or music, material to understanding the program and not observable from the visual action, have been accurately described.

### **9 Comprehensibility of captions**

1. When providing a captioning service for a program, broadcasters and narrowcasters must use captions that are comprehensible.
2. When determining whether captions are comprehensible, the following factors must be considered in the context of the program as a whole:
	1. whether the captions clearly identify and distinguish individual speakers, including off-screen and off-camera voices;
	2. whether the captions are displayed for a sufficient length of time to allow the viewer to simultaneously read them and follow the action of the program;
	3. the extent to which the appearance of the caption coincides with the onset of speech of the corresponding speaker, sound effect or music;
	4. the extent to which the disappearance of the caption coincides with the end of the speech of the corresponding speaker, sound effect or music;
	5. whether the words used in the captions have been spelt correctly;
	6. where a word is not spelt correctly, whether the spelling provided nevertheless conveys the meaning of the actual word;
	7. whether explanatory captions are provided for long speechless pauses in the program;
	8. the extent to which a caption over-runs a shot or scene change; and
	9. the extent to which the appearance or disappearance of the caption, as the case may be, coincides with the relevant shot or scene change.

**Attachment C**

**TABLES OF DISTINCT SEGMENTS, APPROXIMATE DURATION AND ASSOCIATED KEY ISSUES**

**Bold and shaded** – Breach due to captioning issues identified. The captioning issues affected the accuracy, comprehensibility and readability of the segment in question, to the extent that it would have made it difficult for a person relying on the captions to comprehend the segment. As such, the captioning was not meaningful to viewers relying on captions.

Normal and unshaded – No breach despite captioning issues identified. The captioning issues did not affect the accuracy, comprehensibility and readability of the segment in question to the extent that the errors would have made it difficult for a person relying on the captions to comprehend the segment. As such, the captioning remained meaningful to viewers relying on captions.

**Table 1 - Broadcast One: 2 November 2020**

| **­** | Name of segment (bolded and shaded indicates breach) | Key issues | Relevant provision of the Standard (bolded and shaded indicates breach) |
| --- | --- | --- | --- |
| 1 | Introduction(0:19 to 1:10)(approx. 51 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Latency within the segment of approx. 5 seconds at beginning of segment.
 |
| 2  | **Star Charged** (Dylan Walker)(1:11 to 03:17) (approx. 2 minutes and 6 seconds) | Comprehensibility | * Subparagraph 9(b)(ii) Captions are not displayed for a sufficient period to be read.
* Subparagraph 9(b)(iii) Latency within the segment of approx. 3 seconds at beginning of segment.
 |
| 3 | Jack de Belin rape trial (3:18 to 03:39) (approx. 21 seconds) |  |  |
| 4 | Stepping Down (Christine Holgate)*(3:30 to 5:14)*(approx. 1 minute and 44 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Latency within the segment of approx. 5 seconds within the segment.
 |
| 5 | Border Wait(5:15 to 6:55)(approx. 1 minute and 40 seconds) | Accuracy | * Subparagraphs (8)(b)(ii) Word missing.
* Subparagraph (8)(b)(ii) and 8(b)(iii) Captions are not verbatim, although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
 |
| 6 | Opera House re-opening(6:55 to 7:28)(approx. 33 seconds) |  |  |
| 7 | Sydney Gateway*(7:29 to 9:07)*(approx. 1 minute and 38 seconds) |  |  |
| 8 | Shipping container falls off truck(9:08 to 9:25)(approx. 16 seconds) | Accuracy | * Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
 |
| 9 | Campaign Overdrive (US election)(9:26 to 11:53)(approx. 2 minutes and 28 seconds) | Accuracy and Comprehensibility | * Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.

