



Review of Part 9D of the *Broadcasting Services Act 1992* (Cth)

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1. Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to provide a submission to the Australian Communications and Media Authority (ACMA) in its review of Part 9D of the *Broadcasting Services Act 1992* (Cth) (the BSA).

PIAC submits that it would be appropriate for the ACMA and the Commonwealth Government to consider amending Part 9D to provide for audio description.

Audio description provides a narrative soundtrack that runs alongside audio, and describes actions and non-verbal cues that are occurring on screen so that people who are blind and vision-impaired can fully enjoy programs on television.

Section 130ZZE of the BSA provides that:

The Australian Communications and Media Authority must conduct a review of the following matters:

- (a) the operation of this Part [9D];
- (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.¹

PIAC submits that a proposal to amend Part 9D to provide for audio description falls within the first two terms of reference: the operation of Part 9D, and the potential amendment of Part 9D. The terms of reference (c) through to (h) would be consequential amendments to any amendment to Part 9D to provide for audio description.

PIAC submits that relatively simple amendments to Part 9D of the BSA could gradually introduce audio description,² and thereby improve access to television services for persons with blindness or low vision across Australia.

Vision Australia estimates that in 2013, there were 357,000 people in Australia who were blind or had low vision, and that this number would grow to 564,000 by 2030.³ These individuals would benefit from improved access to television services through the introduction of audio description in Australia.

¹ *Broadcasting Services Act 1992* (Cth), s130ZZE(1).

² See ACCAN, 'Audio description trial to commence on the ABC second half of 2012,' Media release, 22 February 2012, available at <http://accan.org.au/our-work/435-audio-description-trial-to-commence-on-the-abc-second-half-of-2012?highlight=WyJhdWRpbyIsIidhdWRpbyIsImRlc2NyaXB0aW9uIiwZGVzY3JpcHRpb24nLiIsImF1ZGlvIGRlc2NyaXB0aW9uIl0=> (accessed 29 June 2016).

³ Vision Australia, 'Blindness and vision loss', available at <http://www.visionaustralia.org/living-with-low-vision/newly-diagnosed/blindness-and-vision-loss> (accessed 29 June 2016).

PIAC recommends that the ACMA should propose an amendment to Part 9D to incorporate gradual increases in audio description. PIAC recommends that it would be appropriate for the ACMA to, as part of this consultation, consult with leading human rights and peak organisations regarding the possible models that may be explored in order for this to occur.

1.1 Summary of recommendations

Recommendation 1 – Consider amending Part 9D

As two technical trials of audio description have now been completed, PIAC recommends that the Government expedite the introduction of audio description, including via amending legislation to Part 9D of the BSA.

Recommendation 2 – Consult regarding preferred model for gradual introduction of audio description

PIAC recommends that as part of this review, the ACMA consult with disability peak organisations, the Australian Human Rights Commission, PIAC and other interested parties, and facilitate dialogue regarding potential models for gradually introducing audio description within Part 9D of the BSA. This consultation should include consideration of the minimum percentages and/or minimum hours broadcast that are required to be audio described. The consultation could take the form of a forum of relevant stakeholders to discuss potential models for introducing and increasing audio description.

Recommendation 3 – Review within 24 months of the introduction of audio description

PIAC recommends that Part 9D should be amended to ensure that a review take place within 24 months of the introduction of audio description, to assess the awareness of the vision impaired community and general community regarding audio description; the effectiveness of communication regarding audio description to the vision impaired community and general community; and the experience of communities using audio description, including quality of audio description and any other issues.

Recommendation 4 – Consult regarding future review provisions

PIAC recommends that as part of this review, the ACMA further consult with disability peak organisations, the Australian Human Rights Commission, PIAC and other interested parties, and facilitate dialogue regarding the appropriate time frames for review of captioning and audio description provisions, including the frequency with which such review would occur.

PIAC recommends that the new ‘review provisions’ require that review bodies must consult with persons with disabilities regarding accessibility.

1.2 About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from NSW Trade and Investment for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.3 PIAC's work relevant to the review

At present, PIAC is representing claimants in two separate civil actions that relate to the Commonwealth Government's failure to take adequate steps to provide for audio description

PIAC has also been involved in representing plaintiffs in complaints under the *Disability Discrimination Act 1992* (Cth) against commercial broadcasters for failure to provide access to this service.

