Broadcasting Services Amendment (Improved Access to Television Services) Act 2012

No. 83, 2012

An Act to amend the *Broadcasting Services Act 1992*, and for other purposes
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Broadcasting Services Amendment (Improved Access to Television Services) Act 2012

No. 83, 2012

An Act to amend the Broadcasting Services Act 1992, and for other purposes

[Assented to 28 June 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Broadcasting Services Amendment (Improved Access to Television Services) Act 2012.
2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Broadcasting Services Act 1992

1 After subsection 123(3D)

Insert:

(3E) A code of practice referred to in paragraph (2)(i) has no effect to the extent to which it is inconsistent with a standard determined under subsection 130ZZA(1).

2 After Part 9C

Insert:

Part 9D—Captioning

Division 1—Introduction

130ZJ Simplified outline

The following is a simplified outline of this Part:

- Broadcasters must comply with rules and standards relating to captioning of television programs for the deaf and hearing impaired.

130ZK Definitions

In this Part:

Category A subscription television general entertainment service has the meaning given by section 130ZW.

Category A subscription television movie service has the meaning given by section 130ZVA.
Category B subscription television general entertainment service has the meaning given by section 130ZW.

Category B subscription television movie service has the meaning given by section 130ZVA.

Category C subscription television general entertainment service has the meaning given by section 130ZW.

Category C subscription television movie service has the meaning given by section 130ZVA.

Community service announcement means community information, or community promotional material, for the broadcast of which the commercial television broadcasting licensee, subscription television licensee or national broadcaster does not receive any consideration in cash or in kind.

Coverage area has the same meaning as in Schedule 4.

Designated viewing hours has the meaning given by section 130ZL.

Emergency service agency means:

(a) a police force or service; or

(b) a fire service; or

(c) a State Emergency Service of a State or a Territory; or

(d) the Commonwealth Bureau of Meteorology; or

(e) a body that runs an emergency service specified in the regulations.

general entertainment program means a program other than:

(a) a movie program; or

(b) a news or current affairs program; or

(c) a sports program; or

(d) a music program.

HDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

HDTV multi-channelled national television broadcasting service has the same meaning as in Schedule 4.
**movie program** means a program that is:
(a) a feature film; or
(b) a short film; or
(c) a telemovie.

**music program** means a program the sole or dominant purpose of which is to provide:
(a) music with video clips; or
(b) video footage of musical performances; or both.

**national broadcasting service** does not include a broadcasting service provided under the *Parliamentary Proceedings Broadcasting Act 1946*.

**national television broadcasting service** means a national broadcasting service that provides television programs.

**news or current affairs program** means any of the following:
(a) a news bulletin;
(b) a program (whether presenter-based or not) whose sole or dominant purpose is to provide analysis, commentary or discussion principally designed to inform the general community about social, economic or political issues of current relevance to the general community.

**primary commercial television broadcasting service** has the same meaning as in Schedule 4.

**primary national television broadcasting service** has the same meaning as in Schedule 4.

**primary satellite national television broadcasting service** has the same meaning as in Schedule 4.

**program** does not include:
(a) advertising or sponsorship matter (whether or not of a commercial kind); or
(b) a community service announcement; or
(c) an emergency warning.

**satellite delivery area** has the same meaning as in Schedule 4.
SDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

SDTV multi-channelled national television broadcasting service has the same meaning as in Schedule 4.

simulcast-equivalent period has the same meaning as in Schedule 4.

simulcast period has the same meaning as in Schedule 4.

sports program means:
(a) a sports news bulletin; or
(b) a program the sole or dominant purpose of which is to provide:
   (i) coverage of one or more sporting events; or
   (ii) analysis, commentary or discussion in relation to one or more sporting events;
   or both.

subscription television general entertainment service means a subscription television service the program content of which consists wholly or primarily of general entertainment programs.

subscription television licensee means:
(a) a subscription television broadcasting licensee; or
(b) a subscription television narrowcasting licensee.

subscription television movie service means a subscription television service the program content of which consists wholly or primarily of movie programs.

subscription television music service means a subscription television service the program content of which consists wholly or primarily of music programs.

subscription television narrowcasting licensee means a person who provides a subscription television narrowcasting service under a class license.

subscription television news service means a subscription television service the program content of which consists wholly or primarily of news or current affairs programs.

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subscription television service means:
(a) a subscription television broadcasting service; or
(b) a subscription television narrowcasting service.

subscription television sports service means a subscription television service the program content of which consists wholly or primarily of sports programs.

130ZL Designated viewing hours

Programs transmitted before 1 July 2014
(1) For the purposes of the application of this Part to programs transmitted before 1 July 2014, designated viewing hours are the hours:
(a) beginning at 6 pm each day or, if another time is prescribed, beginning at that prescribed time each day; and
(b) ending at 10.30 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

Programs transmitted on or after 1 July 2014
(2) For the purposes of the application of this Part to programs transmitted on or after 1 July 2014, designated viewing hours are the hours:
(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
(b) ending at midnight on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

130ZM This Part does not apply to foreign language programs
(1) This Part does not apply to a television program that is wholly in a language other than English.

(2) For the purposes of subsection (1), disregard minor and infrequent uses of the English language.
130ZN This Part does not apply to programs that consist wholly of music

(1) This Part does not apply to a television program the audio component of which consists only of music that has no human vocal content that is recognisable as being in the English language.

(2) For the purposes of subsection (1), disregard minor and infrequent uses of the English language.

130ZO Captioning service provided for part of program

For the purposes of this Part, if:

(a) a television program is transmitted on:
   (i) a commercial television broadcasting service provided by a commercial television broadcasting licensee; or
   (ii) a national television broadcasting service provided by a national broadcaster; or
   (iii) a subscription television service provided by a subscription television licensee; and

(b) the audio component of the television program consists:
   (i) partly of human vocal content that is recognisable as being in the English language; and
   (ii) partly of other content; and

(c) a captioning service is provided for the human vocal content covered by subparagraph (b)(i);

the licensee or the national broadcaster, as the case may be, is taken to have provided a captioning service for the program.

130ZP Multiple subscription television services provided by licensee

For the purposes of this Part, the subscription television services provided by a subscription television licensee are to be determined by reference to:

(a) all of the subscription television broadcasting licences (if any) under which the licensee provides services; and

(b) the class licence (if any) under which the licensee provides services.
130ZQ  Television service provided in a period

(1) For the purposes of this Part, a commercial television broadcasting service is provided in a period (for example, a financial year) if the service is provided during the whole or a part of the period.

(2) For the purposes of this Part, a national television broadcasting service is provided in a period (for example, a financial year) if the service is provided during the whole or a part of the period.

(3) For the purposes of this Part, a subscription television service is provided in a period (for example, a financial year) if the service is provided during the whole or a part of the period.

Division 2—Captioning obligations of commercial television broadcasting licensees and national broadcasters

130ZR  Captioning obligations—basic rule

Basic rule

(1) Each commercial television broadcasting licensee, and each national broadcaster, must provide a captioning service for:

(a) television programs transmitted during designated viewing hours; and

(b) television news or current affairs programs transmitted outside designated viewing hours.

Note: For compliance by licensees, see clause 7 of Schedule 2.