Subparagraphs 8(b)(ii) and (8)(b)(iii) Captions appear for words that are not spoken.* Subparagraph 9(b)(iii) Captions appear before the speaker.
 |
| 10 | Shock Twist (Craig McLachlan)(11:54 to 13:40)(approx. 1 minute and 46 seconds) | Readability, Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraph 9(b)(iii) Captions appear before the spoken content.
 |
| 11 | Westpac(13:41 to 15:17)(approx. 1 minute and 36 seconds) | Accuracy  | * Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions not verbatim although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content. Captions also appear for words that are not spoken.
 |
| 12 | Teenage Surfer Bitten By Shark*(15:18 to 15:43)*(approx. 25 seconds) | Readability, Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraph 9(b)(iii) Latency within the segment of approx. 3 seconds at beginning of segment.
 |
| 13 | Stolen Car Crash(15:44 to 16:12)(approx. 28 seconds) | Readability | * Subparagraph (7)(b)(ii) Captions are repeated.
 |
| 14 | Melbourne Cup day interest rate cut*(16:13 to 17:59)*(approx. 1 minute and 46 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Captions appear before the spoken content.
 |
| 15 | Prince William diagnosed with COVID-19(18:00 to 19:01)(approx. 1 minute and 1 second) | Accuracy, Comprehensibility | * Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim, although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(iii) Latency of between 2 and 4 seconds within the segment.
 |
| 16 | Weather Report(19:02 to 19:58)(approx. 56 seconds) | Accuracy  | * Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim, although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
 |
| 18 | Distracted Driver’s Near-Miss(23:33 to 23:56)(approx. 23 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Captions appear before the spoken content.
 |
| 19 | **Jail Sentence**(23:57 to 25:39)(approx. 1 minute and 42 seconds) | Readability, Accuracy and Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraph (8)(b)(i) Captions are omitted.

Subparagraphs 8(b)(ii) and 8(b)(iii) Captions are not verbatim and, if it was not possible for the captions to be verbatim, they do not reflect the actual meaning spoken content.Subparagraph 9(b)(iii) Latency captions appear before the spoken content. |
| 20 | Deadly sword rampage in Quebec*(25:40 to 26:04)*(approx. 24 seconds) |  |  |
| 21 | Johnny Depp decision to be handed down*(26:05 to 26:27)*(approx. 22 seconds) |  |  |
| 22 | *Unexpected Visitor*(26:28 to 26:44)(approx.16 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Captions appear before the spoken content.
 |
| 24 | Murder Mystery(30:24 to 30:55 – continues on Part 2 of the recording) (approx. 31 seconds) | Accuracy and Comprehensibility | * Subparagraph (8)(b)(i) Words are omitted.
* Subparagraph 9(b)(iii) Captions appear before the spoken content.
 |
| Broadcast One - Part 2 |
| 24 (continued) | Murder Mystery continued Fake marriage scam(00:00 to 01:28)(approx. 1 minute and 28 seconds, 1 minute and 59 seconds in total) |  |  |
| 25 | China Trade Tensions Escalate(01:29 to 02:02)(approx. 33 seconds) |  |  |
| 26 | Guilty Plea(02:03 to 03:21)(approx. 1 minute and 18 seconds) | Readability, Accuracy and Comprehensibility | * Subparagraph 7(b)(ii) Captions are repeated at the beginning of the next segment.
* Subparagraph (8)(b)(i) Words are omitted.
* Subparagraph (9)(b)(i) Delay in colour change to indicate change in speaker from News Presenter to traffic Reporter, although the captions are still comprehensible.

Subparagraph 9(b)(iii) Latency of approx. 7 seconds at the beginning of the segment. Captions also appear before spoken content. |
| 27 | Near-miss on Boston driveway(03:22 to 03:42)(approx. 20 seconds) | Readability | * Subparagraph (7)(b)(ii) Captions from previous segment repeated at beginning of this segment but this does not affect comprehensibility.
 |
| 28 | Diabetes Warning(03:43 to 5:25)(approx. 1 minute and 42 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Captions disappear too quickly to be read and appear before the spoken content.
 |
| 29 | Phar Lap Remembered(5:26 to 5:46)(approx. 20 seconds) |  |  |
| 31 | Checking the markets(9:08 to 9:25)(approx. 17 seconds) | Comprehensibility | Subparagraph 9(b)(iii) Latency of approx. 4 seconds at the beginning of the segment. |
| 32 | Fuel Prices(9:26 to 9:40)(approx. 14 seconds) | Readability | * Subparagraph (7)(b)(ii) Captions are repeated from the previous segment.
 |
| 33 | Life Saving Words(9:41 to 10:07)(approx. 26 seconds) | Comprehensibility | * Subparagraph (9)(b)(i) Change in speaker not clearly identified.
* Subparagraph 9(b)(ii) Captions are not displayed for a sufficient period to be read.