The provision of audio description to persons with blindness or low vision is in the public interest and requires remedy at a systemic level.

PIAC has also represented individuals in leading disability discrimination cases under the *Disability Discrimination Act 1992* (Cth) across a wide of range of areas, including education and transport. These cases have further secured the rights of people with disability across Australia.

PIAC has significant expertise in claims under the *Disability Discrimination Act 1992* (Cth), and in identifying systemic issues relating to disability discrimination.

2. Improving access to television services

2.1 A brief history of captioning in Australia

The introduction of the *Television Broadcasting Services (Digital Conversion) Act 1998* (Cth) greatly improved access to television services for people living with a hearing impairment. The passage of the Act enabled approximately 2 million Australians with a hearing impairment⁴ to access captioning during 'prime viewing hours' between 6pm and 10.30pm, and for news or current affairs programs transmitted on television outside these hours, from 1 January 2001.⁵

The change meant that individuals with a hearing impairment were more equipped to participate in community and social life.

Changes in 2012 inserted Part 9D into the BSA in the form of the *Broadcasting Services Amendment (Improved Access to Television Services) Act 2012* (Cth) (the amending Act). The amending Act expanded the provisions regarding captioning, and also the times in which captioning was required. Before 1 July 2014, the 'designated viewing hours' were the hours between 6pm and 10.30pm (or another prescribed time). From 1 July 2014, these hours were between 6am and midnight (or another prescribed time).⁶

In 2013, the ACMA determined the *Broadcasting Services (Television Captioning) Standard 2013*, under subsection 130ZZA(1) of the BSA.⁷

The amending Act also improved access to televised emergency warnings for people with a hearing impairment or vision impairment, by mandating that emergency warnings broadcast on television must be transmitted in the form of text and speech, and captioned, where reasonably practicable.

These changes were consistent with Australia's international obligations under the *UN Convention on the Rights of Persons with Disabilities* (CRPD), especially the right to equality and non-discrimination (Article 5, CRPD), the right to access on an equal basis with others, including information and communications (article 9, CRPD), the right to freedom of expression and opinion, and access to information (Article 21, CRPD) and the right to participate on an equal basis with others in cultural life, which includes enjoying access to television programs in accessible formats (Article 30, CRPD).

Broadcasters negotiated with the Australian Human Rights Commission and reached agreements regarding captioning targets and exemptions.⁸

⁴ See Australian Human Rights Commission, 'Agreement for more captioning on pay TV (2012 Media release)', 8 May 2012, available at <https://www.humanrights.gov.au/news/media-releases/agreement-more-captioning-pay-tv-2012-media-release> (accessed 30 June 2016).

⁵ *Television Broadcasting Services (Digital Conversion) Act 1998* (Cth), which created Schedule 4 to the *Broadcasting Services Act 1992* (Cth), including cl 38 in relation to captioning standards, and amendments to Schedule 2 cl (7)(1).

⁶ *Broadcasting Services Act 1992* (Cth), s130ZL.

⁷ This is available at <https://www.legislation.gov.au/Details/F2013L00918> (accessed 6 July 2016).

⁸ Access Report at 16; see also, Australian Human Rights Commission, 'Agreement for more captioning on pay TV (2012 Media release)', 8 May 2012, available at <https://www.humanrights.gov.au/news/media-releases/agreement-more-captioning-pay-tv-2012-media-release> (accessed 30 June 2016).

While some of the 2012 amendments to emergency service announcements benefitted persons with blindness or low vision, on the whole, the absence of like provisions for audio description in the *Broadcasting Act 1992* (Cth) left Australians with blindness or low vision relatively unable to access television services, compared to Australians with a hearing impairment.

2.2 Access to Electronic Media for the Hearing and Vision-Impaired Final Report

The Explanatory Memorandum to the Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012 noted that

The Bill implements the Australian Government's response to a number of recommendations in the *Access to Electronic Media for the Hearing and Vision-Impaired Final Report* (Access Report)⁹ tabled by Senator the Hon Stephen Conroy, then the Minister for Broadband, Communications and the Digital Economy, on 3 December 2010.¹⁰

Many of the recommendations have been implemented, and the introduction of captioning within the BSA was perhaps the strongest change to result from the Access Report.

