30 June 2010

Mr Graeme Innes AM

Disability Discrimination Commissioner

Australian Human Rights Commission

GPO Box 5218
SYDNEY NSW 2001

By email: graeme.innes@humanrights.gov.au

Dear Commissioner Innes

I refer to the decisions of the Australian Human Rights Commission (‘the Commission’) to grant temporary exemptions from the *Disability Discrimination Act 1992* to free to air television broadcasters (Free to Air Television Captioning (No. 3) of 13 October 2008 and Regional Television Captioning of 12 May 2009).

As you would be aware, under the terms of these exemptions, broadcasters are required to undertake certain consultations and report on the results of those consultations.

Specifically, the exemptions require:

By 30 June 2010 the Broadcasters are to report to the Commission on consultation with deafness organisations including Deaf Australia and the Deafness Forum of Australia, on total captioning hours being achieved, that is, including the period between 12 midnight and 6 am, having regard to any publicly available data, including information published through Media Access Australia, and any further information which may be provided by the Broadcasters. (This requirement to consult does not involve a requirement to achieve any particular level of captioning between midnight and 6am during the exemption period).

I am writing to you to provide such a report, as required by the exemptions. The report is enclosed and is provided on behalf of Free TV Australia (representing all of Australia’s commercial free to air television broadcasters), the ABC and SBS (‘the Broadcasters’).

I am pleased to report that a consultation meeting was held at Free TV in April this year. The meeting provided a very useful forum to discuss key issues from all parties. Discussion was not limited to issues around the amount of captioning and open discussion on any issues of interest to the parties was encouraged.

We are grateful for the positive and constructive contributions from the deafness organisations to this meeting and look forward to further consultations this year regarding captioning on secondary channels, as required by the terms of the exemptions.

A copy of our report will be provided to Ms Karen Lloyd AM, Executive Officer, Deaf Australia, Ms Nicole Lawder, Chief Executive Officer, Deafness Forum of Australia and Mr Alex Varley, Chief Executive, Media Access Australia.

Yours sincerely

**Julie Flynn**

**CEO**

**FREE TO AIR TELEVISION BROADCASTERS**

**REPORT OF CONSULTATIONS ON TOTAL CAPTIONING HOURS**

**JUNE 2010**

Introduction

This report is provided on behalf of Free TV Australia (representing all of Australia’s commercial free to air television broadcasters), the ABC and SBS (‘the Broadcasters’). The Broadcasters are parties to temporary exemptions from the *Disability Discrimination Act 1992* granted by the Australian Human Rights Commission (Free to Air Television Captioning (No. 3) of 13 October 2008 and Regional Television Captioning of 12 May 2009).

Broadcasters welcomed the formal framework provided by the exemptions for important consultation between broadcasters and the deaf and hearing impaired community on a range of matters. The first issue to be addressed under this framework was ‘accuracy of captioning’, with the exemption requiring that:

By 30 June 2009 the Broadcasters are to report to the Commission on the results of consultation with deafness organisations including Deaf Australia and the Deafness Forum of Australia, on proposals to address issues regarding accuracy of captioning.

Broadcasters provided their report on these consultations in June 2009, as required.

The second issue to be address under this framework was:

By 30 June 2010 the Broadcasters are to report to the Commission on consultation with deafness organisations including Deaf Australia and the Deafness Forum of Australia, on total captioning hours being achieved, that is, including the period between 12 midnight and 6 am, having regard to any publicly available data, including information published through Media Access Australia, and any further information which may be provided by the Broadcasters. (This requirement to consult does not involve a requirement to achieve any particular level of captioning between midnight and 6am during the exemption period).

Consultation meeting

Free TV wrote to Deafness Organisations on 10 March 2010 on behalf of all broadcasters inviting the deafness organisations to participate in a meeting to discuss total captioning hours.

This meeting was held on 7 April 2010. In attendance at the meeting were:

Karen Lloyd Executive Officer, Deaf Australia

David Parker Policy Officer, Deaf Australia

Nicole Lawder Chief Executive Officer, Deafness Forum of Australia

Alex Varley Chief Executive, Media Access Australia

Chris Mikul Media Access Australia

Julie Flynn CEO, Free TV Australia

Alina Bain Director of Legal and Broadcasting Policy, Free TV Australia

Nick O’Donnell Regulatory and Business Affairs Manager, Seven Network

Paul Richardson BCM Presentation, Seven Network

Scott Briggs Regulatory Affairs Manager, PBL Media Pty Ltd

Ian Wilson Manager, Regulatory Affairs, Network Ten

Greg Dodgson General Manager QLD, NSW, VIC, ACT, Southern Cross

Therese Iverach Senior Advisor, Government and Regulatory, SBS

Winnie Lai Manager, Subtitling, SBS

Michael Brealey Head of Strategy and Government, ABC

The meeting provided a very useful forum to discuss key issues from all parties. Discussion was not limited to issues around the amount of captioning and open discussion on any issues of interest to the parties was encouraged.

At the meeting, the Broadcasters took the opportunity to follow up on previous discussions and consultations regarding captioning quality. As the Commission will be aware, as part of consultations on captioning quality in 2009, broadcasters made a commitment to bi-annual discussions regarding captioning quality. It was intended that the consultation meeting on captioning amounts also fulfil this commitment and discussion of captioning quality issues was encouraged.

Broadcasters outlined their strong commitment to captioning quality and in particular their desire to implement the captioning guidelines (this is discussed in more detail below).

