



## **Regulation impact statement—Media Access Review**

This regulation impact statement (RIS) concerning the investigation into access to electronic media for the hearing and vision impairment has been prepared by the Commonwealth Department of Broadband, Communications and the Digital Economy (the department).

### **1. Problem**

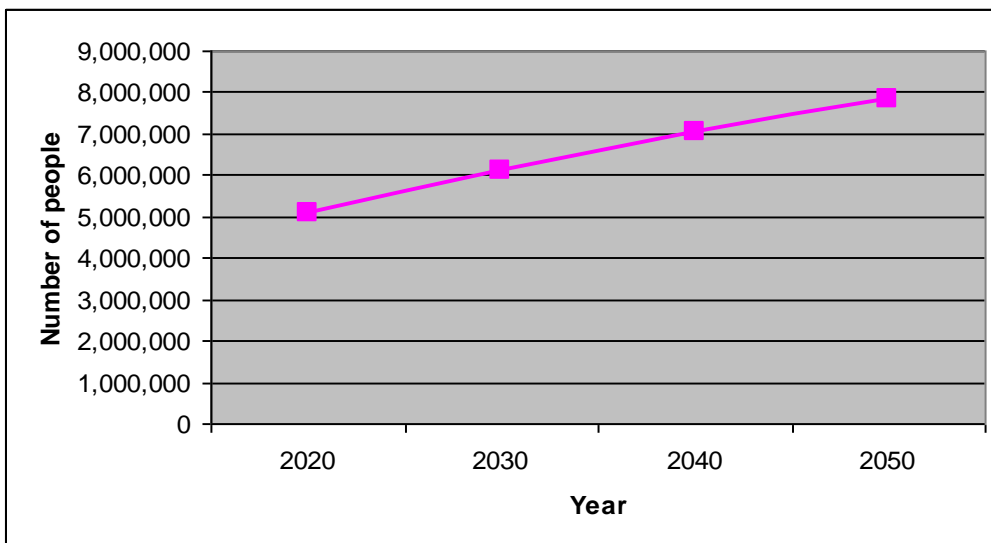
Access to electronic media is important to all members of the community, including those with a hearing or vision impairment. It involves captioning and audio description in Australia on free-to-air and subscription television, film in cinemas, DVDs and audio visual content on the internet.

#### **1.1 Prevalence of vision and hearing impairment**

For many Australians, visual and hearing impairments make it hard to enjoy a digital world that most people take for granted. According to data from the Australian Bureau of Statistics (ABS), about 2.67 million Australians—one in every eight people—have some form of hearing loss<sup>i</sup>. There are also about 284 000 people who are completely or partially blind<sup>ii</sup>.

Over the next decade, an ageing population and an increase in the incidence of obesity-linked diabetes are expected to lead to an increase in the number of Australians who experience visual and hearing impairments. Hearing loss is expected to affect more than five million Australians by 2020<sup>iii</sup>. The number of vision-impaired Australians is also expected to increase and is projected to reach about 716 000 by 2020<sup>iv</sup>.

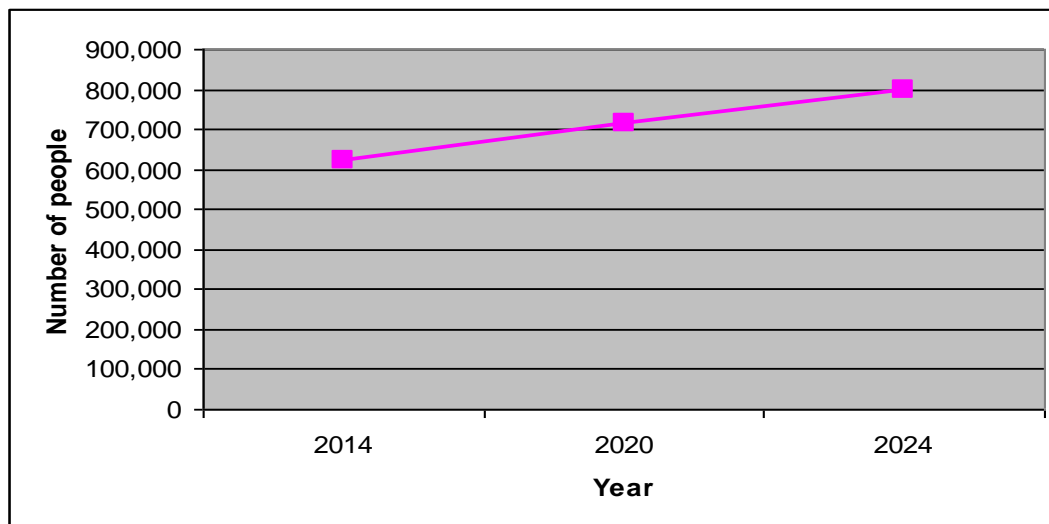
**Table 1: Projected number of Australians with a hearing impairment**



Source: Access Economics, *Listen Hear! The Economic Impact and Cost of Hearing Loss in Australia*, 2006

Results of the 2007–08 National Health Survey (NHS) showed that although most people reported they were in good health or better, 77 per cent of the total population reported that they had one or more current long-term medical conditions. The most commonly reported long-term conditions were problems with eyesight<sup>1</sup>. However, complete or partial deafness affected 10 per cent of the population and hearing problems were commonly reported<sup>v</sup>.

**Table 2: Projected number of Australians with a vision impairment**



Source: Access Economics, *Clear Insight: The Economic Impact and Cost of Vision Loss in Australia, 2004*

## 1.2 Change in electronic media environment

Electronic media such as television, film and the internet are invaluable sources of information and entertainment for all Australians. Changes in technology and media consumption—particularly the growth of subscription television, increased levels of audio visual content consumed via the internet, technical developments—and the impact of government initiatives that have the potential to transform the media landscape in Australia—such as the introduction of the National Broadband Network and the switch to digital television—mean that the current regulatory environment which supports access to electronic media for people with hearing or vision impairments needs retuning.

## 1.3 Incentives to improve access

Increasing media access levels is consistent with Australia’s international obligations under the United Nations (UN) Convention on the Rights of Persons with Disabilities (the Convention) and domestic policies, such as the government’s social inclusion policy. Improving access is an important part of the government’s response to the Convention.

### 1.3.1 United Nations Convention on the Rights of Persons with Disabilities

Australia ratified the Convention on 17 July 2008. On 30 July 2009, Australia became a party to the Optional Protocol to the Convention. This allows individuals who feel that their rights under the Convention have been breached to make a complaint to the UN Committee on the Rights of Persons with Disabilities.

<sup>1</sup> Including 26 per cent with long-sightedness and 23 per cent with short-sightedness. (Australian Bureau of Statistics, 2007–08 National Health Survey, ABS cat. no. 4364.0, ABS, Canberra, 2009)

The Convention sets out with much greater clarity the obligations on countries to promote, protect and ensure the rights of people with a disability, and specifically prohibits discrimination against people with disability in all areas of life<sup>vi</sup>.

One of the eight general principles of the Convention (Article 3) is accessibility, including access to information. Article 9(2) specifically states that countries 'shall also take appropriate measures to promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information'<sup>vii</sup>.

Article 21 of the Convention sets out a number of obligations on States Parties to the Convention to ensure that people with disability can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas, on an equal basis with others. In particular, Article 21 states that States Parties must take all appropriate measures to:

- ensure that information intended for the general public is provided to people with disability in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost (Article 21(a))
- urge private entities that provide services to the general public, including through the internet, to provide information and services in accessible and usable formats for persons with disabilities (Article 21(c))
- encourage the mass media, including providers of information through the internet, to make their services accessible to persons with disabilities (Article 21(d))<sup>viii</sup>.

Finally Article 30 states that countries must take all appropriate measures to ensure that persons with disabilities:

- enjoy access to cultural materials in accessible formats
- enjoy access to television programs, films, theatre and other cultural activities, in accessible formats
- enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

### ***1.3.2 Social inclusion***

To abide by Australia's social inclusion policy, the government needs to pursue continuing improvement of access to electronic media for individuals with a hearing or vision impairment.

The government is committed to assisting all members of the community to play a full role in Australian life. It is the intention of the government to take a whole-of-government approach to the social inclusion of individuals and communities<sup>ix</sup>.

For social inclusion, all Australians need to have the resources, opportunities and capability to:

- learn by participating in education and training
- work by participating in employment, in voluntary work and in family and caring
- engage by connecting with people and using their local community's resources
- have a voice so that they can influence decisions that affect them.

