

## FILMS AND PUBLICATIONS AMENDMENT BILL, 2006

### GENERAL EXPLANATORY NOTE:

[            ]        Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_        Words underlined with a solid line indicate insertions in existing enactments.

---

## BILL

To amend the Films and Publications Act, 1996 so as to insert, amend and delete certain definitions; to establish and provide for the functions and powers of a Council; to provide for the appointment and powers of compliance officers; to provide for the composition, functions, powers and management of the Board; to repeal the Schedules to the Act; and to provide for matters connected therewith.

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—

### Amendment of section 1 of Act 65 of 1996

1. Section 1 of the Films and Publications Act, 1996 (Act No. 65 of 1996), hereinafter referred to as “the principal Act”, is hereby amended—

- (a) by the insertion before the definition of “Board” of the following definition:

**“Appeal Tribunal”** means the Appeal Tribunal established by section 3;”;

- (b) by the substitution for the definition of “chief executive officer” of the following definition:

**“chief executive officer”** means the chief executive officer of the Board referred to in section 4(1)~~[(a)]~~(c);”;

- (c) by the substitution for the definition of “child pornography” of the following definition:

“**child pornography**’ includes any image, however created, or any description of a person, real or simulated, who is, or who is depicted, made to appear, look like, represented or described as being under the age of 18 years—

~~[(i)](a)~~ engaged in sexual conduct;

~~[(ii)](b)~~ participating in, or assisting another person to participate in, sexual conduct; or

~~[(iii)](c)~~ showing or describing the body, or parts of the body, of such a person in a manner or in circumstances which, within context, amounts to sexual exploitation, or in such a manner that it is capable of being used for the purposes of sexual exploitation;”;

- (d) by the insertion after the definition of “consumer advice” of the following definition:

“**Council**’ means the Council established by section 3;”;

- (e) by the substitution for the definition of “distribute” of the following definition:

“**distribute**’, in relation to a film or a publication, without derogating from the ordinary meaning of that word, includes to sell, hire out or offer or keep for sale or hire and, for purposes of sections **[25(a), (b) and (c), 26(1)(a) and (b) and 28(1) and (2),]** 24A and 24B includes to hand or exhibit a film, game or a publication to a person under the age of 18 years, and also the failure to take reasonable steps to prevent access thereto by such a person;”;

- (f) by the deletion of the definition of “executive committee”;”;

- (g) by the insertion after the definition of “executive committee” of the following definition:

“**explicit sexual conduct**’ means, for purposes of sections 16 and 18 of this Act, graphic and detailed visual presentations or descriptions of any conduct characteristically associated with sexual intercourse;”;

- (h) by the substitution for the definition of “film” of the following definition:

“film’ means any sequence of visual images recorded in such a manner that by using such recording such images will be capable of being seen as a moving picture, and includes any picture intended for exhibition through any medium or device;”;

- (i) by the insertion after the definition of “film” of the following definitions:
- “game’ means a computer game, video game or other interactive computer software for interactive game playing, where the results achieved at various stages of the game are determined in response to the decision, inputs and direct involvement of the game player or players;
- “identifiable group characteristic’ means a characteristic that identifies an individual as a member of a group identified by race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and nationality;”;
- (j) by the substitution for the definition of “in public” of the following definition:
- “in public’**, **without derogating from the ordinary meaning of that word,**] includes any place to which admission is obtained for any consideration, direct or indirect, or by virtue of membership of any association of persons or contribution towards any fund;”;
- (k) by the insertion after the definition of “in public” of the following definition:
- “matters of public interest’ means, for the purposes of this Act, discussions, debates or opinions on matters pertaining to the common well-being or general welfare of the public or serving the interests of the public and includes discussions, debates and opinions on matters pertaining to religion, belief or conscience;”;
- (l) by the insertion after the definition of “Minister” of the following definition:
- “newspaper’ includes an on-line publication of a newspaper;”;
- (m) by the insertion after the definition of “possession” of the following definition:
- “prescribed’ means prescribed by regulation;”;
- (n) by the substitution for the definition of “publication” of the following definition:
- “publication’** means—

- (a) any newspaper, book, periodical, pamphlet, poster or other printed matter;
  - (b) any writing or typescript which has in any manner been duplicated;
  - (c) any drawing, picture, illustration or painting;
  - (d) any print, photograph, engraving or lithograph;
  - (e) any record, magnetic tape, soundtrack[, **except a soundtrack associated with a film,**] or any other object in or on which sound has been recorded for reproduction;
  - (f) computer software which is not a film;
  - (g) the cover or packaging of a film;
  - (h) any figure, carving, statue or model; and
  - (i) any message or communication, including a visual presentation, placed on any distributed network including, but not confined to, the Internet;"; and
- (o) by the deletion of the definition of "Review Board".

