

approved in terms of this Act or the Publications Act, 1974 (Act No. 42 of 1974).

(2) The Board shall refer any film or game submitted under subsection (1)(b) to a classification committee for examination and classification.

(3) The classification committee shall, in the prescribed manner, examine the film or game referred to it and shall—

(a) classify the film or game as a refused classification if the film or game—

(i) contains depictions or scenes of child pornography, propaganda for war or incites imminent violence; or

(ii) advocates hatred based on any identifiable group characteristic that constitutes incitement to cause harm,

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

(b) classify the film or game as XX if it depicts—

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

(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, in respect of the film or game, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be classified X18 or classified with reference to the relevant guidelines relating to

the protection of children from exposure to disturbing, harmful or age-inappropriate materials;

- (c) classify the film or game as X18 if it contains visual presentations, descriptions or representations of explicit sexual conduct, unless, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials; or
- (d) if the film or game contains scenes which may be disturbing or harmful to, or age-inappropriate for children, classify that film or game with reference to the relevant guidelines issued by the Board 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.

(4) Where a film or game has been classified as a refused classification or has been classified as 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.

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

Insertion of sections 18A and 18B in Act 65 of 1996

17. The following sections are hereby inserted in the principal Act after section 18:

"Display of classification decisions

18A.(1) Where a film, game or publication has been classified or exempted from classification in terms of this Act—

- (a) if it is a film or game approved for sale or hire, display the following certificate conspicuously and clearly visible on or through the cover or packaging of the cassette or holder of the film or game:
'CERTIFICATE OF CLASSIFICATION
 Certificate of Classification No.:
 Classification and Consumer Advice:
 Any other condition imposed:';
- (b) if it is a publication, display either on the front of the cover or on the wrapper of the publication, where applicable—
 - (i) classification and consumer advice; or
 - (ii) any other condition aimed at the protection of children; or
- (c) if it is a film approved for exhibition in public, display on all advertisements and illustrated exhibitions associated with that film the classification, consumer advice and any other condition imposed by the Board with respect to the exhibition of that in public.

(2) The format, including size and design, as well as the manner of the display of certificates of classification on films, games and publications approved for distribution or exhibition, may be prescribed.

Reclassification

18B. Any person may, after a period of two years from the date when a film, game or publication was first classified in terms of this Act, apply, in the prescribed manner, for a less restrictive classification of that film, game or publication.".

Substitution of section 19 of Act 65 of 1996

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

"Right to appear, to be represented, to adduce evidence, to address, to have case and arguments properly considered, and to be informed of grounds of decision

19. The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for **[a decision and]** classification in terms of **[section 17]** section 16, **[and any person who applies for a classification of a film,]** or the reclassification of a film, game or publication, or for a permit, exemption or licence, or who is the publisher of a publication which is the subject of an application for classification, or whose financial interest could be detrimentally affected by a decision of the Board on such application, or with regard to an exemption or permit, the withdrawal of which is being considered, or who appeals to the **[Review Board]** Appeal Tribunal against a decision with regard to such an application, shall have the right—

- (a) to appear in person before the **[executive committee]** Board, classification committee or **[Review Board]** Appeal Tribunal, or to be represented or assisted by a legal practitioner or by any other person of his or her choice, to adduce oral or written evidence and, subject to a reasonable time-limit imposed by the chairperson concerned, to address that committee, **[or board]** the Board or Appeal Tribunal, in the language of his or her choice; and
- (b) to have his or her case and arguments duly considered and to be informed, in writing, of the decision of the **[Review]** Board or Appeal Tribunal **[or committee]**, of the reasons for and grounds upon which such decision is based, which shall include, in the case of a refused classification or an XX classification of a publication, **[or]** film[,] or game a reference to the particular **[clause of Schedule 1 or 6]** section of the Act which **[forms]** formed the basis of the decision, **and of the names of**

the members of that board or committee who took part in rendering the decision of that board or committee].”.

Amendment of section 20 of Act 65 of 1996

19. Section 20 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for a decision and classification in terms of **[section 17]** section 16, and any person who applied for the classification of a film or game, or the publisher or distributor of a publication which formed the subject of any complaint or application in terms of section 16, may within a period of 30 days from the date on which he or she was notified of the decision, **[which in the case of the classification of a publication shall be the date of publication of the decision in the Gazette,]** in the prescribed manner appeal to the **[Review]** Appeal Tribunal.”;

(b) by the substitution for subsections (3) and (4) of the following subsections:

“(3) The **[Review]** Appeal Board may refuse the appeal and confirm the decision in question, or allow the appeal, either wholly or in part, and give such decision as the Board **[executive committee]** should, in its view, have given, and amend the classification of the **[publication or]** film, game or publication, specifying the **[clause]** section of **[Schedule 1 or 6]** this Act upon which the classification is in terms of its decision based, and may impose other conditions in respect of the distribution or exhibition of the **[publication or]** film, game or publication.

