



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

**Submission to the
Community Affairs Committee**

April 2008

Introduction

AUSTAR United Communications Limited (**AUSTAR**) welcomes the opportunity to respond to the invitation of the Community Affairs Committee (**Committee**) to provide this written submission addressing issues arising under the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008* (the **Bill**) that are of relevance to AUSTAR's supply of subscription television in the Northern Territory.

About AUSTAR

AUSTAR is the leading provider of subscription television to customers in regional and rural Australia. AUSTAR also offers these customers dial-up internet and mobile telephone services. Every day, throughout our entire business, AUSTAR's primary focus is on regional and rural Australians and we are wholly committed to their wellbeing.

We were therefore very concerned to read in the *Little Children are Sacred Report* (**Report**) that AUSTAR's subscription television may be contributing to the grave social issues affecting Aboriginal communities in the Northern Territory.

AUSTAR response to the *Little Children are Sacred Report*

Since the release of the Report we have sought to play an ethical and responsible role in the debate about the availability of R18+ rated programming on AUSTAR services. In particular, we have consulted extensively with the current and previous Governments on the proposed ban on R18+ rated television content in prescribed areas and the practical – and technical - issues a ban would raise for AUSTAR and its customers.

This Submission summarises these discussions and is intended to give the Committee important background information on the availability and content of AUSTAR services in the Aboriginal communities covered by the Report.

Community Level Involvement

We are keen to work in partnership with Government and Indigenous communities in the Northern Territory to tackle the problems of child abuse and improve the prospects of indigenous children and their families. To this end, we have already begun work with the Department of Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**) on an education program for Indigenous Communities to better inform adults in the

Community about AUSTAR's services and the parental control technology they can use to restrict their children's access to programming that is unsuitable for them to watch.

We are hopeful that part of this program will involve us visiting these Communities, in consultation with FaHCSIA, to hear first hand the concerns about our services so that we are better able to address them, quickly and effectively. If, in the course of these Community consultations, we discover that any of our customers are misusing our services by allowing children to watch R18+ rated television content, we will not hesitate to cancel that customer's AUSTAR service for breach of the conditions under which they receive it.

If, however, the Government considers it necessary to bring in legislation on this subject, we believe that the Bill currently before Parliament, with some minor amendments on technical issues such as recordkeeping, will achieve the stated policy objectives of the Government.

AUSTAR Subscription Television

The AUSTAR Service

AUSTAR has provided subscription television services to audiences in regional and rural Australia for 13 years.

The AUSTAR services comprise over 100 channels of digital television and radio content including sports, documentaries, movie, children's, lifestyle, music and general entertainment channels. These are delivered by satellite to customers who access the channels through use of an AUSTAR set top box connected to their television sets. There are currently 670,000 AUSTAR customers, which is approximately 25% of all television households in regional and rural Australia. Approximately 30% of all Australians live in areas in which AUSTAR offers its subscription television services.

Since it began operations, AUSTAR has invested over \$1 billion to establish the state-of-the-art technology platforms and customer service centre needed to support the supply of world class subscription television to its regional and rural customers, regardless of their sometimes vast distances from the city.

AUSTAR presence in the Northern Territory

AUSTAR has 21,000 customers in the Northern Territory and Darwin is one of AUSTAR's highest penetrated markets. 35% of television households in Darwin subscribe to AUSTAR subscription television.

AUSTAR maintains a retail office in Darwin.

Issues raised by the *Little Children Are Sacred Report*

Identifying Pornographic Material

Like the rest of Australia, AUSTAR was extremely concerned to read in the Report about the children's exposure to pornographic material in Aboriginal communities. Although it is not clear on the face of the Report, we understand that the AUSTAR programming of concern to these Communities is sexually explicit television content generally, and 'Adults Only' programming in particular.

However, the debate surrounding the pornography issue indicates that there is confusion about what qualifies as 'pornography' on Australian television. Famously, concerns have been raised about the SBS carrying 'pornography' and the Report itself refers to music film clips and gangster movies under the 'Pornography' heading.

