



Submission by Free TV Australia

Proposal to remake the Broadcasting Services (Television Captioning) Standard 2013

Australian Communications and Media Authority

June 2023

1. Summary

- Free TV submits that the current regulatory framework of the primary legislation (section 130ZZA of the *Broadcasting Services Act 1992* (BSA)), and the Broadcasting Services (Television Captioning) Standard 2013 (the Standard) are not workable as currently drafted as they do not account for the realities of providing captioning in a live environment.
- However given the process required to amend the current legislative framework, Free TV reluctantly supports the remaking of the Standard.
- The Standard should be remade, as drafted, for a period of no more than two years, with the exception of the removal of section 6(b) and consideration of live programming.
- As submitted previously, it is recommended that section 6(b) be removed from the Standard. The challenges associated with this section cannot be overcome by the drafting of guidance.
- Free TV members have also raised concerns with instances where the Australian Communications and Media Authority (ACMA) have found breaches of the Standard during live programming based upon the ACMA's strict interpretation of section 130ZZA(2B) of the BSA. Options to recognise the unique characteristics of live programming must be considered. Failure to appropriately distinguish between live and pre-programmed captioning will likely result in ongoing breaches by broadcasters.
- It is recommended that the ACMA use its discretion to issue forbearance in relation to live captioning, until a new measurement tool is introduced. Should a future metric measurement tool differentiate between live and pre-recorded captioning, then it would be appropriate to amend the legislation to reflect this.
- Free TV supports the introduction of a trial to test a metric measurement model, which is managed and funded by the ACMA. Free TV and commercial broadcasters would welcome the opportunity to work with the ACMA to design this trial. Such a trial should be rolled out in a timely manner to ensure the trial is completed in advance of the next sunset date of the Standard.
- It is recommended that the NER model be trialled. Current technology providers are familiar with the model, and have already applied it to demonstrate its application to broadcasters. This model can be applied to both live and pre-recorded captioning. Therefore, the industry, with appropriate support from the ACMA, is in a position to roll this trial out relatively quickly, and it can be relatively short. The current measurement system for captioning quality is very subjective, and open to interpretation. Should concerns be raised in relation to captioning of a particular program, the NER system can quickly and accurately measure the impact on viewers.
- Free TV recommends that learnings from international experience should be incorporated into the trial, and would be pleased to initiate contact with broadcasters and service providers in the United Kingdom and Canadian markets to ensure that the trial reflects good

practice use of a metric measurement model.

- The research undertaken by the ACMA gives an important insight into the use of captions by audience members. However, it is reassuring that most respondents were satisfied or very satisfied with the quality of live and pre-prepared captioning services for the programs they watched.
- A complaints-based compliance regime is the most efficient, sensible and responsive mechanism for measuring compliance with captioning obligations, as audience members are best placed to identify errors in captioning that make a material difference to their understanding and enjoyment of the program. The introduction of a metric measurement system would be intended to support the ongoing management of a complaints-based compliance regime.

2. About Free TV Australia

Free TV Australia is the peak industry body for Australia's commercial television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial FTA television makes to Australia's culture and economy.



Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia*, highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of \$2.5 billion into the local economy. Further, advertising on commercial TV contributed \$161 billion in brand value. Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day.

Free TV Australia's members are vital to telling Australian stories to Australians, across news, information and entertainment. Free to air television broadcasters understand and appreciate the cultural and social dividend that is delivered through the portrayal of the breadth and depth of Australian culture on television, and Australians prefer local stories. Commercial television networks spend more than \$1.5 billion on Australian content every year, dedicating over 85% of their content expenditure to local programming.

The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings.

A strong commercial broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

3. Remaking of the Standard

The Consultation Paper notes that,

The ACMA's preliminary view is that there is strong evidence that the Standard should be remade as drafted, on the basis that, where complied with, it is effective and efficient in achieving its purpose as it results in captions that are meaningful to viewers and allows the quality of captioning to be determined in the context of a program or program segment as a whole.

