



Australian Government

Department of Broadband,
Communications and the Digital Economy



Investigation into access to electronic media for the hearing and vision-impaired

Media access review final report

December 2010

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Recommendations

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Acronyms and abbreviations

AANA	Australian Association of National Advertisers
ABC	Australian Broadcasting Corporation
ACCAN	Australian Communications Consumer Action Network
ACMA	Australian Communications and Media Authority
AS	Australian Standard
ASTRA	Australian Subscription Television and Radio Association
ASVDA	Australian Visual Software Distributors Association
BSA	<i>Broadcasting Services Act 1992</i>
DDA	<i>Disability Discrimination Act 1992</i>
DTT	Digital terrestrial television
DVA	Department of Veterans' Affairs
DVB-T	Digital video broadcasting - terrestrial
DVD	Digital versatile disc
HDTV	High definition television
IP	Internet protocol
MP3	A common digital audio encoding format compression used for the storage, transfer and playback of audio information on digital audio players.
MPEG	Moving Picture Experts Group—(i) the body that sets standards for audio and video compression and transmission and (ii) a file format that meets those standards.
NBN	National Broadband Network
NDS	National Disability Strategy
Ofcom	Office of Communications (United Kingdom)
PDA	Personal digital assistant
RFT	Request for tender
SBS	Special Broadcasting Service
SDTV	Standard definition television
SMS	Short message service
TV	Television
UK	United Kingdom
WCAG 2.0	Web Content Accessibility Guidelines 2.0
W3C	Worldwide Web Consortium

Part one: Introduction

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

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

The Government has considered the complex policy and regulatory issues in this area and has developed a range of recommendations to address identified issues.

The Government intends 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.

Substantial achievements 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 Australian 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 Australian Government committed funding of \$470 000 to the cinema project.

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

- providing regulatory certainty by consolidating captioning requirements into *Broadcasting Services Act 1992*
- raising captioning targets to provide a better outcome for people with hearing impairment
- conducting a technical trial of audio description.

The Government will commence a further review of captioning and audio description on electronic media by 2014. This review will consider the effectiveness of action agreed in 2010 in light of 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.

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.

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 Australian 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.

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 .

The Australian Government has carefully considered the submissions and stakeholder feedback received. It has developed 22 recommendations to address the key issues raised in the investigation.

Captioning

Captioning is the presentation of the audio component of audiovisual content as text on screen. It is generally intended to assist viewers with a hearing impairment. Captions include descriptions of sounds, laughter and music, and are usually situated on screen to minimise interference with the picture. Captions are timed to appear with speech and are usually coloured and positioned to indicate who is speaking. Where speaker identification is not relevant, captions are usually in the form of white writing on a black backdrop.

Two types of captioning are commonly used—closed and open. In relation to television captioning, closed captions are encoded into the television signal and decoded and viewed with a capable television. Open captions are overlaid or ‘burnt’ onto the original print recording of a program and do not require a decoder.

In relation to cinema captioning, closed captioning works by transmitting the captions onto an individual screen that a patron places in the drink cup holder of any seat in a cinema and positions to see the captions and movie at the same time. Open captions are burnt into a film print in the same way as foreign language subtitles. That print is then projected in the standard manner for the whole audience to view.

Audio description

Audio description is the presentation of the visual component of audio-visual content as additional verbal commentary that complements the underlying soundtrack. It is generally intended to assist people with vision impairment. A narrator describes speakers, gestures, facial expressions, scene changes, text on screen and other visual information on a separate pre-recorded digital file that is synchronised with the action in a television program or film. The audio description is generally transmitted to the consumer via headphones.

United Nations Convention on the Rights of Persons with Disabilities

Increasing media access is consistent with Australia’s international obligations, such as under the United Nations Convention on the Rights of Persons with Disabilities. Australia ratified the Convention on 17 July 2008 and became a party to the Optional Protocol to the Convention on 21 August 2009.

The Convention creates obligations for States Parties to promote, protect and ensure the enjoyment of human rights by all people with a disability, and it specifically prohibits discrimination against people with disability in all areas of lifeⁱ. The Convention also sets out obligations in relation to participation in cultural life and specifies that countries take all appropriate measures to ensure persons with disabilities can ‘access cultural materials ... and access television programs, films, theatre and other cultural activities in accessible formats.’

Social inclusion

The Australian Government is committed to assisting all members of the community to play a full role in Australian life. It will take a whole-of-government approach to the social inclusion of individuals and communities.ⁱⁱ

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

- 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
- learn by participating in education and training
- have a voice so that they can influence decisions that affect them.