#### **Substitution of section 2 of Act 65 of 1996**

2. The following section is hereby substituted for section 2 of the principal Act:

##### **"Objects of Act**

2. The objects of this Act shall be to regulate the creation, production, possession and distribution of films, games and certain publications to—

- (a) provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care;
- (b) protect children from exposure to disturbing and harmful materials and from pre-mature exposure to adult experiences; and
- (c) make the use of children in, and exposure to, pornography punishable."

#### **Substitution of section 3 of Act 65 of 1996**

3. The following section is hereby substituted for section 3 of the principal Act:

**"Establishment of Film and Publication Board, Council and [Film and Publication Review Board] Appeal Tribunal**

3. (1) There is hereby established—
- (a) a juristic person which shall be known as the Film and Publication Board; **[and]**
  - (b) **[a juristic person which shall be known as the Film and Publication Review Board,]** the Council; and
  - (c) an Appeal Tribunal,

which shall perform the functions, exercise the powers and carry out the duties~~[,]~~ assigned to, conferred on or imposed upon them in terms of this Act or any other law.

(2) The Board and **[Review Board]** the Appeal Tribunal shall **[function without any bias and shall]** be independent and function without any bias.

(3) The seat of the Board **[and Review Board]** shall be determined by the Council in consultation with the Minister."

**Amendment of section 4 of Act 65 of 1996**

4. Section 4 of the principal Act is hereby substituted for the following section:

**"Composition of Council**

4. (1) The Council shall consist of—
- (a) a chairperson and a deputy chairperson appointed by the Minister;
  - (b) such number of members, not exceeding seven, as the Minister may appoint having regard to the need to ensure that the membership of the Council is broadly representative of the South African community and relevant stakeholders; and
  - (c) the chief executive officer appointed by the Council in consultation with the Minister.
- (2) (a) In the absence of the chairperson the deputy chairperson shall act as chairperson.
- (b) In the absence of the chairperson and the deputy chairperson at a meeting, the Council shall elect one of the members present to act as the chairperson of that meeting.

(3) Decisions of the Council shall be taken by a majority of votes, and in the case of an equality of votes, the chairperson of the meeting shall have the casting vote.

(4) The majority of the Council shall constitute a quorum at a meeting of the Council."

#### Insertion of section 4A in Act 65 of 1996

5. The following section is hereby inserted in the principal Act after section 4:

#### **"Powers and duties of Council**

**4A.(1)** The Council shall—

- (a) in consultation with the Minister, issue directives of general application, including classification guidelines, in accordance with matters of national policy consistent with the purpose of this Act;
- (b) determine and issue a Code of Conduct for members of the Council;
- (c) in consultation with the Minister, appoint the chief executive officer;
- (d) in consultation with the Minister, determine the qualifications, experience and terms and conditions of employment of classifiers;
- (e) appoint such number of classifiers that comply with the determinations contemplated in paragraph (d), as may be required, having regard to the likely volume of applications and submissions that will be made in terms of this Act;
- (f) review, at least four times a year, the functioning of the Board to ensure that the objectives of the Act are implemented efficiently and that the Board discharges its obligations and responsibilities in accordance with this Act or any other law; and
- (g) exercise and perform such other functions, powers and duties as are conferred or imposed on the Council by or under this Act or any other law.

(2) When making an appointment in terms of subsection (1)(e), the Council shall—

- (a) have regard to the person's personal attributes, integrity, qualifications, knowledge and experience in the different aspects of matters likely to come before the Board; and
- (b) ensure broad representation of the South African community in terms of race, ethnicity, gender and religion and may invite the public to nominate candidates suitable for appointment as classifiers.

(3) Meetings of the Council shall be convened by the chairperson and shall be held at the premises of the Board, unless, for *bona fide* reasons, the chairperson directs that a meeting be held at another venue.".