Subparagraph 9(b)(iii) Latency captions appear before the spoken content. |
| 34 | Kogarah Oval Future(10:08 to 10:30)(approx. 22 seconds) | Accuracy | * Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim, although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
 |
| 35 | Calling Card(10:31 to 11:49)(approx. 1 minute and 18 seconds) | Comprehensibility | * Subparagraph 9(b)(ii) Captions are not displayed for a sufficient period.
* Subparagraph 9(b)(iii) Latency captions appear before the spoken content.
 |
| 36 | Don’t Miss (Chris Reagan’s special investigation)(11:50 to 12:04)(approx. 14 seconds) |  |  |
| 38 | **Sport Report**(15:35 to 20:16)(approx. 4 minutes and 41 seconds) | Readability, Accuracy and Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraph (8)(b)(i) Captions are omitted.
* Subparagraph (8)(b)(i) Captions cut off before sentences finishes.

Subparagraphs 8(b)(ii) and (8)(b)(iii) an incorrect word and,if it was not possible for the captions to be verbatim, it does not reflect the meaning of the spoken content. Subparagraph 9(b)(iii) Latency of approx. 7 to 12 seconds within the segment. Subparagraph 9(b)(ix) Captions do not coincide with the scene change |
| 39 | **Chris Reason special investigation**(20:17 to 23:06)(approx. 2 minutes and 49 seconds) | Readability, Accuracy and Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraph (8)(b)(i) Captions are omitted.
* Subparagraphs 8(b)(ii) and (8)(b)(iii) Incorrect captions and, if it was not possible for the captions to be verbatim, they do not reflect the meaning of the spoken content.
* Subparagraph 9(b)(ii) of the Standard. Captions are not displayed for a sufficient period.
* Subparagraph 9(b)(iii) Latency of between 8 and 37 seconds within the segment.

Subparagraph 9(b)(ix) captions do not coincide with the scene change and spill into the next segment. |
| 40 | On Sunrise Tomorrow(23:07 to 23:22)(approx. 15 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Latency of approx. 9 seconds at the beginning of the segment.
 |
| 42 | Toniqht on The Latest(23:32 to 23:54)(approx. 22 seconds) |  |  |
| 44 | **Weather**(28:07 to 30:53)(approx. 2 minutes and 46 seconds) | Readability, Accuracy and Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim, although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
* Subparagraphs 8(b)(ii) and (8)(b)(iii) Captions are not verbatim and,if it was not possible for the captions to be verbatim, they do not reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(ii) of the Standard. Captions are not displayed for a sufficient period.
* Subparagraph 9(b)(iii) Latency of approx. 4 seconds within the segment.
 |

