

# **Submission**

on the

## **Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008**

to the

### **Senate Community Affairs Committee**

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## TABLE OF CONTENTS

<b>1.</b>	<b>Introduction.....</b>	<b>1</b>
<b>2.</b>	<b>R18+ programs on narrowcasting services .....</b>	<b>1</b>
	2.1 The 35% rule.....	1
	2.2 Declared prescribed areas .....	2
<b>3.</b>	<b>Transport of prohibited material .....</b>	<b>3</b>
<b>4.</b>	<b>Access to Aboriginal land.....</b>	<b>4</b>
<b>5.</b>	<b>Conclusion .....</b>	<b>5</b>
<b>6.</b>	<b>Endnotes .....</b>	<b>6</b>

# 1. Introduction

The Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008 was introduced to the House on 21 February 2008 by the Minister for Housing and Minister for the Status of Women, the Hon Tanya Plibersek.

On 19 March 2008 the Senate, on the recommendation of the Selection of Bills Committee, referred the provisions of the Bill to the Community Affairs Committee for inquiry and report by 7 May 2008. Public submissions are due by 14 April 2008.

## 2. R18+ programs on narrowcasting services

The Bill proposes a limited and complex regime for restricting the broadcast of R18+ television into certain prescribed areas of the Northern Territory.

### 2.1 *The 35% rule*

The restrictions would only apply to a subscription television narrowcasting service in which the total number of hours of R18+ programs broadcast during a seven day period exceeds 35% of the total number of hours of all programs broadcast during that period.<sup>1</sup>

The wording of the Bill makes it uncertain whether the 35% rule would apply to a specific channel or to the entire broadcast hours of a particular subscription television narrowcasting service. This would need to be clarified as if it were to apply to the entire broadcast hours of a particular subscription television narrowcasting service then this provision would have no effective application.

Even if the Bill were amended to ensure that the 35% rule would apply to a particular channel rather than to a particular subscription television narrowcasting service as a whole, the provision would still be difficult to apply.

The only form of television broadcasting services currently permitted to broadcast R18+ programs is subscription television narrowcasting services. The legislation and codes of practice for all other television broadcasting services – ABC, SBS, commercial free-to-air and subscription television broadcasting services – currently prohibit the broadcasting of R18+ programs. Suggestions by some contributors to the House of Representatives' second reading debate on the Bill that a comprehensive ban on the broadcast of R18+ programs to all prescribed areas would restrict the broadcast of SBS are mistaken. The highest level of classification permitted on SBS is MAV15+.<sup>2</sup>

AUSTAR, the provider of subscription television narrowcasting services to the Northern Territory, was specifically identified in the report, *Little Children are Sacred*<sup>3</sup>, as the source of pornographic television. Several witnesses indicated that pornographic television was contributing to the problems of sexualisation of Aboriginal youth and the sexual abuse of women and children in their communities.

“Wherever the Inquiry travelled throughout the Territory, people would tell us the same story – lack of housing, inadequate housing, 10-20 people living in many homes, no privacy, families relegated to a single room in a house shared with several other families, toilets and showers not working due to excessive use, security issues, very young children being exposed to adult sexual behaviour, children exposed to pornographic magazines, videos and television, and vulnerable children living in close proximity to adults who are often intoxicated or violent or both.”<sup>4</sup>

“Pornography is an issue as are music film clips and various television programs. - *Central Australian community*.

“Porn is available in the community – SBS and Austar are probably the main sources. - *Service Providers at a Central Australian community*.

“We are worried about the influence of television and magazines. In particular, pornographic videos and music video clips. - *East Arnhem community*.”<sup>5</sup>

AUSTAR offers the “Adult Channel” as Channel 120 (Digital) or Channel 25 (“old Austar”) on its satellite and cable services. It carries R18+ erotic movies<sup>6</sup>. It is available as add-on channel for \$24.95 per month.<sup>7</sup> It is also available to *all* subscribers on a pay-per-view basis for \$6.95 per 2 hours.<sup>8</sup>

Channel 25 on “old Austar” is shared between the “Adult Channel” and “Main Event”, which is a pay-per-view service mainly featuring wrestling and other sporting events. The percentage of hours that this channel is used for R18+ programs may vary considerably from week to week depending what events are scheduled on “Main Events”. This may make the application of the 35% rule difficult to apply to “old Austar” services.

Another channel that carries R18+ programs is World Movies. For example, three R18+ movies were scheduled for 2 April 2008.<sup>9</sup>

Every device used to receive AUSTAR includes a parental control facility.<sup>10</sup> This uses a PIN to manage access to programs by classification. It ought to be possible for AUSTAR to engineer this device to permanently block access to R18+ programs.

Pay-per-view access to Adult Channel could easily be blocked as this service requires the user to contact AUSTAR for each purchase of access. Subscribers in the prescribed areas could be readily identified and access denied.