The government's social inclusion agenda aims to launch a new era of governance that will mainstream the task of building social inclusion. Promoting social inclusion requires rethinking how policy and programs across portfolios and levels of government can work together to combat economic and social disadvantage in Australia<sup>x</sup>.

The Australian Government's National Disability Strategy (NDS) is an important component of its commitment to promoting social inclusion for all Australians and will include the following high-level measurable outcomes:

- equal social, economic and cultural participation of people with disability and their families
- elimination of discrimination experienced by people with disability and their families.

On 29 July 2010, the government released its draft NDS, which outlines a 10-year national plan to improve the lives of people with disability, promote participation and create a more inclusive society. The NDS was developed in consultation with people with disabilities, the community, state and territory governments and local governments. It outlines a nationwide approach to improving the lives of people with disability.

The NDS will deliver a whole-of-government, whole-of-life approach to disability issues and will incorporate the principles of the Convention<sup>xi</sup>.

The Cultural Ministers Council, a forum including ministers responsible for culture and the arts in Australia, has agreed to the National Arts and Disability Strategy, which sets out a vision for improving access and participation in the artistic and cultural activities for people with disabilities. The strategy provides a framework within which jurisdictions can assess and improve existing activities.

The principles of the Convention will also guide implementation of the National Arts and Disability Strategy.

#### **1.4 Actions taken to investigate problem**

The government investigation into access to electronic media for people with hearing and vision impairment has occurred in stages and involved significant public consultation.

The 'Access to Electronic Media for the Hearing and Vision-Impaired' discussion paper released in April 2008 identified existing arrangements for access by people with a hearing and or vision impairment to electronic media. It examined the availability of captioning and audio description for free-to-air television, subscription television and film. It also outlined arrangements in some overseas jurisdictions, and invited comments on a number of key issues. The discussion paper and submissions to that discussion paper are available from the department's website: [www.dbcde.gov.au/television/television\\_captioning/media\\_access\\_review](http://www.dbcde.gov.au/television/television_captioning/media_access_review)

The department received 167 submissions from representatives of the television, film and internet industries, and from people with a hearing or vision impairment and their representative bodies.

A number of key issues were raised in the submissions, including:

- the adequacy of captioning and audio description services
- future targets for captioning and audio description
- associated costs

- regulatory frameworks
- the necessary application of captioning and audio description to new and emerging communications and media content delivery platforms.

In November 2009 the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, released for discussion the report 'Access to Electronic Media for the Hearing and Vision-Impaired: Approaches for Consideration'. The report outlined possible approaches the government was considering to improve audio description and caption levels in Australia on free-to-air and subscription television, film in cinemas, DVDs and audio visual content on the internet. There were 54 submissions received. The discussion report and submissions to that discussion report are available from the department's website:

[www.dbcde.gov.au/television/television\\_captioning/media\\_access\\_review](http://www.dbcde.gov.au/television/television_captioning/media_access_review)

The information provided in submissions and in the discussion paper and discussion report highlighted that the levels of access varied considerably across a range of media formats and that Australia lags significantly behind the levels of access available to people in comparable countries with hearing or vision impairments.

## **1.5 Summary of current regulatory framework**

The *Broadcasting Services Act 1992* (BSA) provides for the captioning of free-to-air television programs. In addition, under the *Disability Discrimination Act 1992* (DDA), disability discrimination is unlawful and that Act aims to promote equal opportunity and access for people with disability across all electronic media. The DDA prohibits discrimination on the ground of disability in the provision of goods and services, but does not provide specific requirements for the audio description of electronic media.

### **1.5.1 Disability Discrimination Act 1992 (DDA)**

The DDA makes discrimination unlawful in relation to access to goods and services, except where providing non-discriminatory access would involve unjustifiable hardship. The DDA aims to promote equal opportunity and access for people with disabilities. Under the DDA, individuals can lodge complaints of discrimination and harassment with the Australian Human Rights Commission (the Commission).

Section 3 of the DDA states that the objects of the Act are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
  - (i) work, accommodation, education, access to premises, clubs and sport
  - (ii) the provision of goods, facilities, services and land
  - (iii) existing laws
  - (iv) the administration of Commonwealth laws and programs
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

Section 24 of the DDA makes discrimination unlawful in relation to access to goods and services, except where providing non-discriminatory access would involve unjustifiable hardship. Section 29 makes discrimination unlawful in the administration of Commonwealth laws and programs.

The Commission is responsible for receiving complaints of discrimination and attempting to conciliate agreements between parties to a complaint. If conciliation is unsuccessful, a party may commence legal proceedings regarding the complaint in the Federal Magistrates Court or the Federal Court. Only the court can determine if unlawful discrimination has occurred and whether a defence of unjustifiable hardship exists.

Under section 55 of the DDA, the Commission may, on application, grant temporary exemptions for up to five years from complaints in relation to issues specified in an exemption. Temporary exemptions are generally only granted for periods during which actions are taken to eliminate discrimination. It is not unlawful for the Commission to refuse an application for temporary exemption from the DDA from a broadcaster. The effect of an exemption is that actions or circumstances covered by the exemption are not unlawful under the DDA while the exemption remains in force.

The DDA recognises that providing access for people with disabilities does not mean access at any cost. The use of terms such as 'as far as possible' and 'as far as practicable' makes it clear that there must be a balance between the benefit and the cost of providing access. Similarly, the provision of exceptions and the concept of 'unjustifiable hardship' in both the DDA and the Standards, whereby action is not required where it would create unjustifiable hardship for a provider, also recognise the need to balance benefits and costs.

### **1.5.2 Broadcasting Services Act 1992 (BSA)**

The BSA, Clause 38 of Schedule 4, requires each commercial television broadcasting licensee and each national broadcaster to provide a captioning service for television programs transmitted during prime viewing hours (6.00 pm – 10.30 pm) and for news or current affairs programs transmitted outside prime viewing hours. When Clause 38 of Schedule 4 to the BSA applies, it is a condition of a commercial television broadcasting licence to comply with this requirement (Paragraph 7(1)(o) of Schedule 2 to the BSA).

A number of program types are exempt from this requirement, including:

- television programs that are not in English or mainly not in English
- non-vocal music-only programs
- incidental or background music
- live sport coverage with unscheduled extended coverage that displaces a news program.

The Australian Communications and Media Authority (the ACMA) can handle complaints made directly to the ACMA if the complaint relates to television captioning for the deaf and hearing-impaired. It will consider whether a captioning service is provided in accordance with the BSA. The ACMA may also consider whether a captioning service is provided in accordance with industry codes of practice provided that the complaint was first directed in writing to the relevant broadcaster within 30 working days of the broadcast at issue. If the complaint is not answered within 30 working days of receipt or not answered to the complainant's satisfaction, the complainant may then refer it to the ACMA. If the ACMA finds that there was a breach of a code, the ACMA may direct the relevant broadcaster to comply with the code. Failure to comply with such a direction may result in a financial penalty.

The *Broadcasting Legislation Amendment (Digital Television) Act 2010* has provided standard definition television (SDTV) or high definition television (HDTV) multichannels with an exemption

from BSA captioning requirements until the final digital television switchover day (unless content was previously broadcast with captions on the broadcaster's core/primary channel).

### ***1.5.3 Industry codes***

Codes of practice developed by sections of the broadcasting industry in consultation with the broadcasting regulator, the ACMA, require broadcasters to clearly identify which programs have captions in their television guides and other consumer information.

Section 123 of the BSA provides for sections of the broadcasting industry to develop codes of practice in relation to aspects of broadcasting services. Paragraph 123(2)(i) provides that these codes of practice may relate to captioning of programs for people with hearing impairment.

The ACMA must register a code developed by a section of the broadcasting industry if it is satisfied that:

- the code provides appropriate community safeguards for the matters covered by the code
- the code is endorsed by a majority of the providers of broadcasting services in that section of the industry, and
- members of the public have received adequate opportunity to comment on the code.

The Commercial Television Industry Code of Practice, developed by Free TV Australia on behalf of commercial television broadcasting licensees and registered with the ACMA, includes provisions that deal with closed captioning. Under this code, commercial television licensees will:

- Ensure that closed captioning is clearly indicated in station program guides, in press advertising, in program promotions and at the start of the program.
- Exercise due care in broadcasting closed captioning, and ensure there are adequate procedures for monitoring closed captioning transmissions.
- Provide adequate advice to viewers with hearing impairment if scheduled closed captioning cannot be transmitted. If technical problems prevent the provision of this advice in closed captioned form, it must be provided as open caption as soon as reasonably practicable.
- When broadcasting emergency, disaster or safety announcements, provide the essential information visually whenever practicable. This should include relevant contact numbers for further information.

