

# STATEMENT OF REASONS FOR THE DECISION TO MAKE A TARGET REDUCTION ORDER (STV-TRO-00148) FOR TELSTRA PAY TV PTY LTD (ACN 095 931 614) IN RESPECT OF THE SUBSCRIPTION TELEVISION SERVICE AURORA CHANNEL FOR THE 2023-2024 FINANCIAL YEAR

## 1. DECISION

- 1.1 On 20 June 2024, for the reasons set out below, I, Phyllis Fong, as delegate of the Australian Communications and Media Authority (**the ACMA**) decided to make a target reduction order (**the Target Reduction Order**) for Telstra Pay TV Pty Ltd (ACN 095 931 614) (**the Applicant**) in respect of the subscription television service, Aurora channel (**the Service**), for the specified eligible period of 1 July 2023 to 30 June 2024 (**the Specified Eligible Period**).
- 1.2 The Target Reduction Order has been published on the ACMA's website in accordance with subsection 130ZY(10) of the *Broadcasting Services Act 1992* (**the BSA**).

## 2. LEGISLATION

### Annual captioning targets

- 2.1 Subsection 130ZV(1) of the BSA requires a subscription television licensee to meet annual captioning targets for its subscription television services for each financial year commencing from 1 July 2012. An annual captioning target for a financial year is a percentage of the total number of hours of programs transmitted on the subscription television service during the financial year. The annual captioning target for a financial year is dependent on the category of subscription television service provided by a licensee.
- 2.2 There are nine categories of subscription television services: movie service (divided into three sub-categories – Movies A, B and C); general entertainment service (divided into three sub-categories – General Entertainment A, B and C); news service; sports service; and music service.

### Application for a target reduction order

- 2.3 Paragraph 130ZY(1)(b) of the BSA provides that a subscription television licensee may apply to the ACMA for a target reduction order that:
  - (i) is expressed to relate to a specified subscription television service provided by the licensee in a specified eligible period; and
  - (ii) for each financial year included in the eligible period, provides that a specified percentage is the reduced annual captioning target for the service, for the financial year.

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

### **3. LEGISLATIVE OBJECTIVES**

- 3.1 The purpose of captioning target requirements is to facilitate improved access to free-to-air and subscription television by Australia's deaf and hearing-impaired community, by requiring broadcasters to caption speech and other sounds during television broadcasts. The prescribed captioning targets for subscription television services are legislated to increase by 5% annually until they reach 100%.

3.2 The Second Reading Speech for the 2012 Amendment Bill<sup>1</sup> noted that a gradual, incremental increase in captioning targets is intended to assist Australia’s broadcasters to adjust to the increasing costs associated with the changes. The cost of providing captioning services on subscription television is a business expense which must be borne by licensees, except where, on application under section 130ZY of the BSA, a licensee is able to satisfy the ACMA that compliance with the captioning obligations would impose an unjustifiable hardship on the licensee.

3.3 Paragraph 63 of the Explanatory Memorandum to the 2012 Amendment Bill states:

The priority for government is for television services to be broadcast, and where possible for those services to be broadcast with captions. It is not the intention of the government that services not be shown because captioning obligations result in unjustified hardship on broadcasters.

## 4. APPLICATION

4.1 On 27 March 2024, the Applicant applied for a target reduction order under paragraph 130ZY(1)(b) of the BSA in relation to the Service for the Specified Eligible Period, as follows:

Specified Eligible Period	Annual captioning target	Proposed reduced annual captioning target
1 July 2023 to 30 June 2024	70%	45%

### The Applicant

4.2 The Applicant is a subscription television licensee. The Applicant is a wholly owned subsidiary of Telstra Corporation Limited.

4.3 The Applicant provides movie, general entertainment, news, sport and music subscription television services.

### The Service

4.4 The Service screens Australian content created by emerging and independent producers. The Service provides a national platform for programming produced by a wide variety of interest groups, from religious services to not-for-profit organisations.

4.5 The Service falls within the captioning category of ‘General Entertainment’ and is nominated by the Applicant as Category C, which would normally attract an annual captioning target of 70% for the financial year commencing 1 July 2023, increasing by 5% each financial year thereafter.