Additionally, and as discussed further in section 3.3.2 below, the results from the ACMA's audience research indicate broad satisfaction with captioning services, further strengthening support for a remaking of the Standard. Given the time constraints on the industry, with the Standard due to sunset in October this year, Free TV reluctantly does not oppose the remaking of the Standard, with the exception of the removal of section 6(b) as discussed in section 3.1 below, and consideration in the Standard of live programming, as discussed in sections 3.1.2 and 3.1.3 below. This will provide

certainty for broadcasters and captioning providers, and will ensure that audiences can continue to receive this accessibility service.

Free TV also recognises the ACMA's comments in relation to the remaking of the Standard,

However, the ACMA considers that if the Standard is to be remade in its current form, it should be accompanied by:

- > *further ACMA guidance on the interpretation of key elements of the Standard*
- > *a commitment to support industry to further examine the introduction of a trial designed to test a metric measurement model. Following detailed consideration of the outcomes of a trial of metric model, the ACMA could review and amend the Standard.*

Each of these comments is addressed below.

The proposed introduction of a trial, however, would suggest that the Standard should be remade for a period of no more than two years. This would allow sufficient time for a comprehensive trial to be undertaken, for those results to be presented to the ACMA, and for redrafting of the Standard to take place. A Standard remade for a longer period of time would risk the results of the trial being outdated at the time of the next review.

3.1 ACMA guidance on elements of the Standard

3.1.1 Distinct program segment

Section 6(b) of the Standard states 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 Standard also defines 'distinct program segment within a television program' as a 'distinct segment that is unrelated to other program segments within that same television program'.

It is recommended that section 6(b) be removed from the Standard. The challenges associated with this section cannot be overcome by the drafting of guidance.

The approach of the ACMA to segmentation of the broadcasts in recent breaches has seen the ACMA equate this definition with program 'stories' in relation to news or entertainment (eg. morning shows), and effectively makes compliance with the Standard almost impossible given that any instance of material error with a 'segment' will automatically lead to a breach finding. Captioning discrepancies should be evaluated against the program as a whole.

Free TV notes the ACMA's comments in the Consultation Paper in relation to this issue,

If the Standard didn't distinguish a 'distinct program segment' from a 'television program', there could also be broader implications for broadcasters' captioning quantity targets as broadcaster's cannot count 'programs' that breach the Standard towards their relevant captioning quantity targets. Currently, broadcasters only have to deduct the time of a 'segment' that has been found to have not complied with the Standard.

Commercial broadcasters would appreciate the opportunity to discuss with the ACMA a more appropriate way of measuring broadcasters which recognises the unique elements of each program. The removal of section 6(b) from the Standard would provide flexibility in doing this, and further

guidance can be developed by the ACMA, in collaboration with industry, to determine the best way forward on this issue.

3.1.2 The primary legislation is problematic in relation to live programming

Noting that this is not a legislative review, and any amendment to legislation is a matter for the Parliament, it should be noted that the legislation under section 130ZZA states:

*2A) In determining a standard under [subsection \(1\)](#), the **ACMA** must consider the differences (including time constraints for [live content](#)) between providing captioning services for:*

(a) [live television programs](#) and pre-recorded television [programs](#); and

(b) wholly [live](#) or wholly pre-recorded television [programs](#) and television [programs](#) that include both [live](#) and pre-recorded [program](#) material.

*(2B) [Subsection \(2A\)](#) does not authorise the **ACMA** to determine that a lower quality (within the meaning of [subsection \(2\)](#)) of captioning service is acceptable for a kind of [program](#) or [program](#) material.*

The highlighted area in 2a and 2b contradict each other, as the restriction of section 2b to prohibit ACMA from applying a lower standard, while 2a requiring the ACMA to consider the differences in captioning, do not reconcile. Live captioning is different and it is not possible to achieve the same captioning standards as in pre-recorded captioning.

Noting the issues outlined above, the Consultation Paper states that:

The legislation stipulates that in determining the Standard, the ACMA must consider the differences (including time constraints for live content) between providing captioning services for live television programs and pre-recorded television programs, and wholly live or wholly pre-recorded television programs and television programs that include both live and pre-recorded program material.