The Australian Subscription Television and Radio Association (ASTRA) has developed the Subscription Broadcast Television Code, Subscription Narrowcast Television Code and the Open Narrowcast Television Code on behalf of the respective sections of the industry. The BSA requires registration of these codes with the ACMA.

Each of the ASTRA codes includes provisions in relation to closed captioning. Under each, where closed captioned programming is made available it will be clearly identified in program schedule information provided to the press and in program guides. Furthermore, when closed captioned programming is introduced, or the range of captioned programs is extended, the relevant broadcaster will consult with organisations representing people with hearing impairment and organisations specialising in providing closed captioning.

#### **1.5.4 ACMA complaint handling role**

The ACMA is able to handle complaints about alleged non-compliance with the conditions of broadcasting licences. Under paragraph 7(1)(o) of Schedule 2 to the BSA, it is a condition of a commercial television broadcasting licence to comply with the captioning requirements set out under clause 38 of Schedule 4. Clause 38 requires commercial television broadcasting licensees to, amongst other things, provide captions for television programs transmitted between 6.00 pm and 10.30 pm and news or current affairs programs transmitted at other times.

In considering a licensee's compliance with the captioning provisions of the BSA, the ACMA can have regard only to the matters set out in clause 38. The ACMA is therefore limited to considering whether or not a licensee is providing a captioning service. Concerns about the quality of captioning are generally a matter for individual broadcasters, although the ACMA in the past has considered whether the quality of a captioning service, when viewed across an entire program, was a comprehensible service to a deaf or hearing impaired audience.

The ACMA may also consider complaints about a matter covered by a registered industry code. Captioning is dealt with in the Commercial Television Industry Code of Practice and the Subscription Broadcast Television Codes of Practice.

Under these codes, a complainant must first write to the relevant broadcaster within 30 working days of the broadcast at issue. If a commercial television broadcaster does not answer the complaint within 30 working days of receipt or to the complainant's satisfaction, the complainant may then refer it to the ACMA. Subscription broadcasters have 60 days to respond to such complaints.

The ACMA will assess the complaint and determine whether or not a breach of the relevant code has occurred. If a breach of the code has occurred, the ACMA may direct the relevant broadcaster to comply with the code. Failure to comply with such a direction may result in a financial penalty.

### **1.6 Problems with current regulatory framework**

#### **1.6.1 Need to clarify provisions of the DDA**

Section 24 of the DDA makes discrimination against a person on the ground of the person's disability unlawful in the provision of goods and services. The DDA seeks to ensure that people with disabilities are not subject to unlawful discrimination in very broad areas of public life. It is therefore drafted at the level of broad obligations and is not detailed, specific and prescriptive in its requirements.

However, this high level of generality, together with the need to balance competing interests, can lead to significant uncertainty for people with disabilities—such as a hearing or vision impairment—as well as for service providers in determining the actions required for compliance. This lack of certainty gives rise to the need for regulatory action—the need to provide greater clarity for broadcasters and other providers in terms of their obligations and for individuals with disabilities in terms of their entitlements.

#### **1.6.2 Competing regulatory obligations**

In submissions to the Media Access Review free-to-air broadcasters and disability representatives have expressed concern over the competing obligations of the BSA and the DDA in regard to accessing electronic media. While the BSA has requirements for the captioning of free-to-air broadcasts, the primary law relevant to the provision of captioning and audio description in the area of electronic media is discrimination law under the DDA. They argue that the current legislative



target in the BSA for free-to-air broadcasters is virtually redundant as DDA agreements set much higher targets. Having contradictory targets set through two different pieces of legislation creates an uncertain regulatory environment.

SBS and commercial broadcasters were supportive of DDA captioning targets being rolled into the BSA in submissions to the Media Access Review Discussion Report. SBS advised that:

*... the best way to achieve regulatory certainty is to update the BSA with statutory targets which are the same as targets agreed under the DDA temporary exemption, with similar reporting requirements overseen by the ACMA<sup>xii</sup>.*

Free TV Australia, the peak free-to-air television body, advised that:

*Given the financial and operational implications of captioning, there is a strong need for a clear future regulatory framework regarding television captioning<sup>xiii</sup>.*

In its submission to the Media Access Review, the Commission advised that while enacting the DDA is one appropriate measure to implement the government's obligations under the Convention, it considers that the government is obliged to take 'all' appropriate measures.

While the DDA's individual complaints mechanisms provide a means of enforcing its anti-discrimination provisions, few complaints have been brought before a court in relation to access to electronic media. Other measures for achieving change to support the rights under the Convention can be used to ensure the government responds effectively to those rights.

### **1.6.3 Strengthening the ACMA's complaint and reporting powers**

Representatives of people with hearing and vision impairment do not consider that the ACMA's complaint and reporting powers are adequate. Representatives have also criticised the lack of audited third party figures on captioning levels.

The ACMA has the power to investigate complaints about captioning levels mandated in the BSA, but cannot consider complaints about the quality of captions. Disability groups are supportive of change in this area.

*High standard captioning quality guidelines should be finalised without delay and adopted as the industry standard. ACMA should take on the role of ensuring that broadcasters comply with these standards<sup>xiv</sup>.*

*[The] ACMA's role could be improved by: being more proactive about identifying and investigating systematic access issues; improving its communication with consumers who have lodged complaints; taking a more proactive role about future access issues ... undertaking regular spot checks and publishing access compliance reports<sup>xv</sup>.*

*Projected targets need to be incorporated into the BSA and monitored by the ACMA until all free-to-air and subscription television broadcasting in Australia is fully accessible, providing 100 per cent of non-exempt programming with audio description and captioning<sup>xvi</sup>.*

In addition, the SBS view is that:

*[Regulatory changes should] provide for the ACMA to take into account technical and operational limitations which may affect the provision of captioning services when assessing complaints<sup>xvii</sup>.*

*Consideration will also need to be given to how the further conditions of the DDA temporary exemption will operate<sup>2</sup>.*

The ACMA can only make decisions about whether programs were captioned in accordance with the outdated BSA quantity targets, rather than the quality of that captioning or the much higher DDA captioning targets.

Representatives of the hearing and vision impaired state that the role of the ACMA or the BSA should be expanded to increase legislative authority and provide a more transparent complaint system. Integrating captioning targets and captioning quality requirements into the BSA would expand the ACMA's role in this area and allow a complaint based system to operate effectively.

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<sup>2</sup> SBS 2010 submission to the Media Access Review, page 4. The DDA temporary exemption for television broadcasters is provided on a number of conditions. This includes a gradual increase in captioning quota; regular reporting on captioning levels to the Australian Human Rights Commission; the exclusion of non-program matter from captioning requirements; non-applicability to foreign language subtitled programs and support for increases in caption quality.

## 2. Objectives

To ensure that meaningful improvements to levels of media access for people with hearing and vision impairment is achieved in a way that is practical for broadcasters and content producers.

Access to electronic media for people with vision and hearing impairments involves free-to-air and subscription television, DVDs, cinema, and the internet.

### 2.1 Television

#### 2.1.1 Increasing captioning targets in the BSA

The government proposes to introduce the following captioning targets into the BSA. These targets will apply to both a broadcaster's core/primary television service (whichever is applicable).

Table 3: Proposed captioning targets for core/primary services—6.00 am to midnight period

Targets	2009	2010	2011	2012	2013	2014
Negotiated by the Australian Human Rights Commission	75%	80%	85%	TBA	TBA	TBA
Proposed for BSA	n/a	80%	85%	90%	95%	100%

The level of captioning on free-to-air television in Australia is reported to be more than 75 per cent of programming between 6.00 am and midnight in 2009. Some representatives of people with a hearing impairment have indicated that this should increase to 100 per cent.

Captioning requirements are currently set out in clause 38 of Schedule 4 of the BSA. The general rule is that commercial and national broadcasters are to provide a captioning service for television programs transmitted during prime viewing hours and for news and current affairs programs outside prime viewing hours. Prime viewing hours are defined as between 6.00 pm and 10.30 pm each day, unless otherwise prescribed. Certain exemptions to the general captioning rule apply in relation to, amongst others, programs transmitted on SDTV and HDTV multi-channels until the final digital television switchover day (unless those programs were previously broadcast with captions on the broadcaster's core/primary television service).