Exceptions

(2) Subsection (1) does not require the provision by a commercial television broadcasting licensee of a captioning service for a television program covered by paragraph 6(8)(d) of Schedule 4.

(3) Subsection (1) does not require the provision by a national broadcaster of a captioning service for a television program covered by paragraph 19(8)(d) of Schedule 4.

(4) If:

(a) a commercial television broadcasting licence is in force; and
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Part 1 Amendments

(b) the licence was not allocated under section 38C; and
(c) the licensee provides a core/primary commercial television broadcasting service in the licence area; and
(d) the licensee provides in the licence area another service that is:
   (i) a SDTV multi-channelled commercial television broadcasting service; or
   (ii) a HDTV multi-channelled commercial television broadcasting service;
subsection (1) does not require the provision of a captioning service for a television program transmitted on:
(e) the SDTV multi-channelled commercial television broadcasting service mentioned in subparagraph (d)(i) of this subsection; or
(f) the HDTV multi-channelled commercial television broadcasting service mentioned in subparagraph (d)(ii) of this subsection;
unless the program has been previously transmitted on the core/primary commercial television broadcasting service.

(5) If:
(a) a commercial television broadcasting licence is allocated under section 38C; and
(b) the licensee provides a primary commercial television broadcasting service in the licence area; and
(c) the licensee provides in the licence area:
   (i) another SDTV multi-channelled commercial television broadcasting service; or
   (ii) a HDTV multi-channelled commercial television broadcasting service;
subsection (1) does not require the provision of a captioning service for a television program transmitted on:
(d) the other SDTV multi-channelled commercial television broadcasting service; or
(e) the HDTV multi-channelled commercial television broadcasting service;
unless the program has been previously transmitted on the primary commercial television broadcasting service.
(6) If:
   (a) a national broadcaster provides a national television broadcasting service in a coverage area; and
   (b) the service is not provided with the use of a satellite;
subsection (1) does not require the provision of a captioning service for a television program transmitted on:
   (c) a SDTV multi-channelled national television broadcasting service provided by the national broadcaster otherwise than with the use of a satellite; or
   (d) a HDTV multi-channelled national television broadcasting service provided by the national broadcaster otherwise than with the use of a satellite;
unless:
   (e) during the simulcast period, or the simulcast-equivalent period, as the case may be, for the coverage area, the television program was previously transmitted by the national broadcaster on the national television broadcasting service that is:
      (i) provided by the national broadcaster; and
      (ii) the service to which clause 19 of Schedule 4 applies; or
   (f) after the end of the simulcast period, or the simulcast-equivalent period, as the case may be, for the coverage area, the television program was previously transmitted by the national broadcaster on the primary national television broadcasting service provided by the national broadcaster.

(7) If:
   (a) a national broadcaster provides a national television broadcasting service in a satellite delivery area; and
   (b) the service is provided with the use of a satellite;
subsection (1) does not require the provision of a captioning service for a television program transmitted on:
   (c) a SDTV multi-channelled national television broadcasting service provided by the national broadcaster with the use of a satellite; or
   (d) a HDTV multi-channelled national television broadcasting service provided by the national broadcaster with the use of a satellite;
unless the television program has been previously transmitted by the national broadcaster on the broadcaster’s primary satellite national television broadcasting service.

(8) Subsection (1) does not require the provision of a captioning service:

(a) by the licensee of a commercial television broadcasting licence that was allocated under subsection 40(1); and

(b) during:

(i) the first year of operation of the licence; or

(ii) if the ACMA, by written notice given to the licensee, allows a longer period—that longer period.

Note 1: For exemption orders, see section 130ZUA.

Note 2: For target reduction orders, see section 130ZUA.

130ZS Captioning obligations—special rules for multi-channelled services

Commercial television broadcasting licensee

(1) If:

(a) a commercial television broadcasting licence is in force; and

(b) the licence was not allocated under section 38C; and

(c) the licensee transmits a television program on:

(i) a SDTV multi-channelled commercial television broadcasting service; or

(ii) a HDTV multi-channelled commercial television broadcasting service;

in the licence area; and

(d) the program has been previously transmitted on another commercial television broadcasting service provided by the licensee in the licence area; and

(e) the licensee provided a captioning service for the program when the program was so previously transmitted on the other service;

the licensee must provide a captioning service for the television program transmitted as mentioned in paragraph (c).

Note: For compliance by licensees, see clause 7 of Schedule 2.
(2) If:
   (a) a commercial television broadcasting licence is allocated under section 38C; and
   (b) the licensee transmits a television program on:
      (i) a SDTV multi-channelled commercial television broadcasting service; or
      (ii) a HDTV multi-channelled commercial television broadcasting service;
   in the licence area; and
   (c) the program has been previously transmitted on another commercial television broadcasting service provided by the licensee in the licence area; and
   (d) the licensee provided a captioning service for the program when the program was so previously transmitted on the other service;
   the licensee must provide a captioning service for the television program transmitted as mentioned in paragraph (b).
   
   Note: For compliance by licensees, see clause 7 of Schedule 2.

National broadcaster

(3) If:
   (a) a national broadcaster transmits a television program on:
      (i) a SDTV multi-channelled national television broadcasting service; or
      (ii) a HDTV multi-channelled national television broadcasting service;
   in a coverage area; and
   (b) the program has been previously transmitted on another national television broadcasting service provided by the national broadcaster in the coverage area; and
   (c) the national broadcaster provided a captioning service for the program when the program was so previously transmitted on the other service;
   the national broadcaster must provide a captioning service for the television program transmitted as mentioned in paragraph (a).

(4) Subsection (3) does not apply to a national television broadcasting service provided with the use of a satellite.
(5) If:
   (a) a national broadcaster transmits a television program on:
       (i) a SDTV multi-channelled national television
           broadcasting service; or
       (ii) a HDTV multi-channelled national television
           broadcasting service;
           in a satellite delivery area; and
   (b) the service mentioned in paragraph (a) is provided with the
       use of a satellite; and
   (c) the program has been previously transmitted on another
       national television broadcasting service provided by the
       national broadcaster, with the use of a satellite, in the satellite
       delivery area; and
   (d) the national broadcaster provided a captioning service for the
       program when the program was so previously transmitted on
       the other service;

the national broadcaster must provide a captioning service for the
   television program transmitted as mentioned in paragraph (a).

130ZT Annual captioning targets for 2012-13 and 2013-14—
commercial television broadcasting licensees

   (1) A commercial television broadcasting licensee must ensure that the
percentage worked out using the following formula is not less than
90%:

\[
\frac{\text{Total hours of captioned programs transmitted during 2012-13}}{\text{Total hours of programs transmitted during 2012-13}} \times 100
\]

where:

*total hours of captioned programs transmitted during 2012-13*

means the total number of hours of television programs:
   (a) that were transmitted:
       (i) during targeted viewing hours in the financial year
           beginning on 1 July 2012; and
       (ii) on the licensee’s core/primary commercial television
           broadcasting service; and
   (b) for which a captioning service was provided.
total hours of programs transmitted during 2012-13 means the total number of hours of television programs transmitted:
   (a) during targeted viewing hours in the financial year beginning on 1 July 2012; and
   (b) on the licensee’s core/primary commercial television broadcasting service.

Note: For compliance by licensees, see clause 7 of Schedule 2.