The Access Report made recommendations in relation to audio description:

- A technical trial of audio description on the Australian Broadcasting Corporation be commissioned by the Federal Government in 2011, subject to funding approval.¹¹
- That the Federal Government give further consideration to the introduction of progressive audio description requirements after the completion of the audio description trial and the receipt of technical advice from the ACMA on the results of the trial.¹²
- That the Federal Government commence another review of captioning and audio description on electronic media in Australia in 2014. This review would evaluate the impact of changes introduced in response to **all** of the recommendations outlined in this report and the impact of technological change in the media environment, following the completion of analogue television switch off in 2013. The review would also consider what further actions are appropriate based on the media environment at that time.¹³ [Emphasis added]

The 2014 review recommended by the Access Report did not occur.

Many other recommendations focused on investigating accessibility issues for persons with hearing and vision impairments.

It appears that the momentum for advancing audio description has since slowed. In the five years since the Access Report was released, standards in relation to captioning have increased.

⁹ Australian Government, Department of Broadband, Communications and the Digital Economy, *Investigation into access to electronic media for the hearing and vision impaired: Media access review final report* (December 2010), (Access Report) available at http://www.abc.net.au/mediawatch/transcripts/1105_bcd.pdf (accessed 28 June 2016).

¹⁰ Parliament of Australia, 'Broadcasting Services Amendment (Improved Access to Television Services) Bill 2012 (Cth), Explanatory Memorandum', available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4836_ems_9f394481-5ca7-447b-839c-7785bc5d4d2c/upload_pdf/368981.pdf;fileType=application%2Fpdf (accessed 28 June 2016).

¹¹ Recommendation 5, Access Report at 3.

¹² Recommendation 6, Access Report at 3.

¹³ Recommendation 22, Access Report at 5.

However, no such progress has occurred in relation to audio description in Australia, despite demonstrated progress in other jurisdictions. For example, in the UK, from which Australia (especially the ABC) purchases a wide range of content, many broadcasters now exceed the minimum 10 per cent requirements for audio description, and are providing 20 per cent audio described content.

3. Time for progress on audio description

3.1 Failure to progress audio description inconsistent with human rights obligations

The Access Report identified that other than the general non-discriminatory provisions of the *Disability Discrimination Act 1992* (Cth), there is no regulatory requirement specifically for the audio description of electronic media.¹⁴

PIAC submits that the Federal Government's failure to progress audio description breaches Australia's obligations under the CRPD. While the rights of individuals with hearing impairments have been advanced through the provisions relating to captioning, more needs to be done to ensure people with blindness and low vision can access television programs on an equal basis.

In its submission to the Access Report consultation, the Australian Human Rights Commission (AHRC) advised that:

discrimination law is not sufficient in itself to deliver systemic change. The AHRC advises that while enacting the DDA is one appropriate measure to implement the Australian Government's obligations under the United Nations Convention on the Rights of Persons with Disabilities, the Government is obliged to take 'all' appropriate measures.¹⁵

The AHRC further noted that:

other measures for achieving change to support the rights under the Convention are required, to ensure the Australian Government complies with its obligations and to avoid a finding that it has acted inconsistently with 'human rights' under the *Australian Human Rights Commission Act 1986*.¹⁶

3.2 Practical considerations in introducing audio description

Introducing audio description by amending Part 9D of the *Broadcasting Services Act* would also provide regulatory certainty to broadcasters. The Access Report noted that 'prescribing the relevant parts of the BSA under the DDA will provide both consumers and broadcasters with a level of regulatory certainty. It will provide certainty about future targets, one overarching regulatory system and a clear and cost-effective compliance and complaints mechanism.'¹⁷

Reductions in broadcast licence fees following the announcement of the federal budget in 2016 has potentially made more funding available for accessible programming. Following the 25 per

¹⁴ Access Report, at 11.

¹⁵ Access Report, at 22.

¹⁶ Access Report, at 22.