Under an agreement negotiated with the Commission, free-to-air broadcasters agreed to a five per cent increase in captioning targets per annum for the period 2009 to 2011. An extension of this five per cent trend increase would see 100 per cent captioning between 6.00 am and midnight on a broadcaster's primary television service by 31 December 2014. A primary television service is a multichannelled SDTV service declared by the ACMA to be a commercial broadcaster's primary television service for a licence area after the end of the relevant simulcast period. National broadcasters declare, by notice in writing to the Minister, that a multichannelled television service will be its primary television service in particular coverage area.

#### 2.1.2 Achieving regulatory certainty

The government proposes to update the BSA captioning targets for free-to-air broadcasters and to prescribe the relevant parts of BSA under the DDA.

Free-to-air broadcasters and disability representatives have expressed concern over the competing obligations of the BSA and the DDA in regard to accessing electronic media. Broadcasters and representatives of people with hearing or vision impairment received with interest the proposal that the government consider updating the BSA captioning targets for free-to-air broadcasters and to prescribe the relevant parts of BSA under the DDA.

This action would require the Attorney-General to prescribe the relevant sections of the BSA under subsection 47(2) of the DDA in Schedule 1 of the Disability Discrimination Regulations 1996. While the BSA has requirements for the captioning of free-to-air broadcasts, the primary law relevant to the provision of captioning and audio description in the area of electronic media is discrimination law. Therefore, prescribing the relevant parts of BSA under the DDA will provide both consumers and broadcasters with a level of regulatory certainty. It will provide certainty about future targets, one overarching regulatory system and a clear and cost-effective compliance and complaints mechanism.

### ***2.1.3 Strengthening the ACMA's complaint, quality and reporting powers***

The government proposes to update the BSA to strengthen the ACMA's complaint, quality and reporting powers.

Representatives of people with hearing and vision impairment proposed that the role of the ACMA or the BSA should expand to increase legislative authority and provide a more transparent complaint system. Integrating captioning targets and captioning quality requirements into the BSA would expand the ACMA's role in this area and allow a complaints system to operate effectively.

Currently, no audited third party figures are available on captioning levels. As part of its strengthened role, the ACMA would require that commercial free-to-air and subscription broadcasters report annually on captioning levels on television.

There is a precedent for this requirement, as broadcasters must currently report annually to the ACMA on their compliance with Australian drama requirements, Australian content in advertising and the Children's Television Standards 2009. This information is publicly available on the ACMA website. There is an additional requirement for broadcasters to report to the ACMA on their compliance in meeting the HDTV quotas. Broadcasters must also report any changes in control within five days.

## **2.2 Subscription television**

The government proposes to amend the BSA to require subscription broadcasters to set captioning targets, provided these targets can be agreed in the first quarter of 2011.

Disability representative groups are seeking increased levels of captioning on subscription television.

Over 40 subscription television channels provide captioned programs. Although there is no specific legislative requirement for subscription television providers, such as Foxtel and Austar, to provide captioned programming, the industry has negotiated an agreement with the Commission to provide captioning across an increasing number of channels.

On 4 June 2004, the Commission granted ASTRA a temporary exemption under the DDA. ASTRA's members were required to achieve minimum captioning levels, over five years, of 25 per cent and 15 per cent for 20 Phase One channels and 20 Phase Two channels respectively<sup>3</sup>, across a 24-hour period.

ASTRA reports that its members have reached and exceeded the targets set in 2004, achieving an average of 44 per cent for Phase One channels and 24 per cent for Phase Two channels. Five additional channels also include some level of captioning.

On 18 February 2010, the Commission received a new application for a DDA temporary exemption from ASTRA on behalf of its members. The application detailed a number of commitments to increase captioning levels over five years, and identified key groupings of channels where different but progressively increasing caption targets should apply. This included proposing to increase the total number of current channels that provide some level of captioning from 45 to 65.

The Commission decided on 17 September 2010 to reject the application. Therefore, subscription broadcasters are no longer protected from DDA complaints.

### **2.3 Audio description**

The government proposes to commission the ABC to conduct a technical trial of audio description in the second half of 2011, subject to funding approval in the 2011-12 Budget process. The trial will contribute to future policy and would be intended to generate greater understanding of both technical and consumer requirements associated with establishing and delivering audio description services in Australia.

There is no regularly scheduled audio description on free-to-air and subscription television in Australia. However, other countries have mandated audio description or are trialling audio description. The UK media regulator, Ofcom, mandates minimum levels of audio described content in the United Kingdom. The New Zealand Government committed in 2010 to a trial of audio description in 2011.

The ABC would deliver content and conduct the trial for the government. The technical trial would aim to identify and solve technical issues regarding the broadcast of closed audio description in Australia; raise awareness of audio description within the industry, government and other key stakeholders; and obtain information on user requirements.

The technical trial would involve significant consultation with disability group representative bodies and equipment suppliers to ensure the appropriate reception equipment is available and that such equipment will meet consumer needs.

The ACMA is currently monitoring the spectrum capacity requirements for existing services and would work closely with the ABC during a technical trial of audio description.

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<sup>3</sup> Phase One referred to the following 20 channels: Arena TV, Cartoon Network, Discovery Channel, Disney Channel, E!, ESPN, FOX News, Fox8, Hallmark Channel, HOW TO, Movie One, MTV, National Geographic, Nickelodeon, Showtime, Showtime Greats, TCM, The Lifestyle Channel, TV1 and UKTV.

Phase Two referred to the following 20 channels: 111 Hits, Animal Plant, Boomerang, Crime and Investigation, Discovery Home and Health, Discovery Science, Discovery Travel and Living, FOX Classics, LifeStyle FOOD, Movie Extra, Movie Greats, Nick Jr, OVATION, Playhouse Disney, Sci Fi, Showcase, The Biography Channel, The Comedy Channel, The History Channel and W.

## 2.4 Advertising

The government proposes to request the Australian Association of National Advertisers (AANA) to include requirements regarding the captioning of advertising content in its codes of practice. The requirements would have regard to (a) existing levels of captioning in advertising, (b) the commercial sensitivities for advertisers, especially in small advertising markets, and (c) the impact of any self-regulatory measures undertaken. Disability representative groups report that a lack of captioning on television commercials has a negative impact on the ability of individuals with hearing and vision impairment to participate in the digital economy. This is because without accessible advertisements people with a hearing or vision impairment do not have access to information on promotional offers and cannot therefore make informed decisions.

Disability groups also point out that people have a right to access advertising information irrespective of hearing or vision impairments. The Australian Human Rights Commission has dealt with a number of complaints in this area.

With regard to television commercials, there are no legislative requirements for television commercials to be captioned or audio-described. However, the AANA recommends that responsible advertisers caption their commercials. Figures from Media Access Australia indicate that around a third of all television commercials are captioned.

**Table 4: Percentage of free-to-air television commercials with captions in 2007**

<b>Broadcaster</b>	<b>Per cent of commercials with captions</b>
Seven	38
Nine	26
Ten	48
SBS	38
<b>Total</b>	<b>37</b>

*Source: Media Access Australia.*

## 2.5 Emergency Broadcasts

Free-to-air television broadcasters play a vital role in the dissemination of emergency information.

The BSA and Commercial Television Industry Code of Practice set requirements for the timely and accurate broadcast of emergency information to a licensee's local community. The information is provided in text and oral form to maximise accessibility.

Representatives of disability groups have indicated that captioning and audio description should be compulsory for emergency, disaster and safety announcements. Currently, emergency broadcasters are only required to caption 'wherever practicable'. Free TV Australia has supported the development of national guidelines and broadcast levels for the broadcast of emergency warnings by the Australian Government. These set down the processes for cooperation between emergency services and all media sectors.

The government proposes to enhance access to emergency broadcasts for people with disabilities to address the need for information broadcast on television to be accessible to ensure people with a disability have access to information in the event of an emergency.

In the past, broadcasters have had problems with their systems that have prevented the delivery of timely and effective captioned warnings.

The ACMA recently conducted a technical feasibility study on SMS access to emergency services for people who are deaf or have a hearing or speech impairment. The report identified that there are inherent risks with using SMS to access the 106 text emergency relay service, including the lack of prioritisation of messages and risks associated with the timeliness and reliability of the technology. The report also identified that there are a number of legislative, regulatory and financial issues that require consideration.

On 20 April 2010, the Minister for Broadband, Communications and the Digital Economy announced the government's intention to establish an SMS emergency service for people with disabilities. The department is currently considering how to address these implementation issues.

## **2.6 Electronic program guides**

The government proposes to improve electronic program guide (EPG) accessibility.