(2) A commercial television broadcasting licensee must ensure that the percentage worked out using the following formula is not less than 95%:

\[
\frac{\text{Total hours of captioned programs transmitted during 2013-14}}{\text{Total hours of programs transmitted during 2013-14}} \times 100
\]

where:

**total hours of captioned programs transmitted during 2013-14** means the total number of hours of television programs:
   (a) that were transmitted:
      (i) during targeted viewing hours in the financial year beginning on 1 July 2013; and
      (ii) on the licensee’s core/primary commercial television broadcasting service; and
   (b) for which a captioning service was provided.

**total hours of programs transmitted during 2013-14** means the total number of hours of television programs transmitted:
   (a) during targeted viewing hours in the financial year beginning on 1 July 2013; and
   (b) on the licensee’s core/primary commercial television broadcasting service.

Note: For compliance by licensees, see clause 7 of Schedule 2.

**Exceptions**

(3) This section does not apply to a television program that is transmitted:
   (a) by the licensee of a commercial television broadcasting licence that was allocated under subsection 40(1); and
   (b) during:
(i) the first year of operation of the licence; or
(ii) if the ACMA, by written notice given to the licensee, allows a longer period—that longer period.

(4) This section does not apply to a television program covered by paragraph 6(8)(d) of Schedule 4.

Targeted viewing hours

(5) For the purposes of this section, targeted viewing hours are the hours:

(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
(b) ending at midnight on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

Note: For target reduction orders, see section 130ZUA.

130ZU Annual captioning targets for 2012-13 and 2013-14—national broadcasters

Services provided without the use of a satellite

(1) If a national broadcaster provides a core national broadcasting service in a coverage area, the national broadcaster must ensure that the percentage worked out using the following formula is not less than 90%:

\[
\frac{\text{Total hours of captioned programs transmitted during 2012-13}}{\text{Total hours of programs transmitted during 2012-13}} \times 100
\]

where:

**total hours of captioned programs transmitted during 2012-13** means the total number of hours of television programs:

(a) that were transmitted:
   (i) during targeted viewing hours in the financial year beginning on 1 July 2012; and
   (ii) on the core national broadcasting service; and

(b) for which a captioning service was provided.

**total hours of programs transmitted during 2012-13** means the total number of hours of television programs transmitted:
(a) during targeted viewing hours in the financial year beginning on 1 July 2012; and

(b) on the core national broadcasting service.

(2) If a national broadcaster provides a core national broadcasting service in a coverage area, the national broadcaster must ensure that the percentage worked out using the following formula is not less than 95%:

\[
\frac{\text{Total hours of captioned programs transmitted during 2013-14}}{\text{Total hours of programs transmitted during 2013-14}} \times 100
\]

where:

**total hours of captioned programs transmitted during 2013-14**

means the total number of hours of television programs:

(a) that were transmitted:

(i) during targeted viewing hours in the financial year beginning on 1 July 2013; and

(ii) on the core national broadcasting service; and

(b) for which a captioning service was provided.

**total hours of programs transmitted during 2013-14**

means the total number of hours of television programs transmitted:

(a) during targeted viewing hours in the financial year beginning on 1 July 2013; and

(b) on the core national broadcasting service.

**Services provided with the use of a satellite**

(3) If a national broadcaster provides a primary satellite national television broadcasting service in a satellite delivery area, the national broadcaster must ensure that the percentage worked out using the following formula is not less than 90%:

\[
\frac{\text{Total hours of captioned programs transmitted during 2012-13}}{\text{Total hours of programs transmitted during 2012-13}} \times 100
\]

where:

**total hours of captioned programs transmitted during 2012-13**

means the total number of hours of television programs:

(a) that were transmitted:
(i) during targeted viewing hours in the financial year beginning on 1 July 2012; and
(ii) on the primary satellite national television broadcasting service; and
(b) for which a captioning service was provided.

**total hours of programs transmitted during 2012-13** means the total number of hours of television programs transmitted:
(a) during targeted viewing hours in the financial year beginning on 1 July 2012; and
(b) on the primary satellite national television broadcasting service.

(4) If a national broadcaster provides a primary satellite national television broadcasting service in a satellite delivery area, the national broadcaster must ensure that the percentage worked out using the following formula is not less than 95%:

\[
\frac{\text{Total hours of captioned programs transmitted during 2013-14}}{\text{Total hours of programs transmitted during 2013-14}} \times 100
\]

where:

**total hours of captioned programs transmitted during 2013-14** means the total number of hours of television programs:
(a) that were transmitted:
   (i) during targeted viewing hours in the financial year beginning on 1 July 2013; and
   (ii) on the primary satellite national television broadcasting service; and
(b) for which a captioning service was provided.

**total hours of programs transmitted during 2013-14** means the total number of hours of television programs transmitted:
(a) during targeted viewing hours in the financial year beginning on 1 July 2013; and
(b) on the primary satellite national television broadcasting service.
Exceptions

(5) This section does not apply to a television program covered by paragraph 19(8)(d) of Schedule 4.

Core national broadcasting service

(6) For the purposes of this section, if:

(a) during the simulcast period, or the simulcast-equivalent period, as the case may be, for a coverage area, a national broadcaster provides, in the coverage area, a national broadcasting service to which clause 19 of Schedule 4 applies—the service is the core national broadcasting service provided by the national broadcaster in the coverage area; and

(b) after the end of the simulcast period, or the simulcast-equivalent period, as the case may be, for a coverage area, a national broadcaster provides, in the coverage area, a primary national television broadcasting service—the service is the core national broadcasting service provided by the national broadcaster in the coverage area.

Targeted viewing hours

(7) For the purposes of this section, targeted viewing hours are the hours:

(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at midnight on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

Note: For target reduction orders, see section 130ZUA.

130ZUA Exemption orders and target reduction orders—unjustifiable hardship

Application

(1) A commercial television broadcasting licensee may apply to the ACMA for:
Schedule 1 Amendments

Part 1 Amendments

(a) an order (an exemption order) that exempts from subsection 130ZR(1) a specified commercial television broadcasting service provided by the licensee in a specified eligible period; or

(b) an order (a target reduction order) that:
   (i) is expressed to relate to a specified commercial television broadcasting service provided by the licensee in a specified eligible period; and
   (ii) for each financial year included in the eligible period, provides that a specified percentage is the reduced annual captioning target for the service for the financial year.

Note: For eligible period, see subsection (15).

(2) A national broadcaster may apply to the ACMA for:
   (a) an order (an exemption order) that exempts from subsection 130ZR(1) a specified national television broadcasting service provided by the broadcaster in a specified eligible period; or
   (b) an order (a target reduction order) that:
      (i) is expressed to relate to a specified national television broadcasting service provided by the broadcaster in a specified eligible period; and
      (ii) for each financial year included in the eligible period, provides that a specified percentage is the reduced annual captioning target for the service for the financial year.

Note: For eligible period, see subsection (15).

(3) An application under subsection (1) or (2) must:
   (a) be in writing; and
   (b) be in a form approved, in writing, by the ACMA; and
   (c) be made in:
      (i) the financial year preceding the eligible period specified in the application; or
      (ii) the 180-day period beginning at the start of the eligible period specified in the application.

