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

No. , 2008

A Bill for an Act to amend laws in order to respond to the Northern Territory’s national emergency, and for other purposes
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A Bill for an Act to amend laws in order to respond to the Northern Territory’s national emergency, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Act 2008.

2 Commencement

This Act commences on the day after it receives the Royal Assent.
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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—R 18+ programs

### Broadcasting Services Act 1992

1. **Paragraph 139(6)(c)**
   
   After “11(1)”, insert “or 12(1)”.

2. **Subsection 140A(6)**
   
   After “11(1)”, insert “or 12(1)”.

3. **Section 204 (at the end of the table)**
   
   Add:

<table>
<thead>
<tr>
<th>Declaration that a subscription television narrowcasting service is a declared subscription television narrowcasting service</th>
<th>Subclause 12(4) of Schedule 2</th>
<th>The person who provides the service under a class licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refusal to approve the making of a declaration that a subscription television narrowcasting service is a declared subscription television narrowcasting service</td>
<td>Subclause 12(6A) of Schedule 2</td>
<td>The person who provides the service under a class licence</td>
</tr>
<tr>
<td>Refusal to revoke a declaration that a subscription television narrowcasting service is a declared subscription television narrowcasting service</td>
<td>Subclause 12(9) of Schedule 2</td>
<td>The person who provides the service under a class licence</td>
</tr>
<tr>
<td>Refusal to approve an electronic format, or a publication, in relation to a subscription television narrowcasting service</td>
<td>Subclause 12(16A) of Schedule 2</td>
<td>The person who provides the service under a class licence</td>
</tr>
<tr>
<td>Revocation of the</td>
<td>Subclause 12(16A) of Schedule 2</td>
<td>The person who</td>
</tr>
</tbody>
</table>
Schedule 1  R 18+ programs

4 Subclause 5(3) of Schedule 2

Omit “so made”, substitute “made under subclause (2)”.

5 After subclause 5(3) of Schedule 2

Insert:

(3A) If:

(a) a broadcaster provides a subscription television narrowcasting service under a class licence; and
(b) the service is capable of being received by a subscriber in a declared prescribed area; and
(c) at least one R 18+ program is broadcast by the service on a particular day; and
(c) the service is not exempt from this subclause;

the broadcaster must cause a record of the following matters to be made in a form approved in writing by the ACMA:

(d) the total number of hours of R 18+ programs broadcast by the service during that day;
(e) the total number of hours of programs broadcast by the service during that day.

Note 1: For declared prescribed area and R 18+ program, see subclause (10).

Note 2: See also subclauses 12(16A) to (16C).

(3B) If:

(a) a broadcaster provides a subscription television narrowcasting service under a class licence; and
(b) a declaration under subclause 12(6A) is in force in relation to the service;

then, unless the ACMA otherwise determines, the service is exempt from subclause (3A) of this clause.

(3BA) The Minister may give the ACMA a written direction in relation to the ACMA’s powers under subclause (3B).

(3BB) The ACMA must comply with a direction under subclause (3BA).
(3BC) A direction under subclause (3BA) is a legislative instrument.

Note 1: Section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to the direction—see section 44 of that Act.

Note 2: Part 6 (sunsetting) of the Legislative Instruments Act 2003 does not apply to the direction—see section 54 of that Act.

(3C) Subject to this clause, a broadcaster must retain in the broadcaster’s custody a record made under subclause (3A):

(a) for 120 days after the day to which the record relates; or

(b) for such longer period as the ACMA directs in writing.

(3D) Subclauses (3A), (3B), (3BA), (3BB), (3BC) and (3C) cease to have effect at the same time as subclause 12(1) ceases to have effect.

6 Subclause 5(4) of Schedule 2

Omit “so made”, substitute “made under subclause (2) or (3A)”.

7 Subclause 5(4) of Schedule 2

After “(3)”, insert “or (3C)”.

8 Subclause 5(9) of Schedule 2

After “(2)”, insert “or (3A)”.

9 At the end of clause 5 of Schedule 2

Add:

(10) In subclause (3A):

declared prescribed area has the same meaning as in the Northern Territory National Emergency Response Act 2007.

R 18+ program has the same meaning as in clause 12.

10 At the end of Part 7 of Schedule 2

Add:
Schedule 1  R 18+ programs

12 Condition applicable to declared subscription television
narrowcasting services provided in the Northern
Territory under class licences

(1) The provision by a person of a declared subscription television
narrowcasting service under a class licence is subject to the
condition that the licensee will not provide the service in a way that
will enable a subscriber in a declared prescribed area to receive the
service.

