

Submission

on the

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007

to the

Senate Legal and Constitutional Affairs Committee

Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au

by

Festival of Light Australia

4th Floor, 68 Grenfell St

Adelaide SA 5000

Phone: 1300 365 965

Fax: 08 8223 5850

Email: office@fol.org.au

Website: www.fol.org.au

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1. Introduction

The government is to be congratulated for its determination to address the deep and widespread problem of sexual abuse of children in indigenous communities in the Northern Territory. Only with such determination can these apparently intractable problems be solved.

All decent Australians have been deeply disturbed by the accounts of child sexual abuse, including the sexualisation of young children through exposure to X-rated pornography, recounted in *Little Children are Sacred*.

One example will suffice to illustrate the nature of the problem: “The Inquiry was also told a story of a 17-year-old boy who would regularly show pornographic DVDs at a certain house then get young children to act out the scenes from the films.”¹

This echoes the findings of the *1999 Report of the Aboriginal and Torres Strait Islander Women’s Task Force on Violence (Queensland)*² which also pointed to the link between X-rated films and sexual violence against women and children: “The incidence of sexual violence is rising and is [in] a direct relationship to negative and deformed male socialisation associated with alcohol and other drug misuse, and the prevalence of pornographic videos in some Communities.” The Aboriginal Coordinating Council referred to \$4,000 to \$5,000 of orders of pornographic videos sent every week from Canberra to the Cape Communities.

In the light of this evidence the provisions in the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007* which would prohibit the possession of X18+ films and other prohibited material are essential in addressing the problem of child sexual abuse in the indigenous communities of the Northern Territory.

2. Extending the prohibition on possession of X18+ films throughout the Northern Territory.

Those who live in the prescribed areas are not, nor should they be, prohibited from travelling outside these areas. The Northern Territory, unlike the six States, currently permits the sale of X18+ films to any person over the age of 18. If this is allowed to continue then it will seriously undermine the prohibitions being put in place 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 X 18+ or R 18+, unless the person is a parent or guardian of the minor.” This extraordinary provision means that it is not unlawful 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 indigenous children.

Recommendation 1: Schedule 1 of the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 should be amended in such a way that its provisions in relation to X18+ films apply to the whole of the Northern Territory, that is to prohibit the possession or supply of X18+ films throughout the Northern Territory.

3. Effect of X18+ films on children throughout Australia

At the Joint Press Conference announcing this legislative package on 22 June 2007 the Prime Minister, the Hon John Howard, stated: “that if this set of circumstances had been disclosed as taking place in the suburb of Dickson, can you imagine what the local response from police, from medical authorities and from the state government would have been? It would have been horror and immediate action and a demand by the community that something be done.”

Sadly, there is evidence that similar events involving the sexualisation of young children through exposure to X-rated pornography are taking place in the suburbs of Canberra. The problem may be less widespread than in indigenous communities but it is nonetheless alarming.

A paper³ presented at the Ninth Australasian Conference on Child Abuse and Neglect in November 2003 by staff from the Child at Risk Assessment Unit, Canberra Hospital has reported that exposure to X-rated pornography is one significant factor in children younger than 10 years old sexually abusing other children.

In the first six months of 2003 the Unit had identified as many as 48 children under 10 years of age who had engaged in sexualised, sexually abusive behaviour. The paper does not claim that pornography is the only factor in children becoming sexually abusive. Other factors include substances abuse, mental health and domestic violence issues in the family. Nonetheless the authors make a strong case for access to pornography as decisively shaping this disturbing trend in the incidence of sexually abusive children. The authors present a case study of a nine year old boy, Steven, who sees his mother’s current de facto (her fourth since Steven was born) watching pornography and concludes that this is an acceptable activity. He then gets involved in viewing pornography regularly. Soon he is making his four year old half-brother Deacon act out homosexual acts with him. He also makes younger girls at school participate in sexual acts with him and threatens to hurt them if they tell anybody. While Steven certainly had significant social and developmental problems the specific expression of these problems in sexually aggressive behaviour with younger children was shaped by his exposure to graphic sexual images.