However, the ACMA is not authorised to determine that a lower quality of captioning service is acceptable for a kind of program or program material (including a live or partially live program).

Consequently, the Standard cannot, and does not, differentiate between the criteria for quality imposed on captioning services for live and pre-recorded programs and does not differentiate between live captioning and pre-produced captions.

It is recommended that the ACMA use its discretion to issue forbearance in relation to live captioning, until a new measurement tool is introduced. Should the measurement tool differentiate between live and pre-recorded captioning, then it would be appropriate for the ACMA to make representation to the Minister to amend the legislation to reflect this.

In consideration of the above, Free TV would also like to draw attention to section 130ZZA(7A) of the BSA, which provides that:

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.

3.1.3 Live captioning in the Standard

As noted above, it is recommended that the ACMA use its discretion to issue forbearance in relation to live captioning, until a new measurement tool is introduced. Should the measurement tool

differentiate between live and pre-recorded captioning, then it would be appropriate for the ACMA to make representation to the Minister to amend the legislation to reflect this.

The current legislative framework was devised at a time when broadcasters were generally only broadcasting 60 minutes of news a day. In recent years, the news and current affairs landscape has changed dramatically and networks are now broadcasting more than eight hours a day of news and public affairs content, all of which is live or near live.

Free TV members have raised concerns with instances where the ACMA have found breaches of the Standard during live programming based upon the ACMA's strict interpretation of section 130ZZA(2B) of the Act, which they believe has failed in many instances to appropriately consider the application of section 130ZZA(7A) to the circumstances.

The broadcast industry takes its obligations to provide captioning services for its deaf and hard-of-hearing viewers very seriously. Broadcasters have invested significantly in the development of cutting-edge captioning technology that will continue to overcome the technological difficulties around live captioning. However, despite best endeavours, it is impossible to ensure 100 percent accuracy for live captioning with the available technology. For example, while live news programs often do employ scripts and pre-recorded packages that operate incidentally to the unscripted elements of live programs, the pre-recorded packages routinely require editing without warning.

The regulatory framework needs to be modernised and made fit for purpose. If changes are not made, broadcasters will continue to be found in breach and this, in turn, causes reputational harm to broadcasters and undermines their commitment to providing world-class accessibility services for viewers.

3.2 Trial of a metric measurement model

Free TV supports the introduction of a trial to test a metric measurement model, which is managed and funded by the ACMA. Free TV and commercial broadcasters would welcome the opportunity to work with the ACMA to design this trial. The ACMA raises, in questions four to nine, a number of important issues to be considered in a trial of the metric model.

Free TV recommends that learnings from international experience should be incorporated into the trial, and would be pleased to initiate contact with broadcasters and service providers in the United Kingdom and Canadian markets to ensure that the trial reflects good practice use of a metric measurement model.

As noted above, the NER system is used in the United Kingdom and Canada. The Canadian NER system is described in the following way,

NER measures the accuracy of captions. It compares the experience of the caption viewer to that of the hearing viewer.

Transcripts must be prepared for NER evaluation. An exact transcript and a caption transcript of 10 minutes of content is prepared. The content is a television show that is live-captioned. The NER evaluator compares the two transcripts and scores the captions. The evaluator assigns an error type to any differences. Each error type has a score deducted.

Errors occur when the following happens.

There is a loss or change of meaning.

There are words or phrases that interrupt the reading experience. They do not alter the meaning. But the caption reader has to stop to try and understand them.¹

It is recommended that this model be trialled in Australia. The current measurement system for captioning quality is very subjective, and open to interpretation. Should concerns be raised in relation to captioning of a particular program, the NER system can quickly and accurately measure the impact on viewers.

The benefits of this system are:

- It measures the actual impact of captioning discrepancies on audiences
- It provides a quantitative system
- It can be used for live captioning or pre-recorded captioning

The NER quality threshold should be set at a quantitative level determined by negotiation between broadcasters and the ACMA, in collaboration with captioning providers. The threshold should take into account the realities and challenges of captioning, particularly live captioning, while continuing to reflect the very high level of captioning accuracy currently achieved. Research suggests that an appropriate level may be between 95 and 98 percent, however further work would be required to confirm this. The current Standard would continue to be used (noting suggested amendments outlined earlier) to guide the creation and implementation of captions, and it is noted that the NER system does not measure reading rates or synchronicity with the program. The NER system does, however, provide a reliable and internationally-recognised measurement tool to assess how broadcasters and captioning providers are meeting the requirements.