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 Decision on application

(4) If an application under subsection (1) or (2) has been made for an exemption order or target reduction order, the ACMA must, after considering the application:

(a) by writing, make the exemption order or target reduction order, as the case may be; or

(b) refuse to make the exemption order or target reduction order, as the case may be.

Criteria for making exemption order or target reduction order

(5) The ACMA must not make the exemption order or target reduction order unless the ACMA is satisfied that a refusal to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant.

(6) In determining whether a failure to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant, the ACMA must have regard to the following matters:

(a) the nature of the detriment likely to be suffered by the applicant;

(b) the impact of making the exemption order or target reduction order, as the case may be, on deaf or hearing impaired viewers, or potential viewers, of the commercial television broadcasting service or national television broadcasting service concerned;

(c) the financial circumstances of the applicant;

(d) the estimated amount of expenditure that the applicant would be required to make if there was a failure to make the exemption order or target reduction order, as the case may be;

(e) the extent to which captioning services are provided by the applicant for television programs transmitted on commercial television broadcasting services or national television broadcasting services provided by the applicant;

(f) the likely impact of a failure to make the exemption order or target reduction order, as the case may be, on the quantity and quality of television programs transmitted on commercial television broadcasting services.
television broadcasting services or national television broadcasting services provided by the applicant;

(g) whether the applicant has applied, or has proposed to apply, for exemption orders or target reduction orders under this section in relation to any other commercial television broadcasting services or national television broadcasting services provided by the applicant;

(h) such other matters (if any) as the ACMA considers relevant.

Consultation

(7) Before making an exemption order, or a target reduction order, under subsection (4), the ACMA must:

(a) within 50 days after receiving the application for the exemption order or target reduction order, as the case may be, publish on the ACMA’s website a notice:

(i) setting out the draft exemption order or draft target reduction order, as the case may be; and

(ii) inviting persons to make submissions to the ACMA about the draft exemption order or draft target reduction order, as the case may be, within 30 days after the notice is published; and

(b) consider any submissions received within the 30-day period mentioned in subparagraph (a)(ii).

Commencement of exemption order or target reduction order

(8) An exemption order, or a target reduction order, under subsection (4) comes into force at the start of the eligible period to which the exemption order or target reduction order, as the case may be, relates.

Refusal to make exemption order or target reduction order

(9) If:

(a) an application under subsection (1) or (2) has been made for an exemption order or target reduction order; and

(b) the ACMA does not make a decision on the application within the period of 90 days beginning at the start of the day on which the ACMA received the application;
the ACMA is taken, at the end of that 90-day period, to have decided to refuse to make the exemption order or target reduction order, as the case may be.

(10) If:
   (a) an application under subsection (1) or (2) has been made for an exemption order or target reduction order; and
   (b) the ACMA decides to refuse to make the exemption order or target reduction order, as the case may be;
the ACMA must give written notice of the decision to the applicant.

Publication requirement

(11) If the ACMA makes an exemption order or target reduction order under subsection (4), the ACMA must publish a copy of the order on the ACMA’s website.

Order is not a legislative instrument

(12) An exemption order, or a target reduction order, under subsection (4) is not a legislative instrument.

Target reduction order may specify different percentages for different years

(13) A target reduction order under subsection (4) may specify different percentages for different financial years.

Specification of national television broadcasting services

(14) For the purposes of this section, a national television broadcasting service may be specified by reference to:
   (a) whether or not the service is provided with the use of a satellite; and
   (b) the coverage area, or the satellite delivery area, in which the service is provided.

Definitions

(15) In this section:
commercial television broadcasting service includes a proposed commercial television broadcasting service.

eligible period means:
(a) a financial year; or
(b) 2 consecutive financial years; or
(c) 3 consecutive financial years; or
(d) 4 consecutive financial years; or
(e) 5 consecutive financial years.

national television broadcasting service includes a proposed national television broadcasting service.

130ZUAA Effect of target reduction order

Scope
(1) This section applies if a target reduction order under section 130ZUA is applicable to:
(a) a commercial television broadcasting service; or
(b) a national television broadcasting service;
for a financial year.

Commercial television broadcasting service

(2) If the service is a commercial television broadcasting service provided by a commercial television broadcasting licensee, the licensee must ensure that the percentage worked out using the following formula is not less than the reduced annual captioning target for the service for the financial year:

\[
\frac{\text{Total hours of captioned programs transmitted during the financial year}}{\text{Total hours of programs transmitted during the financial year}} \times 100
\]

where:

total hours of captioned programs transmitted during the financial year means the total number of hours of television programs:
(a) that were transmitted:
(i) during targeted viewing hours in the financial year; and
(ii) on the service; and
(b) for which a captioning service was provided.

**total hours of programs transmitted during the financial year**
means the total number of hours of television programs transmitted:
(a) during targeted viewing hours in the financial year; and
(b) on the service.

**National television broadcasting service**

(3) If the service is a national television broadcasting service provided by a national broadcaster, the national broadcaster must ensure that the percentage worked out using the following formula is not less than the reduced annual captioning target for the service for the financial year:

\[
\frac{\text{Total hours of captioned programs transmitted during the financial year}}{\text{Total hours of programs transmitted during the financial year}} \times 100
\]

where:

**total hours of captioned programs transmitted during the financial year**
means the total number of hours of television programs:
(a) that were transmitted:
   (i) during targeted viewing hours in the financial year; and
   (ii) on the service; and
(b) for which a captioning service was provided.

**total hours of programs transmitted during the financial year**
means the total number of hours of television programs transmitted:
(a) during targeted viewing hours in the financial year; and
(b) on the service.

**Standard captioning rule does not apply**

(4) Subsection 130ZR(1) does not apply to the service for the financial year.
Standard target provisions do not apply

(5) If:
   
   (a) the service is a commercial television broadcasting service; and
   
   (b) the financial year is:
       
       (i) the financial year beginning on 1 July 2012; or
       
       (ii) the financial year beginning on 1 July 2013;

   section 130ZT does not apply to the service for the financial year.

(6) If:
   
   (a) the service is a national television broadcasting service; and
   
   (b) the financial year is:
       
       (i) the financial year beginning on 1 July 2012; or
       
       (ii) the financial year beginning on 1 July 2013;

   section 130ZU does not apply to the service for the financial year.

Targeted viewing hours

(7) For the purposes of this section, targeted viewing hours are the hours:

   (a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
   
   (b) ending at midnight on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

130ZUB Certain breaches to be disregarded

(1) If:

   (a) apart from this subsection, a commercial television broadcasting licensee has breached a provision of this Division; and
   
   (b) the breach is attributable to significant difficulties of a technical or engineering nature for the licensee; and
   
   (c) those difficulties could not reasonably have been foreseen by the licensee;

   then the breach is to be disregarded in determining whether the licensee has complied with the provision.

(2) If:
(a) apart from this subsection, a national broadcaster has breached a provision of this Division; and
(b) the breach is attributable to significant difficulties of a technical or engineering nature for the broadcaster; and
(c) those difficulties could not reasonably have been foreseen by the broadcaster;
then the breach is to be disregarded in determining whether the broadcaster has complied with the provision.