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

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

On 29 July 2010, the Australian 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 disability, 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 Conventionⁱⁱⁱ.

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.

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 the Act aims to promote equal opportunity and access for people with disability across all electronic media. Other than the general non-discriminatory provisions of the DDA, there is no regulatory requirement specifically for the audio description of electronic media.

Broadcasting Services Act 1992

Clause 38 of Schedule 4 to the BSA requires each commercial television broadcasting licensee and each national broadcaster to provide a captioning service for television programs transmitted during prime viewing hours (6.00–10.30 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 *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 previously broadcast with captions on the broadcaster's core/primary channel).

Industry codes

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 Australian Communications and Media Authority (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.

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 6.00–10.30 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 a matter that 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.

ACMA powers

The ACMA has a range of powers to enable it to deal effectively with breaches of the law—including, in particular, the program standards and licence conditions—established by the BSA or the codes developed under the BSA, and in a manner commensurate with the seriousness of the breach. Where a breach of a code has occurred, the ACMA may accept an enforceable undertaking for the purpose of securing future compliance with the code or impose an additional licence condition under Section 43 of the BSA requiring a licensee to comply with the codes.

Before it can impose a licence condition under Section 43 of the BSA:

- the ACMA must give the licensee written notice of its intention to impose the licence condition
- the licensee must receive a reasonable opportunity to make representations to ACMA in relation to the proposed licence condition, and
- the proposed licence condition must be published in the Commonwealth Gazette before becoming effective.

The licensee can apply for a review of the ACMA's decision by the Administrative Appeals Tribunal.

In the event that the licensee does not comply with a remedial direction, the ACMA may:

- pursue a civil penalty
- refer the matter for prosecution as an offence
- suspend or cancel the licence, or
- at any time, accept an enforceable undertaking (including provisions dealing with compliance with a code).

If the ACMA has convincing evidence that codes of practice have failed to provide appropriate community safeguards in relation to a matter, it can determine a new program standard to apply to a particular section of the broadcasting industry.

In addition to these formal powers, the ACMA may also informally agree to accept measures by broadcasters to improve compliance. For example, the ACMA has on many occasions agreed with licensees on action by them intended to ensure compliance problems are addressed and are effective. Such measures have often succeeded in improving behaviour within licensees (and networks). If a licence condition is successfully imposed and a licensee breaches such an additional licence condition, then as an alternative to suspending or cancelling the licence, the ACMA has the power to issue a remedial direction requiring compliance.

Disability Discrimination Act 1992

The DDA makes disability discrimination unlawful and aims to promote equal opportunity and access for people with disability. Under the DDA, individuals can lodge complaints of discrimination and harassment with the Australian Human Rights 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 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. 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.

Part two: Broadcast media

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.

Increasing captioning targets in the BSA

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 multichannels until the final digital television switchover day (unless those programs have been previously broadcast with captions on the broadcaster's core/primary television service).

Under an agreement negotiated with the Australian Human Rights 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.

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

**Table 1: 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%

Achieving regulatory certainty

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 Australian 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 and list the relevant sections of the BSA as a prescribed law under 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.

Strengthening the ACMA's complaint 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.

Broadcasters have already taken some steps to increase the effectiveness of the current captioning complaint system. They have supported the adoption of the online captioning complaint form developed by Media Access Australia as standard and have undertaken to make it available to people wishing to make a complaint.

The Department of Broadband Communications and the Digital Economy will consult with the ACMA on draft amendments to the BSA to give the ACMA the power to consider complaints about both the quantity and quality of captions. This may involve amending section 38 (1) of Schedule 4 of the BSA to include reference to 'of adequate quality'.

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.

Captioning on digital multichannels

On 29 June 2010, the *Broadcasting Legislation Amendment (Digital Television) Act 2010* gave legislative effect to the recommendations of the report 'Content and Access: The future of program standards and captioning requirements on digital television multichannels', which was tabled in Parliament on 3 June 2010.

The legislation implements the report's proposal to extend the exemption from the Australian Content Standard and Children's Television Standard on commercial multichannel services, and captioning requirements on commercial and national

multichannel services, until digital switchover is completed nationally by 31 December 2013.

No reduction in the levels of Australian and children's program content or in captioning requirements will occur during the switchover process, although broadcasters can choose to increase this content on their digital multichannels to meet audience demand.

A further multichannel review of the application of content and captioning rules after digital switchover is completed will occur before 31 December 2012.

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.

DDA temporary exemption

On 4 June 2004, the Australian Human Rights 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 respectively¹, 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.