The Community consultation process included in the Bill will allow the Government to resolve this confusion and identify with certainty what programs on subscription television are of concern to that Community. AUSTAR strongly supports this evidence-based approach to solving the problem of Aboriginal children gaining access to unsuitable audiovisual material, whether on AUSTAR or other media, such as DVDs and videos.

Pornographic vs R18+ Rated Programs

'Pornography' is not one of the 5 categories used to classify subscription television for Australian viewers (*i.e.* G (General), PG (Parental Guidance), M (Mature), MA15+ (Mature Accompanied) and R18+ (Restricted)). However, it is likely that the sexually explicit television content referred to in the Report, was R18+ classified.

It is for this reason that the 'pornography' legislation introduced by the current and previous Governments is based on restricting the supply of R18+ rated subscription television into prescribed communities.

However, not all R18+ rated content on subscription television is 'Adults Only' or contains sexually explicit material. For example, popular films such as the black comedy crime thriller "Smokin' Aces" and Vietnam War film "Apocalypse Now" are R18+ rated but not because they include sexual content. If a total ban was to be put on the availability of R18+ rated content in Aboriginal Communities, this would have the effect of stopping people in those Communities from accessing material that the prohibition was not intended to catch.

The Right Balance

This raises an important philosophical issue for AUSTAR. It is our belief that any legislation that is put in place to address the problems surrounding pornography in Aboriginal Communities should be careful to preserve - so far as possible - the right of all Australians, regardless of where they live, to enjoy as much choice in television as anyone else, provided they do so responsibly.

A prohibition on subscription television content that accidentally captures programs that are not the kind of programs intended to be caught, cuts across this important civil right.

R18+ Rated Content on AUSTAR

AUSTAR Services that Carry R18+ rated Content

By way of background, a description of the R18+ rated content currently available through AUSTAR follows.

Under the *Broadcasting Services Act 1992* (Cth), R18+ rated programs can only be shown on television as part of a subscription television narrowcasting service. In order to qualify as a subscription television narrowcasting service, the audience for the service is necessarily limited.

Of the 87 different television services offered by AUSTAR, 3 of these services include R18+ rated content from time to time. These are:

- The World Movies channel, a foreign language channel carrying premium quality art-house movies, which occasionally shows movies that are rated R18+. In 2007 3% of all movies broadcast on the World Movies channel were R18+ rated. R18+ rated programs are only scheduled on the World Movies channel after 9.30pm at night.
- The BOX OFFICE Movies service, a pay per view movie service that allows customers to book and view movies in return for an additional payment. From time to time the BOX OFFICE Movies service might include a movie that is R18+ rated (e.g. 'Smokin Aces'). BOX OFFICE Movies is not a traditional "linear" television channel. The service will only give a customer access to a movie if the customer calls AUSTAR's call centre and pays an extra amount of \$5.95 for access to the movie; when the movie access period expires (at 5.00am the next morning), the customer will no longer be able to view that movie

- The BOX OFFICE 'Adults Only' service, which offers Adults Only movies to subscribers on a per session or monthly subscription basis, in return for an additional payment over the customer's base subscription fee in the same way as customers order BOX OFFICE movies (described above).

Of all of the programs on these three services, we understand from our discussions with both the current and previous Governments that the only programs intended to be captured by the 'pornography' debate are the programs that appear on the BOX OFFICE 'Adults Only' service.

PIN Protection for R18+ rated programs and 'Adults Only' Services

AUSTAR is acutely aware of how important it is that children are not given access to R18+ rated content (whether sexually explicit or otherwise). We have heightened concerns about children gaining access to 'Adults Only' programming.

A description of how AUSTAR and other subscription television providers restrict children's access to unsuitable television content follows. It is intended to provide the Committee background information concerning the accessibility of R18+ and 'Adults Only' content on AUSTAR services.

Under the Subscription Television Codes of Practice, all drama and movies appearing on subscription television are ratings classified using an electronic 'tag'. A program's classification is included in all TV Guide descriptions of the program, including the description that automatically appears on customers' screens when they land on a channel or order a movie through AUSTAR's BOX OFFICE pay per view service. Full screen notification of a program's classification rated PG and above also appears at the beginning of every drama program and movie aired.