4.6 The Applicant is a reseller, to its own subscribers, of subscription television services offered by Foxtel Cable Television Pty Ltd (**Foxtel**), and the Applicant has no direct contractual influence or control over the content of the Service, or the Channel Provider’s provision of captioning for the Service.

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<sup>1</sup> *Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012* – Second Reading Speech before the House of Representatives on 30 May 2012, available at [https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/4a17e30d-c43b-48b9-83ed-4280fc00314c/0029/hansard\\_frag.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/4a17e30d-c43b-48b9-83ed-4280fc00314c/0029/hansard_frag.pdf;fileType=application%2Fpdf).

- 4.7 The Service is provided by Aurora Community Television Pty Ltd (**the Channel Provider**) and is delivered to the Applicant for broadcast as a pass-through service.<sup>2</sup> The Applicant has advised that the Channel Provider is contractually obliged to Foxtel to provide captioning on the Service to enable Foxtel and its resellers (like the Applicant) to comply with the captioning requirements in Part 9D of the BSA.
- 4.8 The Service is available as part of the Applicant's 'Foxtel Plus Bundle' which is the basic package available to all of the Applicant's cable and satellite subscribers.

## 5. EVIDENCE AND REASONS FOR DECISION

- 5.1 As noted above, the ACMA must not make a target reduction order unless it is satisfied that a refusal to make that order would impose an unjustifiable hardship on the Applicant. In determining whether a failure to make a target reduction order would impose an unjustifiable hardship, the ACMA must have regard to each of the matters specified in subsection 130ZY(5) of the BSA, assessing their relative weight and significance.
- 5.2 The term 'unjustifiable hardship' is not defined in the BSA and is to be given its ordinary and natural meaning as appropriate to the legislative context. The ACMA considers that the BSA requires it to assess the weight and significance of any hardships to the Applicant made out in the material before the ACMA, and to assess whether or not the imposition of those hardships on the Applicant is unjustifiable, having regard to the criteria specified in subsection 130ZY(5) of the BSA and the purpose and objects of the relevant statutory provisions.
- 5.3 In reaching a decision to make the Target Reduction Order, the ACMA considered :
- written representations and supporting evidence submitted by the Applicant.
  - the submission received during the consultation period for the draft target reduction order
- 5.4 This information is considered below by reference to each of the criteria specified in subsection 130ZY(5) of the BSA.

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

- 5.5 The Applicant submitted that the Channel Provider informed it that it is not capable of delivering captions on the Service at the required target of 70% for the 2023-2024 financial year. In October 2022, the Channel Provider was hacked, and ransomware was installed on its systems. As a result, the Service went off air for 24 hours and the Channel Provider's hard drives had to be reprogrammed.
- 5.6 The hack also resulted in damage to the Channel Provider's captioning card which caused significant technical difficulties, leading to a loss of all captions on the Service. The Channel Provider was unable to immediately recover or restore the captioning card and captioning on the Service ceased from 12 November 2022.

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<sup>2</sup> A 'pass-through service' is a service that is obtained under a licensing agreement from a Channel Provider.