Table 2: ASTRA's proposed key groupings of channels

Groups	Group type
1	Broadly-viewed movie, children's, and entertainment channels
2	Mixed genre with a focus on basic high reach channels
3	Mixed genre with a focus on tiered and speciality channels
4	Newly-launched channels
5	Local sport and news channels
6	Music channels

¹ 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, Nickoldeon, 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.

Submissions to the Commission on ASTRA's application closed on 2 April 2010. Several claimed that the rates of captioning proposed by ASTRA represented either no increase from the current rate at which subscription television provide captioning, or an insufficient increase. Media Access Australia contends that, having monitored the rate at which ASTRA members provide captioning, in many cases the rates proposed in the application for DDA exemption could result in a decrease from the rate of captions currently provided.

ASTRA's recent application for a DDA temporary exemption proposed that where one provider owns multiple channels, the provider should be allowed to pool or aggregate provisions of captions across the channels that it owns across six different categories (compared to the channels involved in Phase One and Phase Two). For example, Premier Media Group operates five channels, one for which it proposed to achieve 50 per cent captioning after five years, and four channels for which it proposed to achieve captioning at 10 per cent after five years.

Under ASTRA's proposed aggregation across six categories, Premier Media Group would comply with the terms of the proposed DDA temporary exemption if, after five years, each of its five channels was captioned at 18 per cent—an average of the amount of captioning required across all five channels.

The proposal to aggregate or pool the provision of captions to meet requirements was poorly received. Several submissions to the Commission argued that the ability to aggregate caption requirements would lead to uncertainty for Deaf and hearing-impaired consumers who purchase subscription television packages based on claims by subscription broadcasters of the percentage of captioning they would provide on particular channels.

The Commission decided on 17 September 2010 to reject the application. Therefore, subscription broadcasters are no longer protected from DDA complaints. In October 2010, ASTRA reportedly lodged an appeal against the decision to reject its temporary DDA exemption application.

Legislative captioning targets

The Australian Government proposes to amend the BSA to require subscription broadcasters to set captioning targets, provided these are agreed in the first quarter of 2011.

In considering short, medium and long-term targets proposed by ASTRA on behalf of its members, the Australian Government would consider the views of disability groups, the Australian Human Rights Commission, and other interested stakeholders.

Any proposed targets would need to satisfy the Australian Government, including the Attorney-General. Appropriate captioning targets would provide sufficient and realistic levels of progress in the amount of captioning provided over time on subscription television to eliminate concerns about discrimination and meet consumer expectations.

Subscription television is purchased in packages of channels. Appropriate targets would allow consumers to identify specific captioning targets on individual channels and give them an opportunity to gain a clear understanding of the level of captioning per package.

Incorporating appropriate targets for subscription broadcasters in the BSA, and then prescribing the relevant part of BSA under the DDA, will provide a level of regulatory certainty for both consumers and subscription broadcasters about future captioning targets, one overarching regulatory system and a clear and cost-effective compliance and complaints mechanism.

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.

In its submission, the Australian Human Rights Commission advised that it believes discrimination law is not sufficient in itself to deliver systemic change^{iv}. The Commission advises that while enacting the DDA is one appropriate measure to implement the Australian Government's obligations under the United Nations Convention on the Rights of Persons with Disabilities, the Government is obliged to take 'all' appropriate measures.

The DDA is limited in its effect due to its reliance on individuals to make complaints. The Commission's view is that other measures for achieving change to support the rights under the Convention are required, to ensure the Australian Government complies with its obligations and to avoid a finding that it has acted inconsistently with 'human rights' under the *Australian Human Rights Commission Act 1986*^v.

Free-to-air and subscription broadcasters and representatives of the vision impaired have highlighted the importance of further research and consultation if a proposed technical trial on the Australian Broadcasting Corporation (ABC) is to have meaningful results.

The Australian Government intends to commission the ABC to conduct a technical trial of audio description in the second half of 2011, subject to funding approval.

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.

The ABC will deliver content and conduct the trial for the Australian Government. The technical trial will 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 will 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 will work closely with the ABC during the technical trial of audio description.

Subject to funding approval, the closed audio description technical trial will be run for 13 weeks in the second half of 2011 and broadcast drama and documentary content with audio description on ABC1 for 14 hours per week during prime time. It will feature receiver-mixed broadcast technology and consumer equipment. Receiver mix technology is new to the Australian market. The trial therefore will encompass testing of broadcast delivery path from capture (acquisition or commissioning) to transmission and distribution. The ABC will also undertake appropriate promotion and publicity of the technical trial.

