

FILMS AND PUBLICATIONS ACT, NO 65 OF 1996
as amended by the *Films and Publications Amendment Act, 1999*,
the *Films and Publications Amendment Act, 2004*, and the
Films and Publications Amendment Act, 2009

ACT¹

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

CHAPTER 1

Definitions

1 In this Act, unless the context otherwise indicates-

- (a) **"Appeal Tribunal"** means the Appeal Tribunal established by section 3;
- (b) **"Board"** means the Film and Publication Board, established by section 3;
- (c) **"certificate"**, in relation to a film, means the certificate referred to in section 18, issued in respect of the classification of a film;
- (d) **"chief executive officer"** means the chief executive officer of the Board referred to in section 4(1)(c);
- (e) **"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) engaged in sexual conduct;
 - (ii) participating in, or assisting another person to participate in, sexual conduct; or
 - (iii) 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;
- (f) **"classification"**², means any decision by the Board in terms of this Act;

¹ The Board is an "organ of state" – see section 239(b)(ii) of the *Constitution*. Its decisions are "administrative actions" in terms of the *Promotion of Administrative Justice Act* – see section 1 : "administrative action means any decision taken...by an organ of state when....exercising a public power or performing a public function in terms of any legislation...which adversely affects the rights of any person and which has a direct, external legal effect...", read with definition of "decision". In terms of section 33(1) of the *Constitution*, "everyone has the right to administrative action that is lawful, reasonable and procedurally fair." In terms of the *FP Act*, classification decisions (decisions following the examination of a film or publication) may only be taken by classification committees appointed in terms of section 10 and acting in terms of sections 17 and 18(4), as the case may be

- (g) "**classification committee**" means a classification committee referred to in section 10;
- (h) "**computer software**" means a programme and associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows interactive use;
- (i) "**consumer advice**" means that part of the Board's decision with regard to a film which informs the public of the fact that certain sensitivities could be offended by a film;
- (j) "**Council**" means the Council established by section 3;
- (k) "**degrade**" means advocate a particular form of hatred which is based on gender;
- (l) "**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 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;
- (m) "**distributor**", in relation to a film, means a person who conducts business in the selling, hiring out or exhibition of films;
- (n) "**domestic violence**" means depictions or descriptions of-
- (i) physical abuse;
 - (ii) sexual abuse; or
 - (iii) emotional, verbal and psychological abuse,
- and includes any other abusive behaviour involving persons who are or have been in an intimate relationship or who are family members, regardless of gender or sexual orientation;
- (o) "**explicit sexual conduct**" means, for purposes of sections 16 and 18, graphic and detailed visual presentations or descriptions of any conduct contemplated in the definition of "sexual conduct" in this Act;

² A film submitted to the Board is referred to a classification committee appointed from a panel of examiners. The committee examines the film in the light of the Act, a set of classification guidelines based on generally-accepted community standards and the Constitution. The committee pays particular attention to the following classifiable elements : violence, sex, language, nudity and prejudice or negative stereotyping relating to race, ethnicity, gender or religion. With the aim of protecting children from potentially disturbing and harmful materials, the committee will impose an appropriate age restriction, depending on how often and how intensely these classifiable elements occur in the film. Age restrictions are legally enforceable. Distribution and/or exhibition contrary to age-restricted decisions are offences under the Act.

- (p) **"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;
- (q) **"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;
- (r) **"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;
- (s) **"Internet address"** means a website, a bulletin board service, an Internet chat-room or newsgroup or any other Internet or shared network protocol address;³
- (t) **"Internet service provider"** means any person who carries on the business of providing access to the Internet by any means;⁴
- (u) **"in public"** 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;
- (w) **"matters of public interest"** means 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;
- (x) **"Minister"** means the Minister to whom the administration of this Act has been assigned;
- (y) **"newspaper"** includes an on-line publication of a newspaper;
- (z) **"possession"**, in relation to a film or publication, without derogating from its ordinary meaning, includes keeping or storing in or on a computer or computer system or computer data storage medium and also having custody, control or supervision on behalf of another person;⁵
- (aa) **"prescribed"** means prescribed by regulation;
- (bb) **"publication"** means-
- (i) any newspaper, book, periodical, pamphlet, poster or other printed matter;