¹⁷ Access Report, at 17.

cent reductions in broadcast licence fees, the Australian Communications Consumer Action Network (ACCAN) called for free-to-air networks to fund more accessible programming.¹⁸

3.3 Technical trials of audio description have occurred

The Access Report recommended that the Government commission a technical trial of audio description on the ABC in 2011,¹⁹ and that after the completion of the trial and the receipt of technical advice from the ACMA on the results of the trial, the Federal Government should give further consideration to the introduction of progressive audio description requirements.²⁰

In 2012, a technical trial of audio description took place on ABC1 for 14 hours per week over a 13-week period.²¹

As at time of writing, the ABC is conducting a trial of audio description on its online television service, iView, for 15 months, making 14 hours of audio described content available per week until the end of July 2016.²²

Recommendation 1 – Consider amending Part 9D

As two technical trials of audio description have now been completed, PIAC recommends that the Government expedite the introduction of audio description, including via amending legislation to Part 9D of the BSA.

4. Audio description in other jurisdictions

The legislative approaches taken in regards to audio description in other nations are of assistance in determining the appropriate model in Australia.

PIAC notes that Vision Australia has sought that a minimum of 14 hours of audio described content be available per week in Australia.²³

4.1 Arrangements for audio description in the UK

Legislative provision for audio description was introduced in the United Kingdom (UK) in the *Broadcasting Act 1996* (UK). The Broadcasting Standards Commission was empowered to draw up a code giving guidance on the extent to which digital program services and qualifying services should promote the understanding and enjoyment by persons who were deaf or hearing impaired, or persons who were blind or partially sighted.²⁴ The Act also required that, from the tenth

¹⁸ ACCAN, 'Update on audio description', available at <https://accan.org.au/election-2016/resources/1242-update-on-audio-description> (accessed 30 June 2016).

¹⁹ Recommendation 5, Access Report, at 3.

²⁰ Recommendation 6, Access Report, at 3.

²¹ See ACCAN, 'Audio description trial to commence on the ABC second half of 2012,' Media release, 22 February 2012, available at <http://accan.org.au/our-work/435-audio-description-trial-to-commence-on-the-abc-second-half-of-2012?highlight=WyJhdWRpbylslidhdWRpbylslmRlc2NyaXB0aW9uIiwiaWZGVzY3JpcHRpb24nLlslmF1ZGlvIGRlc2NyaXB0aW9uIi0=> (accessed 29 June 2016).

²² ABC, 'Help: Audio Description Trial', available at http://www.abc.net.au/tv/help/audio_description_trial.htm (accessed 28 June 2016).

²³ Vision Australia, 'Tell the whole story – Vision Australia calls for audio description on Australian TV', available at <http://www.visionaustralia.org/about-us/news-and-media/latest-news/news/2015/02/26/tell-the-whole-story-vision-australia-calls-for-audio-description-on-australian-tv> (accessed 13 July 2016).

²⁴ *Broadcasting Act 1996* (UK), s20(1).

anniversary of the date of the commencement of the provision of any digital program service, in each week, at least 10 per cent of relevant programs were to be accompanied by audio description.²⁵

Under sections 303 to 305 of the *Communications Act 2003* (UK), Ofcom (the independent regulator and competition authority for the UK communications industries) must draw up, review and revise a code relating to provision for the deaf and vision impaired. Ofcom's May 2015 *Code on Television Access Services* sets out incremental statutory targets that rise from a low level to the ten-year targets prescribed by the Act: 80 per cent for subtitling (or captioning), 5 per cent for signing, and 10 per cent for audio description.²⁶

Ofcom's 2015 *Television access services report* identified that this minimum obligation was being exceeded by a number of broadcasters:

A number of broadcasters continue to meet a voluntary commitment of delivering 20% audio description on all or most of their channels, even though the statutory obligation is only to deliver 10% (or less in the case of channels that are less than five years old). These include the BBC, ITV, Channel 4 and Sky.²⁷

The gradual increases in audio description in the UK compared with the arrangements for captioning (subtitling) and signing, can be seen in the table below.

Table: Interim annual targets for the provision of television access services with effect from the anniversary of the relevant date²⁸

Anniversary of relevant date	Subtitling	Signing	Audio description
First	10%	1%	2%
Second	10%	1%	4%
Third	35%	2%	6%
Fourth	35%	2%	8%
Fifth	60%	3%	10%
Sixth	60%	3%	10%
Seventh	70%	4%	10%
Eighth	70%	4%	10%
Ninth	70%	4%	10%
Tenth	80%	5%	10%

²⁵ *Broadcasting Act 1996* (UK), s20(3).

²⁶ Ofcom, *Ofcom's Code on Television Access Services*, last updated 13 May 2015, at 3 [9], available at <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2015.pdf> (accessed 29 June 2016).