The ACMA does not currently require that EPGs have accessibility features. On 2 June 2009, the ACMA announced it had identified principles and key performance criteria that it will look for in relation to EPGs provided by free-to-air broadcasters as part of their digital television services.

The principles focus on making EPG data freely available, and EPGs providing critical information.

Critical information is that information currently described in the Operational Procedures FTVA OP 44 Implementation Guide for DVB EIT present/following (EIT p/f) and FTVA OP58 Implementation Guide for DVB EIT Schedule Information (EITschedule actual) developed by Free TV Australia.

The ACMA provides monthly reports on the performance of EPGs on its website. It is monitoring the functionality of industry EPGs to decide whether to determine industry standards for digital commercial and national television services.

The ACMA will consult with Free TV Australia to discuss ways in which information may be provided (for example, on a website) to people with disabilities to help them use an EPG.

The ACMA will also consult with broadcasters, through Free TV Australia, and equipment manufacturers to examine the feasibility of enabling (as far as is practicable) accessibility features in EPGs.

## **2.7 Set-top boxes**

The government proposes to improve set-top box accessibility.

The government has mandated a series of features for the rollout of subsidised set-top boxes under the Digital Switchover Household Assistance Scheme. The scheme assists eligible Australians to convert from analog to digital television. It commences approximately six months prior to the television digital switchover date in each region in Australia and will conclude approximately one month after the switchover in that region.

Eligible households that opt to join the scheme will receive a set-top box, specifically chosen to ensure that it meets the needs of the elderly and people with a disability. The tender processes for procuring the supply of set-top boxes stipulated accessibility standards to assist people with a disability and the elderly. In particular, the department is focused on incorporating text-to-speech technology into set-top boxes to enable 'talking' menus and EPGs, and the inclusion of receiver-mixed audio description capability. This includes working with manufacturers and stakeholder groups to make this technology available on the commercial market.

## **2.8 Non-broadcast media**

The government proposes to monitor recent developments in the non-broadcast media area.

Substantial increases in access levels are already evident in DVD and cinema production. On 12 January 2010, in response to the government's discussion report released in November 2009, the Australian Visual Software Distributors Association announced that all the major film distributors and some smaller Australian independent distributors will make available audio description and English captioning on the majority of theatrical films when released on DVD.

On 17 July 2010, the government and Australia's four major cinema groups agreed to roll out audio description and captioning technology by 2014, with 242 accessible screens provided in 132 complexes. Currently there are only 12 screens in 12 complexes with captioning. The government committed funding of \$470,000 to the cinema project.

## **2.9 Convergence and online accessibility**

The government proposes to facilitate and improve access to online content through the National Relay Service (NRS) and the Australian Communications Consumer Action Network (ACCAN)—the peak telecommunications consumer body in Australia.

There is no legislative requirement in relation to the captioning or audio describing of audiovisual content on the internet. This includes television programs subsequently distributed via the internet after broadcast on television. While there may be an expectation that programs that are provided with access features when broadcast on television would also be provided with access features when made available online, this is not currently required.

The limited availability of captioning and audio description access features for online audiovisual content is understood to be due to a range of technical considerations related to online media and text formats, differences in the software for online audiovisual players, the editing of material originally distributed with access features, and a lack of clear online caption production and delivery standards and requirements.

The government has funded the establishment of the ACCAN. The department administers the funding under the Consumer Representation Grants Program. ACCAN is active in facilitating consumer access to online information.

A comprehensive community consultation process will be conducted by the department, in conjunction with the ACMA, to explore how the NRS could be improved and developed for the future. The NRS is a vital communication tool for members of the deaf and people with hearing impairment.

Emerging technologies and applications, along with the potential of the National Broadband Network to deliver new applications, provide a timely opportunity to consider the evolution of the NRS.



### 3. Options

The Media Access Review began in 2007 and has occurred in stages involving significant public consultation. A number of key issues were raised in submissions and examined throughout the review including:

- future targets for captioning and audio description (verbal descriptions of visual content on screen)
- associated costs and regulatory frameworks
- quality issues
- the application of captioning and audio description to new and emerging communications and media content delivery platforms.

The department has carefully considered the submissions and stakeholder feedback received and developed a final report outlining 22 recommendations. The key recommendations outlined in the final report are in accordance with the objectives of the government's National Disability Strategy and are in response to concerns such as the levels of captioning and audio description services on television (free-to-air and subscription), films in cinemas, DVDs and audiovisual content on the internet. Key recommendations include increasing captioning targets in the BSA and conducting an audio description trial on the ABC.

The key areas where further access improvements are expected to occur include:

- providing regulatory certainty by consolidating captioning requirements into the BSA
- raising captioning targets to provide a better outcome for people with hearing impairment
- conducting a technical trial of audio description.

The department has identified two major options for action. The first option is to implement the Media Access Review's 22 recommendations. The second option is to maintain the status quo and rely on action being taken under the DDA to increase access.

#### **3.1 Option—Implement Media Access Review recommendations**

The government could choose to implement the Media Access Review's 22 recommendations, including legislating to amend the BSA to include minimum captioning targets for free-to-air and subscription television. Captioning levels on television are set to increase significantly as a result of the investigation.

The 22 recommendations have been tested with stakeholders, after release as 'options being considered' in the 2009 Media Access Review Discussion Report. Stakeholder feedback was generally favourable (see discussion in section 1—Problem).

#### **3.2 Option—Rely on DDA to increase access**

The government can opt to maintain the status quo, with a continuing role for the DDA temporary exemptions. However, the Commission is unlikely to support this approach.

In its submission to the Media Access Review, the Commission advises that while enacting the DDA is one appropriate measure to implement the government's obligations under the Convention, it considers that the government is obliged to take 'all' appropriate measures.

While the DDA's individual complaints mechanisms provides the means for enforcing its anti-discrimination provisions, few complaints have been brought before a court in relation to access to electronic media. Given the Convention provides a broader context, other measures for achieving change to support the rights under the Convention can be used to ensure the government responds effectively to those rights. The Commission has indicated it supports such other measures.

## 4. Impact analysis

Access to electronic media for people with vision and hearing impairment is an important issue that involves free-to-air and subscription television, DVDs, cinema, and the internet.

The approaches being considered by the government were flagged in the Media Access Review Discussion Report, which was released for public comment on 26 November 2009. A total of 54 submissions were received. The government considered the complex policy and regulatory issues in this area and developed a range of recommendations based on these approaches to address identified issues.

The final report outlines the 22 recommendations for action to improve access levels for individuals with hearing and vision impairment.

The main stakeholders affected by the final report's recommendations are:

- individuals with a hearing and vision impairment
- television broadcasters (subscription and free-to-air)
- non-broadcast media industry.

### 4.1 Implications for individuals with hearing and vision impairment

For individuals with hearing and vision impairment, the Media Access Review final report's recommendations make more explicit their rights of access to electronic media. The objective of both the DDA and the final report's recommendations is to ensure that, as far as possible and practicable, individuals with hearing or vision impairment have the same access to television, cinema movies, DVDs and the internet as individuals without disabilities.

Individuals will benefit from the final report's recommendations through increased levels of accessible content, which is consistent with the government's goals of social inclusion.

In addition to increased levels of content, the final report's recommendations will also enhance the viewing experience for individuals by introducing requirements for caption quality. Introducing captioning quality requirements into the current self-regulatory system will allow consumers to access an effective complaint-based mechanism that is overseen by the industry regulator, the ACMA. All categories of program content are subject to captioning requirements, with the following exceptions:

- television programs that are not in English or mainly not in English
- non-vocal music-only programs
- incidental or background music
- live sport coverage with unscheduled extended coverage that displaces a news program.

The *Broadcasting Legislation Amendment (Digital Television) Act 2010* has provided standard definition television or high definition television multichannels with an exemption from BSA captioning requirements until the final digital television switchover day (unless previously broadcast with captions on the broadcaster's core/primary channel).

## 4.2 Implications for television broadcasters

The final report's recommendations intend to ensure that meaningful improvements to levels of media access for people with hearing and vision impairment can be achieved, while ensuring that actions taken are practical for broadcasters and content producers.

For television broadcasters (subscription and free-to-air) the final report recommendations will provide certainty about their regulatory obligations by consolidating captioning requirements into the BSA.

Free-to-air broadcasters and disability representatives have previously expressed concern over the competing obligations of the BSA and the DDA and are likely to support the final report's recommendation. Broadcasters and representatives of people with hearing or vision impairment received with interest the proposal in the 2009 discussion report that the government consider updating the BSA captioning targets for free-to-air broadcasters and to prescribe the relevant parts of the BSA under the DDA.