³ *Films and Publications Amendment Act, 2004*

⁴ *Films and Publications Amendment Act, 2004*

⁵ *Films and Publications Amendment Act, 2004*

- (ii) any writing or typescript which has in any manner been duplicated;
- (iii) any drawing, picture, illustration or painting;
- (iv) any print, photograph, engraving or lithograph;
- (v) any record, magnetic tape, soundtrack or any other object in or on which sound has been recorded for reproduction;
- (vi) computer software which is not a film;
- (vii) the cover or packaging of a film; and
- (viii) any figure, carving, statue or model;
- (ix) any message or communication, including a visual presentation, placed on any distributed network including, but not confined to, the Internet;⁶

(cc) “sexual conduct” includes-

- (i) male genitals in a state of arousal or stimulation;
- (ii) the undue display of genitals or of the anal region;
- (iii) masturbation;
- (iv) bestiality;
- (v) sexual intercourse, whether real or simulated, including anal sexual intercourse;
- (vi) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, with or without any object;
- (vii) the penetration of a vagina or anus with any object;
- (viii) oral genital contact; or
- (ix) oral anal contact;⁷

(dd) “sexual violence” means conduct or acts contemplated in the definitions of “sexual conduct” and “explicit sexual conduct” that are accompanied either by force or coercion, actual or threatened, or that induces fear or psychological trauma in a victim;

(ee) "this Act" includes the regulations made in terms of section 31;

⁶ *Films and Publications Amendment Act, 1999*

⁷ *Films and Publications Amendment Act, 2004*

(ff) **“visual presentation”** means—

- (i) a drawing, picture, illustration, painting, photograph or image; or
- (ii) a drawing, picture, illustration, painting, photograph or image or any combination thereof, produced through or by means of computer software on a screen or a computer printout.⁸

⁸ *Films and Publications Amendment Act, 1999*

CHAPTER 2

Film and Publication Board and Film and Publication Review Board

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 premature exposure to adult experiences; and
 - (c) make the use of children in and the exposure of children to pornography punishable.

Establishment of Film and Publication Board, Council and Appeal Tribunal

- 3 (1) There is hereby established-
- (a) a juristic person which shall be known as the Film and Publication Board;
 - (b) 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 the Appeal Tribunal shall be independent and function without any bias.
- (3) The seat of the Board shall be determined by the Council in consultation with the Minister.

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) A quorum of the Council is constituted by fifty percent plus one of its total number of members.

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) at least four times a year, review and report to the Council on the functioning of the Board to ensure that the objects of this 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.

Composition of Appeal Tribunal

- 5 (1) The Appeal Tribunal shall consist of-
 - (a) a chairperson; and
 - (b) eight other members.
- (2) A member of the Appeal Tribunal designated by the Minister shall act as chairperson of the Appeal Tribunal during the chairperson's absence.⁹
- (3) The chairperson and four other members of the Appeal Tribunal shall constitute a quorum of the Appeal Tribunal.
- (4) Decisions of the Appeal Tribunal shall be taken by a majority of votes, and in the case of an equality of votes the chairperson shall have a casting vote.

⁹ *Films and Publications Amendment Act, 2004*

Members of Council and Appeal Tribunal to be appointed by Minister

- 6 (1) The members of the Council and Appeal Tribunal shall be appointed by the Minister by notice in the *Gazette* after consultation with Cabinet.
- (2) The Minister may, whenever it is necessary to appoint members of the Council or 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 nominate persons for appointment.
- (4) (a) A member of the Council or Appeal Tribunal appointed in terms of subsection (1) shall—
- (i) be a fit and proper person:
 - (ii) be of good character; and
 - (iii) not be disqualified in terms of section 7.
- (b) A member of the Council or 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.

Disqualifications with regard to membership of Council or Appeal Tribunal

- 7 (1) A person shall not be qualified to be appointed as a member of the Council or Appeal Tribunal, or to be such a member, if he or she-
- (a) is not a citizen of and is not permanently resident in the Republic;
 - (b) at the time when the appointment is to be made, holds an office of profit in the service of the State;
 - (c) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the film, publishing or printing industry;
 - (d) or his or her spouse, partner or associate, holds an office in or is employed by any company, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (c);
 - (e) is an unrehabilitated insolvent;
 - (f) is subject to an order of a competent court declaring him or her to be mentally ill or mentally disordered;
 - (g) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which he or she has been sentenced to imprisonment without the option of a fine;
 - (h) at any time before the commencement of this Act was, or at any time after such commencement is, convicted-
 - (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)*;
 - (ii) elsewhere than in the Republic, of any offence corresponding materially with any offence referred to in subparagraph (i); or
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
 - (i) has been or is found guilty of any offence in terms of this Act.