The rating 'tag' on drama programs and movies underpins parental control technology included in each AUSTAR set top box. By employing PIN protection AUSTAR and parents can restrict children's access to programs that, by their nature, are not suitable for any children (e.g. 'Adults Only' movies) or that parents otherwise decide is not suitable for their children.

Generally speaking, the AUSTAR set top box puts parents in control over PIN protection for programs that they believe their children should not be allowed to access having regard to the ratings classification of those programs. However, AUSTAR has configured its equipment in a way that requires the entry of a PIN number in order to access any programs on AUSTAR's 'Adults Only' service. This requirement cannot be removed by an account holder and is reimposed every time a new program commences on the 'Adults Only' service.

Further detailed information of the various ways children's access to R18+ rated and 'Adults Only' content on AUSTAR is restricted is set out in Attachment 1 to this Submission.

In summary, however, it is not possible for a child who lands on an 'Adults Only' movie on AUSTAR, either by changing to the 'Adults Only' channel, or by continuing to watch a channel that has been left on, to obtain access to an AO movie unless they enter a pre-established PIN number into a unique screen that precedes the movie.

Technical Issues raised by a blanket prohibition on R18+ Rated Content

Program by program prohibitions

AUSTAR is not technologically able to block the supply of R18+ rated programs to prescribed areas in Australia on a program-by-program basis. As explained above, we have consciously designed program-by-program access restrictions in a way that gives that control to parents, in the home. In addition, AUSTAR imposes PIN protection centrally on all 'Adults Only' programming. We cannot, technically, do more than that.

A blanket prohibition on AUSTAR's supply of all R18+ rated programs carried on its platform into prescribed areas would therefore require AUSTAR to suspend all AUSTAR services that ever include R18+ rated programs, including the World Movies channel and BOX OFFICE movies in their current program configuration, into those areas. We do not believe that this would be the intention of any version of the 'pornography' legislation.

AUSTAR support for the Bill and service-based restrictions rather program-by-program restrictions

If the Government takes the view that legislation is needed in order to stop the availability of R18+ programs in Aboriginal Communities, then AUSTAR is in favour of the approach to how these restrictions should be imposed that is set out in the Bill. AUSTAR's reasons for this are that:

- The Bill frames the prohibition on R18+ content in a way that prohibits access to offensive *services* or *channels*, rather than to individual items of R18+ rated programming.
- The occasional inclusion of R18+ rated content on services or channels that are clearly not pornographic should not result in the entire service or channel being prohibited; this is achieved by the 35% threshold on R18+ rated content referred to in the Bill.

We strongly disagree with any call for a blanket ban on all 'pornographic' material in prescribed areas.

For the reasons referred to above, we take the view that a call to change the legislation in this way does not acknowledge the confusion surrounding the word 'pornography' and indicates a lack of understanding about the technology on which the subscription television industry is based and what it is capable of doing.

It is also significant that the call for a total ban does not take into account the previous Government's intention to consider amending the legislation it tabled in September 2007, to ensure that services other than the AUSTAR 'Adults Only' services would not be inappropriately captured by the Government's NT emergency response measures.

It was in this context that the then Department of Communications, Information Technology and the Arts (**DCITA**) first considered a 35% benchmark to define the kind of service or channel that would be prohibited. We understand that this benchmark was determined prior to the November Federal election, after DCITA went through the process of analysing, with us, the frequency of R18+ rated programs on services such as World Movies and BOX OFFICE movies. The November election was called before the proposed amendments had the opportunity to progress in the normal manner.

On a separate point, we note some comment during the House of Representatives debate on this Bill on 19 March, that it was possible to read the 35% R18+ rated program threshold as applying across the entire AUSTAR service (all 87 channels). We do not agree that the Bill is capable of being read in this way. The Bill makes it clear that the threshold applies on a service by service, channel by channel, basis.