Division 3—Captioning obligations of subscription television licensees

130ZV Annual captioning targets—subscription television licensees

Annual captioning targets

(1) If a subscription television licensee provides a subscription television service in:
(a) the financial year beginning on 1 July 2012; or
(b) a later financial year;
the licensee must ensure that the percentage worked out using the following formula is not less than the annual captioning target for the service for the financial year:

\[
\frac{\text{Total hours of captioned programs transmitted on the service during the financial year}}{\text{Total hours of programs transmitted on the service during the financial year}} \times 100
\]

where:

**total hours of captioned programs transmitted on the service during the financial year** means the total number of hours of television programs:
(a) that were transmitted on the service during the financial year; and
(b) for which a captioning service was provided.

**total hours of programs transmitted on the service during the financial year** means the total number of hours of television programs transmitted on the service during the financial year.
(2) For the purposes of this section, the annual captioning target for a subscription television service for a financial year is:

(a) in the case of the financial year beginning on 1 July 2012—
the applicable percentage set out in the following table; or
(b) in the case of the financial year beginning on 1 July 2013—
the applicable percentage set out in the following table; or
(c) in the case of the financial year beginning on 1 July 2014—
the applicable percentage set out in the following table; or
(d) in the case of a later financial year—whichever is the lesser
of the following percentages:
   (i) the percentage worked out using the formula in
       subsection (3);  
   (ii) 100%.

### Annual captioning targets

<table>
<thead>
<tr>
<th>Item</th>
<th>Service</th>
<th>Percentage for the financial year beginning on 1 July 2012</th>
<th>Percentage for the financial year beginning on 1 July 2013</th>
<th>Percentage for the financial year beginning on 1 July 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Category A subscription television movie service</td>
<td>60%</td>
<td>70%</td>
<td>75%</td>
</tr>
<tr>
<td>2</td>
<td>Category B subscription television movie service</td>
<td>40%</td>
<td>50%</td>
<td>55%</td>
</tr>
<tr>
<td>3</td>
<td>Category C subscription television movie service</td>
<td>30%</td>
<td>40%</td>
<td>45%</td>
</tr>
<tr>
<td>4</td>
<td>Category A subscription television general entertainment service</td>
<td>40%</td>
<td>50%</td>
<td>55%</td>
</tr>
<tr>
<td>5</td>
<td>Category B subscription television</td>
<td>30%</td>
<td>40%</td>
<td>45%</td>
</tr>
</tbody>
</table>

### Annual captioning targets

<table>
<thead>
<tr>
<th>Item</th>
<th>Service</th>
<th>Percentage for the financial year beginning on 1 July 2012</th>
<th>Percentage for the financial year beginning on 1 July 2013</th>
<th>Percentage for the financial year beginning on 1 July 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>general entertainment service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Category C subscription television general entertainment service</td>
<td>15%</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>7</td>
<td>Subscription television news service</td>
<td>10%</td>
<td>12.5%</td>
<td>15%</td>
</tr>
<tr>
<td>8</td>
<td>Subscription television sports service</td>
<td>10%</td>
<td>12.5%</td>
<td>15%</td>
</tr>
<tr>
<td>9</td>
<td>Subscription television music service</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

(3) The formula is as follows:

\[
1.05 \times \text{Annual captioning target for the subscription television service for the previous financial year}
\]

(4) If the percentage worked out using the formula in subsection (3) is not a multiple of 5%, the percentage is to be rounded up to the nearest multiple of 5%.

**Exclusion of time-shifting services and high definition services**

(5) This section does not apply to a subscription television service provided by a subscription television licensee if the service does no more than:

(a) transmit the same stream of programs that has been previously transmitted on another subscription television service provided by the licensee; or
(b) simultaneously transmit, in a high definition format, the same stream of programs that is transmitted, in a standard definition format, on another subscription television service provided by the licensee.

Note 1: For exemption orders, see section 130ZYA.

Note 2: For target reduction orders, see section 130ZYA.

130ZVA Categories for subscription television movie services

(1) For the purposes of this Part, if a subscription television licensee provides at least one, but fewer than 7, subscription television movie services in a financial year, those services are **Category A subscription television movie services** for the financial year.

(2) For the purposes of this Part, if a subscription television licensee provides more than 6, but fewer than 8, subscription television movie services in a financial year:

   (a) if the licensee, by written notice given to the ACMA before the end of the financial year, nominates 6 of those services to be Category A subscription television movie services for the financial year:

      (i) the nominated services are **Category A subscription television movie services** for the financial year; and

      (ii) the remaining service is a **Category B subscription television movie service** for the financial year; or

   (b) otherwise—each of those services is a **Category A subscription television movie service** for the financial year.

(3) For the purposes of this Part, if a subscription television licensee provides more than 7 subscription television movie services in a financial year:

   (a) if the licensee, by written notice given to the ACMA before the end of the financial year, nominates:

      (i) 6 of those services to be Category A subscription television movie services for the financial year; and

      (ii) one of those services (other than services nominated under subparagraph (i)) to be a Category B subscription television movie service for the financial year;

   then:
(iii) the services nominated under subparagraph (i) are

Category A subscription television entertainment services for the financial year; and

(iv) the service nominated under subparagraph (ii) is a

Category B subscription television entertainment services for the financial year; and

(v) the remainder of those services are Category C subscription television movie services for the financial year; or

(b) otherwise—each of those services is a Category A subscription television movie service for the financial year.

Exclusion of time-shifting services and high definition services

(4) This section does not apply to a subscription television service provided by a subscription television licensee if the service does no more than:

(a) transmit the same stream of programs that has been previously transmitted on another subscription television service provided by the licensee; or

(b) simultaneously transmit, in a high definition format, the same stream of programs that is transmitted, in a standard definition format, on another subscription television service provided by the licensee.

130ZW Categories for subscription television general entertainment services

(1) For the purposes of this Part, if a subscription television licensee provides at least one, but fewer than 19, subscription television general entertainment services in a financial year, those services are Category A subscription television general entertainment services for the financial year.

(2) For the purposes of this Part, if a subscription television licensee provides more than 18, but fewer than 35, subscription television general entertainment services in a financial year:

(a) if the licensee, by written notice given to the ACMA before the end of the financial year, nominates 18 of those services to be Category A subscription television general entertainment services for the financial year:
(i) the nominated services are *Category A subscription television general entertainment services* for the financial year; and

(ii) the remainder of those services are *Category B subscription television general entertainment services* for the financial year; or

(b) otherwise—each of those services is a *Category A subscription television general entertainment service* for the financial year.

(3) For the purposes of this Part, if a subscription television licensee provides more than 34 subscription television general entertainment services in a financial year:

(a) if the licensee, by written notice given to the ACMA before the end of the financial year, nominates:

(i) 18 of those services to be *Category A subscription television general entertainment services* for the financial year; and

(ii) 16 of those services (other than services nominated under subparagraph (i)) to be *Category B subscription television general entertainment services* for the financial year;

then:

(iii) the services nominated under subparagraph (i) are *Category A subscription television entertainment services* for the financial year; and

(iv) the services nominated under subparagraph (ii) are *Category B subscription television entertainment services* for the financial year; and

(v) the remainder of those services are *Category C subscription television general entertainment services* for the financial year; or

(b) otherwise—each of those services is a *Category A subscription television general entertainment service* for the financial year.