The audio description technical trial is expected to have limited geographic reach but will include Sydney, Brisbane and Melbourne.

The report on the trial will obtain research on community awareness, attitudes and use of audio description to include in the report the ABC will prepare for the Australian Government at the conclusion.

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.

In updating the captioning targets in the BSA, the Australian Government intends to strengthen the ACMA’s powers to investigate complaints. Currently the ACMA has the power to investigate complaints about captioning levels mandated in the BSA, but cannot consider complaints about the quality of captions. The ACMA can only make decisions about whether programs were captioned in accordance with the minimum level BSA quantity targets, rather than the quality of that captioning or the much higher level DDA captioning targets.

Updating the BSA captioning requirements to include quality would, in effect, strengthen the obligations concerning captioning quality that broadcasters (both free-to-air and subscription) need to meet under the BSA.

Changes such as these are complementary with the complaints system within which the ACMA currently operates. Section 148 of the BSA provides a right to complain to the ACMA if a commercial broadcaster breaches a code² and a complainant has addressed the complaint to the broadcaster in accordance with the procedure set out in the relevant code. The ACMA has the power to investigate complaints, conduct hearings and to make recommendations. However, the ACMA is not supported by penalty provisions or a specific power to direct a broadcaster to remediate the breach.

If the ACMA is satisfied that a complaint is justified, it can choose to exercise its regulatory powers in a manner that is commensurate with the breach concerned. These powers include imposing a condition on an individual licensee requiring compliance with the code of practice, accepting an enforceable undertaking by a person to take, or refrain from taking, specified action to comply with a registered code of practice, and determining a program standard.

In June 2009, broadcasters submitted a report to the Australian Human Rights Commission detailing the progress of consultations between the broadcasters and deafness organisations on the quality of closed captioning as required under the DDA temporary exemption. The report noted that the ‘quality’ of captions depends on a range of factors including accuracy, speed, placement and font type^{vi}.

² Section 148 of the BSA permits complaint to the ACMA if the code of practice is included in the Register of codes of practice and this will not apply to the ABC and SBS

Free-to-air and subscription broadcasters have worked collaboratively with peak deafness organisations to identify and address key factors affecting captioning quality. Free TV Australia advised that broadcasters started formally implementing the voluntary captioning quality guidelines in 2010.

In their submissions, broadcasters and representatives of the Deaf community and people with hearing impairment provided feedback on the complexities involved.

Caption quality is a critical issue, as it ensures that captioning quantity requirements are meaningful.^{vii}

An open and transparent complaints mechanism in relation to the quality of captioning should be available for Australians so problems can be identified and resolved in an efficient and timely manner.^{viii}

The viewer's desire to receive as much information as possible needs to be balanced against the practical constraints of how quickly captions can be read and how much visual information can appropriately be displayed on the screen at any one time.^{ix}

The draft quality guidelines should be implemented and given a chance to work before any consideration is given to imposing mandatory arrangements.^x

SBS considers that it is in the best interests of all parties to finalise the guidelines through consultation.^{xi}

Poor quality captions are as bad as no captions at all.^{xii}

The ACMA hosted a captioning quality workshop on 16 September 2010, attended by representatives of people with a hearing or vision impairment, government and free-to-air and subscription broadcasters. An outcome of that workshop was the formation of a captioning committee to develop caption quality indicators.

The ACMA will convene the first meeting of the committee to enable further bilateral discussions between industry and representatives of the hearing impaired to facilitate discussions about issues and disputes associated with captioning quality and to seek to resolve the challenges and limitations of the current regulatory framework.

The ACMA has previously developed criteria for assessing the quality of a captioning service which included an assessment of the overall captioning comprehensibility. However, this 'overall comprehensibility' test has recently attracted criticism from stakeholders and accordingly the ACMA hopes to develop, in consultation with the captioning committee, more workable and sensitive criteria in the near future.

Factors affecting the quality of transmission and user experience of audio description will be explored as part of the ABC audio description technical trial.

Advertising

Recommendation 9—That the Government requests 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.

Representatives of people with hearing and vision impairment supported the proposal for the Government to work with the Australian Association of National Advertisers (AANA) and the community sector to improve the availability of access in advertising content. Industry did not comment on this specific proposal.

The AANA recommends responsible advertisers caption their commercials, but it is not included in the self-regulatory codes of practice. Figures from Media Access Australia indicate that around a third of all television commercials are captioned^{xiii}.

With regard to television commercials, other than the general non-discrimination provisions of the DDA, there are no legislative requirements for captions or audio description. Captioning of advertising material is a commercial decision for advertisers and not specifically covered in the BSA.