Sunset provision

(2) Subclause (1) ceases to have effect at whichever is the earlier of
the following times:

(a) the end of the period of 5 years that began on the day after
the day on which the Northern Territory National Emergency
Response Act 2007 received the Royal Assent;

(b) if a shorter period is specified in a written instrument made
by the Minister for the purposes of this paragraph—the end
of that shorter period.

(3) An instrument under paragraph (2)(b) is a legislative instrument.

Declared subscription television narrowcasting service

(4) The Minister may, by writing, declare that a specified subscription
television narrowcasting service is a declared subscription
television narrowcasting service for the purposes of this clause.

(5) The Minister must not make a declaration under subclause (4) in
relation to a subscription television narrowcasting service unless
the Minister is satisfied that the total number of hours of R 18+
programs broadcast by the service during a particular declaration
test period exceeds 35% of the total number of hours of programs
broadcast by the service during that period. For this purpose, a
declaration test period is a 7-day period that occurs within the
21-day period that ends at the end of the day before the day on
which the Minister makes the declaration.

(6) A declaration test period must not begin before the commencement
of this clause.
(6A) If a person provides a subscription television narrowcasting service under a class licence, the person may, with the written approval of the Minister, declare that the service is a declared subscription television narrowcasting service for the purposes of this clause.

(6B) A declaration under subclause (6A) can only be revoked under subclause (9).

(7) A declaration under subclause (4) or (6A) is not a legislative instrument.

(7A) An approval under subclause (6A) is not a legislative instrument.

(8) A copy of a declaration under subclause (4) or (6A) is to be published in the Gazette.

(9) If a declaration is in force under subclause (4) or (6A) in relation to a subscription television narrowcasting service, the Minister may, by writing, revoke the declaration.

(10) The Minister must not revoke a declaration made under subclause (4) or (6A) unless the Minister is satisfied that the total number of hours of R 18+ programs broadcast by the service during a particular revocation test period is:

(a) zero; or

(b) equal to or less than 35% of the total number of hours of programs broadcast by the service during that period.

For this purpose, a revocation test period is a 7-day period that occurs within the 21-day period that ends at the end of the day before the day on which the Minister revokes the declaration.

(11) A revocation under subclause (9) is not a legislative instrument.

(12) A copy of a revocation under subclause (9) is to be published in the Gazette.

(13) Subclause (9) does not limit the application of subsection 33(3) of the Acts Interpretation Act 1901 to other instruments under this Act.

Minister may direct ACMA to make available specified information

(15) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of
facilitating the exercise of a power conferred on the Minister by this clause.

(16) The ACMA must comply with a direction under subclause (15).

Pre-broadcast data

(16A) For the purposes of this clause and subclause 5(3A), if, before a particular day, a schedule of the programs to be broadcast by a subscription television narrowcasting service on that day is:

(a) made available in an electronic format approved, in writing, by the ACMA in relation to the service; or

(b) made available in a publication approved, in writing, by the ACMA in relation to the service;

those programs are taken to have been broadcast by the service on that day in accordance with that schedule.

Incidental material

(16B) For the purposes of this clause and subclause 5(3A), if an item of incidental material is broadcast during a break in a substantive program, the item of incidental material is taken to be a part of the substantive program.

(16C) For the purposes of this clause and subclause 5(3A), if one or more items of incidental material are broadcast during the period:

(a) beginning at the end of a particular substantive program (the first substantive program) broadcast on a subscription television narrowcasting service; and

(b) ending immediately before the start of the next substantive program to be broadcast on the service;

each of those items of incidental material are taken to be a part of the first substantive program.

Definitions

(17) In this clause:

declared prescribed area has the same meaning as in the Northern Territory National Emergency Response Act 2007.

incidental material means:
(a) advertising or sponsorship material (whether or not of a commercial kind); or
(b) a promotion for a television program or a subscription television narrowcasting service; or
(c) community information material or community promotional material; or
(d) a news break or weather bulletin; or
(e) any other similar material.

**R 18+ program** means:
(a) a program that has been classified R 18+ by the Classification Board; or
(b) a program that has been classified R 18+ by the provider of the subscription television narrowcasting service concerned; and includes a part of a program covered by paragraph (a) or (b).

**substantive program** means a program other than incidental material.

### 13 Some Northern Territory laws excluded

(1) The following provisions:
(a) clause 12;
(b) the remaining provisions of this Act in so far as they relate to clause 12;
are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as that law would otherwise apply.