**Table 2 - Broadcast Two: 28 November 2020**

| **Segment**  | **Name of segment** (bolded and shaded indicates breach) | **Key issues** | **Relevant provision of the Standard**(bolded and shaded indicates breach) |
| --- | --- | --- | --- |
| 1 | *Introduction* (0:13 to 1:01)(approx. 48 seconds) | Accuracy andComprehensibility  | * Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(iii) Latency of approx. 7 seconds at the beginning of the segment.
 |
| 2 | Heatwave(01.02 – 03.02)(approx. 2 minutes and 1 second) |  |  |
| 3 | ***Weather Update***(03.03-04.10)(approx. 1 minute and 7 seconds) | Readability, Accuracy and Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraph (8)(b)(i) Captions are omitted.
* Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
* Subparagraph (8)(b)(iii) Captions are not verbatim and, if it was not possible for the captions to be verbatim, they do not reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(iii) Latency of approx. 16 seconds within the segment.
 |
| 4 | ***Covid Crackdown***(04.10-04.50)(approx. 40 seconds) | Readability, Accuracy and Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(ii) Captions run too fast making them difficult for viewers to keep up with the spoken content.
* Subparagraph 9(b)(iii) Latency of approx. 5 seconds within the segment.
 |
| 5 | Mask Scam*(5:22 to 5:47)*(approx. 25 seconds) | Accuracy, Comprehensibility | * Subparagraph (8)(b)(i) Captions are omitted.
* Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim, although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(iii) Captions appear before the spoken content.
 |
| 6 | Toddler Tragedy(05.48 to 7:43)(approx.1 minute and 55 seconds) | Accuracy, Comprehensibility | * Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(iii) Latency of approx. 2 to 4 seconds within the segment.
 |
| 7 | *Garage Car Jacking*(07.44 to 9:08)(approx.1 minute and 24 seconds) |  |  |
| 8 | *Trade Tension*(09.09 to 11:01)(approx. 1 minute and 51 seconds) | Accuracy, Comprehensibility | * Subparagraph (8)(b)(i) Captions are omitted.
* Subparagraphs 8(b)(ii) and (8)(b)(iii) Captions are not verbatim and, if it was not possible for the captions to be verbatim, they do not reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(ii) Captions run too fast making them difficult for viewers to keep up with the spoken content.
* Subparagraph 9(b)(iii) Latency captions appear before the spoken content.
 |
| 9 | Killing of top nuclear scientist(11:02 to 13:14)(approx. 2 minutes and 34 seconds) | Readability | * Subparagraph (7)(b)(ii) Captions are repeated.
 |
| 10 | *Lamborghini Driver Wanted*(13:15 to 13:30)(approx. 30 seconds) |  |  |
| 11 | Childcare Fraud Syndicate (13.30 – 15.39)(approx. 2 minutes and 9 seconds) | Accuracy, Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraph (8)(b)(i) Captions are omitted.
* Subparagraph 9(b)(i) Captions do not clearly identify speakers though captions are still comprehensible.
* Subparagraph 9(b)(ii) Captions run fast making them difficult for viewers to keep up with the spoken content.
* Subparagraph 9(b)(iii) Latency of approx. 3 seconds within the segment.
 |
| 12 | *Missing Woman Investigation – Melissa Caddick*(15:41 to 16:03)(approx. 22 seconds) | Readability | * Subparagraph 9(b)(ii) Captions run fast making them difficult for viewers to keep up with the spoken content.
 |
| 13 | *Land Rush*(16.04 to 17:45*)*(1 minute and 41 seconds) |  |  |
| 15 | 2 cars torched in arson attack(21.10 to 21:25)(approx. 15 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Latency of approx. 3 seconds within the segment.
* Subparagraph (9)(b)(ix) Captions do not coincide with the scene change.
 |
| 16 | Kate’s Mission*(21.26 to 23:04)*(approx. 1 minute and 38 seconds) | Comprehensibility | * Subparagraph 9(b)(ii) Captions are not displayed for a sufficient period.
* Subparagraph 9(b)(iii) Latency of approx. 4 seconds within the segment. Captions also appear before the spoken content.
* Subparagraph (9)(b)(ix) Captions do not coincide with the scene change.
 |
| 17  | *Minivan crash into monument in Buffalo New York**(23:05 to 23:25)*(approx. 25 seconds) |  |  |
| 18 | *Demolition of Dubai building*(23:26 to 23:45)(approx. 19 seconds) |  |  |
| 19 | *Brawl in Taiwanese Parliament*(23:46 to 24:08)(approx. 22 seconds) |  |  |
| 21 | *Porsche Driver’s Property Sell-off**(27:26 to 27:47)*(approx. 21 seconds) | Comprehensibility | * Subparagraph 9(b)(iii) Latency of approx. 2 seconds at the beginning of the segment.
 |
| 22 | Cannabis grow house fire(27:48 to 28:01)(approx. 13 seconds) |  |  |
| 23 | *Money Spinner**(28:02 to 29:43)*(approx. 1 minute and 41 seconds) | Comprehensibility | * Subparagraph 9(b)(ii) Captions are not displayed for a sufficient period.
* Subparagraph 9(b)(iii) Captions also appear before the spoken content.
 |
| 24 | Council Workers Flee to Higher Ground(29:44 to 30:11)(approx. 27 seconds) |  |  |
| 25 | Rental Revolution(30:12 to 31:41)(approx. 1 minute and 29 seconds) | Accuracy and Comprehensibility | * Subparagraphs 8(b)(ii) and (8)(b)(iii) Captions are not verbatim and, if it was not possible for the captions to be verbatim, they do not reflect the actual meaning of the spoken content.