(4) The chief executive officer shall, in the case of a successful appeal against a decision whereby an application for **[a]** registration, exemption, permit or licence is refused, issue the requisite certificate of registration, exemption, permit or licence, subject to the conditions, if any, imposed by the **[Review]** Appeal Tribunal.”.

Repeal of section 21 of Act 65 of 1996

20. Section 21 of the principal Act is hereby repealed.

Amendment of section 22 of Act 65 of 1996

21. Section 22 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections:

“(1) The **[executive committee]** Board may on receipt of an application in the prescribed form, subject to such conditions as it may deem fit, exempt in writing any person or institution from **[sections 25, 27 and 28]** section 24A, 24B or 24C if it has good reason to believe that *bona fide* purposes will be served by such an exemption.

(2) Where the **[executive committee]** Board after due inquiry has good reason to believe that the conditions of an exemption are not complied with or that the *bona fide* purposes are no longer present, it may withdraw the exemption.”; and

(c) by the deletion of subsection (3).

Substitution of section 23 of Act 65 of 1996

22. Section 23 of the principal Act is hereby substituted for the following section:

“Exhibition of films to distributor of films not prohibited by this Act

23.(1) The provisions of **[section 26(1)(a) and (b)]** section 24A(1), (2)(a) and (3) shall not prohibit the exhibition of any film or game to any person in the course of his or her business as a distributor of films or games or to the representative of such distributor acting for the purposes of such business.

(2) The **[executive committee]** Board may, in its discretion and subject to such conditions as it may deem fit to impose, either by means of a permit, issued in the prescribed form, or by notice in the *Gazette*, exempt from **[section 26]** classification any particular film or game, any particular class of films or games, or any film or game intended for exhibition to a particular group of persons or under any particular circumstances, and may at any

time, after due inquiry, withdraw any such permit or exemption: Provided that if such exemption was granted by notice in the *Gazette*, the chief executive officer shall by notice withdraw the exemption.

(3) A broadcaster who is subject to regulation by the Independent Communication Authority of South Africa shall, for purposes of broadcasting, be exempt from the duty to apply for classification of a film or game and, subject to section 24A(2) and (3), shall, in relation to a film or game, not be subject to any classification or condition made by the Board in relation to that film or game."

Amendment of section 24 of Act 65 of 1996

23. Section 24 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections:

"(1) Any person may **[notwithstanding the provisions of section 25(b), 26(1)(b) or 28(2),]** exhibit in public or distribute any film, game or publication [or film] classified as X18 in terms of [a decision of the Board which has been published in the *Gazette* as X18 or a publication which falls within Schedule 2 read with Schedule 5,] this Act if such person is the holder of a licence to conduct the business of adult premises, issued by a licensing authority in terms of **[section 2, read with item 2 of Schedule 1, of the Business Act, 1991 (Act No. 71 of 1991), and if]** relevant national, provincial or local government laws: Provided that such exhibition or distribution takes place on or from within premises forming part of a building.

(2) Any exemption granted in terms of subsection (1) may be suspended by the **[executive committee] Board** for a period not exceeding one year, if the **[executive committee] Board**, after the holding of an inquiry, is satisfied that—

(a) notices stating that no person under the age of 18 years may enter or be within such premises were not displayed, in the manner prescribed by the Board, at all entrances to the premises concerned;

- (b) a film, game or publication was displayed or **[a film was]** exhibited within such premises, or in a display window or door forming part thereof, in such a manner or in such a position that the film, game or publication **[or film]** could be seen from any point outside the premises concerned;
- (c) any person under the age of 18 years was allowed to enter or be within the premises concerned; or
- (d) any film, game or publication **[or film]** classified as X18 in terms of a decision of the Board, published in the *Gazette*, was delivered by the person licensed in terms of subsection (1) to conduct such premises—
 - (i) to a person who is not the holder of a similar licence; or
 - (ii) in a manner which was not in accordance with regulations made **[by the Board,]** under this Act with the aim of preventing the delivery of such films, games or publications **[and films]** to persons under the age of 18 years.”.