While the BSA has requirements for the captioning of free-to-air broadcasts, the primary law relevant to the provision of captioning and audio description in the area of electronic media is discrimination law. Therefore, prescribing the relevant parts of BSA under the DDA will provide both consumers and broadcasters (free-to-air and subscription) with a level of regulatory certainty. It will provide certainty about future targets, one overarching regulatory system and a clear and cost-effective compliance and complaints mechanism.

The final report's recommendations provide for specific captioning targets for free-to-air and subscription broadcasters. Providing specific, measurable, timely and appropriate targets for access will provide certainty to broadcasters, allowing them to increase access levels in a sustainable manner over a defined period during a period of substantial change in the media environment as a result of the switch to digital television and the introduction of the National Broadband Network.

The final report's recommendations may have a negative financial impact on broadcasters. In absence of government regulatory action, broadcasters would pursue temporary agreements under the DDA and these may have higher or lower financial impacts than the government's proposed targets.

For free-to-air broadcasters, under an agreement negotiated with the Australian Human Rights Commission they agreed to a five per cent increase in captioning targets per annum for the period 2009 to 2011. An extension of this five per cent trend increase would see 100 per cent captioning between 6.00 am and midnight on a broadcaster's primary television service by 31 December 2014. The final report's recommendations for free-to-air broadcasters are consistent with an extension of the targets agreed between broadcasters and the Commission. The ABC is supportive of increases to captioned content in its submission:

*The ABC believes that a staged increase in captioned content on its television broadcast platform provides a balanced way forward for both the ABC and its viewers<sup>xviii</sup>.*

*As a starting point, the captioning levels agreed between industry and the Australian Human Rights Commission as part of the exemption process should form the basis for any update of the BSA captioning targets<sup>xix</sup>.*

For subscription broadcasters, appropriate targets are being agreed by the first quarter of 2011. The agreed targets are likely to have an increased financial impact than targets proposed by subscription

broadcasters to the Commission in 2010. However, this recommendation will only be implemented if subscription broadcasters have agreed to the targets.

Increased accessibility for individuals with a hearing and vision impairment may result in marginally higher viewer levels for broadcasters, with a corresponding beneficial financial effect. However, this positive effect would be difficult to identify and quantify.

#### **4.3 Financial impact of increased captioning targets on broadcasters**

All free-to-air commercial and national broadcasters have indicated that they are currently meeting mandated captioning levels of 75 per cent in 2009. Free-to-air broadcasters are estimated to spend in the order of \$3 million to \$5 million per annum to achieve these captioning levels, based on available information.

Discussions on the development of captioning quality guidelines have occurred between Free TV Australia and representatives from the deaf and hearing-impaired community for several years. The proposals to address captioning quality are not expected to create an additional financial impact on broadcasters as they are primarily designed to formalise existing commitments by broadcasters and reform the existing regulatory framework to assist the ACMA in handling complaints about the quality of captions.

An increase in captioning levels to 100 per cent for free-to-air broadcasters is likely to result in an incremental additional cost of \$4 million to \$5 million per annum, taking total costs to \$7 million to \$10 million per annum. However, given commercial free-to-air broadcasters' revenues in 2009 of between \$903 million and \$1.5 billion, it is unlikely that they could mount a persuasive case that the higher targets represent an unjustifiable hardship under the DDA. These estimates of cost are based on figures provided by the ABC.

The national broadcasters advised in submissions to the Media Access Review Discussion Report that they are providing even higher levels of captioning. SBS noted in its submission that for the period 1 January to 31 December 2009, SBS achieved an average captioning level of 86 per cent of eligible programming broadcast on SBS ONE.

The ABC advised in its submission that it expects to caption at least 85 per cent of program hours on ABC1 by the end of 2011. The ABC reports that it broadcast almost 14 000 hours of programming with closed captions on ABC1 and ABC2 in 2009. With the launch of ABC3, the ABC will broadcast over 18 000 hours of captioning programming in 2010 on its broadcast services. The ABC's 24-hour continuous news channel will also have a significant proportion of that service captioned.

Broadcasters have advised that their current captioning costs are substantial and should be factored into any consideration of increased captioning targets. Broadcasters have provided the following information about their current costs.

- **SBS:** The estimated cost of SBS subtitling and captioning services for the period 1 January to 31 December 2009 was approximately \$4.77 million<sup>[xx]</sup>. SBS advised that it is not specifically funded to provide closed captioning services and would require additional funding to meet any new obligations. SBS stated that its high level of captioning is achieved through the provision of subtitling for its non-English language programming.
- **ABC:** The estimated cost of ABC subtitling and captioning is over \$3 million per annum<sup>[xxi]</sup>. In addition to the issue of cost, the ABC identified spectrum availability as a significant issue that will impact on the delivery of television captions.

*A further issue is the spectrum required to deliver accessibility services ... While the delivery of a single service, such as captioning a television broadcast, does not require a large amount of spectrum, the accumulated requirement for a number of services has major implications<sup>[xxii]</sup>.*

- **Commercial free-to-air channels:** Commercial broadcasters were reluctant to supply information about the costs of providing captioning, but advised in their submissions that their costs would greatly escalate with any increase in captioning or audio description requirements. Free TV Australia stated in its submission on behalf of commercial broadcasters:

*The high levels of captioning already provided mean that to deliver further increases in captioning levels, broadcasters will need to consider programs that are particularly difficult or costly to caption. This will represent a significant commitment of resources for broadcasters. It is an established principle of broadcasting regulatory policy that regulatory requirements must balance public interest considerations with their financial and administrative burden on broadcasters<sup>[xxiii]</sup>.*

*[T]he impact of captioning additional programs is exponential, rather than linear, when compared to the marginal gains in captioning levels<sup>[xxiv]</sup>.*

*Broadcasters are aware of new technologies, such as voice recognition captioning, being put forward as potential solutions to the difficulties involved in achieving very high levels of captioning. However, it is important to understand that there are limitations involved and that these technologies are some way from being suitable for widespread adoption<sup>[xxv]</sup>.*

National broadcaster captioning costs are comparable with the subscription broadcasters Foxtel and Austar, which for 2007–08 had a combined estimated cost of \$4.5 million. The costs of captioning on subscription television include infrastructure costs for enabling channels, bandwidth costs, administrative and compliance monitoring costs and provision of closed-captioned programming<sup>[xxvi]</sup>.

Should a target of 100 per cent captioning for 6.00 am to midnight be introduced, broadcasters advise it would have the following costs:

- **ABC:** The estimated cost of meeting a requirement for 100 per cent captioning on existing services, with current programming strategies, is over \$7 million per annum.
- **SBS:** nil information available.
- **Free-to-air commercial broadcasters:** nil information available.

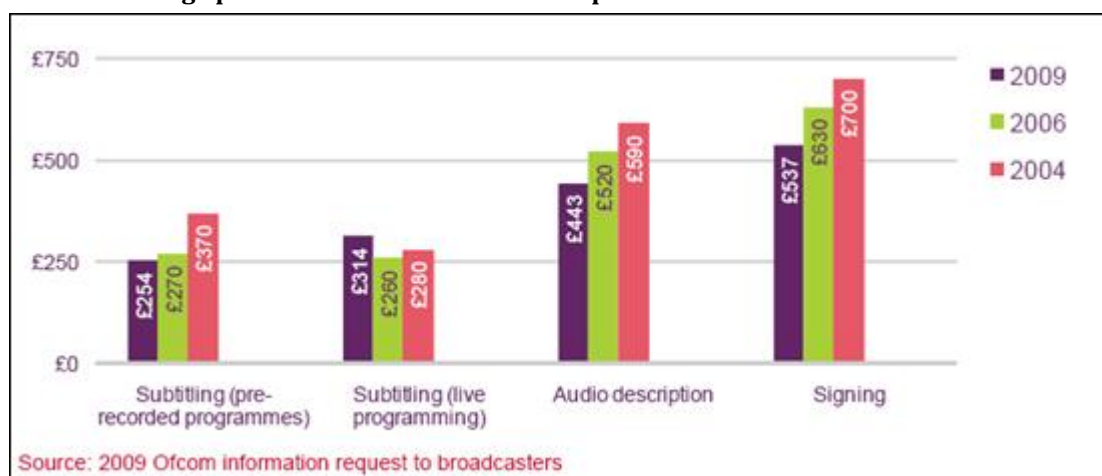
The ABC advises that, added to the cost of captioning for existing and new channels and online services, the total cost of meeting 100 per cent captioning and a requirement for up to 10 per cent audio description is estimated at over \$15 million annually, compared to current access expenditure of over \$3 million<sup>[xxvii]</sup>.

