

THE
*BROADCASTING
SERVICES ACT*

EXPLANATION OF
CAPTIONING AMENDMENTS

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1. FREE-TO-AIR TELEVISION

CAPTION QUOTAS

The amendments to the *Broadcasting Services Act* (BSA) which were passed in June 2012 introduce new caption quotas for the commercial and national free-to-air broadcasters (Seven, Nine, Ten, Prime, WIN, Southern Cross, ABC and SBS). This is the first time that caption quotas have been increased by legislation since the initial quotas (for programming between 6 pm and 10.30 pm and news and current affairs programs) came into effect when digital broadcasting began in 2001.

The new quotas follow the pattern set by agreements brokered by the Australian Human Rights Commission since 2005, which saw broadcasters agree to increasing levels of captioning between 6 am and midnight.

Broadcasters will have to caption, on their main channels:

- 90% of programs between 6 am and midnight in 2012-2013
- 95% of programs between 6 am and midnight in 2013-2014
- 100% of programs between 6 am and midnight after 1 July 2014

They must also continue to caption all television news or current affairs programs transmitted outside prime viewing hours.

There is currently no mechanism in the BSA for increasing captioning beyond this.

EXEMPTION ORDERS AND TARGET REDUCTION ORDERS

Commercial broadcasters are able to apply to the Australian Communication and Media Authority (ACMA) for an exemption order or target reduction order on the ground that fulfilling the caption targets would result in “an unjustifiable hardship”.

MULTICHANNELS

The amendments do not affect the digital multichannels (such as Gem, GO!, One, Eleven, 7Two, 7Mate, ABC2, ABC 3, SBS2), which remain exempt from the caption regulations that apply to the main channels. Currently, the multichannels are only obliged to caption programs which were previously captioned for broadcast on a network’s main channel.

The multichannel rules are to be reviewed before the end of 2012.

2. SUBSCRIPTION TELEVISION

CAPTION QUOTAS



The amendments impose legislated caption quotas on subscription television licence holders (e.g. FOXTEL) for the first time, requiring them to provide certain levels of captioning on their TV services (i.e. channels).

The BSA divides subscription TV channels into five genres: movies, general entertainment, news, sports and music. Movies and general entertainment are further divided into three categories, A, B and C, with different caption quotas assigned to each. (Note, the quotas do not include time-shifted (i.e. +2) channels or HD channels simulcasting content from a main channel.)

The quotas are as follows.

	Captioning quota 2012-2013	Captioning quota 2013-2014	Captioning quota after 1 July 2014
Category A movie service	60%	70%	75%
Category B movie service	40%	50%	55%
Category C movie service	30%	40%	45%
Category A general entertainment service	40%	50%	55%
Category B general entertainment service	30%	40%	45%
Category C general entertainment service	15%	20%	24%
News service	10%	12.5%	15%
Sports service	10%	12.5%	15%
Music service	5%	5%	5%

Each subscription TV licensee can nominate the services they have in each genre which will fulfil caption requirements (and, in the case of movies and general entertainment services, which category they will be in), unless the licensee has less than the minimum cut-off numbers in each genre.

In practice, these exemptions work as follows.

Movies

If a subscription TV licensee has up to 6 movie services, these are all Category A.

If a subscription TV licensee has 7 movie services, it can nominate 6 as Category A, and 1 as Category B.

If a subscription TV licensee has more than 7 movie services, it can nominate 6 as Category A, 1 as Category B and up to 4 as Category C. Any services above 11 will be exempt.



General entertainment

If a subscription TV licensee has up to 18 general entertainment services, these are category A.

If a subscription TV licensee has up to 34 general entertainment services, it can nominate 18 as Category A, and up to 16 as Category B.

If a subscription TV licensee has more than 34 general entertainment services, it can nominate 18 as Category A, 16 as Category B and up to 9 as Category C. Any services above 43 will be exempt.

News

A subscription TV licensee must provide captioning on up to 3 news services. Any services above these will be exempt.