The issues discussed during the meeting included:

* Captioning levels and captioning of particular programs
* Captioning of television programs on DVD and on the internet
* Captioning Guidelines and accuracy of captioning

**Captioning levels and captioning of particular programs**

Broadcasters reported that they have all met or exceeded the current quota for captioning levels. Specifically, networks reported as follows:

* Network Seven reported that they provided captions for all of the tennis season in January. This resulted in higher than normal captioning figures, which they expect to trend down in the next few months. Network Seven reported that captioning levels for the period midnight to 6am are currently at 45%. Because of the types of programming shown on 7TWO, Seven’s multi‑channel, the captioning levels are somewhat lower than for the main channel. Seven confirmed that NBC Today and the early news from 5:30am are always captioned.
* Nine Network reported that they are meeting the captioning quota for the period 6am to midnight. In terms of the period midnight to 6am, Nine reported that the news program broadcast at 5am and the CBS news program are captioned.
* Network Ten reported that they expect their captioning levels to increase in the coming months and are on track to meet the quota. Ten noted that overnight shopping programs are not captioned as the network is devoting resources to other time periods.
* The ABC reported that its captioning levels throughout the whole day are at about 70%.
* SBS reported that it captions major sporting events which are broadcast outside prime time. SBS noted that it will caption in full all of the 2010 FIFA World Cup matches and that is looking into providing closed captions on the 2010 FIFA World Cup DVDs.

The Deaf Groups raised concerns about the lack of captioning during the Opening Ceremony of the Winter Olympics. The Nine network noted that once the network realised that the live broadcast had not been captioned they ensured that the replayed version was captioned. The Nine network confirmed that the Summer Olympics will be captioned.

Network Ten has since confirmed that the Opening and Closing Ceremonies of the 2010 Commonwealth Games will be captioned.

The Deaf Groups expressed some concern about levels of captioning particularly during the midnight to 6am time period. They noted that there are members of the deaf community who work shift work or have other reasons to be watching TV during these times. In their view these people should have the same access to programs as other Australians – it’s a matter of social inclusion. The Deaf Groups asked what the broadcasters plans are for arriving at 100% of captions.

Free TV noted that the issue of strict liability (which would arise under a 100% quota) is of concern for the broadcasters as this allows no accommodation of even small scale technical or human error (both of which can arise in the fast-paced and high-pressured environment of live television – not just in relation to captioning but in relation to multiple aspects of the play-out process). Broadcasters have committed and expressed their willingness to be involved and engaged on all issues of captioning and they have focussed on making the service available for everyone to access.

The broadcasters noted that the issue of captioning levels was addressed in the Australian Government’s Media Access Review Discussion Report, released in early 2010. In that report the Government flags its intention to conduct a further review into, amongst other things, overall captioning levels in 2013. The broadcasters also note that future captioning targets will also come under consideration as the present temporary exemption reaches its conclusion.

**Captioning of television programs on DVD and on the internet**

Ms Lawder asked about programs which are previously captioned and then broadcast between midnight and 6am. Ms Lawder also sought clarification on the position in relation to television programs with captions being broadcast on DVD or on-line (catch up TV).

SBS confirmed that they would be captioning the 2010 FIFA World Cup and that it is looking into providing closed captions on the DVD releases.

The Deaf Groups noted that once a caption file has been created they would like to see it follow the material, whether it is then provided in DVD format or otherwise. The Deaf Groups noted that programs which are captioned for television will have a following in the deaf community and there is therefore an expectation that the captions will follow the program into other formats and on line.

The broadcasters explained that their contracts with the captioning service providers will dictate the extent to which captions will follows programs into other formats. When programs are distributed in other formats, ie on-line or on DVD, it is the arrangements between captioning providers and the providers of the service which influence whether the captions will be included.

In terms of DVD distribution and on-line, the captioning of programs is a matter for the providers of those services, ie the DVD distributors or the websites which control the on line content. The broadcasters noted that due to technical issues, programs are sometimes provided in different versions for DVD distribution. This will impact the ability of captions to follow the program.

The Broadcasters also noted that different entities control the on-line environment for their programs. For example, Nine has an arrangement with a separate entity (Ninemsn) and Seven has a similar arrangement with Yahoo7 for on-line content. Again, the arrangements with the captioning providers will influence whether the captions follow the content into these different formats.

Broadcasters suggested that they invite the caption service providers to the next Consultation Meeting to address this issue.

**Captioning Guidelines**

Free TV noted that the broadcasters are ready to implement the Guidelines now unless the Deaf Groups have any particular objections. The Deaf Groups noted their concern around the watering down of the broadcasters’ obligations in the guidelines, particularly in relation to live captioning. However the Deaf Groups noted that it’s great that the broadcasters are willing to sign up to them. Broadcasters have agreed to have further discussions with captioning service providers about live captioning.

Broadcasters agreed to allow the deaf groups additional time to provide comments. Broadcasters would then look to implement the guidelines.

**Future consultations**

The broadcasters note that under the terms of the exemption, further consultations are required regarding:

By 31 December 2010 the Broadcasters are to report to the Commission on consultation with deafness organisations including Deaf Australia and the Deafness Forum of Australia, on captioning levels  being  achieved on secondary channels, having regard to any publicly available data, including information published through Media Access Australia , and any further information which may be provided by broadcasters. (This requirement to  consult would not impose a requirement to achieve any particular level of captioning  on secondary channels  during the  exemption period).

Broadcasters will shortly commence making arrangements for these consultations.