- 5.7 Due to the loss of captions on the Service, the Applicant applied for a target reduction order for the Service on 23 March 2023 for the specified eligible period of 1 July 2022 to 30 June 2023. The target reduction order for that period was made by the ACMA in respect of the Service on 9 June 2023 and reduced the captioning target for the 2022-2023 financial year from 65% to 25% (TRO Reference: STV/TRO-00143).
- 5.8 The Applicant has submitted that, after the hacking event, the Channel Provider engaged a third party to investigate and repair the damaged captioning card at extensive time and cost to the Channel Provider. The third party was able to resolve the issues with the card, and although a replacement card was not needed, the Channel Provider was required to reprogram the original captioning card and reload the relevant data and content files.
- 5.9 The Channel Provider's captioning card was not repaired and reprogrammed until September 2023, at which time the Channel Provider experienced an additional issue where the captioning files that were being provided to the Applicant could not be broadcast over the Service. This issue was eventually resolved by engineers working for Foxtel, after several additional weeks.
- 5.10 Due to these issues, the Channel Provider did not resume captioning on the Service until 11.30am on 17 October 2023.
- 5.11 Once the issue was resolved, the Channel Provider was initially able to caption programming on the Service at a reduced rate of 55.64% for 3 months before increasing to 69.83%. Programs on the Service are now captioned at a rate of 70%.
- 5.12 The Applicant has submitted that, if the Target Reduction Order is not granted by the ACMA, the Channel Provider will be unable to meet the captioning target for the Service and the Applicant will be in breach of Part 9D of the BSA, and corresponding subscription television licence conditions, in respect of the Service.
- 5.13 The Applicant has submitted that the failure of the Service to meet the annual captioning target for the Specified Eligible Period is entirely beyond the control of the Applicant, caused by the residual effects of a one-off hacking incident, which has now been resolved. If the Target Reduction Order is not made, the Applicant submitted that it is likely to suffer detriment in the following ways:
- the Service will not meet the required captioning target for the 2023-2024 financial year and the Applicant may be required to cease providing the Service
  - the Service is the only source of community programming on the Applicant's nation-wide subscription television platform, and if the Applicant ceased to provide it, it would reduce the availability of diverse and innovative Australian-made community content, including regional and community news, from the Applicant's 'Foxtel Plus Bundle' which would be a detriment to the Applicant and its subscribers
  - the Applicant will suffer detriment as the Foxtel Plus Bundle may not be as attractive (as a whole) to its customers and potential customers, possibly leading to a decrease in subscriptions.
- 5.14 Based on the information provided by the Applicant, particularly the circumstances that led to the reduction in captions on the Service and the time taken for the

Channel Provider to restore captions, the ACMA is of the view that the reduction of captions that has already occurred in the 2023-2024 financial year was beyond the control of the Applicant and the Channel Provider.

5.15 The ACMA also notes the steps taken by the Applicant and Channel Provider to restore captions on the Service, and that this has been at some cost to the Channel Provider.

5.16 On this basis, the ACMA is of the view that, if the Target Reduction Order is not made, it is likely that the Applicant would be found to be in breach of captioning requirements in Part 9D of the BSA, and the corresponding subscription television licence condition, which would be a detriment, especially as the Applicant and the Channel Provider have taken reasonable steps, at some expense, to ensure that captions were restored to the Service.

5.17 The ACMA has also considered the Applicant's claim that, if the Target Reduction Order is not made, it may cease to provide the Service, but notes that ceasing to provide the Service would not resolve any breach that may have already occurred. Additionally, as the Applicant expects captioning will be provided at the required level in the 2024-2025 financial year, ceasing the Service would not appear to be required to prevent future non-compliance.

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

5.18 The Applicant submitted that, if the ACMA makes the Target Reduction Order, it would have a low impact on deaf or hearing-impaired viewers because:

- The Service has low viewer numbers, and deaf and hearing-impaired viewers make up a minority proportion of total viewers. Confidentially, the Applicant provided figures for the average daily reach for the Service on the entire Foxtel platform. The Applicant estimates that 1 in 6 of these viewers is deaf or hearing impaired, meaning an even smaller number of viewers might have used captions, if available, on any given day.
- The Channel Provider intends to caption the Service at the required level for the remainder of FY24 and onwards.
- The Applicant has not received any complaints from viewers in respect of the lack of captioning during the period captioning was not available on the Service.

5.19 Information available to the ACMA indicates that between 10.2% and 15.3% of Australians (i.e. between approximately 1 in 10 and 1 in 6, respectively) are affected by total or partial hearing loss.<sup>[3] [4] [5]</sup> This aligns with the estimates provided by the Applicant.

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<sup>3</sup> 2017-18 National Health survey: First results, Australian Bureau of Statistics, Table 3.3 Long-term health conditions, Proportion of persons, located at <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/national-health-survey-first-results/latest-release>.

<sup>4</sup> Hearing for Life – the Value of Hearing Services for Vulnerable Australians, Hearing Care Industry Association, March 2020, located at [https://www.hcia.com.au/hcia-wp/wp-content/uploads/2020/02/Hearing\\_for\\_Life.pdf](https://www.hcia.com.au/hcia-wp/wp-content/uploads/2020/02/Hearing_for_Life.pdf).