Use of the NER system is also expected to reduce the time and resources required to prepare responses to preliminary and breach notifications, which place unnecessary financial and administrative burdens on broadcasters, particularly given the generally high level of captioning compliance. Free TV members use multiple captioning service providers and in-house captioning services for their programming. Each of these captioners is familiar with the NER system, and supports its use for their services.

A complaints-based compliance regime is the most efficient, sensible and responsive mechanism for measuring compliance with captioning obligations, as audience members are best placed to identify errors in captioning that make a material difference to their understanding and enjoyment of the program. It is intended that the NER system would be the measure of compliance, would inform broadcasters' and the ACMA's response to complaints, and would assist in identifying any rectification measures required.

3.2.1 Question 4

A metric model would be an appropriate alternative to the Standard's current approach, though commercial broadcasters recognise that a combination of the two may be necessary to meet all the requirements of the BSA.

¹ <https://nercanada.ca/ner-guidelines>

3.2.2 Question 5

In question five, the ACMA asks '[w]ould viewers who are concerned about the quality of captioning be able to determine whether a captioning service has met a metric measure while they are watching a television program? If so, how?'. It is not the role of audience members to individually assess programs based on metric measurements – this is the role of specialists who are trained in the metric measurement system. Broadcasters and the ACMA have a strong complaints-based system in place – there is no consideration that the system would be discontinued. If audience members have a concern about the captioning quality of a particular program, they are able to complain to the broadcaster, or to the ACMA. An investigation, using the metric model as appropriate, would then be undertaken.

3.2.3 Question 6

The NER model would be the most appropriate to measure the quality of captioning (of the measurement tool options currently available). While its focus is on the accuracy of captioning, it assesses the impact of accuracy on the comprehensibility of captions.

3.2.4 Question 8

As outlined above, the current complaints-based system for captioning quality works well in Australia, and is a familiar system for broadcasters and audiences. This should continue to be the basis for the implementation of a metric model, with the metric model being used to assess programs about which broadcasters or the ACMA have received a complaint. This may also be used if the ACMA were to launch an investigation of a program without having received a complaint.

While additional monitoring would be required during a trial period, it is expected that the industry would return to a complaints-based system at the conclusion of the trial. It should also be noted that, as with audits carried out by the ACMA, that breach findings should not be made while monitoring for the trial.

3.2.5 Question 9

Free TV and commercial broadcasters would be pleased to work through the outcomes and proposed measurements of the trial. This would be an area that would benefit significantly from input from international regulators, broadcasters, and service providers which use the same measurement model as is being tested.

3.3 Other comments

3.3.1 Technological developments

The Consultation Paper notes the technological developments available in captioning, particularly Automatic Speech Recognition (ASR) or speech-to-text (STT). As noted by the ACMA, this is an important area of exploration for captioning service providers, broadcasters and audiences. Commercial broadcasters have not yet implemented this technology in their practices, but will continue to monitor developments in this area.

3.3.2 Research undertaken by the ACMA

The research undertaken by the ACMA gives an important insight into the use of captions by audience members. As recognised by the ACMA, the lack of participation by those with profound hearing loss in both ears makes it challenging to determine the suitability of captions for those who rely solely on captions. However, it is reassuring that most respondents were satisfied or very satisfied with the quality of live and pre-prepared captioning services for the programs they watched, and that more than 90% of deaf or hard-of-hearing respondents indicated that they were satisfied with the quality of captions regardless of the program type or broadcaster. While there are clear areas where audiences would like to see improvement, the research would appear to support an understanding of the realities of live captioning: ‘participants generally perceived live captions to be of a tolerable quality, with many participants expressing a sense of gratitude that live captioning existed.’