#### **Amendment of section 5 of Act 65 of 1996**

6. Section 5 of the principal Act is hereby amended by the substitution for the heading of the following heading:

**"[Constitution of Review Board] Composition of Appeal Tribunal"**.

#### **Substitution of section 6 of Act 65 of 1996**

7. The following section is hereby substituted for section 6 of the principal Act:

**"Members of [Board] Council and [Review Board] Appeal Tribunal to be appointed by Minister**

6. (1) The members of the [Board] Council contemplated in section 4(1)(a) and (b) and [Review Board] Appeal Tribunal shall be appointed by the Minister by notice in the *Gazette* after consultation with [the] Cabinet.

(2) The Minister may, whenever it is necessary to appoint members of the [Board] Council or [Review Board] Appeal Tribunal, appoint an advisory panel to advise him or her with regard to the persons who are to be appointed as such members and shall appoint one of the members of the advisory panel as the chairperson thereof.

(3) The Minister[, ] or the advisory panel may invite members of the public to **[propose]** nominate persons **[who may be considered]** for appointment.

(4) (a) A member of the **[Board]** Council or **[Review Board]** Appeal Tribunal appointed in terms of subsection (1) shall—

- (i) be a fit and proper person;
- (ii) be of good and sound character; and
- (iii) not be a person contemplated in section 7.

(b) A member of the **[Board]** Council or **[Review Board]** Appeal Tribunal shall have experience in, or knowledge of, any one or more of the following matters:

- (i) Community development;
- (ii) education;
- (iii) psychology;
- (iv) religion;
- (v) law;
- (vi) drama;
- (vii) literature;
- (viii) communications science;
- (ix) photography;
- (x) cinematography;
- (xi) gender matters;
- (xii) children's rights; or
- (xiii) any other relevant field of experience as may be prescribed.”.

#### **Amendment of section 7 of Act 65 of 1996**

8. Section 7 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

**“Disqualifications with regard to membership of **[Board]** Council or **[Review Board]** Appeal Tribunal”;**

(b) by the substitution in subsection (1) of the words preceding paragraph (a) of the following words:

“(1) A person shall not be qualified to be appointed as a member of the **[Board]** Council or **[Review Board]** Appeal Tribunal, or to be such a member, if he or she—”;



- (c) by the substitution in subsection (1)(h) for subparagraph (i) of the following subparagraph:

“(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);” and

- (d) by the substitution for subsection (2) of the following subsection:

“(2) Whenever circumstances in relation to a member of the **[Board] Council** or **[Review Board] Appeal Tribunal** so change that it would have disqualified him or her from being appointed as such a member, had they have been in existence at the time of his or her appointment, the seat of that member shall become vacant, and the vacancy in such seat shall be filled in accordance with section 6.”.

#### **Amendment of section 8 of Act 65 of 1996**

9. Section 8 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

**“Period of office of members of **[Board] Council** or **[Review Board] Appeal Tribunal**”;**

- (b) by the substitution for subsection (1) of the following subsection:

**“(1) Members of the Council and Appeal Tribunal shall be appointed for a period of five years.”.**

#### **Substitution of section 9 of Act 65 of 1996**

10. The following section is hereby substituted for section 9 of the principal Act:

##### **“Removal from office**

9. (1) The Minister may remove a member of the **[Board] Council** or **[Review Board] Appeal Tribunal** from office on the grounds of incapacity, incompetence, misconduct or misrepresentation.

(2) A decision to remove a member of the **[Board] Council** or **[Review Board] Appeal Tribunal** from office shall be based on a finding of a tribunal appointed by the Minister: Provided that the member shall have the right to be heard.

(3) The Minister may suspend a member of the **[Board] Council** or **[Review Board] Appeal Tribunal** from office pending the finding of the tribunal referred to in subsection (2).

(4) A member of the **[Board] Council** or **[Review Board] Appeal Tribunal** shall vacate his or her office when any of the circumstances referred to in section 7 become applicable in respect of him or her, and the Minister **[, upon information given to him or her by the Chief executive officer or the chairperson of the Review Board,]** issues him or her with a certificate to that effect.”.

#### Insertion of section 9A in Act 65 of 1996

11. The following section is hereby inserted in the principal Act after section 9:

#### **“Composition, functions, powers and management of Board**

**9A.** (1) The Board shall consist of the chief executive officer and such number of officers as determined by the Council.