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.

Broadcasters did not support the proposal to consider mandating the captioning or subtitling of all pre-produced emergency, disaster or safety announcements broadcast on television and introduce a voiceover requirement for essential information such as contact numbers.

Free TV Australia argues that further regulation of emergency warning broadcasts is not necessary but it would welcome further discussions regarding the accessibility of these broadcasts. However, representatives of disability groups welcomed the proposal for mandatory accessibility requirements for emergency broadcasts and emphasised that it is international best practice.

In the ABC's 2010 submission to the discussion report, it noted:

The ABC has developed guidelines to make its television services more accessible for people who are deaf with hearing impairment or are blind or have a visual impairment. For example, Editorial Policies aim to make television and online services accessible to audience members who are blind or have a visual impairment by “ensur[ing] that material provided in text format on the screen will also be provided in audio”. The policy also states that, “closed caption content will be clearly marked when program information is provided to the media or when captioned programming is promoted. Where possible, open caption advice will be provided if technical problems prevent scheduled closed caption ... Addresses to the nation and events of national significance will be transmitted with closed captioning.”^{xiv}

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.

Electronic program guides (EPGs)

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 requests 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.

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 (EITscheduleactual) 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.

Ai-Media's submission further supported EPGs that take into account public education and international experience:

Ease of use: Captioning and audio description are only of use if people know how to access them. Digital technology allows for a better consumer experience switching captions on and off than the old teletext methodology. Ideally captions should toggle on and off with a single button on the remote. Audio description requires audio navigation capability. International best practice should inform Australian policy.^{xv}

Television industry representative bodies and broadcasters have technical expertise to progress developments in this area. The broadcasting regulator in the United Kingdom, Ofcom, has published a Code of Practice on Electronic Programme Guides that outlines the practices to follow in the provision of EPGs. The Code does not set out specific technical requirements, but instead requires EPG providers to work closely with disability groups, broadcasters and set-top box manufacturers on ways of improving usability. Among other things, the Code requires that EPGs provide features and information enabling them to be used by people with disabilities affecting their sight or hearing or both, so far as practicable. Every year, EPG providers are required to send a statement to Ofcom, outlining the steps they have taken and plan to take in this regard.

The Ofcom 2009 report on accessibility was released in March 2010 and identified the following features on EPGs:

- easy method of switching subtitles and audio description on and off using the remote control;
- high visibility of audio-described or subtitled programs—for example, accessible programs appear in a different colour to other programs
- audible signal for audio-described programs
- audio channel line-up from one provider that allows blind or partially-sighted customers to hear a spoken list of all channels available on the platform
- subtitled video-on-demand from one provider
- search function for access services.

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.

On 19 October 2008, the Minister for Broadband, Communications and the Digital Economy announced the proposed timetable for the switch to digital television.

The *Broadcasting Legislation Amendment (Digital Television Switchover) Act 2008* amended the *Broadcasting Services Act 1992* to provide the legislative framework to implement the Australian Government's phased, region-by-region digital television switchover timetable.

The Australian Government has mandated a series of features for the rollout of subsidised set-top boxes.

The Digital Switchover Household Assistance Scheme is assisting eligible Australians to convert from analog to digital television. The scheme provides in-home assistance to eligible households to provide equipment, installation, antenna work and training to assure that they continue to have access to free-to-air television after switchover.

A household is eligible for help where one or more people living in the residence are in receipt of the maximum rate Age Pension, Disability Support Pension, Carer Payment, Department of Veterans' Affairs (DVA) service pension or the DVA income support supplement payments. Centrelink is responsible for determining household eligibility.

The scheme commences approximately six months prior to the switchover date in each region and will conclude approximately one month after the switchover in that region.

Each eligible household that opts 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.

The technical specifications for the set-top boxes were designed around Australian Standard AS4933.1, along with research conducted by Digital UK on usability specifications. A stated mandatory requirement of the unit is the ability to decode MPEG-4 (a pre-requisite for closed audio description) formats. While some countries have chosen to use the MPEG-4 standard for the provision of high definition television services, the transition to MPEG-4 is not planned in Australia at this time. The ACMA notes that broadcasters have announced that before they make any move to change their transmission streams to MPEG-4, they would consult with the Government.

Provisions within the BSA allow the ACMA to oversee the development of technical standards and industry codes and standards intended to ensure that industry and retailers are able to provide high quality digital services and products to consumers. The ACMA recognises the value of incorporating MPEG-4 into a receiver specification to future proof the receiver against possible future changes in technology.