Sport

A subscription TV licensee must provide captioning on up to 7 sports services. Any services above these will be exempt.

Music

A subscription TV licensee must provide captioning on up to 5 music services. Any services above these will be exempt.

EXEMPTION REDUCTIONS AFTER 1 JULY 2015

The above schedule will be in place until 1 July 2015, after which there is a mechanism in the BSA for reducing the number of services which are exempt from captioning.

This is achieved by reducing the 'exemption percentage'.

- Until 1 July 2015, the exemption percentage is 100%.
- For the 2 years commencing 1 July 2015, the exemption percentage will be 80%
- For the 2 years commencing 1 July 2017, the exemption percentage will be 60%
- For the 2 years commencing 1 July 2019, the exemption percentage will be 40%
- For the year commencing 1 July 2021, the exemption percentage will be 20%

For example:

Using the example of FOXTEL, which has 53 General Entertainment channels, 43 will need to have captions, and 10 will be 100% exempt until 30 June 2015.

After 1 July 2015, 80% of those 10 channels would be exempt – so 2 will need to be captioned.

After 1 July 2017, 60% of those 10 channels would be exempt – so 4 will need to be captioned.

3. RULES APPLYING TO ALL SERVICES

The BSA amendments mean that the BSA is now the sole regulation covering captioning on all television in Australia. In addition to the caption quotas for free-to-air and subscription TV, the following rules apply to all services.



CAPTION QUALITY

The BSA amendments allow the Australian Communications and Media Authority (ACMA) to determine caption standards, with particular regard to readability, comprehensibility and accuracy. These standards must be in place by the end of June 2013. It is understood that ACMA will be releasing a draft of its captioning quality guidelines later in 2012.

EMERGENCY WARNINGS

Warnings should be in text and speech form, and should be captioned “if it is reasonably practicable to do so”.

REPORTING

Television licence holders must report on compliance 90 days after the end of the financial year. ACMA will publish the reports on its website.

RECORD KEEPING

TV licence holders must keep compliance records in a form approved by the ACMA

4. NOTES ON THE BSA AMENDMENTS AND THEIR APPLICATION

UNCERTAINTY ABOUT WHICH SUBSCRIPTION CHANNELS WILL BE CAPTIONED

A subscription TV service provider has until the end of a financial year to nominate which of its channels are going to fulfil caption requirements. This means that at no point is it possible to check whether any channels are fulfilling requirements, and Deaf and hearing impaired people contemplating subscribing to a service will have no certainty about levels of captioning on channels or packages until the licensee notifies the ACMA.

LOW LEVELS OF CAPTIONING ON MUSIC CHANNELS

In the amendments, music channels are assigned the lowest caption quota (5%) and unlike the other genres, this quota does not increase during the first three years. In addition to this, because of the way the ‘exemption percentage’ is formulated, there will not be any increase until 2019 (unless new music channels are introduced between now and then).

To use the example of FOXTEL, it currently has 7 music channels, 5 of which need to caption 5% of their programs, while 2 are exempt.

After 1 July 2015, 80% of those 2 channels, or 1.6 of them will be exempt. However the amendments state that that if this figure is not a whole number, it needs to be rounded up, so it would remain 2. It will not be until 1 July 2019, when the exemption percentage falls to 40%, that there will be any increase in the number of music channels which need to be captioned.

AFFECT ON SUBSCRIPTION TV PROVIDERS OTHER THAN FOXTEL

The BSA amendments apply to all subscription TV suppliers which are providing their services via cable or satellite.



This may have different outcomes for a subscription TV service which includes the same channels as FOXTEL does in its package, because the captioning requirements for those channels on FOXTEL may not match those for the smaller service provider.

An example of this is TransACT, a subscription service available in ACT and regional Victoria which delivers content via internet and cable. It offers a selection of channels that are also offered on FOXTEL, as well as some channels not on FOXTEL.

To use TransACT's sports programming as an example, it offers five sports channels that are also on FOXTEL, but only one of these is currently captioned on FOXTEL. The BSA requires TransACT to caption the other 4.