Any increase in requirements for captioning may be partially offset by reduced costs of captioning. The UK media regulator, Ofcom, released a consultation report<sup>[xxviii]</sup> in late 2009 as part of its review of television access services that found costs for access service provision had fallen over the period 2004–09.

The Ofcom report outlined a decline in cost for all forms of access except the captioning of live programming, which rose slightly. Notably, costs of prerecorded captioning declined by 30 per cent

and audio description by 25 per cent in the five years from 2004. Live captioning became 10 per cent more expensive during the same period<sup>[xxix]</sup>.

**Table 5: Average per hour cost of access service provision in UK**



Under the DDA, broadcasters would need to show why increased captioning levels would threaten their financial stability or be an unreasonable hardship. In determining whether a hardship imposed on a broadcaster would be an unjustifiable hardship, all relevant circumstances of the particular case must be taken into account, including:

- i. the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned
- ii. the effect of the disability of any person concerned
- iii. the financial circumstances, and the estimated amount of expenditure required to be made, by the broadcaster
- iv. the availability of financial and other assistance to the broadcaster
- v. any relevant action plans given to the Commission.

#### 4.4 Implications for non-broadcast media

Substantial outcomes have already been achieved in 2010 in the area of DVDs and cinema. The outcomes have been negotiated, and agreement reached between industry and disability representative groups. These outcomes have a significant financial impact for cinema groups and DVD distributors and a significant social impact for individuals with a hearing and vision impairment.

The government welcomed these positive steps in the final report. The recommendations do not have a significant additional financial impact on cinema groups, DVD distributors, or individuals with a hearing or vision impairment.

On 18 June 2010, Screen Australia released its updated Terms of Trade after a period of industry consultation in November 2009. The 2010 Terms of Trade came into effect on 1 July 2010, and apply to all projects approved for funding from that date. The Terms of Trade were amended to encourage producers of all content to budget for both captioning and audio description to provide access to their projects for both hearing and visually-impaired audiences. The proposed recommendation to amend Screen Australia's Terms of Trade to require audio description and captioning for the feature films it funded is not expected to have a major impact as the proposal is not a specific condition of funding.





## **5. Consultation**

The government investigation into access to electronic media for people with hearing and vision impairment has occurred in stages and involved significant public consultation.

### **5.1 Discussion paper**

The 'Access to Electronic Media for the Hearing and Vision Impaired' discussion paper released in April 2008 identified existing arrangements for access to electronic media by people with a hearing and/or vision impairment. It examined the availability of captioning and audio description for free-to-air television, subscription television and film. It also outlined arrangements in some overseas jurisdictions, and invited comments on a number of key issues. In response, 167 submissions were received from representatives of the television, film and internet industries, and from people with a hearing or vision impairment and their representative bodies. The discussion paper and submissions to that discussion paper are available from the department's website:

[www.dbcde.gov.au/television/television\\_captioning/media\\_access\\_review](http://www.dbcde.gov.au/television/television_captioning/media_access_review)

### **5.2 Discussion report**

The subsequent discussion report, 'Access to Electronic Media for the Hearing and Vision Impaired: Approaches for Consideration' was released in November 2009. It outlined possible approaches under consideration by the government to improve audio description and caption levels in Australia on free-to-air and subscription television, film in cinemas, DVDs and audio visual content on the internet. The consultation period on this report closed on 29 January 2010 with a total of 54 submissions received. The discussion report and submissions to that discussion report are available from the department's website:

[www.dbcde.gov.au/television/television\\_captioning/media\\_access\\_review](http://www.dbcde.gov.au/television/television_captioning/media_access_review)

A number of key issues were raised in the submissions, including:

- the adequacy of captioning and audio description services
- future targets for captioning and audio description
- associated costs
- regulatory frameworks
- the application of captioning and audio description to new and emerging communications and media content delivery platforms.

The information provided in submissions and in the discussion paper and discussion report highlighted that the levels of access varied considerably across a range of media formats and that Australia lags significantly behind the levels of access available to people in comparable countries with hearing or vision impairments .

## 6. Conclusions and recommendations

Access to electronic media is important to all members of the community, including those with a hearing or vision impairment. It involves captioning and audio description in Australia on free-to-air and subscription television, film in cinemas, DVDs and audio visual content on the internet.

For many Australians, visual and hearing impairments make it hard to enjoy a digital world that most people take for granted. According to data from the Australian Bureau of Statistics, about 2.67 million Australians—one in every eight people—have some form of hearing loss<sup>[xxx]</sup>. There are also about 284 000 people who are completely or partially blind<sup>[xxxi]</sup>.

Over the next decade, an ageing population and an increase in the incidence of obesity-linked diabetes are expected to lead to an increase in the number of Australians who experience visual and hearing impairments. Hearing loss is expected to affect more than five million Australians by 2020<sup>[xxxii]</sup>. The number of vision-impaired Australians is also expected to increase and is projected to reach about 716 00 by 2020<sup>[xxxiii]</sup>.

Increasing media access levels is consistent with Australia's international obligations under the United Nations Convention on the Rights of Persons with Disabilities and domestic policies including the development of the National Disability Strategy. The Commission has advised that limited action to further improve access might leave the government open to considerable criticism and possible complaints made under the Convention.

The government investigation into access to electronic media for people with hearing and vision impairment has occurred in stages and involved significant public consultation.

- The 'Access to Electronic Media for the Hearing and Vision Impaired' discussion paper released in April 2008 identified existing arrangements for access by people with a hearing and or vision impairment to electronic media, receiving 167 submissions from representatives of the television, film and internet industries, and from people with a hearing or vision impairment and their representative bodies.
- The 'Access to Electronic Media for the Hearing and Vision Impaired: Approaches for Consideration' released in November 2009 outlined possible approaches the government considered to improve audio description and caption levels in Australia on free-to-air and subscription television, film in cinemas, DVDs and audio visual content on the internet. It received 54 submissions.

The Media Access Review has been a thorough and exhaustive process, which has resulted in the identification of 22 recommendations to amend current regulations and practices. The government has the option of implementing these recommendations, or maintaining the status quo and relying on the DDA to achieve increases in access levels.

The preferred option is to implement the proposed 22 recommendations. This will provide certainty to individuals with a hearing and vision impairment, broadcasters and the general community. The recommendations will result in significant increases to current access levels for television by legislating to amend the BSA to include minimum captioning targets for free-to-air and subscription television. The recommendations will also identify the technical issues associated with the broadcast of audio description content in Australia. The 22 recommendations have been tested with stakeholders, after release as 'options being considered' in the 2009 Media Access Review discussion report. Stakeholder feedback was generally favourable (see discussion in section 1—Problem).

The option to rely on the DDA to achieve action is not supported. In its submission to the Media Access Review, the Commission advises that while the DDA is one appropriate measure to implement the government's obligations under the Convention, it considers that the government is obliged to take 'all' appropriate measures.

While the DDA's individual complaints mechanisms are an important means of enforcing anti-discrimination provisions, few complaints have been brought before a court in relation to access to electronic media. Other measures for achieving change to support the rights under the Convention can be used to ensure the government responds effectively to those rights.

The 22 recommendations are listed below.

## **Television**

**Recommendation 1**—That the government includes new captioning targets in the *Broadcasting Services Act 1992*, mandating 100 per cent captioning between 6.00 am and midnight on the primary television service provided by national broadcasters and commercial television broadcasters by 2014.

**Recommendation 2**—That the government prescribes the sections of the *Broadcasting Services Act 1992* that mandate captioning targets under subsection 47(2) of the *Disability Discrimination Act 1992*. The legislative amendments would result in anyone acting in direct compliance with the prescribed part of the *Broadcasting Services Act 1992* no longer being subject to complaint under the *Disability Discrimination Act 1992*.

**Recommendation 3**—That the government strengthens the Australian Communications and Media Authority's powers to investigate complaints about television captioning matters and to require broadcasters to report annually on captioning levels.

## **Subscription television**

**Recommendation 4**—That the government includes captioning targets in the *Broadcasting Services Act 1992* for subscription broadcasters, provided appropriate targets can be agreed in the first quarter of 2011.

## **Audio description**

**Recommendation 5**—That the government commissions a technical trial of audio description on the Australian Broadcasting Corporation in the second half of 2011, subject to funding approval.

**Recommendation 6**—That the government gives further consideration to the introduction of progressive audio description requirements after the completion of the audio description trial and the receipt of technical advice from the Australian Communications and Media Authority on the results of the trial.