Australia has two digital television standards developed by Standards Australia:

- AS 4599.1-2007: Digital television—Terrestrial broadcasting—Characteristics of digital terrestrial television transmissions
- AS 4933.1-2005: Digital television—Requirements for Receivers Part 1: VHF/UHF DVB-T television broadcasts.

Although not mandated by the ACMA, AS 4599.1-2007 specifies digital terrestrial television transmission requirements—including video, audio and data coding, transport stream characteristics, channel coding and the required modulation system. It is based on the European digital video broadcasting terrestrial (DVB-T) transmission standard.

The digital receiver standard AS 4933.1-2005 provides receiver manufacturers with technical specifications and requirements that enable the successful reception of transmissions complying with AS 4599.1-2007. The standard identifies minimum essential requirements for reception, demodulation and decoding of television broadcasts complying with the Australian implementation of DVB-T. It also provides additional information and recommendations regarding implementation if other features are included in equipment design.

The Australian receiver standard specifies that if several audio channels in the same or different formats are present in a program service, a menu option should make it possible to choose between them. The ease in accessing the additional audio varies widely between receivers and not all devices may support it.

The complexity of accessibility issues points to the need to test broadcasting and receiver equipment and conduct field tests. The audio description technical trial on the ABC is expected to explore the technical viability of these test options.

The ACMA is undertaking technical field surveys to assess the coverage of digital television to ensure that viewers are provided with the best possible access to new digital services.

The Department of Broadband, Communications and the Digital Economy has developed an online database that allows participating manufacturers to list digital ready products, including set-top boxes and televisions.

The Department is also working with suppliers and community groups to help ensure that digital television equipment available in Australia is accessible and usable for all viewers including those who have a disability. The Department is currently considering what criteria might be used to establish whether equipment meets accessibility and usability requirements for users that would identify such products for listing on a web page. The page would give details of the products including a description of features designed to meet particular needs.

Part three: 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.

Cinema

In a series of meetings conducted between April and July 2010, the Australian Government and the disability sector negotiated with major cinema chains (Hoyts, Village, Greater Union Birch Carroll & Coyle and Reading) to achieve broad and increased geographical coverage of captioning and audio description. As a result, major cinema chains have committed to a long-term goal to have at least one fully-accessible cinema (with captioning and audio description) in every complex across Australia that each major cinema chain owns.

Details of the proposal include:

- by the end of 2010 access provided in 24 screens (10 per cent of proposed total)
- by the end of 2011 access provided in 73 screens (30 per cent of proposed total)
- by the end of 2012 access provided in 145 screens (60 per cent of proposed total)
- by the end of 2013 access provided in 194 screens (80 per cent of proposed total)
- by the end of 2014 access provided in 242 screens (100 per cent of proposed total)

Every session of a movie that has captioning or audio description will make those facilities available. The Australian Government has committed \$470 000 to the cinema project.

While cinemas will initially use CaptiView technology to deliver captioning and audio description, the industry has acknowledged that will not preclude adoption of improved technology in the future.

The proposal was announced by the Minister for Families, Housing, Community Services and Indigenous Affairs and former Parliamentary Secretary for Disabilities on 17 July 2010.

The Australian Government will also contribute \$30 000 over four years toward some of the costs for disability and media advocacy sector representatives to attend a newly established Accessible Cinema Advisory Group, as well as providing Auslan interpreters for Advisory Group meetings.

Membership of the Advisory Group draws on the expertise of cinema industry, disability and media advocacy sector representatives and the Australian Human Rights Commission. The Department of Families, Housing, Community Services and Indigenous Affairs will also be a member of this group, which the Department of Broadband, Communications and the Digital Economy attends as an observer.

In its annual report for 2009–10, Media Access Australia noted that the deal agreed by the Australian Government and the cinema industry was ‘the biggest cinema access deal in Australia (and possibly the world)’. Further, ‘this major win for access would see Australia jumping to near top for accessibility of cinemas measured on a per head of population basis’.^{xvi}

According to the Motion Picture Distributors Association of Australia, the Australian cinema industry consists of some 1989 screens in 492 locations nationally. The Australian Government notes that at this time no similar increase in captioning levels was negotiated with independent cinema chains, which have only recently implemented accessibility equipment in 12 cinemas as a result of Australian Government funding.

The Independent Cinemas Association of Australia has advised that digital equipment installed in cinemas as part of a broad industry digital switchover will incorporate captioning and audio description capabilities. The conversion will enable captioning and audio description without the need for additional projection equipment. Currently, 35 mm film projectors require bolt-on projector equipment.