**Exclusion of time-shifting services and high definition services**

(4) This section does not apply to a subscription television service provided by a subscription television licensee if the service does no more than:
(a) transmit the same stream of programs that has been previously transmitted on another subscription television service provided by the licensee; or
(b) simultaneously transmit, in a high definition format, the same stream of programs that is transmitted, in a standard definition format, on another subscription television service provided by the licensee.

130ZX Exemptions—certain subscription television services provided before 1 July 2022

Subscription television movie services

(1) If:
   (a) a subscription television licensee provides more than 11 subscription television movie services in a financial year beginning before 1 July 2022; and
   (b) the licensee has complied with subsection 130ZV(1) in relation to at least 11 of those services for the financial year; and
   (c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television movie services that:
      (i) are covered by paragraph (a); and
      (ii) are not covered by paragraph (b);
   to be exempt services for the financial year; and
   (d) the total number of nominated services does not exceed the number worked out using the formula in subsection (2);

subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(2) The formula is:

\[
\frac{\text{Total number of the services covered by paragraph (1)(a) } - 11}{\text{Total number of the services covered by paragraph (1)(a)}} \times \text{Exemption percentage}
\]

where:

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exemption percentage means the exemption percentage for the financial year.

Note: See subsection (11).

Subscription television general entertainment services

(3) If:

(a) a subscription television licensee provides more than 43 subscription television general entertainment services in a financial year beginning before 1 July 2022; and

(b) the licensee has complied with subsection 130ZV(1) in relation to at least 43 of those services for the financial year; and

(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television general entertainment services that:

(i) are covered by paragraph (a); and

(ii) are not covered by paragraph (b);

to be exempt services for the financial year; and

(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (4);

subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(4) The formula is:

\[
\frac{\text{Total number of the services covered by paragraph (3)(a) } - 43}{\text{Exemption percentage}} \times \text{Exemption percentage}
\]

where:

exemption percentage means the exemption percentage for the financial year.

Note: See subsection (11).

Subscription television news services

(5) If:

(a) a subscription television licensee provides more than 3 subscription television news services in a financial year beginning before 1 July 2022; and
(b) the licensee has complied with subsection 130ZV(1) in relation to at least 3 of those services for the financial year; and
(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television news services that:
(i) are covered by paragraph (a); and
(ii) are not covered by paragraph (b);
to be exempt services for the financial year; and
(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (6);
subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(6) The formula is:

\[
\left( \frac{\text{Total number of the services covered by paragraph (5)(a)}}{3} - 3 \right) \times \text{Exemption percentage}
\]

where:

exemption percentage means the exemption percentage for the financial year.

Note: See subsection (11).

Subscription television sports services

(7) If:

(a) a subscription television licensee provides more than 7 subscription television sports services in a financial year beginning before 1 July 2022; and
(b) the licensee has complied with subsection 130ZV(1) in relation to at least 7 of those services for the financial year; and
(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates

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one or more of the subscription television sports services that:

(i) are covered by paragraph (a); and
(ii) are not covered by paragraph (b);

to be exempt services for the financial year; and

(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (8);

subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(8) The formula is:

\[
\left( \frac{\text{Total number of the services covered by paragraph (7)(a)}}{7} \right) \times \text{Exemption percentage}
\]

where:

**exemption percentage** means the exemption percentage for the financial year.

Note: See subsection (11).

*Subscription television music services*

(9) If:

(a) a subscription television licensee provides more than 6 subscription television music services in a financial year beginning before 1 July 2022; and

(b) the licensee has complied with subsection 130ZV(1) in relation to at least 6 of those services for the financial year; and

(c) the licensee, by written notice given to the ACMA not later than 30 days after the end of the financial year, nominates one or more of the subscription television music services that:

(i) are covered by paragraph (a); and

(ii) are not covered by paragraph (b);

to be exempt services for the financial year; and

(d) the total number of nominated services does not exceed the number worked out using the formula in subsection (10);
subsection 130ZV(1) does not apply, and is taken never to have applied, to programs transmitted on a nominated service during the financial year.

(10) The formula is:

\[
\left( \frac{\text{Total number of the services covered by paragraph (9)(a)} - 6}{\text{Total number of the services}} \right) \times \text{Exemption percentage}
\]

where:

**exemption percentage** means the exemption percentage for the financial year.

*Exemption percentage*

(11) For the purposes of this section, the **exemption percentage** for a financial year is:

(a) in the case of the financial year beginning on 1 July 2012—100%; or

(b) in the case of the financial year beginning on 1 July 2013—100%; or

(c) in the case of the financial year beginning on 1 July 2014—100%; or

(d) in the case of the financial year beginning on 1 July 2015—80%; or

(e) in the case of the financial year beginning on 1 July 2016—80%; or

(f) in the case of the financial year beginning on 1 July 2017—60%; or

(g) in the case of the financial year beginning on 1 July 2018—60%; or

(h) in the case of the financial year beginning on 1 July 2019—40%; or

(i) in the case of the financial year beginning on 1 July 2020—40%; or

(j) in the case of the financial year beginning on 1 July 2021—20%.
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Rounding

(12) If the number worked out using the formula in subsection (2), (4), (6), (8) or (10) is not a whole number, the number is to be rounded up to the nearest whole number.

Exclusion of time-shifting services and high definition services

(13) This section does not apply to a subscription television service provided by a subscription television licensee if the service does no more than:

(a) transmit the same stream of programs that has been previously transmitted on another subscription television service provided by the licensee; or

(b) simultaneously transmit, in a high definition format, the same stream of programs that is transmitted, in a standard definition format, on another subscription television service provided by the licensee.

130ZY  Exemption orders and target reduction orders—unjustifiable hardship

Application

(1) A subscription television licensee may apply to the ACMA for:

(a) an order (an exemption order) that exempts from subsection 130ZV(1) a specified subscription television service provided by the licensee in a specified eligible period; or

(b) an order (a target reduction order) that:

(i) is expressed to relate to a specified subscription television service provided by the licensee in a specified eligible period; and

(ii) for each financial year included in the eligible period, provides that a specified percentage is the reduced annual captioning target for the service for the financial year.

Note: For eligible period, see subsection (13).

(2) An application must:

(a) be in writing; and

(b) be in a form approved, in writing, by the ACMA; and

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ComLaw Authoritative Act C2012A00083
(c) be made in:
   (i) the financial year preceding the eligible period specified in the application; or
   (ii) the 180-day period beginning at the start of the eligible period specified in the application.

Decision on application

(3) If an application under subsection (1) has been made for an exemption order or target reduction order, the ACMA must, after considering the application:
   (a) by writing, make the exemption order or target reduction order, as the case may be; or
   (b) refuse to make the exemption order or target reduction order, as the case may be.

Criteria for making exemption order or target reduction order

(4) The ACMA must not make the exemption order or target reduction order unless the ACMA is satisfied that a refusal to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant.

(5) In determining whether a failure to make the exemption order or target reduction order, as the case may be, would impose an unjustifiable hardship on the applicant, the ACMA must have regard to the following matters:
   (a) the nature of the detriment likely to be suffered by the applicant;
   (b) the impact of making the exemption order or target reduction order, as the case may be, on deaf or hearing impaired viewers, or potential viewers, of the subscription television service concerned;
   (c) the number of people who subscribe to the subscription television service concerned;
   (d) the financial circumstances of the applicant;
   (e) the estimated amount of expenditure that the applicant would be required to make if there was a failure to make the exemption order or target reduction order, as the case may be;
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(f) the extent to which captioning services are provided by the applicant for television programs transmitted on subscription television services provided by the applicant;

(g) the likely impact of a failure to make the exemption order or target reduction order, as the case may be, on the quantity and quality of television programs transmitted on subscription television services provided by the applicant;

(h) whether the applicant has applied, or has proposed to apply, for exemption orders or target reduction orders under this section in relation to any other subscription television services provided by the applicant;

(i) such other matters (if any) as the ACMA considers relevant.