Insertion of sections 24A, 24B and 24C in Act 65 of 1996

24. The following sections are hereby inserted in the principal Act after section 24:

“Prohibitions, offences and penalties on distribution and exhibition of films, games and publications

24A. (1) Any person who knowingly distributes or exhibits in public a film or game without first having been registered with the Board as a distributor or exhibitor of films or games shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(2) Any person who knowingly broadcasts, distributes, exhibits in public, offers for sale or hire or advertises for exhibition, sale or hire any film, game or a publication referred to in section 16(1) or (2) of this Act which has—

- (a) except with respect to broadcasters, not been classified by the Board;
- (b) been classified as a refused classification; or
- (c) been classified as XX, or would, except with regard to a newspaper, have been so classified had it been submitted for classification,

shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(3) Any person, not being the holder of a licence to conduct the business of adult premises and, with regard to films and games, not being registered with the Board as a distributor or exhibitor of films or games, and who knowingly broadcasts, distributes, exhibits in public, offers for exhibition, sale or hire or advertises for sale or hire any film, game or a publication which has been classified X18, or would have been so classified had it been submitted for classification, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) Any person who knowingly distributes or exhibits any film, game or publication classified X18 or which contains depictions, descriptions or scenes of sexual conduct to a person under the age of 18 years shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(5) Any person who knowingly distributes a film, game or publication which has been classified by the Board without displaying, clearly and conspicuously and in the prescribed manner, the classification reference number, the age restriction, consumer advice and any other condition imposed on the distribution of that film, game or publication shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(6) Any person who knowingly advertises a film or game in any medium without indicating, clearly and conspicuously so as to be plainly visible to the public, the age restriction, consumer advice and any other condition imposed on the film or game being advertised,

shall be guilty of an offence and liable, upon conviction, to be a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(7) Any person who knowingly and without the prior written approval of the Board exhibits in public during the same screening session, or distributes on the same cassette or disc of a film or game, a trailer advertising a film or an game with a more restrictive classification than the featured film or game, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

Prohibition, offences and penalties on possession of films, games and publications

24B. (1) Any person who—

- (a) unlawfully possesses;
- (b) creates, produces or in any way contributes to, or assists in the creation or production of;
- (c) imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates the importation, procurement, obtaining or accessing of; or
- (d) knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or distributed or assists in making available, exporting, broadcasting or distributing, any film, game or publication which contains depictions, descriptions or scenes of child pornography or which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children,

shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

(2) Any person who, having knowledge of the commission of any offence under subsection (1) or having reason to suspect that such an offence has been or is being committed and fails to—

- (a) report such knowledge or suspicion as soon as possible to a police official of the South African Police Service; and
- (b) furnish, at the request of the South African Police Service, all particulars of such knowledge or suspicion,

shall be guilty of an offence and liable, upon conviction, to be sentenced to a fine or to imprisonment for a period not exceeding ten years or both to a fine and such imprisonment.

(3) Any person who has control over any film, game or publication which contains depictions, descriptions or scenes of sexual conduct and who fails to take all reasonable steps to prevent access to such materials by any person under the age of 18 years shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) Any person who, by means of any telecommunication system, communicates with, contacts or sends any message to a child, or accesses or attempts to access any information concerning a child, for the purpose of committing or facilitating the commission of an offence under this Act or any other law, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(5) It shall not be a defence to a charge under subsection (4) that the accused believed that the person was 18 years or older unless the accused took reasonable steps to ascertain the age of that person.

(6) Any person who processes, facilitates or attempts to process or facilitate a financial transaction, knowing that such transaction will facilitate access to, or the distribution or possession of, child pornography, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding ten years or to both a fine and such imprisonment."

Obligations of internet access and service providers

24C. (1) For the purposes of this section, unless the context otherwise indicates—

- (a) **'child-oriented service'** means a contact service and includes a content service which is specifically targeted at children;
- (b) **'contact service'** means any service intended to enable people previously unacquainted with each other to make initial contact and to communicate with each other;
- (c) **'content'** means any sound, text, still picture, moving picture, other audio visual representation or sensory representation and includes any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated but excludes content contained in private communications between consumers;
- (d) **'content service'** means—
 - (i) the provision of content; or
 - (ii) the exercise of editorial control over the content conveyed via a communications network, as defined in the Electronic Communications Act, 2005 (Act No. 35 of 2005), to the public or sections of the public; and
- (e) **'operator'** means any person who provides a child-oriented contact service or content service, including Internet chat-rooms.