Subparagraph 9(b)(iii) Latency of approx. 3 seconds within the segment. |
| 26 | Construction project in Bavarian Town(31:44 to 32:04)(approx. 20 seconds) |  |  |
| 27 | Silent Protest(32:05 to 32:26)(approx. 21 seconds) |  |  |
| 28 | **Lego Satellite**(32.27 to 32: 54)(approx. 27 seconds) | Accuracy, Comprehensibility | Subparagraph (8)(b)(ii) and 8(b)(iii) Captions are not verbatim although,if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.* Subparagraphs 8(b)(ii) and (8)(b)(iii) Captions are not verbatim and, if it was not possible for the captions to be verbatim, they do not reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(ii) of the Standard. Captions are not displayed for a sufficient period.
* Subparagraph 9(b)(iii) Captions appear before the spoken content.
 |
| 29 | Sydney Zoo welcomes bull shark(32:44 to 33:13)(approx. 29 seconds) |  |  |
| 31 | **Keeping the lights on – Ausgrid**(37.10 – 37:31)(approx. 21 seconds) | Accuracy | * Subparagraph (8)(b)(i) Segment is not captioned.
 |
| 32 | **Oxford Street Future**(37:32 to 37:54)(approx. 22 seconds) | Accuracy | * Subparagraph (8)(b)(i) Segment is not captioned.
 |
| 33 | **Australian Museum Reopens***(37:55 to 38:13)*(approx. 18 seconds) | Accuracy | * Subparagraph (8)(b)(i) Segment is not captioned.
 |
| 34 | **Game Changer** (38:14 to 40:02)(approx. 1 minute and 48 seconds) | Accuracy | * Subparagraph (8)(b)(i) Captions are omitted.
* Subparagraph 9(b)(iii) Latency of approx. 5 seconds at the beginning of the segment.
 |
| 35 | **Cher and Kavaan the Elephant**(40.04 to 40:29)(approx. 25 seconds) | Comprehensibility | * Subparagraph 9(b)(ii) of the Standard. Captions are not displayed for a sufficient period.
* Subparagraph 9(b)(iii) Latency of approx. 3 seconds at the beginning of the segment. Captions also appear before the spoken content.
 |
| 36 | Don’t Miss*(40:30 to 40:43)*(approx. 13 seconds) |  |  |
| 38 | Sport (44:41 to 51:35)(approx. 6 minutes and 54 seconds) | Accuracy and Comprehensibility | * Subparagraph (8)(b)(i) Captions are omitted.
* Subparagraph (9)(b)(i) Captions do not clearly identify speakers, although the captions are still comprehensible.
* Subparagraph 9(b)(ii) of the Standard. Captions are not displayed for a sufficient period.
 |
| 39 | Smart Watch (51:36 to 53:07)(approx. 1 minute and 31 seconds) |  |  |
| 40 | Weather Update*(53:09 to 53:22)*(approx. 13 seconds) |  |  |
| 42 | Weather Update(58.16 to 1:00:49)(approx. 1 minute and 33 seconds) | Readability, Accuracy, Comprehensibility | * Subparagraph (7)(b)(ii) Captions are repeated.
* Subparagraph 8(b)(i) Words omitted.
* Subparagraphs (8)(b)(ii) and 8(b)(iii) Captions are not verbatim although, if it was not possible for the captions to be verbatim, they still reflect the actual meaning of the spoken content.
* Subparagraph 9(b)(ii) of the Standard. Captions run fast.
* Subparagraph 9(b)(iii) Captions appear before the spoken content.
 |

Attachment D

Licensee’s submissions to the ACMA

1. **Extract from letter of 17 November 2020**

**[…]**

During the broadcast of the Program, an unforeseen technical issue occurred with a live captioner who was working from home as a result of COVID-19 protocols of our caption provider. This unforeseen technical issue was caused due to an internet outage affecting the live captioner, which led to a series intermittent losses and delays, starting at 18:49.

A standby captioner took over the live captioning at 18:52, with full-quality live captioning restored to the Program approximately one minute later.

Seven appreciates the importance of the captioning service that we provide to deaf and hearing-impaired viewers and takes its captioning obligations very seriously.

1. **Extract from letter of 15 December 2020**

**Are you aware of any issues that would have affected quality/delivery of the captions for the Programs? If so, please provide details.**

During the broadcast of the Program, an unforeseen human error led to an unforeseen technical issue occurring, when a live captioner incorrectly selected the wrong mode of captioning when transitioning between two different modes of captioning. This error led to the software being unable to accept pre scripted captions, causing captions to not be broadcast.

This resulted in a captioning outage between 18:36 and 18:38, at which point the incorrect setting was manually overridden and full-quality live captioning was restored to the Program.

Seven appreciates the importance of the captioning service that we provide to deaf and hearing-impaired viewers and takes its captioning obligations very seriously.