Consultation

(6) Before making an exemption order, or a target reduction order, under subsection (3), the ACMA must:

(a) within 50 days after receiving the application for the exemption order or target reduction order, as the case may be, publish on the ACMA’s website a notice:

(i) setting out the draft exemption order or draft target reduction order, as the case may be; and

(ii) inviting persons to make submissions to the ACMA about the draft exemption order or draft target reduction order, as the case may be, within 30 days after the notice is published; and

(b) consider any submissions received within the 30-day period mentioned in subparagraph (a)(ii).

Commencement of exemption order or target reduction order

(7) An exemption order, or a target reduction order, under subsection (3) comes into force at the start of the eligible period to which the exemption order or target reduction order, as the case may be, relates.

Refusal to make exemption order or target reduction order

(8) If:

(a) an application under subsection (1) has been made for an exemption order or target reduction order; and
(b) the ACMA does not make a decision on the application within the period of 90 days beginning at the start of the day on which the ACMA received the application; the ACMA is taken, at the end of that 90-day period, to have decided to refuse to make the exemption order or target reduction order, as the case may be.

(9) If:

(a) an application under subsection (1) has been made for an exemption order or target reduction order; and
(b) the ACMA decides to refuse to make the exemption order or target reduction order, as the case may be;
the ACMA must give written notice of the decision to the applicant.

Publication requirement

(10) If the ACMA makes an exemption order or target reduction order under subsection (3), the ACMA must publish a copy of the order on the ACMA’s website.

Order is not a legislative instrument

(11) An exemption order, or a target reduction order, under subsection (3) is not a legislative instrument.

Target reduction order may specify different percentages for different years

(12) A target reduction order under subsection (3) may specify different percentages for different financial years.

Definitions

(13) In this section:

eligible period means:

(a) a financial year; or
(b) 2 consecutive financial years; or
(c) 3 consecutive financial years; or
(d) 4 consecutive financial years; or
(e) 5 consecutive financial years.
subscription television service includes a proposed subscription television service.

130ZYA Effect of target reduction order

Scope

(1) This section applies if a target reduction order under section 130ZY is applicable to a subscription television service for a financial year.

Subscription television broadcasting service

(2) The subscription television licensee who provides the service must ensure that the percentage worked out using the following formula is not less than the reduced annual captioning target for the service for the financial year:

\[
\frac{\text{Total hours of captioned programs transmitted on the service during the financial year}}{\text{Total hours of programs transmitted on the service during the financial year}} \times 100
\]

where:

total hours of captioned programs transmitted on the service during the financial year means the total number of hours of television programs:

(a) that were transmitted on the service during the financial year;

and

(b) for which a captioning service was provided.

total hours of programs transmitted on the service during the financial year means the total number of hours of television programs transmitted on the service during the financial year.

Standard captioning targets do not apply

(3) Subsection 130ZV(1) does not apply to the service for the financial year.
130ZZ Captioning services for repeats of television programs

If:

(a) a subscription television licensee transmits a television program on a subscription television service; and
(b) the program has been previously transmitted:
   (i) on the same subscription television service; or
   (ii) on another subscription television service provided by the licensee; and
(c) the licensee provided a captioning service for the program when the program was so previously transmitted;
the licensee must provide a captioning service for the television program transmitted as mentioned in paragraph (a).

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.
Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.

130ZZAA Captioning services for simultaneously transmitted television programs

If:

(a) a subscription television licensee transmits a television program on a subscription television service (the first service); and
(b) the program is simultaneously transmitted on another subscription television service (the second service) provided by the licensee; and
(c) the licensee provides a captioning service for the transmission of the program on the first service;
the licensee must provide a captioning service for the television program transmitted on the second service.

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.
Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.

130ZZAB Certain breaches to be disregarded

If:
(a) apart from this section, a subscription television licensee has breached a provision of this Division; and
(b) the breach is attributable to significant difficulties of a technical or engineering nature for the licensee; and
(c) those difficulties could not reasonably have been foreseen by the licensee;
then the breach is to be disregarded in determining whether the licensee has complied with the provision.

## Division 4—Captioning standards

### 130ZZA Captioning standards

(1) The ACMA may, by legislative instrument, determine standards that relate to:

(a) the quality of captioning services provided by commercial television broadcasting licensees for television programs; and
(b) the quality of captioning services provided by national broadcasters for television programs; and
(c) the quality of captioning services provided by subscription television broadcasting licensees for television programs; and
(d) the quality of captioning services provided by subscription television narrowcasting licensees for television programs.

(2) For the purposes of subsection (1), quality includes:

(a) readability; and
(b) comprehensibility; and
(c) accuracy.

(3) Section 589 of the Telecommunications Act 1997 applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

### Compliance

(4) A commercial television broadcasting licensee must comply with a standard determined under subsection (1).

Note 1: For compliance by licensees, see clause 7 of Schedule 2.
Note 2: See also subsection 123(3E) (standards determined under subsection (1) of this section prevail over inconsistent codes of practice).

(5) A national broadcaster must comply with a standard determined under subsection (1).

(6) A subscription television broadcasting licensee must comply with a standard determined under subsection (1).

Note 1: For compliance by licensees, see clause 10 of Schedule 2.

Note 2: See also subsection 123(3E) (standards determined under subsection (1) of this section prevail over inconsistent codes of practice).

(7) A subscription television narrowcasting licensee must comply with a standard determined under subsection (1).

Note 1: For compliance by licensees, see clause 11 of Schedule 2.

Note 2: See also subsection 123(3E) (standards determined under subsection (1) of this section prevail over inconsistent codes of practice).

**Timing**

(8) The ACMA must take all reasonable steps to ensure that standards are in force under subsection (1) at all times after the end of the 12-month period that began at the commencement of this section.

**Division 5—Emergency warnings**

130ZZB Emergency warnings

*Commercial television broadcasting licensee*

(1) If a commercial television broadcasting licensee, at the request of an emergency service agency, transmits an emergency warning on any of its commercial television broadcasting services, the licensee must:

(a) transmit the whole of the emergency warning in:

(i) the form of text; and

(ii) the form of speech; and

(b) if it is reasonably practicable to do so—provide a captioning service for the emergency warning.
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Note: For compliance by licensees, see clause 7 of Schedule 2.

National broadcaster

(2) If a national broadcaster, at the request of an emergency service agency, transmits an emergency warning on any of its national television broadcasting services, the national broadcaster must:
   (a) transmit the whole of the emergency warning in:
       (i) the form of text; and
       (ii) the form of speech; and
   (b) if it is reasonably practicable to do so—provide a captioning service for the emergency warning.