(2) Any person who provides child-oriented services, including chat-rooms, on or through mobile cellular telephones or the internet, shall—

- (a) moderate such services and take such reasonable steps as are necessary to ensure that such services are not being used by any person for the purpose of the commission of any offence against children;

- (b) prominently display reasonable safety messages in a language that will be clearly understood by children, on all advertisements for a child-oriented service, as well as in the medium used to access such child-oriented service including, where appropriate, chat-room safety messages for chat-rooms or similar contact services;
- (c) provide mechanism to enable children to report suspicious behaviour by any person in a chat-room to the service or access provider;
- (d) report details of any information regarding behaviour which is indicative of the commission of any offence by any person against any child to a police official of the South African Police Service; and
- (e) where technically feasible, provide children and their parents or primary care-givers with information concerning software or other tools which can be used to filter or block access to content services and contact services, where allowing a child to access such content service or contact service would constitute an offence under this Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools.

(3) Any person who fails to comply with the provisions of subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.”.

Repeal of sections 25, 26 and 27 of Act 65 of 1996

25. Sections 25, 26 and 27 of the principal Act are hereby repealed.

Amendment of section 27A of Act 65 of 1996

26. Section 27A of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Any person who—

(a) fails to comply with subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or

(b) fails to comply with subsections (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment."

Repeal of sections 28 and 29 of Act 65 of 1996

27. Sections 28 and 29 of the principal Act are hereby repealed.

Amendment of section 30 of Act 65 of 1996

28. Section 30 of the principal Act is hereby amended—

- (a) by the deletion of subsections (1), (1A), (2) and (3);
 (b) by the substitution for paragraphs (a) and (b) in subsection (4) of the following paragraphs:

"(4)(a) If any person who has contravened or failed to comply with **[section 26(1)(a), (aA), (b), (c), (d), (2) or (3) or 27A(1)]** sections 24(A)(1), 2(a), (5), (6), (7), 24C(2) or 27A(1)(a) agrees to abide by a decision **[of the executive committee]** of the Board and deposits with the Board such sum as **[the executive committee of]** the Board may determine but not exceeding the greater of two thousand rand or two times the prescribed classification costs, where applicable, on each such contravention or failure to comply, **[the executive committee of]** the Board may, after conducting an enquiry, determine the matter summarily and may, without legal proceedings, order forfeiture by way of

penalty of the whole or any part of the amount so deposited.

- (b) There shall be a right of appeal to the Minister from any determination or order of the **[executive committee of the]** Board under paragraph (a), as long as that right is exercised within a period of three months from the date of such determination or order.”.

Amendment of section 30B of Act 65 of 1996

29. Section 30B of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) any film, game or publication **[or film]** has or has not been submitted to the Board in terms of this Act.”.

Amendment of section 31 of Act 65 of 1996

30. Section 31 of the principal Act is hereby amended—

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

“(1) The Minister **[shall]** may—

- (a) in consultation with the Minister of Finance, make regulations, **[prescribing the]** regarding fees **[which shall be]** payable in respect of any application, exemption, permit or appeal under this Act;
- (b) make regulations relating to the **[establishment of,]** procedure with regard to the nomination of persons as candidates for the **[Board]** Council or **[Review Board]** Appeal Tribunal, further relevant experience in terms of section 6(4)(a) of this Act and the experience of persons who may be appointed as members of the advisory panel referred to in section 6(1) of this Act; and
- (c) after consultation with the Council, make regulations relating to—
- (i) the procedures and forms for making any application or submission under this Act;

- (ii) the form of any certificate to be issued in terms of this Act; and
 - (iii) the format and details of the display or exhibition of decisions of the Board with respect to films, games and publications classified in terms of this Act;
 - (d) after consultation with the Appeal Tribunal, make regulations regarding the procedures and forms for the submission of appeals to the Appeal Tribunal;
 - (e) make regulations on any matter that may be prescribed under this Act; and
 - (f) make regulations generally on any matter required for the better achievement of the objects and purposes of this Act.”; and
- (b) by the deletion of subsection (2).

Repeal of section 32 of Act 65 of 1996

31. Section 32 of the principal Act is hereby repealed.

Repeal of Schedules of Act 65 of 1996

32. Schedules 1 to 10 to the principal Act are hereby repealed.

Substitution of words in Act 65 of 1996

33. The principal Act is hereby amended by the substitution for the words “Review Board”, wherever it occurs, of the words “Appeal Tribunal”.

Transitional provisions

34. The provisions of this Act shall not affect—
- (a) anything done or omitted in terms of the principal Act before the date of commencement of this Act; and
 - (b) anything done under the provisions of the principal Act prior to the commencement of this Act, which can be done under the principal Act

as amended by this Act, shall be deemed to have been done under the principal Act as amended by this Act.

Short title and commencement

35. This Act is called the Films and Publications Amendment Act, 2006, and comes into operation on a date determined by the President by proclamation in the *Gazette*.