<sup>5</sup> Roadmap for Hearing Health, Department of Health, February 2019 located at [https://www1.health.gov.au/internet/main/publishing.nsf/content/CDFD1B86FA5F437CCA2583B7000465DB/\\$File/Roadmap%20for%20Hearing%20Health.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/content/CDFD1B86FA5F437CCA2583B7000465DB/$File/Roadmap%20for%20Hearing%20Health.pdf)

5.20 The ACMA accepts that a small number of subscribers watch the Service on any given day, and that a smaller number of viewers of the Service would be likely to require captioned content.

5.21 However, although total audience numbers are low, deaf or hearing-impaired viewers would likely make up a reasonable proportion of total viewers.

5.22 Therefore, the ACMA considers that the impact of making the Target Reduction Order would have some adverse impact on deaf and hearing-impaired viewers, and potential viewers.

Number of people who subscribe to the Service (paragraph 130ZY(5)(c) of the BSA)

5.23 The Applicant provided the following information, on a confidential basis, about the number of people who subscribe to the 'Foxtel Plus Bundle' and about the average daily number of viewers who watched the Service across the Foxtel platform as a whole (i.e., including subscribers of the Applicant and other licensees who resell Foxtel services), sourced from OzTAM:

- the total number of subscribers to the Foxtel Plus Bundle (containing the Service) provided by the Applicant at the time the application was made.
- the average daily reach for the Service as supplied by all licensees who offered the Foxtel platform in the 2023-2024 financial year to the end of February 2024.
- the total percentage audience share of the Service across all Foxtel providers in the 2023-2024 financial year to the end of February 2024.

5.24 Having regard to the figures supplied by the Applicant, in confidence, the ACMA accepts that the number of subscribers who access the Service is relatively low, but that deaf and hearing-impaired viewers are likely to make up a reasonable proportion of viewers.

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

5.25 On a confidential basis, the Applicant provided revenue and other financial information for the 2022-2023 financial year.

5.26 The ACMA has considered the financial information provided by the Applicant, in confidence.

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

5.27 The Applicant submitted that the estimated amount of expenditure for the Channel Provider to meet the required captioning level is approximately \$181,170 for the Specified Eligible Period.

5.28 According to the Applicant, the Channel Provider recently learned that in order to increase captioning levels above 70% for the remainder of the 2023-2024 financial year, the Channel Provider will be required to build a new payout facility.

5.29 The Channel Provider has received a quote of \$8,000 per month (\$96,000 per annum) for the new playout facility; however, the provider of the facility requires a minimum three-year term. The Channel Provider is unable to provide such a contractual guarantee, given the size and nature of the organisation. The Applicant has not indicated whether or not the Channel Provider is investigating alternative ways of meeting the annual captioning target for future years but has advised that the Channel Provider intends to meet the annual captioning target for the Service from the 2024-2025 financial year.

5.30 The ACMA notes that the Channel Provider is contractually obliged to Foxtel to provide captioning on the Service and that, in turn, the Applicant has contracted with Foxtel for the supply of the Foxtel platform, which the Applicant then provides to its own subscribers. Thus, any expenditure by the Applicant on replacement captioning of programs on the Service would have been additional to contractual amounts it has already paid, noting that, in practical terms, the Applicant is unable to provide captions on the Service on a unilateral basis.

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

5.31 In its annual compliance report for 2022-2023, provided in accordance with subsection 130ZZC(5) of the BSA, the Applicant reported providing captioning on 98 of 99 subscription television services.

5.32 With respect to the Service, the Applicant submitted that, although captions were not provided on the Service during the Specified Eligible Period from 1 July 2023 to 16 October 2023, captioning resumed from 17 October 2023. Information provided with the Application indicates that, in the period from 17 October 2023 until 31 March 2024, 2759 hours of programming were captioned, a captioning rate of 68.84%. Taken across the 2023-2024 financial year from 1 July 2023 until 31 March 2024, this equated to a captioning rate of 41.8%.