Subscription television licensee

(3) If a subscription television licensee, at the request of an emergency service agency, transmits an emergency warning on a subscription television service, the licensee must:
   (a) transmit the whole of the emergency warning in:
       (i) the form of text; and
       (ii) the form of speech; and
   (b) if it is reasonably practicable to do so—provide a captioning service for the emergency warning.

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.

Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.

Division 6—Reports and record-keeping

130ZZC Annual compliance reports

Commercial television broadcasting licensee

(1) A commercial television broadcasting licensee must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to compliance by the licensee with Divisions 2, 4 and 5 during the financial year.

   Note: For compliance by licensees, see clause 7 of Schedule 2.

(2) A report under subsection (1) must:

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(a) be in a form approved, in writing, by the ACMA; and
(b) set out such information as is required by the form.

National broadcasters

(3) A national broadcaster must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to compliance by the national broadcaster with Divisions 2, 4 and 5 during the financial year.

(4) A report under subsection (3) must:
   (a) be in a form approved, in writing, by the ACMA; and
   (b) set out such information as is required by the form.

Subscription television licensee

(5) If a subscription television licensee is a body corporate, the licensee must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to compliance by the licensee with Divisions 3, 4 and 5 during the financial year.

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.

Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.

(6) A report under subsection (5) must:
   (a) be in a form approved, in writing, by the ACMA; and
   (b) set out such information as is required by the form.

Publication of copy of report

(7) The ACMA must publish on its website a copy of a report given to it under subsection (1), (3) or (5).

130ZZD Record-keeping

Commercial television broadcasting licensee

(1) A commercial television broadcasting licensee must:
   (a) cause compliance records for the licensee for each financial year to be made in a form approved in writing by the ACMA; and
(b) retain the compliance records in its custody until the end of the period ending 90 days after its report under subsection 130ZZC(1) in relation to that financial year is given to the ACMA; and

(c) without charge, make available to the ACMA, on request, any compliance records made by the licensee under paragraph (a) that have been retained by the licensee (whether or not the licensee is, at the time of the request, under an obligation to retain the records).

Note: For compliance by licensees, see clause 7 of Schedule 2.

National broadcaster

(2) A national broadcaster must:

(a) cause compliance records for the national broadcaster for each financial year to be made in a form approved in writing by the ACMA; and

(b) retain the compliance records in its custody until the end of the period ending 90 days after its report under subsection 130ZZC(3) in relation to that financial year is given to the ACMA; and

(c) without charge, make available to the ACMA, on request, any compliance records made by the national broadcaster under paragraph (a) that have been retained by the national broadcaster (whether or not the national broadcaster is, at the time of the request, under an obligation to retain the records).

Subscription television licensee

(3) If a subscription television licensee is a body corporate, the licensee must:

(a) cause compliance records for the licensee for each financial year to be made in a form approved in writing by the ACMA; and

(b) retain the compliance records in its custody until the end of the period ending 90 days after its report under subsection 130ZZC(5) in relation to that financial year is given to the ACMA; and

(c) without charge, make available to the ACMA, on request, any compliance records made by the licensee under paragraph (a) that have been retained by the licensee.
(whether or not the licensee is, at the time of the request, under an obligation to retain the records).

Note 1: For compliance by subscription television broadcasting licensees, see clause 10 of Schedule 2.

Note 2: For compliance by subscription television narrowcasting licensees, see clause 11 of Schedule 2.

Compliance records

(4) For the purposes of this section:

(a) **compliance records** for a commercial broadcasting licensee or a national broadcaster, as the case may be, for a financial year, means records of such information as will enable compliance by the licensee or national broadcaster with Divisions 2, 4 and 5 during that financial year to be readily ascertained; and

(b) **compliance records** for a subscription television licensee for a financial year, means records of such information as will enable compliance by the licensee with Divisions 3, 4 and 5 during that financial year to be readily ascertained.

Division 7—Review of this Part etc.

130ZZE  Review of this Part etc.

(1) Before 31 December 2015, the ACMA must conduct a review of the following matters:

(a) the operation of this Part;

(b) whether this Part should be amended;

(c) the operation of paragraph 7(1)(o) of Schedule 2;

(d) whether paragraph 7(1)(o) of Schedule 2 should be amended;

(e) the operation of paragraph 10(1)(eb) of Schedule 2;

(f) whether paragraph 10(1)(eb) of Schedule 2 should be amended;

(g) the operation of paragraph 11(1)(bc) of Schedule 2;

(h) whether paragraph 11(1)(bc) of Schedule 2 should be amended.
Consultation

(2) In conducting the review, the ACMA must make provision for public consultation.

Report

(3) The ACMA must give the Minister a report of the review before 30 June 2016.

(4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sittings days of that House after receiving the report.

3 Section 150

Before “If”, insert “(1)”.

4 At the end of section 150

Add:

(2) If:

(a) a person has made a complaint to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation on the ground that the Corporation has breached Part 9D (which deals with captioning); and

(b) either:

(i) the person has not received a response within 30 days after making the complaint; or

(ii) the person has received a response within that period but considers that response to be inadequate;

the person may make a complaint to the ACMA about the matter.

5 Subsection 204(1) (after table item dealing with subsection 123(4))

Insert:

To make an exemption order or target reduction order

Section 130ZUA

A person whose interests are affected by the decision to make the exemption order or target

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No. 83, 2012
Refusal to make an exemption order or target reduction order  
Section 130ZUA  
The applicant

To make an exemption order or target reduction order  
Section 130ZY  
A person whose interests are affected by the decision to make the exemption order or target reduction order

Refusal to make an exemption order or target reduction order  
Section 130ZY  
The applicant

6 Paragraph 7(1)(o) of Schedule 2
Repeal the paragraph, substitute:
(o) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that provision;

7 After paragraph 10(1)(ea) of Schedule 2
Insert:
(eb) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that provision;

8 After paragraph 11(1)(bb) of Schedule 2
Insert:
(bc) if a provision of Part 9D (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that provision;

9 Clause 1 of Schedule 4
Omit:

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• Broadcasters must meet standards relating to captioning of television programs for the deaf and hearing impaired.

10 Division 3 of Part 4 of Schedule 4
Repeal the Division.

11 Clauses 60B and 60C of Schedule 4
Repeal the clauses.

12 Paragraphs 60D(1)(a) and (b) of Schedule 4
Omit “clause 38 of this Schedule”, substitute “sections 130ZR and 130ZS”.

13 Paragraphs 60D(1)(c) and (d) of Schedule 4
Omit “clause 38 of this Schedule, in so far as that clause applies”, substitute “sections 130ZR and 130ZS, in so far as those sections apply”.

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Part 2—Application and transitional provisions

14 Application—emergency warnings
Section 130ZZB of the *Broadcasting Services Act 1992* as amended by this Schedule does not apply to the transmission of an emergency warning during the 7-day period that began at the commencement of this item.

15 Application—annual compliance reports
Section 130ZZC of the *Broadcasting Services Act 1992* as amended by this Schedule applies to a report relating to:
(a) the financial year beginning on 1 July 2012; or
(b) a later financial year.

16 Application—record-keeping
Section 130ZZD of the *Broadcasting Services Act 1992* as amended by this Schedule applies to records relating to:
(a) the financial year beginning on 1 July 2012; or
(b) a later financial year.

[Minister’s second reading speech made in—
House of Representatives on 30 May 2012
Senate on 21 June 2012]