## **Caption quality**

**Recommendation 7**—The *Broadcasting Services Act 1992* be amended to include a reference to captions (for subscription and free-to-air television) of an 'adequate quality'.

**Recommendation 8**—That the Australian Communications and Media Authority hosts captioning quality workshops, via a captioning committee, to develop criteria that the ACMA can use when assessing the quality of captions.

## **Advertising**

**Recommendation 9**—That the government asks the Australian Association of National Advertisers to include requirements regarding the captioning of advertising content in its codes of practice. The requirements would have regard to (a) existing levels of captioning in advertising, (b) the commercial sensitivities for advertisers, especially in small advertising markets, and (c) the impact of any self-regulatory measures undertaken.

## **Emergency broadcasts**

**Recommendation 10**—That people with disability should have access to emergency services when at home and outside of the home. The government has committed to the establishment of an SMS emergency service for people with disability.

**Recommendation 11**—That the government mandates the captioning or subtitling of all pre-produced emergency, disaster or safety announcements broadcast on television and introduces a voiceover requirement for essential information such as contact numbers.

**Recommendation 12**—That the government acknowledges the community need for captioning and audio support for such warnings, and works with industry to develop such a capability so that warnings can be broadcast with these features in a timely and effective manner, noting that for emergency warning requests that are not pre-produced, the priority remains for the warning to be broadcast without delay.

## **Electronic Program Guides**

**Recommendation 13**—That the government calls on Free TV Australia to coordinate efforts to improve electronic program guide accessibility, in conjunction with their international counterparts.

**Recommendation 14**—That the government asks the Australian Communications and Media Authority to consider including accessibility features as a key requirement for electronic program guides, or to develop a Code of Practice for electronic program guides by 2012.

## **Set-top boxes**

**Recommendation 15**—That the government continues to investigate the technical specifications of set-top boxes to ensure set-top boxes are as user-friendly as possible and include specifications designed to assist people with hearing or vision impairments.

**Recommendation 16**—That the government develops a website that allows manufacturers to list product and accessibility features of set-top boxes and digital equipment to enhance consumer awareness.

## **Non-broadcast media**

**Recommendation 17**—That the government continues to monitor ongoing developments by the major cinema chains to achieve the commitments they have made to the Australian Government and disability groups.

**Recommendation 18**—That the government works with the Independent Cinema Association in achieving increased levels of accessibility in independent cinemas, having regard to differing levels of commercial viability and capacity to implement accessibility changes.

**Recommendation 19**—That the government asks Screen Australia to amend its Terms of Trade to require the feature films it finances to be audio-described and captioned for cinemas and DVD.

### **Convergence and online accessibility**

**Recommendation 20**—That the government, in conjunction with the Australian Communications and Media Authority, conducts a review to explore how the National Relay Service could be improved and developed for the future.

**Recommendation 21**—That the government continues to encourage industry to partner with the disability representative groups to improve online accessibility through the Australian Communications Consumer Action Network.

### **Review**

**Recommendation 22**—That the government commences another review of captioning and audio description on electronic media in Australia by 2014. The review will evaluate the impact of changes introduced in response to all the recommendations outlined in this report and the impact of technological change in the media environment, following the completion of analog television switch off at the end of 2013. The review will consider what further actions are appropriate based on the media environment at that time.

## 7. Implementation and review

The government's strategy for improving media access has two parts:

- actions to be taken immediately to improve accessibility, and
- commence a media access review by 2014 to determine the next set of actions.

The proposal to conduct a media access review in 2013 was well received by both industry and disability groups. However, greater clarity on the specific terms of reference was considered desirable. The ABC and SBS submissions noted that the proposed review would be an appropriate time to set future media accessibility targets. The review would also provide an opportunity to assess the operation of various digital platforms and the accessibility of content in light of the development of the National Broadband Network and the proximity to the completion of digital television switchover.

The media access review will provide a set time period to investigate the impact of changes introduced following this report. It will also consider actions taken by industry and assess the state of the media environment at that time. This assessment would have particular regard to the expected growth in internet protocol television, digital switchover, the digital dividend of vacated analog spectrum, and innovation in captioning and audio description technologies.

The outcomes from broader government processes will also be considered as part of the review, including outcomes from the Multichannel Review, Convergent Media Review and the National Disability Strategy.

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<sup>i</sup> Australian Bureau of Statistics, 2007–08 National Health Survey, ABS cat. no. 4364.0, ABS, Canberra, 2009, page 15.

<sup>ii</sup> Australian Bureau of Statistics, Disability, Ageing and Carers: Disability and Long-term Health Conditions, ABS cat. no. 4430.x, unpublished DBCDE commissioned research, 2003.

<sup>iii</sup> Access Economics, Listen Hear! The Economic Impact and Cost of Hearing Loss in Australia, Report prepared for the Cooperative Research Centre for Cochlear Implant and Hearing Aid Innovation and the Victorian Deaf Society, Melbourne, 2006, page 39.

<sup>iv</sup> Access Economics, Clear Insight: The Economic Impact and Cost of Vision Loss in Australia, report prepared for the Centre for Eye Research Australia and the Eye Research Australia Foundation, Canberra, 2004, page 31.

<sup>v</sup> Australian Bureau of Statistics, 2007–08 National Health Survey, ABS cat. no. 4364.0, ABS, Canberra, 2009.

<sup>vi</sup> Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) 2008 submission page 5.

<sup>vii</sup> United Nations website, [www.un.org/disabilities](http://www.un.org/disabilities), UN Convention on the Rights of Persons with Disabilities

<sup>viii</sup> United Nations website, [www.un.org/disabilities](http://www.un.org/disabilities), UN Convention on the Rights of Persons with Disabilities

<sup>ix</sup> Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) 2008 submission page 3.

<sup>x</sup> Australian Government, [www.socialinclusion.gov.au](http://www.socialinclusion.gov.au)

<sup>xi</sup> Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) 2008 submission page 4.

<sup>xii</sup> SBS 2010 submission to the Media Access Review, page 3.

<sup>xiii</sup> Free TV Australia 2010 submission to the Media Access Review, page 3.

<sup>xiv</sup> Deaf Australia 2010 submission to the Media Access Review, page 6.

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- <sup>xv</sup> Media Access Australia 2010 submission to the Media Access Review, page 4.
- <sup>xvi</sup> Blind Citizens Australia 2010 submission to the Media Access Review, page 11.
- <sup>xvii</sup> SBS 2010 submission to the Media Access Review, page 4.
- <sup>xviii</sup> ABC 2010 submission to the Media Access Review page 3.
- <sup>xix</sup> Ibid., page 3
- <sup>[xx]</sup> SBS 2010 submission to the Media Access Review, page 2.
- <sup>[xxi]</sup> ABC 2008 submission to the Media Access Review, page 6.
- <sup>[xxii]</sup> ABC 2010 submission to the Media Access Review, page 3.
- <sup>[xxiii]</sup> Free TV Australia 2010 submission to the Media Access Review, page 6.
- <sup>[xxiv]</sup> Free TV Australia 2010 submission to the Media Access Review, page 6.
- <sup>[xxv]</sup> Free TV Australia 2010 submission to the Media Access Review, page 7.
- <sup>[xxvi]</sup> ASTRA 2008 submission to the Media Access Review, page 4.
- <sup>[xxvii]</sup> ABC 2008 submission to the Media Access Review, page 7.
- <sup>[xxviii]</sup> 2009 Review of Television Access Services, Ofcom, page 19.
- <sup>[xxix]</sup> 2009 Review of Television Access Services, Ofcom, page 19. The table that follows below is from the same source.
- <sup>[xxx]</sup> Australian Bureau of Statistics, 2007–08 National Health Survey, ABS cat. no. 4364.0, ABS, Canberra, 2009, page 15.
- <sup>[xxxi]</sup> Australian Bureau of Statistics, Disability, Ageing and Carers: Disability and Long-term Health Conditions, ABS cat. no. 4430.x, unpublished DBCDE commissioned research, 2003.
- <sup>[xxxii]</sup> Access Economics, Listen Hear! The Economic Impact and Cost of Hearing Loss in Australia, report prepared for the Cooperative Research Centre for Cochlear Implant and Hearing Aid Innovation and the Victorian Deaf Society, Melbourne, 2006, page 39.
- <sup>[xxxiii]</sup> Access Economics, Clear Insight: The Economic Impact and Cost of Vision Loss in Australia, report prepared for the Centre for Eye Research Australia and the Eye Research Australia Foundation, Canberra, 2004, page 31.