(2) The functions of the Board shall be to—

- (a) appoint classification committees to examine and determine, in accordance with any classification guidelines established by the Council, the classification of any film, game or publication submitted to the Board under this Act;
- (b) determine any application made under sections 22 and 23 of this Act for an exemption from any provision of this Act in respect of any film, game or publication; and
- (c) determine any application made under section 18(1) for registration as a distributor or exhibitor of films, games or publications.

(3) The chief executive officer shall be responsible for all matters relating to the administration and management of the Board, including—

- (a) the appointment of administrative staff;
- (b) the appointment of compliance officers;
- (c) the submission to the Council of the quarterly reports contemplated in section 4A(1)(f); and
- (d) the submission of the annual report and financial statements contemplated in section 55 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and relevant Treasury Regulations.”.

(4) The chief executive officer may delegate any power conferred on him or her.”.

#### **Amendment of section 10 of Act 65 of 1996**

12. Section 10 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Board shall appoint classification committees as may be prescribed.

(2) Decisions of a classification committee shall be taken by a majority of votes: Provided that where there is an equality of votes the Board shall appoint an additional member to such committee so as to enable the committee to come to a majority **[a committee consists of two members only, the Board shall in a case where those members differ with regard to the decision which should be taken by the classification committee, appoint a third member to that committee so as to enable the committee to come to a]** decision.”.

**Substitution of section 11 of Act 65 of 1996**

13. The following section is hereby substituted for section 11 of the principal Act:

**"Administrative [staff of Board and Review Board] support for Council and Appeal Tribunal**

11. The administrative work connected with the performance of the functions, the exercise of the powers and the carrying out of the duties of the **[Board and the Review Board] Council and Appeal Tribunal** shall be performed by the staff **[appointed, in the case of the Council, by the chief executive officer, and in the case of the Appeal Tribunal, by the chairperson thereof, under the management, supervision and control of the chief executive officer and the chairperson, as the case may be] of the Board."**

**Amendment of section 12 of Act 65 of 1996**

14. The following section is hereby substituted for section 12 of the principal Act:

**"Remuneration**

12. The Members and staff of the Council, Board, **[Review Board] Appeal Tribunal**, **[and]** an advisory panel and any person appointed as an expert to assist or **[advice] advise** the Council, Board or **[Review Board] Appeal Tribunal [or a classification committee]**, shall receive such remuneration, allowances and other benefits as may be determined by the Minister in consultation with the Minister of Finance."

**Amendment of section 13 of Act 65 of 1996**

15. Section 13 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) The expenditure in connection with the performance of the functions, the exercise of powers and the carrying out of the duties of the Council, Board, **[Review Board] Appeal Tribunal** and an advisory panel, shall be defrayed from money appropriated by Parliament for the purpose.

(2) The chief executive officer shall be the accounting officer **[in respect of all money referred to in subsection (1)]** of the Board.".

**Amendment of section 14 of Act 65 of 1996**

16. The following section is hereby substituted for section 14 the principal Act:

**"Annual Report**

14. (1) **[As soon as practicable]** The Council shall, after the end of each financial year **[the Board shall, from information supplied to it by the chief executive officer and the chairperson of the Review Board, compile]** prepare a report on all the activities of the Board, Council and **[Review Board]** Appeal Tribunal during that financial year, and on the financial position of the Board, Council and **[Review Board]** Appeal Tribunal as at the end of that financial year.

(2) **[That]** The report contemplated in subsection (1), together with the audited balance sheet and accounts pertaining to the funds of the Board, Council and [Review Board] Appeal Tribunal shall be submitted to the Minister[, and the Minister shall lay it upon the Table] for tabling in Parliament **[within 14 days after receipt thereof if Parliament is then in session, or if Parliament is not then in session, within 14 days of the commencement of the next session]."**

**Repeal of section 15 of Act 65 of 1996**

17. Section 15 of the principal Act is hereby repealed.

**Insertion of section 15A in Act 65 of 1996**

18. The following section is hereby inserted in the principal Act after section 15:

**"Functions and powers of compliance officers**

15A. (1) A compliance officer may, for the purpose of achieving the objects of this Act and of—

- (a) advising distributors and exhibitors of films and games of the requirements of this Act with regard to the distribution or exhibition of films and games; and
- (a) ensuring that all films and games offered for sale or hire by a distributor have been classified in terms of this Act and that all such films and games display, in the prescribed manner, the classification reference number, the age restriction, consumer advice and such other conditions as may have been imposed on the distribution of such films and games by the Board,

enter any premises, with the consent of the person in charge of that premises, on or in which the business of the sale, hire or exhibition of films or games is being conducted.