5.33 The ACMA calculates that, if captioning continued on the Service from 1 April 2024 until the end of the Specified Eligible Period at a rate of 70% (being the ongoing captioning rate indicated by the Applicant), then across the entire Specified Eligible Period, approximately 48.8% of programming on the Service would be captioned.

*Likely impact of a failure to make the target reduction order on the quantity and quality of television programs transmitted on subscription television services provided by the Applicant (paragraph 130ZY(5)(g) of the BSA)*

5.34 The Applicant submitted that, if the ACMA does not make the Target Reduction Order and the Channel Provider does not meet the captioning target for the Service in the Specified Eligible Period, the Applicant will be in breach of the captioning requirements in Part 9D of the BSA. The Applicant submitted that, in that event, it may be forced to cease providing the Service.

5.35 As noted above, the ACMA considers that it is not likely that a failure to make the Target Reduction Order would cause the Applicant to cease to provide the Service, as long as there is a reasonable prospect that the Channel Provider can meet the prescribed captioning target in future financial years.



Whether the Applicant has applied, or has proposed to apply, for exemption orders or target reduction orders in relation to any other subscription television services provided by the Applicant (paragraph 130ZY(5)(h) of the BSA)

5.36 The Applicant has made applications for target reduction orders for two other services, covering the same period as the Specified Eligible Period.

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

There are no other matters the ACMA considers relevant in respect of this application.

## 6. RESPONSE TO SUBMISSION RECEIVED

6.1 The ACMA received a submission from the Australian Communications Consumer Action Network (ACCAN) on 10 June 2024 in response to the draft target reduction order published on 10 May 2024.

### ACCAN submission

6.2 ACCAN has submitted that the ACMA should not make the Target Reduction Order and that the ACMA should pursue a consultative process with the Applicant to support the Service's capacity to meet its captioning requirements.

6.3 ACCAN's submission included the following:

This is the second year in a row that requests for reductions in captions targets have been made by both licensees [including the Applicant] for the channel [i.e. the Service]. More broadly, the channel's low captioning rate has been a known issue to licensees since at least 2019.

[...]

ACCAN also recognises that the licensees have continued to raise the issue of the contractual obligation for the channel to provide captions, however the licensees also indicate that the channel is not in a financial position to comply with this requirement. This has been included as a component of the licensee's unjustifiable hardship claim.

[...]

If the channel does not have the financial capacity to provide captions, then it is incumbent upon the licensees to remedy the captions or support the channel to do so. We regard it as a worrying development that instead of allocating resources to resolve the matter, licensees have suggested cancelling the channel's broadcasts.

[...]

In 2024 [...] the licensees have continued to indicate the potential cancellation of the channel [...] ACCAN encourages the ACMA to work with the broadcaster to seek a resolution that ensures the assertions of cancellation are not realised, but that accessible content is provided. This is now critical, with the 2024 statements of reasons indicating the channel has reached a crisis point in their capacity to deliver on future captions targets [...] <sup>6</sup>

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<sup>6</sup> In its submission, ACCAN has cited the quoted costs for a new playout facility, which are reproduced in paragraph 5.29 of this Statement of Reasons.