Identifying AUSTAR customers in 'prescribed areas'

Because of the nature of its business, AUSTAR has one of the most comprehensive lists of physical addresses in regional Australia. However, notwithstanding extensive consultation with FaHCSIA, the physical addresses which AUSTAR uses to identify its customer base cannot be made to correspond with the coordinate-based descriptions of the prescribed areas referred to in the *Northern Territory National Emergency Response Act 2007* (the **Emergency Response Act**).

The difference between how AUSTAR locates its customers and how the Emergency Response Act defines 'prescribed areas' means that it is not possible for AUSTAR to know with certainty whether one or more of its customers is located within a 'prescribed area'. A blanket ban on R18+ rated programming across all prescribed areas would therefore raise the following issues for AUSTAR:

- if AUSTAR thinks a customer is *outside* a prescribed area and does not switch the customer off, but the customer is actually *inside* the prescribed area, AUSTAR would be in breach of the content prohibition
- if AUSTAR thinks a customer is *inside* a prescribed area and switches the customer off, but the customer is actually *outside* the prescribed area, AUSTAR would be in breach of its Customer Agreement with the customer and may be in breach of the *Racial Discrimination Act 1975* (Cth)
- There is an increased likelihood that people who give AUSTAR addresses *outside* prescribed areas will subscribe to prohibited 'Adults Only' services on AUSTAR for the purpose of illegally transporting their set top boxes *into* prescribed areas (either to watch the services there themselves or to resell it to others to watch). A blanket ban is therefore likely to promote piracy of R18+ rated content in prescribed areas.

AUSTAR support for Community consultation process

AUSTAR supports the inclusion in the Bill of a community consultation based process in determining the prescribed areas to be declared for the purposes of the NT Emergency legislation, for the following reasons:

- AUSTAR supports the evidence-based approach that appears to be reflected in the current Bill. We think an evidence-based approach is particularly important given the confusion about exactly what kinds of television programming is contributing to the social issues described in the Report. If AUSTAR and others in the television industry are given the opportunity to look more closely into social issues arising out of television programming in these Communities we will surely be able to address these issues in a more useful way than if we are not involved in these Communities and a blanket prohibition is introduced.
- The Community-based approach supports AUSTAR's existing plan to conduct educational programs in Aboriginal communities in the Northern Territory, in line with the recommendations in the Report. As noted in the **Introduction** above, we are already in contact with the Northern Territory office of FaHCSIA to discuss what kinds of programs AUSTAR might usefully conduct in these Communities. We believe we can make a valuable contribution to these Communities in this way.

- If, during the course of a Community consultation, a problem involving an AUSTAR customer's use of AUSTAR R18+ rated and/or 'Adults Only' content comes to light, under the current Bill AUSTAR will be in a position to work quickly and efficiently with its customer in the community to resolve that problem (whether by cancelling the customer's AUSTAR contract or otherwise). We are convinced that whatever concerns an Aboriginal Community may have about AUSTAR programming, the best way to identify the problems and fix them will be to work with the Community on a local level. If that cannot be satisfactorily done as part of the consultation process, the Government's declaration of the Community as a 'declared prescribed area' will ban completely the provision of declared R18+ television services to that Community.

Under a blanket prohibition on R18+ rated content across multiple prescribed areas without any consultation (as the Opposition has proposed), it may be that the only way for AUSTAR to minimise the risks of not knowing with certainty whether AUSTAR set top boxes are located within or outside those prescribed areas, will be to stop the supply of services containing any R18+ rated content on a Northern Territory wide basis. This would necessarily mean that Northern Territory residents would receive an inferior subscription television service than that offered elsewhere in Australia. We do not believe that this is the desired effect of the legislation.

Conclusion

AUSTAR is extremely concerned that the illegal use of its subscription television services in Aboriginal communities may be contributing to the grave social issues affecting children in those communities. For this reason we have, since the release of the *Little Children are Sacred Report* worked alongside the current and previous Governments to assist legislators in understanding the technical and regulatory environment in which AUSTAR provides its services. Our aim, throughout this cooperation, has been to respond to the crisis in the Aboriginal Communities in the Northern Territory in a responsible and ethical way.