²⁷ Ofcom, *Television access services report 2015* (7 April 2016) at 3 [1.15], available at <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/access-service-reports/access-report-2015.pdf> (accessed 29 June 2016).

²⁸ Ofcom, *Ofcom's Code on Television Access Services*, last updated 13 May 2015, at 4 - 5, available at <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tv-access-services-2015.pdf> (accessed 29 June 2016).

In 2016, the BBC now audio describes 20 per cent of its content on BBC One, BBC Two, BBC Three, BBC Four, CBBC and CBeebies. Programs include popular soaps, dramas, comedies and children's programs.²⁹

Programs produced in the UK are popular with Australian audiences, with the ABC broadcasting many BBC productions. However, the audio description component is generally not purchased in tandem with the broadcast program.

Ironically, a person with blindness or low vision watching *Home and Away* in the UK will have access to audio described content, but a person in Australia will not.

4.2 Audio description in the United States

In the United States, there are more than 20 million people living with vision loss.³⁰

In 1998, the U.S Congress amended the *Rehabilitation Act*, requiring federal agencies to make their electronic and information technology accessible to people with disabilities. From June 2001, all film, video, multimedia and information technology produced or procured by federal agencies was required to include audio description.³¹

In 1999, the Federal Communications Commission (FCC) announced its Notice of Proposed Rulemaking for phased-in audio description³² for television, and in 2000, the FCC implemented rules requiring major broadcast networks and cable companies in the top 25 television markets to provide 50 hours of described programming per quarter, from April 2002.

However, in 2002, the U.S. Court of Appeals for the District of Columbia reversed the FCC ruling, finding that the FCC had acted beyond the scope of its authority in adopting those rules. Bills introduced in 2003 and 2005 to update the authority of the FCC to adopt audio description rules, did not pass.³³

In October 2010, President Barack Obama signed into law the *Twenty-First Century Communications and Video Accessibility Act 2010*.³⁴ The Act 'granted the FCC the authority to mandate the use of audio description for the top four broadcast networks and top five cable networks in the most populated markets in the United States.' Further, the Act mandated that the Commission reinstate the audio description regulations that were previously adopted in 2000, with certain modifications.³⁵ This required commercial television broadcast stations that were

²⁹ BBC, 'Audio description on TV', available at <http://www.bbc.co.uk/corporate2/insidethebbc/howwework/policiesandguidelines/audiodescription.html> (accessed 29 June 2016).

³⁰ See United States Federal Communications Commission, *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report to Congress*, (30 June 2014), at 2, available at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-945A1.pdf (accessed 5 July 2016).

³¹ Audio Description Coalition, 'A Brief History of Audio Description in the US', available at <http://www.audiodescriptioncoalition.org/history.html> (accessed 5 July 2016).

³² In the US, audio description is called 'video description', however we have used the term 'audio description' for consistency.

³³ Bridge Multimedia, 'Audio description in the news', available at http://www.bridgemultimedia.com/audiodes_news/videodesbill.php (accessed 5 July 2016).

³⁴ This can be viewed at <https://www.govtrack.us/congress/bill.xpd?bill=s111-3304>

³⁵ United States Federal Communications Commission, *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report to Congress* (30 June 2014), at 5, available at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-945A1.pdf (accessed 5 July 2016).

affiliated with one of the top four commercial television broadcast networks and located in the top 25 television markets to provide 50 hours per calendar quarter of video-described prime time or children's programming, which expanded to additional television markets in July 2015.³⁶

These numbers will increase throughout the next decade until the FCC is able to expand audio description to 10 new markets annually in order to achieve 100 per cent coverage throughout the country.³⁷

In March 2016, the FCC commenced a consultation, seeking feedback on increasing the number of audio described hours from 50 hours per calendar quarter to 87.5 hours.³⁸

Of note, a report by the FCC to Congress in 2014 found that:

the costs of video description are consistent with the expectations of industry at the time of rule adoption, and covered entities do not indicate that the costs of video description have impeded their ability to comply with the video description rules.³⁹

5. Specific recommendations to progress audio description

5.1 Timely opportunity

PIAC notes that the current review of Part 9D provides a timely opportunity to refocus on progressing audio description: section 130ZZE of the BSA requires the review to be conducted by 31 December 2016, and for the ACMA provide a report of the review before 30 June 2017. This sits neatly alongside the report that the ABC will provide to the government on the audio description trial in the second half of 2016.⁴⁰