In 2003 the Australia Institute⁴ found that, of boys aged 16 or 17, one in twenty watch X-rated videos on a weekly basis while more than a fifth watch an X-rated video at least once a month.

In the light of this evidence of the damaging effect of X-rated videos on non-indigenous children and young people, in places other than the Northern Territory, as well as the evidence cited above on the impact of X18+ films on indigenous communities in Queensland, there is a strong case for complementing the specific provisions proposed in this bill by additional measures that would reduce the exposure of children everywhere to X18+ films.

4. Customs regulations

The overwhelming majority of films classified X18+ that are produced and sold from the Australian Capital Territory to the rest of Australia or that are sold in the Northern Territory are copies of originals produced overseas, mainly in the United States and Europe.

Prohibiting the import of these films would contribute to stopping their proliferation in Australia, including in indigenous communities. This measure would take some time to have its full effect as Australia pornography producers already have thousands of different X18+ films they can copy.

Recommendation 2: The Customs (Prohibited Imports) Regulations 1956, Regulation 4A, Importation of Objectionable Goods should be amended so that films that would be classified X18+ are included in the definition of objectionable goods.

5. Use of carrier services

Every day thousands of X18+ films are sent by carrier services from Canberra to pornography consumers all around Australia, including those in indigenous communities, not just in the Northern Territory but in Queensland and other States.

The Commonwealth has a clear constitutional head of power (Section 51 (v)) to make laws dealing with postal and other like services.

It could be made an offence to carry or cause to be carried or to receive from a carrier service a film classified X18+.

This would make it unlawful for pornography merchants in Canberra to send X18+ films not just to the prescribed areas in the Northern Territory but to any person in Australia. Rather than profiting from the sexualisation of young Australians, including indigenous children, the Canberra pornography industry would be effectively limited to over the counter sales.

Recommendation 3: It should be made an offence under Commonwealth law to carry or cause to be carried or to receive from a carrier service a film classified X18+.

6. Close down the X18+ film business

Obviously the most decisive measure to stop the pernicious effect of X18+ films on children and young people, indigenous and non-indigenous, in Australia would be to prohibit the production and supply of X18+ films in the Australian Capital Territory.

The ACT government inherited permissive legislation on X18+ films when it attained self-government. Sadly it has not followed the lead set by all six States in prohibiting the production and sale of X18+ films. This has meant that despite State bans on the sale of X18+ films anyone in Australia can purchase X18+ films by mail order from the ACT.

The Commonwealth, which retains ultimate responsibility under the territories power, ought to act to remedy this problem. This would be the most effective measure as it would close down the principal sources from which X18+ films find their way into indigenous communities.

Recommendation 4: The Commonwealth should use the territories power (Section 122 of the Constitution) to directly prohibit the production and sale of X18+ films in all territories, including the Australian Capital Territory as well as the Northern Territory.

7. Conclusion

It is understood that because this legislative package is a response to a national emergency there is some urgency in passing these bills. For this reason it may be difficult to adequately consider these recommendations.

Recommendation 1, proposes a relatively straightforward amendment to Schedule 1 of the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007. It should be dealt with as part of this legislative package.

The committee is invited to recommend that the government investigate the measures proposed in recommendations 2, 3 and 4 as means to complement the current legislative package.

8. Endnotes

1. Little Children are Sacred, p 63.
2. <http://www.datsip.qld.gov.au/pdf/taskforce.pdf>, p 101; p 180.
3. “Child Protection and the Internet” presented by Dr Janet Stanley, Ms Cassandra Tinning and Ms Katie Kovacs at the Ninth Australasian Conference on Child Abuse and Neglect 2003.
4. “Youth and Pornography in Australia: Evidence on the extent of exposure and likely effects” Michael Flood and Clive Hamilton, The Australia Institute Discussion Paper Number 52, February 2003 available at: http://www.tai.org.au/documents/dp_fulltext/DP52.pdf.