***Recommendation 1:***

***The Bill ought to be amended to replace provisions prohibiting services for which more than 35% of total broadcast hours are broadcast of R18+ programs with a blanket prohibition on any broadcast of R18+ programs into prescribed areas.***

The means for ensuring that no such programs are broadcast would be determined by the broadcast services but could include removing Adult Channel from any packages sold to subscribers in the prescribed areas (including refunds for existing packages with this channel); denying pay-per-view access to Adult Channel to subscribers within prescribed areas; and re-engineering the parental control facilities on devices supplied to subscribers within prescribed areas to disable the reception of any program classified R18+ even with a PIN.

## ***2.2 Declared prescribed areas***

The Bill would only limit services broadcasting more than 35% R18+ programs from “declared prescribed areas” rather than all prescribed areas. Before declaring a prescribed area the Minister would have to consider<sup>11</sup>:

(a) *the well-being of people living in the prescribed area;*

(b) *whether there is reason to believe that people living in the prescribed area have been the victims of violence or sexual abuse during the preceding 12 months;*

(c) the extent to which people living in the prescribed area have, during the preceding 12 months, expressed their concerns about being at risk of violence or sexual abuse;

(d) whether there is reason to believe that children living in the prescribed area have viewed R 18+ programs provided on a subscription television narrowcasting service during the preceding 12 months;

(e) the extent to which people (in particular, women and children) living in the prescribed area have, during the preceding 12 months, expressed the view that their well-being will be improved if R 18+ programs are not provided on subscription television narrowcasting services that are capable of being received in the prescribed area;

(f) such other matters (if any) as the Minister considers relevant.

This cumbersome approach is not appropriate as a means of consolidating the national emergency response to sexual abuse of women and children in the Northern Territory.

The inquiry which led to the national emergency response legislative package has already determined that women and children in prescribed areas are at risk of violence and sexual abuse, and that pornographic television is a contributing factor to the problem.<sup>12</sup>

The report noted<sup>13</sup>:

“We resolved early that we would not sit under every gum tree in the Territory. Notwithstanding, we have at least figuratively (and sometimes actually) sat under more than a few. We have visited 45 communities, including the major townships, in the Territory. We have seen those communities and talked with their permanent members and those providing services. We believe we have engaged with an excellent cross-section and proportion of the Aboriginal population. We have a strong feeling for their views, problems and aspirations.”

It is neither necessary nor appropriate for the Minister to be second-guessing the work of the inquiry gum tree by gum tree!

The problems with gathering evidence for sexual abuse and violence from the women and children who are victims of this sexual abuse and violence are well-known. It is extraordinary to demand of these victims – including the children, some of whom are as young as 3 years old<sup>14</sup> - that before being protected from the harmful impact of pornographic television in their specific community they must produce evidence that abuse has occurred in the last 12 months (why is abuse that occurred say, 13 months earlier irrelevant?) and articulate a connection between such abuse and R18+ television programs.

***Recommendation 2:***

***The Bill should be amended in such a way that its provisions in relation to the broadcast of R18+ programs apply to all prescribed areas without the need for a ministerial declaration for each prescribed area.***

### **3. Transport of prohibited material**

The Bill would limit the application of the offences of possessing, supplying or transporting prohibited material – X18+ films, Restricted publications and certain unclassified films and publications – so that the offences would “not apply if the person proves that the material was brought into the prescribed area for the sole purpose of transporting it to a place outside the prescribed area.”<sup>15</sup>

A police officer would only be entitled to seize prohibited material if the officer “suspects on reasonable grounds” that the prohibited material “was not brought into the prescribed area for the sole purpose of transporting it to a place outside the prescribed area”.<sup>16</sup> So, although in a prosecution for an offence the legal burden would be on the accused to prove that the material was brought into the prescribed area for the sole purpose of transporting it to a place outside the prescribed area, it is less likely that prosecutions would be brought because police would have difficulty in finding “reasonable grounds” for disbelieving any claim by a person caught with prohibited material in a vehicle that it was intended for transport outside the prescribed area.

This provision is likely to have a significant dampening effect on any serious effort by police to enforce the prohibition on possession of prohibited material in prescribed areas.

It is not appropriate to hamper the provisions of the national emergency response legislation that are targeted at removing access to pornography in prescribed areas.

There is no genuine public interest to justify such unhelpful measures.

The sale and supply of X18+ films is an offence in every State of Australia. Only the ACT and the Northern Territory permit the sale and supply of X18+ films. The effort to keep X18+ films out of the prescribed areas should not be undermined in order to accommodate the demand of Territorians who live outside the prescribed areas for X18+ films nor the commercial interests of the Canberra based pornography merchants who supply X18+ films to the Northern Territory.

***Recommendation 3:***

***The Bill should be amended by deleting Schedule 2 in order to maintain the total ban on prohibited material within the prescribed areas for any purpose.***

Those who live in the prescribed areas are not, nor should they be, prohibited from travelling outside these areas. Continuing the current Northern Territory law which permits the sale of X18+ films to any person over the age of 18 seriously undermines the prohibition of X18+ films in the prescribed areas.