## **ACMA response**

- 6.4 The ACMA acknowledges that the Applicant has previously applied for and been granted target reduction orders, with respect to the Service, for the 2018-2019 and 2022-2023 financial years.
- 6.5 The ACMA also acknowledges that the reduction requested for the Service in the 2023-2024 financial year (from 70% to 45%) is less than the reductions in the 2022-2023 financial year (65% to 25%) and the 2018-2019 financial year (45% to 5%).
- 6.6 Further, the ACMA acknowledges ACCAN's observation that the Applicant has submitted that costs for captioning into the future are difficult, and that the Applicant could be required to cease providing the Service.
- 6.7 However, in deciding to make the Order, the ACMA was satisfied, for the reasons explained, that a refusal to make the Order would impose an unjustifiable hardship on the Applicant.
- 6.8 In particular, the ACMA notes that it has found that the cause of the required level of captioning not being provided on the Service, and the reason for the Application for the 2023-2024 financial year, is the same incident that caused the reduction in captions, and the application for a target reduction order in the 2022-2023 financial year (that is, the Channel Provider was subject to a cyber attack, and it is still in the process of recovering from that attack and restoring captions to the required level).
- 6.9 The ACMA notes ACCAN's reference to the cost to the Channel Provider of engaging a new playout facility, and the Applicant's claim that it may be required to cancel the Service. As indicated in this Statement of Reasons, the ACMA did not consider that these matters supported a finding of unjustifiable hardship. In particular, the ACMA does not consider it likely that the Applicant would cease to provide the Service if the Target Reduction Order was not made.
- 6.10 The ACMA notes that the rate of captioning being provided on the Service since the time the cyber-attack occurred has been increasing and that, notwithstanding the costs to the Channel Provider, the Applicant has indicated that captioning will be provided on the Service at the prescribed level in future years.
- 6.11 Finally, the ACMA has noted ACCN's suggestion that it should pursue a consultative process with the Applicant to support the Service's capacity to meet its captioning requirements. However, the ACMA does not consider that this is relevant to the matter of whether or not a refusal to make the Target Reduction Order would impose an unjustifiable hardship on the Applicant.

## **7. CONCLUSION**

- 7.1 In summary, the ACMA considers that a refusal to make the Target Reduction Order would impose an unjustifiable hardship on the Applicant because:
- The lack of captioning for programs on the Service from 1 July 2023 to 16 October 2023, which the Applicant expects would cause it to not meet its annual captioning target for the 2023-2024 financial year, was a continuation of the captioning failure that began on 12 November 2022.

- The failure of the Applicant to meet the annual captioning target in 2023-2024 would be likely to result in a breach of the captioning requirements in Part 9D of the BSA and of a licence condition of the Applicant's subscription television broadcasting licence.
- This captioning problem was caused by significant legacy issues, outside of the Applicant's control, arising from the cyber-attack on the Channel Provider in October 2022. A target reduction order was made in respect of the Service for the 2022-2023 financial year. The extent of the problem was such that it took the Channel Provider, working with the Applicant, almost 12 months to address, spanning 2 financial years.
- As a reseller of the Service from Foxtel, it would have been neither practical nor commercially justifiable for the Applicant, independently of Foxtel and the Channel Provider, to provide captioning on the Service to the prescribed level for the Specified Eligible Period.
- With the assistance of Foxtel, the Channel Provider has taken reasonable steps to restore captions. This has meant that captions recommenced on the Service and have been provided at an increasing rate since the commencement.
- The Applicant expects captioning to be restored to the required captioning target level for the 2024-2025 financial year, so the current shortfall in captioning should not recur.

7.2 Noting that the original cause of the Applicant's expected non-compliance was outside of the Applicant's control, and the reasonable efforts taken by the Applicant and the Channel Provider to resolve the non-compliance, the ACMA considers that, if it does not make the Target Reduction Order, the Applicant is likely to suffer unjustifiable hardship by being found in breach of the captioning requirements in Part 9D of the BSA.

## **8. APPEAL RIGHTS**

- 8.1 Under section 204 of the BSA, a person whose interests are affected by the decision to make a target reduction order may apply to the AAT for a review of the ACMA's decision. The AAT can, among other things, confirm or vary the ACMA's decision, or set aside the ACMA's decision and replace it with its own decision.
- 8.2 Section 29 of the *Administrative Appeals Tribunal Act 1975* states that an application to the AAT for a review of a decision shall be in writing and must contain a statement of the reasons for the application, identifying the respects in which the applicant believes that the decision is not the correct or preferable decision. The AAT has a form which can be used for this purpose.
- 8.3 The application must be made within 28 days of the date that the notice of the ACMA's decision is received. The application fee of \$1,082 must accompany an application for review by the AAT. An application may be made to the AAT for a reduction of the application fee, and the application form for this can be obtained from the AAT.

8.4 Further information about making an application for review is available on the AAT website at [www.aat.gov.au](http://www.aat.gov.au) or by telephone on 1800 228 333. The postal address for the AAT is GPO Box 9955 in each capital city.