5.2 Key policy components

PIAC submits that the key components of the model for introducing audio description are through legislative amendment to Part 9D of the BSA. PIAC recommends that the amending legislation:

- Expand the Part to apply to both audio description and captioning, including all consequential amendments (including to the BSA Schedules);
- Designate the extent to which exemptions that currently apply to captioning (for example, ss130ZM, 130ZN) are applicable to audio description;
- Create a new section defining 'designated described hours' (mirroring s130ZL, pertaining to 'designated viewing hours');

³⁶ Ibid, at 3.

³⁷ Bridge Multimedia, 'Audio description in the news', available at http://www.bridgemultimedia.com/audiodes_news/videodesbill.php (accessed 5 July 2016).

³⁸ Federal Communications Commission, at 2, *Video Description: implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Notice of Proposed Rulemaking* (1 April 2016) available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-37A1.pdf (accessed 5 July 2016).

³⁹ United States Federal Communications Commission, *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Report to Congress* (30 June 2014), at 3, available at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-945A1.pdf (accessed 5 July 2016).

⁴⁰ ABC, 'Help: Audio Description Trial', available at http://www.abc.net.au/tv/help/audio_description_trial.htm (accessed 28 June 2016).

- Create a ‘basic rule’ regarding audio description obligations, to be inserted within ss130ZR and 130ZS, and create a new section for annual audio description targets for subscription television licensees (mirroring s130ZV);
- Empower ACMA and industry groups to develop a code on audio description, via a minor change to s123, and for the ACMA to develop audio description standards via a minor change to s130ZZA;
- Develop new sections regarding audio description pertaining to target reduction orders and their effect (mirroring ss130ZUAA and 130ZYA); and
- Create a new review provision mirroring s130ZZE, requiring review of the provisions in relation to audio description (and captioning) within a set period of time, and on a frequent basis.

PIAC suggests that defining ‘designated described hours’ and the ‘basic rule’ regarding audio description obligations, would be the key policy components of the legislative amendment, requiring dialogue regarding the options that could be adopted.

Key policy issues requiring further discussion include whether:

- the model will rely on minimum hours or minimum percentages of broadcast programming; and
- the manner in which gradual increases will be secured, with options including:
 - via legislating the gradual required increases from the outset;
 - developed via a code by the ACMA and industry as per s123; or
 - enabled by way of regulation.

The manner in which long-term compliance could be ensured will also require discussion. PIAC suggests considering adoption of the UK’s model of legislating the ten-year minimum benchmark of audio description required, as within s303(5) of the *Communications Act 2003* (UK). However, in order to determine the most appropriate model to be adopted in Australia, PIAC recommends that further consultation is required, drawing upon the legislative arrangements in other jurisdictions that provide for audio description.

Given the constructive role that the AHRC has previously played in the development of legislative targets for captioning and negotiating agreements with broadcasters, PIAC suggests that the AHRC be asked to play a similar role within the context of audio description.

Recommendation 2 – Consult regarding preferred model for gradual introduction of audio description

PIAC recommends that as part of this review, the ACMA consult with disability peak organisations, the Australian Human Rights Commission, PIAC and other interested parties, and facilitate dialogue regarding potential models for gradually introducing audio description within Part 9D of the BSA. This consultation should include consideration of the minimum percentages and/or minimum hours broadcast that are required to be audio described. The consultation could take the form of a forum of relevant stakeholders to discuss potential models for introducing and increasing audio description.

5.3 Balancing minimum standards and compliance

In setting targets in relation to audio description, it is important to set a reasonable minimum standard that is likely to secure compliance from broadcasters. PIAC notes that Australian broadcasters have applied a number of times for exemptions from the *Disability Discrimination Act 1992* (Cth) in relation to captioning, with AHRC decisions handed down in 2003, 2004, 2008, 2009 and 2012.⁴¹

PIAC acknowledges that the technology for captioning is further advanced than that available for audio description, and that the standards in relation to audio description in the UK require a lesser percentage for audio description than captioning.