1. **Extract from letter of 14 January 2022**

**Summary Response to the Preliminary Report**

Seven submits that the captioning outages the subject of these two complaints should be disregarded as unforeseen difficulties of a technical or engineering nature, pursuant to section 130ZUB(1) and section 130ZZA(7A) of the *Broadcasting Services Act*.

The ACMA did not consider the applicability of section 130ZZA(7A) in concluding that Seven had breached the Standard, in each case.

Finally, Seven submits that the quality of captioning should be measured against the distinct program segments of News, Sport and Weather, rather than at each individual story level.

# 2 November 2020 outage

While Seven does not dispute the ACMA’s findings that the captioning did not meet the quality requirements of the Standard (Issue 1) at least in respect of the distinct Sport and Weather segments, Seven is concerned that the ACMA did not consider the applicability of section 130ZZA(7A) when forming its view on Issue 1.

In Seven’s letter of 17 November 2020, we said:

During the broadcast of the Program, an unforeseen technical issue occurred with a live captioner who was working from home as a result of COVID-19 protocols of our caption provider. This unforeseen technical issue was caused due to an internet outage affecting the live captioner, which led to a series intermittent losses and delays, starting at 18:49.

A standby captioner took over the live captioning at 18:52, with full-quality live captioning restored to the Program approximately one minute later.

Under Issue 2 [failure to provide a captioning service], the ACMA did consider the applicability of the ‘sister’ provision to section 130ZZA(7A), section 130ZUB(1).

In considering section 130ZUB(1), the ACMA concluded that the internet outage was reasonably foreseeable and that for live captioning, it is reasonable to expect there would be alternative arrangements, such as a back-up captioner in the event of an internet outage.

In fact, as noted in our letter above, Seven did have in place arrangements for a back-up captioner, who stepped in as soon as possible to maintain continuity of the live captioning. Whilst internet outages as a general rule may be reasonably foreseeable, their timing is not, and accordingly it is not unreasonable to expect that when one occurs, there will be some interruption of service (which there was: no captions for 40 seconds, and quality of captions was also impacted). Seven respectfully disagrees with the ACMA’s view that an internet outage is not ‘sufficiently significant’ a technical difficulty. The outage caused a loss of service, and whilst Seven had a backup arrangement in place, it was not technically possible to avoid some level of interruption.

Accordingly Seven submits that in respect of Issue 2, the breach should be disregarded pursuant to section 130ZUB(1).

Seven equally submits that the failure to meet the quality standards in the Standard (Issue 1) should also have been disregarded for the same reasons, pursuant to section 130ZZA(7A).

# 28 November 2020 outage

Seven does not agree with the ACMA’s findings that the captioning did not meet the quality requirements of the Standard (Issue 1), having regard to the way in which the ACMA has characterized ‘distinct program segments’. We address this further in the ‘Distinct Program Segments’ section below.

But even were Seven to agree with the ACMA’s position on quality of captioning in this Broadcast, Seven is again concerned that the ACMA did not consider the applicability of section 130ZZA(7A) to this outage.

In Seven’s letter of 15 December 2020, we said:

During the broadcast of the Program, an unforeseen human error led to an unforeseen technical issue occurring, when a live captioner incorrectly selected the wrong mode of captioning when transitioning between two different modes of captioning. This error led to the software being unable to accept pre scripted captions, causing captions to not be broadcast.

This resulted in a captioning outage between 18:36 and 18:38, at which point the incorrect setting was manually overridden and full-quality live captioning was restored to the Program.

Under Issue 2 [failure to provide a captioning service], the ACMA did consider the applicability of the ‘sister’ provision to section 130ZZA(7A), section 130ZUB(1).

The Report concluded that the outage was attributable to human error which was reasonably foreseeable, because for live captioning, it is reasonable to expect that captioners would be trained to a certain standard, where some errors may occur, but not the absence of captions altogether.

Seven respectfully disagrees with this view. Seven agrees that captioners are trained to exacting standards, and none more so than live captioners. Nevertheless, some level of human error is unavoidable, indeed understandable under the high pressure of a live environment. It does not follow that such error should be limited to quality issues only, and not issues of omission. Such error can equally lead to both.

In this case, the error (which was unforeseen) led to the incorrect selection of the applicable software, which then resulted in the technical difficulty leading to the absence of captions during approximately 2 minutes.

In these circumstances Seven submits that the breach should be disregarded pursuant to section 130ZUB(1).