(2) Upon entry of any premises as contemplated in subsection (1), the compliance officer may—

- (a) request the production of a certificate of registration as a distributor or exhibitor of films or games issued by the Board and, where relevant, a licence to conduct the business of adult premises issued by a licensing authority contemplated in section 24 of this Act;
- (b) examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24(2) of this Act;
- (c) examine or inspect any film or games being offered for sale or hire for compliance with the requirements of this Act with regard to the distribution of that film or game; and
- (d) advise that films, games and publications being offered for sale or hire that do not comply either with the requirements of this Act or any decision of the Board with regard to the distribution of that film, game or publication be removed from any display or offer for sale or hire until such products

comply with the requirements of this Act or any decision of the Board with regard to their distribution.

(3) When performing any function in terms of this section, a compliance officer may request the assistance of a police official of the South African Police Service."

### **Substitution of section 16 of Act 65 of 1996**

19. The following section is hereby substituted for section 16 of the principal Act:

#### **"Classification of publications**

16. (1) Any person may request, in the prescribed manner, that a publication, other than a newspaper, which is to be or is being distributed in the Republic, be classified in terms of this section.

(2) Any person, except the publisher of a newspaper, who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that contains visual presentations, descriptions or representations of or amounting to—

- (a) sexual conduct;
- (b) propaganda for war;
- (c) incitement of imminent violence; or
- (d) advocacy of hatred based on any identifiable group characteristic and that constitutes incitement to cause harm,

shall submit, in the prescribed manner, such publication for examination and classification to the Board before such publication is distributed, exhibited, offered or advertised for distribution or exhibition.

(3) The Board shall refer any publication submitted to the Board in terms of subsection (1) or (2) to a classification committee for examination and classification of that publication.

(4) The classification committee shall, in the prescribed manner, examine a publication referred to it and shall—

- (a) classify that publication as a refused classification if the publication contains visual presentations, descriptions or representations of or amounting to—

- (i) child pornography, propaganda for war or incitement of imminent violence; or
- (ii) advocacy of hatred <sup>and</sup> based on any identifiable group characteristic that constitutes incitement to cause harm,

unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest;

- (b) classify the publication as XX if it contains visual presentations, descriptions or representations of or amounting to—

- (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any

- person;  
*bisexual, rape, incest*
- (ii) conduct or an act which is degrading of human beings;

- (iii) conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour;

- (iv) explicit infliction of sexual or domestic violence; or

- (v) explicit visual presentations of extreme violence,

unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit, in which event the publication shall be classified X18 or classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;

- (c) classify the publication as X18 if it contains visual presentations, descriptions or representations of explicit sexual conduct, unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit, in which event the publication shall be classified with reference to the guidelines relating to the protection of



children from exposure to disturbing, harmful and age-inappropriate materials; or

- (d) if the publication contains visual presentations, descriptions or representations which may be disturbing or harmful to or age-inappropriate for children, classify that publication, with reference to the relevant guidelines, by the imposition of appropriate age-restrictions and such other conditions as may be necessary to protect children in the relevant age categories from exposure to such materials.

(5) Where a publication has been classified as a refused classification or has been classified XX or X18, the chief executive officer shall cause that classification decision to be published by notice in the *Gazette*, together with the reasons for the decision.

(6) Where a publication submitted to the Board in terms of this section contains visual presentations, descriptions or representations of, or amounts to, child pornography, the chief executive officer shall refer that publication to a police official of the South African Police Service for investigation and prosecution."

#### **Repeal of section 17 of Act 65 of 1996**

20. Section 17 of the principal Act is hereby repealed.

#### **Substitution of section 18 of Act 65 of 1996**

16. The following section is hereby substituted for section 18 of the principal Act:

##### **"Classification of films and games**

18. (1) Any person who distributes, broadcasts or exhibits any film or game in the Republic shall, in the prescribed manner, on payment of the prescribed fee—

- (a) register with the Board as a distributor or exhibitor of films or games; and
- (b) submit for examination and classification any film or game that has not been classified, exempted or