

Remedial Direction issued under section 141 of the *Broadcasting Services Act 1992*

TO: Telstra Pay TV Pty Ltd (ACN 095 931 614) (the **Licensee**)

OF: Level 1, 242 Exhibition Street

Melbourne VIC 3000

Attention: Ivan Cook, Regulatory Principal

By email: Ivan.H.Cook@team.telstra.com

Cc: foxtelacmacompliance@team.telstra.com

Background

The Australian Communications and Media Authority (the **ACMA**) is responsible for administering and enforcing captioning obligations of subscription television broadcasting licensees under Part 9D of the *Broadcasting Services Act 1992* (the **BSA**).

Each subscription television broadcasting licence is subject to the conditions set out in clause 10 of Schedule 2 to the BSA. Paragraph 10(1)(eb) of Schedule 2 provides that if a provision of Part 9D of the BSA (which deals with the captioning of television programs for the deaf and hearing impaired) applies to a licensee, the licensee will comply with that provision (the **captioning licence condition**).

As required by subsection 130ZZC(5) of the BSA, the Licensee submitted its annual compliance report relating to its compliance with Divisions 3, 4 and 5 of Part 9D of the BSA during the 2021-22 financial year within 90 days of the end of that financial year.

On the basis of its assessment of the annual compliance report for the 2021-22 financial year, the ACMA has found that the Licensee breached the captioning licence condition by not complying with the requirement under section 130ZV of the BSA to meet the captioning targets for the following 14 services:

Aurora, BBC Earth, Boomerang, CBeebies, CGTN Documentary, Discovery Turbo, DreamWorks, FOX Arts, FOX Docos, Foxtel Movies Drama, GOOD., Lifetime Movie Network, National Geographic Wild and TVSN.

The ACMA has noted that the Licensee previously did not submit its annual compliance report relating to its compliance with Divisions 3, 4 and 5 of Part 9D of the BSA for the 2020-21 financial year within 90 days after the end of that financial year, in breach of the captioning licence condition.

Direction

The ACMA is satisfied that the Licensee has breached the captioning licence condition at paragraph 10(1)(eb) of Schedule 2 to the BSA and:


HEREBY directs the Licensee under subsection 141(1) of the BSA to take the actions specified below, directed towards ensuring that it does not breach the captioning licence condition, or is unlikely to breach the captioning licence condition in the future:

1. on or before 1 June 2023, the Licensee must provide a report to the ACMA, detailing:
 - a. the administrative processes and practices, including arrangements for senior management assurance and oversight, it has in place to monitor, and enable compliance with, its annual captioning targets under Part 9D of the BSA. This report must include, but is not limited to, the administrative processes and practices in place for preparing:
 - i. nominations of categories for subscription television movie services the Licensee provides, under section 130ZVA of the BSA;
 - ii. nominations of categories for subscription television general entertainment services the Licensee provides, under section 130ZW of the BSA;
 - iii. annual compliance reports, within 90 days of the end of each financial year, under subsection 130ZZC(5) of the BSA;
 - b. for each of the subscription television services that the Licensee expects to nominate, or has nominated, for a category of subscription television service under either section 130ZVA or section 130ZW of the BSA for the 2022-23 financial year, the category of subscription television service the Licensee either (as the case may be):
 - i. expects to nominate before the end of the 2022-23 financial year; or
 - ii. has nominated for the 2022-23 financial year.

Note: The indications of nominations for categories of subscription television services in item 1(b) are indicative only and nothing in the reporting required by this remedial direction is intended to detract from the Licensee's prerogative to review and nominate categories as permitted by sections 130ZVA and 130ZW of the BSA.

TAKE NOTE:

1. Paragraph 10(1)(eb) of Schedule 2 to the BSA provides that, 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.
2. Under section 141 of the BSA, if the ACMA is satisfied that a person who is a subscription television broadcasting licensee has breached, or is breaching, a condition of the licence, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that condition, or is unlikely to breach that condition, in the future.
3. Subsection 142(2) of the BSA provides that a person commits an offence if a person has been given a notice under section 141, and the person is a subscription television broadcasting licensee and engages in conduct that contravenes a requirement in the notice. The maximum penalty is \$550,000.
4. Subsection 142A(1) provides that a person must comply with a notice under section 141. Subsection 142A(2) provides that subsection 142A(1) is a civil penalty provision. Subsection 142A(3) provides that a person who contravenes subsection 142A(1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.




Signature of Member

CATHY RAINSFORD

Signature of Member/General Manager

JAMES CAMERON

Name (Please Print)



Name (Please Print)

Dated this 30 day of March 2023.