The basic captioning rule within the BSA Act essentially requires broadcasters to ‘caption 100 per cent of television programs during designated viewing hours and news or current affairs programs broadcast outside designated viewing hours’.⁴²

PIAC believes that a gradual introduction of audio description, commencing from a low percentage, is more likely to achieve compliance from broadcasters. Setting too high a percentage means that broadcasters would be more likely to seek exemptions from the AHRC, or, in the event that such exemptions were unsuccessful, broadcasters may submit that the provisions impose unjustifiable hardship under section 11 of the *Disability Discrimination Act 1992* (Cth).

PIAC notes that in the UK, the initial minimum percentage of broadcast hours required to be audio described after the first anniversary of the relevant date, was 2 per cent. This was then gradually increased over a period of 10 years to 10 per cent, which is now being exceeded by many broadcasters.

5.4 Review provisions

Given that the current review provision within Part 9D will no longer be relevant following reporting to the Minister by 30 June 2017, PIAC recommends that an additional review provision be inserted into Part 9D, requiring review within 24 months of the introduction of audio description, and providing for regular review of the Part and relevant schedules, in relation to captioning and audio description.

In Australia, the current review was required of Part 9D, which was introduced in 2012. However, PIAC suggests that given that captioning was introduced in 2001, that there was greater general awareness surrounding captioning. Therefore, it would be appropriate that a review following the introduction of audio description should occur within a shorter period of time.

⁴¹ See Australian Human Rights Commission, ‘Exemption applicants under the *Disability Discrimination Act 1992* (Cth)’, available at <https://www.humanrights.gov.au/our-work/legal/exemptions/exemption-applications-under-disability-discrimination-act-1992-cth> (accessed 6 July 2016).

⁴² *Broadcasting Services Act 1992* (Cth), s130ZR. See also, Parliament of Australia, Explanatory Memorandum to the Broadcasting Services Amendment (Increased Access to Television Services) Bill 2012 (Cth) at 14, available at http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4836_e_ms_9f394481-5ca7-447b-839c-7785bc5d4d2c%22 (accessed 6 July 2016).

In the UK, Ofcom published its *Code on Television Access Services* in 2004, requiring 70 channels to provide a gradually increasing level of captioning, signing and audio description. However, an Access Service Review conducted by Ofcom in 2006, revealed a significant lack of awareness of audio description, both among the general UK population and the vision impaired community.⁴³ The Review concluded ‘audio description awareness levels needed to increase in order to confer the maximum benefit of this service to the vision impaired community’.⁴⁴

Recommendation 3 – Review within 24 months of the introduction of audio description

PIAC recommends that Part 9D should be amended to ensure that a review take place within 24 months of the introduction of audio description, to assess the awareness of the vision impaired community and general community regarding audio description; the effectiveness of communication regarding audio description to the vision impaired community and general community; and the experience of communities using audio description, including quality of audio description and any other issues.

In the UK, it is the legislated ‘duty’ of Ofcom to draw up, review and revise the code on television access services,⁴⁵ and in revising such codes, Ofcom must consult with persons representing people with disabilities.⁴⁶

Recommendation 4 – Consult regarding future review provisions

PIAC recommends that as part of this review, the ACMA further consult with disability peak organisations, the Australian Human Rights Commission, PIAC and other interested parties, and facilitate dialogue regarding the appropriate time frames for review of captioning and audio description provisions, including the frequency with which such review would occur.

PIAC recommends that the new ‘review provisions’ require that review bodies must consult with persons with disabilities regarding accessibility.

6. Conclusion

PIAC thanks the ACMA for the opportunity to provide a submission to the review. PIAC would be happy to meet to further discuss the issues raised in this submission, and to work constructively towards change in this area.

⁴³ See Ofcom, ‘Access Services Audio Description: Research into Awareness Levels,’ Research document published 02/07/08, [1.1] – [1.2], available at http://stakeholders.ofcom.org.uk/market-data-research/other/tv-research/access_services_audio/ (accessed 6 July 2016).

⁴⁴ See Ofcom, ‘Access Services Audio Description: Research into Awareness Levels,’ Research document published 02/07/08, [1.2], available at http://stakeholders.ofcom.org.uk/market-data-research/other/tv-research/access_services_audio/ (accessed 6 July 2016).

⁴⁵ *Communications Act 2003* (UK), s303(1).

⁴⁶ *Communications Act 2003* (UK), s304(1)(a).