Furthermore, the Northern Territory’s Classification of Publications, Films and Computer Games Act(NT) Section 50 (2) provides that “A person shall not sell or deliver to a minor a film classified X18+ or R18+, unless the person is a parent or guardian of the minor.” This extraordinary provision means that it is lawful for a parent or guardian to give any child under their care an X18+ film.

Videos and DVDs are very portable items. Unless their sale is prohibited not just within the boundaries of the prescribed areas but throughout the Northern Territory then X18+ films will most likely continue to play a role in the premature sexualisation and sexual abuse of Aboriginal children.

***Recommendation 4:***

***A new Schedule 2 should be added to the Bill that would amend the Classification (Publications, Films and Computer Games) Act 1995 in such a way that the provisions in Part 10 would apply to the entire Northern Territory not just the prescribed areas.***

## **4. Access to Aboriginal land**

The Bill would restore the permit system governing access to major Aboriginal communities by repealing the provisions that have been in place from as recently as 17 February 2008 abolishing aspects of the permit system

The many tragic accounts of sexual abuse of Aboriginal children in the report<sup>17</sup> largely involve abuse by other residents of the local community. It seems reasonable to assume that allowing such “small geographically-isolated communities”<sup>18</sup> with endemic problems of sexual abuse to refuse entry to people from outside the community only perpetuates the problems of isolation.

A permit system which can exclude outside visitors from a community seems to violate the fundamental principles of freedom of movement and freedom of association, as well as the notion of Australia as a single nation with a shared sense of community.

Many journalists have expressed the view<sup>19</sup> that the permit system has contributed to the tardiness of governments and the public generally responding to the problems in the Northern Territory communities.

“I strongly believe that for too long communities have been closed societies, and vested interests have hid behind the permit system. — *Statement from Lindsay Murdoch (Journalist, Fairfax) to Media Watch.*

“I accept that most Aboriginal people want the permit system to remain. I think it’s not serving them well. — *Statement from Paul Toohey (Journalist, The Australian) to Media Watch*”

***Recommendation 4:***

***Schedule 3 of the Bill should be deleted in order that the provisions that came into effect on 17 February 2008 abolishing aspects of the permit system would remain in place.***

## **5. Conclusion**

The Bill as introduced into the House of Representatives fails to live up to its title as an “Emergency Response Consolidation” bill.

It is certainly necessary to consolidate the emergency response by introducing prohibitions on the broadcast of R18+ television programs into Aboriginal communities. However, the complex and limited procedures proposed in the Bill are not adequate. **These ought to be replaced by provisions which prohibit any broadcast of a R18+ program into any prescribed area.**

The Bill would loosen the prohibition on prohibited material – including X18+ films – in prescribed areas. This is hardly “consolidation”. **This provision should be deleted. Instead the Bill should genuinely seek to consolidate the ban on prohibited material – including X18+ films – by extending it throughout the Northern Territory.**

The re-imposition of the full permit system proposed by the Bill would do nothing to consolidate the emergency response. Indeed it is more likely to help perpetuate the isolation and cover-up of the sexual abuse and violence in some communities. **This provision should be deleted.**

## 6. Endnotes

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1. Schedule 1, Clause 10.
2. *SBS Codes of Practice 2006* available at: [www20.sbs.com.au/sbscorporate/media/documents/8487sbs\\_codes\\_of\\_practice\\_2006.pdf](http://www20.sbs.com.au/sbscorporate/media/documents/8487sbs_codes_of_practice_2006.pdf).
3. *Little Children are Sacred*, p 199, available at: [nt.gov.au/dcm/inquirysaac/pdf/bipacsa\\_final\\_report.pdf](http://nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf).
4. *Ibid.*, p 195.
5. *Ibid.* P 199.
6. [www.auspaytv.com/info/austar-g.htm](http://www.auspaytv.com/info/austar-g.htm).
7. <https://join.austar.com.au>.
8. [www.auspaytv.com/info/austar-g.htm](http://www.auspaytv.com/info/austar-g.htm).
9. [worldmovies.net/?page=tvguide](http://worldmovies.net/?page=tvguide).
10. [www.austar.com.au/support/parent\\_control.asp](http://www.austar.com.au/support/parent_control.asp).
11. Schedule 1, Clause 16.
12. *Little Children are Sacred*, pp 195, 199, available at: [nt.gov.au/dcm/inquirysaac/pdf/bipacsa\\_final\\_report.pdf](http://nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf).
13. *Ibid.*, p 15.
14. *Ibid.*, p 63.
15. Schedule 2, Clause 2.
16. Schedule 2, Clause 6.
17. *Little Children are Sacred*, available at: [nt.gov.au/dcm/inquirysaac/pdf/bipacsa\\_final\\_report.pdf](http://nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf).
18. *Ibid.*, p 94.
19. [www.abc.net.au/mediawatch/transcripts/s2197804.htm](http://www.abc.net.au/mediawatch/transcripts/s2197804.htm).