In particular we believe we have helped the Government obtain a better understanding of programming on AUSTAR services and the most efficient ways of stopping the misuse of that programming in Aboriginal areas.

The legislation currently before Parliament reflects the Government's increased understanding of these issues since the previous 'blanket ban' proposal was introduced in September 2007.

Any call to revert to a 'blanket ban' on R18+ rated subscription television programming is not a useful development in the life of this proposed legislation and does not reflect the extensive work that FaCSIA and the Department of Broadband, Communications and the Digital Economy have done to refine this Bill so that it is capable of achieving maximum benefit.

There are still some amendments the subscription television industry would like to see made to the Bill to further refine its operation and a complete list of these is set out in Attachment 2 to this Submission.

AUSTAR would welcome the opportunity to discuss our views further and would be pleased to appear before the Committee during the course of its sittings in Alice Springs and Darwin on 29 and 30 April 2008. We look forward to meeting with members of the Committee to discuss these issues in more detail at that time.

AUSTAR United Communications Limited
18 April 2008

Attachment 1

Restrictions to Access of R18+ and 'Adult Only' Content on AUSTAR

A summary of the various protections used to block their children's access to R18+ rated and 'Adults Only' content is set out below.

- **Purchase Codes for Pay Per View programming (BOX OFFICE Movies and BOX OFFICE Adults Only pay per session)**

To obtain access to a BOX OFFICE Movies movie or a BOX OFFICE 'Adults Only' movie on a single session basis, AUSTAR customers need to go through an on-screen order process. As part of this process, a unique Purchase Code is given to the customer on-screen. The customer must then call our central PPV number and quote the Purchase Code. They will then be asked to approve the addition of the cost of the PPV movie to their account.

The multiple steps involved in ordering a PPV movie from AUSTAR are a significant impediment to the ability of a child to 'happen across' Adults Only and other R18+ rated movies. The parental control functionality built into the AUSTAR set top box is separate from, and in addition to, the PPV order process.

- **Parental control of the ability to order PPV programs from BOX OFFICE Movies and BOX OFFICE Adults Only:**
 - ***Parental control to block programs with a specified classification (e.g. MA15+, R18+)***

The parental control function in AUSTAR set top boxes allows a customer to block access to programs with a specified classification (e.g. MA15+, R18+) unless the viewer enters a parental control PIN (PC PIN). When a customer first receives their set top box from AUSTAR, the AUSTAR installer takes the customer through the parental control features of the box. The default parental control setting on the boxes when they are first delivered to customers is that a PC PIN is needed to access any programs with an R18+ rating.

AO movies (whether single session or available as part of a monthly subscription) are protected by an additional layer of parental control functionality. Even if a customer sets up the parental control function in their box so that all programs (regardless of their classification) are 'unlocked' and can be viewed without a PC

PIN, a customer who lands on the 'Adults Only' movies channel will not be given access to the Adult Only movie then showing unless they enter their PC PIN into a unique screen that precedes the movie. The customer cannot program the box around this requirement.

- ***Hide or Show category labelled 'Adult' in BOX OFFICE***

AUSTAR subscribers can currently only gain access to AO movies from the first page of BOX OFFICE (accessible by pressing 120 on the AUSTAR remote). On this page viewers are given 4 options - '1. Session Times', '2. Movie Previews', '3. Upcoming Releases' and '4. Adult'. As part of the set up of their box, AUSTAR customers are given the ability to suppress the appearance of this 'Adult' category on the BOX OFFICE first page. If a customer elects to do this, it will not be apparent to anyone watching AUSTAR that 'Adults Only' movies are available as part of the service.

- ***PIN Code required to purchase any pay per view BOX OFFICE movie or 'Adults Only' movie on a single session basis***

As described above, BOX OFFICE movies and AO movies acquired on a single session basis, necessarily require a customer to 'order' the movie on-screen and follow up that order with a call to AUSTAR. As part of the set up of their AUSTAR boxes, customers are given the ability to block anyone ordering a PPV movie on-screen (and therefore receiving a Purchase Code), unless they enter a Purchase PIN set by the customer. This Purchase PIN is separate from any Parental Control PIN a customer may choose to activate.