To assist people with a hearing or visual impairment or who are Deaf to find which cinemas sessions feature accessible movies, the Your Local Cinema website^{xvii} provides comprehensive information on Australian cinemas showing movies with captioning and audio description. It covers current accessible movies, session times, has links to accessible trailers and the latest in accessible cinema news in Australia and overseas.

The website was established by Australian Government with funding from the 2008 one-off commitment of \$350 000 by the former Minister for Ageing for cinema accessibility that provided for equipment and promotional support for 12 independent cinemas around the country. The website is maintained by Media Access Australia.

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 have been 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.

DVD

On 12 January 2010, in conjunction with its submission to the Media Access Review discussion report, the Australian Visual Software Distributors Association (AVSDA)³ 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 a revenue basis AVSDA members represent 90 per cent of the market. AVSDA have advised that its members are committed to increasing the amount of product available in Australia with access features and have already undertaken steps to educate, promote, accurately label and include features on Australian DVDs.

The Australia Government welcomes this positive step and notes it addresses one of the proposals outlined in the discussion report.

Media Access Australia noted that thanks to these initiatives, Australia now offers consumers more captioned DVD releases than any other country in the world.^{xviii}

The ABC advised in its submission that:

Since 2005, the ABC has included captions in new DVDs it produces, with the exception of some DVDs for pre-school children.^{xix}

Screen Australia now requires that each Australian feature films it finances puts aside a portion of its budget to caption for cinema and DVD release. These funds do not extend to providing appropriate captioning files suitable for internet download purposes or for audio description. Disability representative groups have advocated for Screen Australia to make funding provisions for captioning and audio description, including on downloaded versions, for the films that it supports.

³ The AVSDA's members are: Anchor Bay Home Entertainment, Fremantle Media, Hopscotch Entertainment, Madman Entertainment, Paramount Home Entertainment, Roadshow Entertainment, Shock Entertainment Group, Sony Pictures Home Entertainment, Time Life Australia, Twentieth Century Fox Home Entertainment, Universal Pictures Video and Warner Home Video.

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.

Online regulatory requirements

The Australian Government understands that access to affordable, fast broadband is increasingly essential to the way Australians communicate. It will help drive Australia's productivity, improve education and health service delivery and connect our big cities and regional centres. It will also provide an opportunity to overcome the technical barriers, including spectrum constraints, inhibiting the affordable delivery of accessible audio described content, for example.

That is why the Australian Government has established a new company, NBN Co Limited, to build and operate the new superfast National Broadband Network. The company will invest up to \$43 billion over eight years to fund the rollout and ongoing operations of the network.

The NBN will provide additional impetus for industry developments to improve and disseminate accessible technological solutions. The NBN and high-speed broadband will mean superfast video, data and voice services and faster downloads of documents. Families and friends will experience improved videoconferencing and the ability to share digital photos and videos in real-time and download high definition movies and television shows with captioning or audio description. With the NBN, Australians will make better use of the range of accessible digital devices in their homes now and into the future—digital video recorders, digital cameras, high definition monitors, PDAs, MP3 players, laptops and other smart appliances.

The emergence, or convergence, of media that uses digital information and communication technologies, such as the online delivery of traditional media, is ongoing and will be accelerated by the rollout of the NBN. However, the Australian Government acknowledges that while digital media is rapidly evolving, accessible features often only become available as other new products and services emerge.

The upcoming review of convergent media will advise the Australian Government on reforms to the existing legislative framework in light of the ongoing technological, commercial and market changes that is occurring with the trend towards the use of internet protocol (IP) networks and the emergence of IP-based content services and applications. The review is expected to commence in December 2010.

A number of organisations are working on technologies to provide online captioning. Access Innovation Media (Ai-Media) noted in its submission that it is focused on developing and delivering access solutions using digital technology^{xx}.

We provide live captioning using both steno and speech recognition methodologies and are rolling out our Ai-Live™ in Schools solution during 2010—providing deaf and hearing impaired kids with real-time text of classroom conversation direct to a laptop in under seven seconds.^{xxi}

A free, non-profit website called Video Critter⁴ now makes creating captions on YouTube videos a simple matter. By logging on to Video Critter and connecting with the relevant YouTube link, the person preparing a video can listen to a phrase or short sentence spoken in the video, pause the playback, type the phrase into Video Critter and repeat the process until the captioning is complete. The drafted captions appear immediately at the bottom of the screen for editing if required^{xxii}.

Overall, the industry considered that a regulatory requirement to add access features to online material is impossible to fulfil and would hinder the industry's efforts and commitment to improve accessibility.