(2) Any acts done under or for the purposes of the provisions of:
(a) clause 12; or
(b) the remaining provisions of this Act in so far as they relate to clause 12;
have effect despite any law of the Northern Territory that deals with discrimination.

(3) However, subclauses (1) and (2) do not apply to a law of the Northern Territory so far as the Minister determines, by legislative instrument, that the law is a law to which subclauses (1) and (2) do not apply.
(4) In this clause, a reference to any acts done includes a reference to any failure to do an act.

14 Northern Territory (Self-Government) Act

Section 49 of the Northern Territory (Self-Government) Act 1978 does not apply in relation to the following provisions:
(a) clause 12;
(b) the remaining provisions of this Act in so far as they relate to clause 12.

11 At the end of subclause 24(4) of Schedule 6
Add:
; and (f) subclauses 5(3A), (3B), (3C), (3D) and (10) of Schedule 2 had not been enacted.

Northern Territory National Emergency Response Act 2007

12 Section 3
Insert:
child means a person who is under 18 years of age.

13 Section 3
Insert:
decclared prescribed area has the meaning given by section 127B.

14 Section 3
Insert:
R 18+ program has the same meaning as in clause 12 of Schedule 2 to the Broadcasting Services Act 1992.

15 Section 3
Insert:
subscription television narrowcasting service has the same meaning as in the Broadcasting Services Act 1992.

16 After Part 7
Insert:

**Part 7A—R 18+ programs**

127A Objects

(1) The object of this Part is to define the expression *declared prescribed area*. That expression is used in clause 12 of Schedule 2 to the *Broadcasting Services Act 1992*.

(2) The object of this Part, when read together with clause 12 of Schedule 2 to the *Broadcasting Services Act 1992*, is to enable special measures to be taken to protect communities from violence and sexual abuse.

Note 1: Under subclause 12(1) of Schedule 2 to the *Broadcasting Services Act 1992*, the provision by a person of a declared subscription television narrowcasting service under a class licence is subject to the condition that the licensee will not provide the service in a way that will enable a subscriber in a declared prescribed area to receive the service.

Note 2: Clause 12 of Schedule 2 to the *Broadcasting Services Act 1992* provides for the declaration of a subscription television narrowcasting service as a *declared subscription television narrowcasting service* if the total number of hours of R 18+ programs provided by the service exceeds 35% of the total number of hours of programs provided by the service.

127B Declared prescribed area

(1) The Minister may, by legislative instrument, determine that a specified prescribed area is a *declared prescribed area* for the purposes of this Act.

(2) The Minister must not make a determination under subsection (1) in relation to a prescribed area unless the Minister is requested to do so by a person living in the prescribed area.

127C Community consultation

(1) Before making a determination under subsection 127B(1) in relation to a prescribed area, the Minister must ensure that:

   (a) information setting out:

   (i) the proposal to make the determination; and
(ii) an explanation, in summary form, of the consequences of the making of the determination;

has been made available in the prescribed area; and

(b) opportunities have been made available to people in the prescribed area to discuss:

(i) the proposal to make the determination; and

(ii) the consequences of the making of the determination;

with employees or officers of the Commonwealth; and

(c) opportunities have been made available to people in the prescribed area to discuss their circumstances, concerns and views with employees or officers of the Commonwealth.

(2) A contravention of subsection (1) does not affect the validity of a determination under subsection 127B(1).

127D Criteria for making a determination

In making a determination under subsection 127B(1) in relation to a prescribed area, the Minister must have regard to the following matters:

(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.
127E Duration of determination etc.

(1) A determination under subsection 127B(1) comes into force at:

(a) if:

(i) a day is specified in the determination for the purposes of the commencement of the determination; and

(ii) the specified day is not later than the 35th day after the determination was made;

the first moment of the specified day; or

(b) in any other case—the first moment of the day next following the day when the determination is registered under the Legislative Instruments Act 2003.

(2) A determination under subsection 127B(1) must specify an expiry date for the determination.

(3) An expiry date must occur in the 12-month period beginning when the determination came into force.

(4) Subsection (3) has effect subject to subsection (5).

Extension of expiry date

(5) The Minister may, by legislative instrument, extend or further extend the expiry date of a specified determination made under subsection 127B(1), so long as the extension or further extension is for a period of not more than 12 months.