- ***'Adults Only' override pin protection***

Generally speaking, the AUSTAR set top box puts parents in control over PIN protection for programs that they believe their children should not be allowed to access having regard to the ratings classification of those programs. However, AUSTAR has configured its equipment in a way that requires the entry of a PIN number in order to access any programs on AUSTAR's 'Adults Only' service. This requirement cannot be removed by an account holder and is reimposed every time a new program commences on the 'Adults Only' service.

- ***Single Session pay per view***

As described above, BOX OFFICE movies and AO movies acquired on a single session basis necessarily require a customer to 'order' the movie on-screen and follow up that order with a call to AUSTAR. Following the entry of a purchase code

pin, the customer is then required to enter an 'Adults Only' content pin. The single session purchase is available to be viewed as many times as the customer wishes during a set time period (up to 24 hours). However, the 'Adults Only' pin code is required at the commencement of every new movie. This means that if a single session has been booked and viewed, but the session still has time to run, a child who wandered into the room would not be able to access the movie without first entering the required 'Adults Only' PIN.

- ***Monthly 'Adults Only' subscription***

The monthly 'Adults Only' subscription is available to customers for \$24.95 on top of their existing subscription. This makes available all of the content on the 'Adults Only' service for the defined period.

At the end of an AO movie, the 'Adult Only' service will go back to its introductory screen and will stay there until a new movie is actively selected and the PIN number is entered again. Accordingly, even if a television is left running all day on the channel from which the 'Adults Only' service is accessed, AO movies will never run on automatically from one to the next. The customer cannot program the set top box around this behaviour.

Attachment 2

Requested Amendments to the Bill

A comprehensive list of the amendments AUSTAR and others in the subscription television industry would like to see made to the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008* follows:

1. **Ability to Self-Declare an R18+ classified service**

If the provider of a subscription television narrowcasting service reasonably believes that the total number of hours of R18+ programs broadcast on its service in any given 7-day period will exceed 35% of the total number of hours of programs broadcast over the same period, it should be entitled to "self-declare" the specified service. This would allow the provider of, say, an 'Adults Only' service to avoid the administrative burden of making the records referred to in paragraph 5 of Schedule 1 of the Bill.

2. **Record keeping**

No obligation to cause a record to be made until after the first prescribed area is declared under the NT Emergency Response legislation

We request that the Bill is amended so that there is no obligation for a narrowcasting service provider to cause a record to be made under the proposed subclause 5(3A) of Schedule 2 of the *Broadcasting Services Act 1992* (Cth) (**BSA**), until the responsible Minister under the Emergency Response Act has declared a prescribed area into which the service provider would be prohibited from broadcasting that service were it to be declared for BSA purposes.

Pre-broadcast program schedules to be defined as sufficient to satisfy record requirement

Also in relation to record keeping, we request that the Bill be amended to make it clear that records based on pre-broadcast data will satisfy the record keeping requirements referred to in Schedule 1 paragraph 5 of the Bill. Post-broadcast logs should not be required.

A pre-broadcast log of programs can be generated by a subscription television provider from its electronic databases, using the on-screen schedule information that accompanies a program when it goes to air on a subscription television service.

These electronic program schedules are continuously and automatically refreshed up to the time of broadcast of a program. The only reason an electronic program schedule would not be accurate at the time a program goes to air would be if the program's start was delayed by a news flash or the overrun of a sports event. It is unlikely, however, that either of these events would materially affect the accuracy of the electronic program schedule on any given day.

News flashes and overruns of sports events are even less likely to affect the accuracy of the electronic program schedule of a channel or service (like World Movies) that includes occasional R18+ rated programs, historically having never occurred.

A post-broadcast program log is an active record of what programs go to air. In order for any service provider to keep a post-broadcast log of programs, the provider would need to either:

- Put in place a failsafe way of recording the channel as it goes to air, and then archive that copy for the 120 days referred to in the Bill; or
- Require a person to sit watching the channel, maintaining a manual log of that material 24 hours per day.

The financial and operational burden of either of these record keeping systems would be extremely - and unnecessarily - onerous on small channel operators such as World Movies.