Seven equally submits that the ACMA should have disregarded the quality issues required by the Standard pursuant to section 130ZZA(7A) (though as we mention above, we submit that the Standard was met in this case – as to which, see below).

# The Standard - distinct program segments

While Seven does not dispute the ACMA’s conclusion that the Standard was not complied with in respect of the Weather and Sports segments in the 2 November 2020 Broadcast, Seven disagrees with the ACMA’s conclusion reached in respect of the Standard not being met on the 28 November 2020 Broadcast. In particular, Seven disagrees with the manner in which the ACMA has characterized ‘distinct program segments’.

The ACMA considered each Broadcast as being broken up into a large number of ‘distinct program segments’, and has counted 38 and 37 segments respectively. Accordingly, the ACMA has assessed quality at the level of each of those individual ‘segments’. The ACMA has taken the view that each news story is a separate ‘segment’.

Seven respectfully argues that the applicability of the Standard should not be so granular. The explanatory statement to the Standard gives the example of a current affairs program (which consists of 3 or 4, possibly up to 6 distinct segments), not a news program. This suggests that Standard should properly be applied to broader ‘segments’ within a program. This is particularly so in relation to nightly News bulletins which are live and fast-paced.

Seven submits that the ‘distinct program segments’ in a News bulletin should properly be characterized as News, Sport and Weather.

In the Report, the ACMA notes:

In determining the quality of captioning, the ACMA takes into account, among other factors, the circumstances of the broadcast, including the nature of live captioning and the fact that delays may occur. The ACMA had regard to this in the present investigation, but also notes that, regardless of the method of captioning, the captioning service provided for a program must be meaningful to deaf and hearing-impaired viewers.

2 November 2020 Broadcast

Seven acknowledges the 2 November 2020 Broadcast suffered quality issues in both the Sport and Weather sections, and we accept the findings in respect of those two distinct segments. Seven does not, however, agree that quality issues in the 3 remaining stories (Star Charged, Jail Sentence and Chris Reason special report), when measured as part of the News segment as a whole (comprising 3 out of 36 stories) should be similarly characterized. When applying the Standard to the broader segments of News, Sport and Weather, and having regard to the above circumstances including the nature of live captioning in a fast-paced news environment and the acknowledgment that delays may occur, Seven respectfully submits that the Standard was met in respect of the News segment (comprising the remaining 36 stories), when considered as a whole.

28 November 2020 Broadcast

In respect of the 28 November 2020 Broadcast, Seven notes that the Sport and Weather segments at the end of the Broadcast were unaffected by captioning quality problems. Looking at the remaining stories in the third ‘distinct program segment’, the News segment, 8 out of 37 stories suffered quality issues. Again, for the same reasons outlined above, Seven would respectfully submit that, viewed as a whole, the quality Standard was met in respect of the News segment.

[…]

Seven appreciates the importance of the captioning service that we provide to deaf and hearing impaired viewers and takes its captioning obligations very seriously.

1. Note that the investigation was undertaken with respect to the relevant BSA requirements in force at the time of the broadcasts and that the *Broadcasting Legislation Amendment (2021 Measures No. 1) Act 2021* is due to make changes to Part 9D of the BSA. [↑](#footnote-ref-2)
2. Paragraph 7(a) of the Standard. [↑](#footnote-ref-3)
3. Paragraph 8(a) of the Standard. [↑](#footnote-ref-4)
4. Paragraph 9(a) of the Standard. [↑](#footnote-ref-5)
5. See [*Broadcasting Services Television Captioning Standard Explanatory Statemen*](https://www.legislation.gov.au/Details/F2013L00918/Explanatory%20Statement/Text)*t,* page 3*.* [↑](#footnote-ref-6)
6. Paragraph 6(a) of the Standard. [↑](#footnote-ref-7)
7. Paragraph 6(c) of the Standard. [↑](#footnote-ref-8)
8. See [Broadcasting Services Television Captioning Standard Explanatory Statement, Page 3.](https://www.legislation.gov.au/Details/F2013L00918/Explanatory%20Statement/Text)  [↑](#footnote-ref-9)
9. Section 3 of the Standard [↑](#footnote-ref-10)
10. See page 22 below. [↑](#footnote-ref-11)
11. Recording of broadcast Part 1. [↑](#footnote-ref-12)
12. Recording of broadcast Part 2. [↑](#footnote-ref-13)