Duration of determination

(6) Unless sooner revoked, a determination under subsection 127B(1) ceases to be in force on the expiry date of the determination.

Fresh determination

(7) If a determination under subsection 127B(1) expires, this Act does not prevent the Minister from making a fresh determination under subsection 127B(1) relating to the same prescribed area as the expired determination.
127F Revocation of determination

(1) If a determination is in force under subsection 127B(1), the Minister may, by legislative instrument, revoke the determination.

(2) Subsection (1) does not limit the application of subsection 33(3) of the Acts Interpretation Act 1901 to other instruments under this Act.

17 Subsections 132(1) and (2)

After “this Act”, insert “(other than Part 7A)”. 
Schedule 2—Transport of prohibited material

Classification (Publications, Films and Computer Games)
Act 1995

1 Section 101
Before “A”, insert “(1)”.

2 At the end of section 101
Add:

(2) Subsection (1) does 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.

Note: A defendant bears a legal burden in relation to the matter in subsection (2)—see section 13.4 of the Criminal Code.

3 Section 102
Before “A”, insert “(1)”.

4 At the end of section 102
Add:

(2) Subsection (1) does 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.

Note: A defendant bears a legal burden in relation to the matter in subsection (2)—see section 13.4 of the Criminal Code.

5 Before subsection 103(3)
Insert:

(2A) Subsections (1) and (2) do not apply if the person proves that the supply, or intended supply, was for the sole purpose of transporting the material to a place outside the prescribed area.

Note: A defendant bears a legal burden in relation to the matter in subsection (2A)—see section 13.4 of the Criminal Code.

6 Paragraph 106(b)
Schedule 2  Transport of prohibited material

Repeal the paragraph, substitute:
(b) the officer suspects on reasonable grounds that the material:
   (i) is prohibited material; and
   (ii) was not brought into the prescribed area for the sole purpose of transporting it to a place outside the prescribed area;

7 Paragraph 108(3)(b)
Repeal the paragraph, substitute:
(b) the responsible officer is satisfied, on reasonable grounds,
   that the material:
   (i) is not prohibited material; or
   (ii) was brought into the prescribed area for the sole purpose of transporting it to a place outside the prescribed area;

8 Subsection 109(3)
Repeal the subsection, substitute:
(3) If the magistrate is satisfied that the material:
   (a) is not prohibited material; or
   (b) was brought into the prescribed area for the sole purpose of transporting it to a place outside the prescribed area;
the magistrate must order that the material is to be returned.
Otherwise the magistrate must refuse to make the order.
Schedule 3—Access to Aboriginal land

Aboriginal Land Rights (Northern Territory) Act 1976

1A Paragraph 70(2A)(d)

Omit “or as a member of the Legislative Assembly of the Northern Territory”, substitute “, as a member of the Legislative Assembly of the Northern Territory or as a member of a local government body in the Northern Territory”.

1 Subsection 70(2BB)

Repeal the subsection, substitute:

(2BB) The Minister may, by writing, authorise a specified person, or any person included in a specified class of persons, to enter or remain on:

(a) all Aboriginal land, other than a sacred site; or

(b) particular Aboriginal land (which may be community land), other than a sacred site.

Note: See section 70A for the definition of community land.

(2BBA) An authorisation under subsection (2BB) is subject to any conditions specified in the authorisation.

2 Transitional—existing authorisations

An authorisation in force under subsection 70(2BB) of the Aboriginal Land Rights (Northern Territory) Act 1976 immediately before the commencement of this item has effect, after that commencement, as if it had been granted under that subsection after that commencement.

3 Subsections 70(2D) and (2E)

Repeal the subsections.

4 Subsection 70A(1)

Repeal the subsection.

Note: The heading to section 70A is replaced by the heading “Community land”.

5 Subsection 70A(2)
Omit “sections 70B to 70F”, substitute “section 70”.

Note: The heading to subsection 70A(2) is deleted.

6 Sections 70B to 70H

Repeal the sections.

7 Paragraph 73(1)(ba)

Repeal the paragraph.

8 Section 74AA

Repeal the section.

Northern Territory National Emergency Response Act 2007

9 Subsection 35(1)

Omit “of this Act or sections 70C to 70G of the Aboriginal Land Rights (Northern Territory) Act 1976”.
Schedule 4—Community stores

Northern Territory National Emergency Response Act 2007

1 Paragraph 92(2)(b)

After “roadhouse”, insert “, unless a community is substantially dependent upon the roadhouse for the provision of grocery items and drinks”.

(43/08)