Treatment of advertising, promotional material etc in measuring R18+ rated content against the 35% threshold

The Bill currently provides that advertising, sponsorship material and other similar ephemeral material should be ignored for the purpose of determining whether R18+ rated programs counted for more than 35% of the total hours of programs broadcast on a service over a 7 day period.

As a practical matter, the inclusion of ephemeral programming in counting up how many hours of R18+ programs are aired in any week will tend to work against broadcasters. Ephemeral material included in an R18+ rated program will just add to the R18+ tally and will therefore increase the chances of the 35% threshold being exceeded.

The only way a subscription television operator could distinguish between this ephemeral material and the programs in which it is included for the purposes of making the calculations referred to in the Bill, would be to maintain a post-program log of all programs on the service.

For the reasons described above, we strongly recommend that the Bill is amended to make it clear that post-program logs of channels are not required for record keeping purposes. Pre-broadcast program logs do not distinguish between ephemeral material and program material. A follow-on amendment to the Bill should therefore be to remove of the provision that refers to advertising or sponsorship material etc.

Suggested amendments to recordkeeping provisions in the Bill

To address all of these record keeping issues and make it clear that they apply on a service by service (*i.e.* channel by channel) basis, we recommend that Schedule 1 paragraph 5 be amended by replacing the subparagraphs labelled (3A) and (3B) with new subparagraphs (3A) and (3B), in the following terms:

(3A) If:

- (a) a broadcaster provides a subscription television narrowcasting service under a class licence; and
- (b) the subscription television narrowcasting service is capable of being received by a subscriber in a prescribed area; and
- (c) at least one R18+ rated program is broadcast by the subscription television narrowcasting service on a particular day;

the broadcaster must maintain records capable of satisfying ACMA of the following matters:

- (d) the total number of hours of R18+ programs broadcast by the subscription television narrowcasting service during that day;
- (e) the total number of hours of programs broadcast by the subscription television narrowcasting service during that day satisfaction the following matters

(3B) Electronic records of information included in the electronic program schedule that accompanies the broadcast of a program will be deemed to satisfy ACMA for the purposes of subclause (3A)

Changes to the current Bill are highlighted.

3. Service provider participation in Community consultation process.

As we discussed with FaHCSIA and Minister Macklin, AUSTAR sincerely believes it can make an important contribution to the community consultation process described in section 127C of the Emergency Response Act. We ask that section 16 of the Part 7A of the Bill be amended along the following lines:

In clause 127C, listing things the Minister must do before she determines that a prescribed area should be declared, add a new paragraph (b) before the existing paragraph (b), in the following terms:

"opportunities have been provided for a provider of a subscription television narrowcasting service that is available in a prescribed area and which makes available R18+ programs as a substantial part of the of the total programming broadcast on the service, to consult with people in the prescribed area and to address their concerns and views by limiting access to that service or by other measures or means determined in consultation with the community"

Changes to the language in the current Bill are highlighted.

4. Inadvertent breach

We request an amendment to the Bill to make it clear that subscription television operators will not be in breach of the new R18+ content prohibitions for providing a declared service to a subscriber in a declared area, if the provider reasonably believed that the subscriber was located outside that area. This would cover the situation where a subscriber acts in breach of their contract with us and moves their box from an address outside of a prescribed area to inside that area. This amendment could be effected by changing the proposed clause 12 of the Broadcasting Services Act to read as follows:

"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 knowingly provide the service in a way that will enable a subscriber in a declared prescribed area to receive the service" (our emphasis).

Changes to the language in the current Bill are highlighted.

5. Exemption from the Racial Discrimination Act

As drafted, the Bill exposes AUSTAR to a claim of racial discrimination in breach of the Racial Discrimination Act 1975 if it withdraws supply of its Adults Only service in a declared prescribed area or refuses to supply the Adults Only service in a declared prescribed area. We request an appropriate amendment to the Bill to expressly exempt AUSTAR from any such breach. We acknowledge, however, that the Government has consistently maintained that an amendment along these lines will not be considered.