Google and Telstra noted in their submissions that the most effective way of improving accessibility of the internet material is for the Australian Government to promote an environment in which industry research, development and innovation continues.

However, representatives of people with hearing and vision impairment viewed poorly the proposed approach to monitor developments and argued it was inadequate to meet the Australian Government's obligations under the United Nations Convention on the Rights of Persons with Disabilities.

The national broadcasters are already captioning online content. The SBS submission noted that:

SBS already transmits audiovisual content with subtitles on its website as part of its catch-up service. Transcripts of all SBS-produced news and current affairs programs are also available on the SBS website. SBS is investigating whether it is possible to convert closed caption files created for programs that have already been broadcast for use online, and would be willing to discuss the results with the Government. At this stage further development is dependent on the availability of funding.^{xxiii}

The ABC captions content for its internet player, iView, where that content was provided with captions in prime time (as screened from 6.00 pm to midnight) on ABC1 and ABC2, and has done so since early 2010. SBS states that it is impractical due to the costs involved and for technical reasons to consider audio description of audiovisual content on the internet.

⁴ www.videocritter.org

Free TV Australia does not support captioning requirements for online material. In its submission to the review, Free TV Australia argued that captioning requirements should be platform neutral; with television content broadcast online subject to the same regulation as general online content.

Access to government information

The Australian Government announced in April 2010 that it would be transitioning to Web Content Accessibility Guidelines 2.0 (WCAG 2.0) compliance over a four-year period. WCAG 2.0 offers considerable advantages for people with hearing and vision impairment to its predecessor, such as audio description and captioning for video, and greater accessibility in the way websites are designed. Australian Government agencies will transition to Single A compliance by 2012 and Double A compliance by 2014.

The Australian Government has also funded the establishment of the Australian Communications Consumer Action Network (ACCAN)—the peak telecommunications consumer body in Australia. The Department of Broadband, Communications and the Digital Economy funds the body under the Consumer Representation Grants Program.

ACCAN is active in facilitating consumer access to online information, and released an independent research report ‘Broadband Solutions for Consumers with Disabilities’ in February 2010. The aim of the study was to highlight existing and potential innovative high-speed broadband applications that could benefit people with disability in Australia. The study provides 16 examples of high-speed broadband applications, including examples from Europe, the United States and Japan.

National Relay Service

A comprehensive community consultation process will be conducted by the Department of Broadband, Communications and the Digital Economy, in conjunction with the ACMA, to explore how the National Relay Service could be improved and developed for the future. The Service is a vital communication tool for members of the Deaf community 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 National Relay Service.

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.

The Australian 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 to be taken.

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 that have been 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, digital restacking, and innovation in captioning and audio description technologies.

The outcomes from broader Australian 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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- ⁱⁱ Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) 2008 submission, page 3.
- ⁱⁱⁱ Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) 2008 submission, page 4.
- ^{iv} The Australian Human Rights Commission 2010 submission to the Media Access Review, page 2.
- ^v The Australian Human Rights Commission 2010 submission to the Media Access Review, page 17.
- ^{vi} Free TV Australia, ABC and SBS, 'Free-to-air television broadcasters: report of consultations on proposals to address the accuracy of captions', June 2009. Available from www.hreoc.gov.au
- ^{vii} Media Access Australia 2010 submission to the Media Access Review, page 31
- ^{viii} Deaf Australia Inc 2010 submission to the Media Access Review, page 6
- ^{ix} Free TV Australia 2010 submission the Media Access Review, page 8
- ^x ABC 2010 submission to the Media Access Review, page 4.
- ^{xi} SBS 2010 submission to the Media Access Review, page 5.
- ^{xii} Deafness Forum of Australia 2010 submission to the Media Access Review, page 7
- ^{xiii} Media Access Australia 2008 submission to the Media Access Review, page 47.
- ^{xiv} ABC 2010 submission to the Media Access Review, pages 4–5.
- ^{xv} Ai-Media 2010 submission to the Media Access Review, page 6.
- ^{xvi} Media Access Australia, Annual Report 2010, pages 3–4.
- ^{xvii} www.yourlocalcinema.com.au
- ^{xviii} Media Access Australia, Annual Report 2010, page 5
- ^{xix} ABC 2010 submission to the Media Access Review, page 8.
- ^{xx} Ai-Media 2010 submission to the Media Access Review, page 3.
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- ^{xxii} Frith, David, 'Instant captions open web to deaf', *The Australian*, 14 September 2010, page 33
- ^{xxiii} SBS 2010 submission to the Media Access Review, page 5.