- (2) Whenever circumstances in relation to a member of the Council or Appeal Tribunal so change that it would have disqualified him or her from being appointed as such a member, had they 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.

Period of office of members of Council and Appeal Tribunal

- 8 (1) Members of the Council and Appeal Tribunal shall be appointed for a period of five years.
- (2) All such members shall upon expiry of their terms of office be eligible for reappointment.
- (3) Any such member may resign by tendering a written notice of resignation to the Minister, at least three months before the date upon which such notice is to take effect.

Removal from office

- 9 (1) The Minister may remove a member of the Council or Appeal Tribunal from office on the grounds of incapacity, incompetence, misconduct or misrepresentation.
- (2) A decision to remove a member of the Council or Appeal Tribunal from office shall be based on a finding of a tribunal appointed by the Minister: Provided that the member shall have a right to be heard.
- (3) The Minister may suspend a member of the Council or Appeal Tribunal from office pending the finding of the tribunal referred to in subsection (2).
- (4) A member of the Council or 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 issues a certificate to that effect.¹⁰

Composition, functions, powers and management of Board

¹⁰ *Films and Publications Amendment Act, 1999*

- 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 issued by the Council, the classification of any film, game or publication submitted to the Board under this Act;
 - (b) determine an application made in terms of section 22 or 23 for an exemption in respect of any film, game or publication; and
 - (c) determine an application made under section 18(1) for registration as a 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)*.
- (4) The chief executive officer may delegate any power conferred on him or her.

Classification committees

- 10 (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 decision.
- (3) A decision of a classification committee shall for the purposes of this Act be deemed to be a decision of the Board.

Administrative 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 Council and Appeal Tribunal shall be performed by the staff of the Board.

Remuneration

- 12 The members and staff of the Council, Appeal Tribunal and an advisory panel and any person appointed as an expert to assist or advise the Council or Appeal Tribunal, shall receive such remuneration, allowances and other benefits as may be determined by the Minister in consultation with the Minister of Finance.

Expenditure

- 13 (1) The expenditure in connection with the performance of the functions, the exercise of the powers and the carrying out of the duties of the Council, 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 of the Board.
- (3) The books of account and financial statements shall be audited by the Auditor-General.

Annual report

- 14 (1) The Council shall, as soon as practicable after the end of each financial year prepare a report on all the activities of the Council and Appeal Tribunal during that financial year, and on the financial position of the Council and Appeal Tribunal as at the end of that financial year.
- (2) The report contemplated in subsection (1), together with the audited balance sheet and accounts pertaining to the funds of the Council and Appeal Tribunal shall be submitted to the Minister for tabling in Parliament.

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
- (b) 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 such 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) instruct that films, games and publications being offered for sale or hire that do not comply 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.

CHAPTER 3

Classification of publications

- 16 (1) Any person may request, in the prescribed manner, that a publication, other than a *bona fide* newspaper that is published by a member of a body, recognised by the Press Ombudsman, which subscribes, and adheres, to a code of conduct that is enforced by that body, 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 contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that—
- (a) contains sexual conduct which-
 - (i) violates or shows disrespect for the right to human dignity of any person;
 - (ii) degrades a person; or
 - (iii) constitutes incitement to cause harm;
 - (b) advocates propaganda for war;
 - (c) incites violence; or
 - (d) the 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 such 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-
 - (i) child pornography, propaganda for war or incitement of imminent violence; or
 - (ii) the advocacy of hatred based on any identifiable group characteristic and 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 —
- (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
 - (ii) bestiality, incest, rape or 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 or is on a matter of public interest, 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 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 or is on a matter of public interest, 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 material 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 child pornography, the chief executive officer shall refer that publication to a police official of the South African Police Service for investigation and prosecution.

CHAPTER 4

Classification of films and games

- 18 (1) Any person who distributes 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 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 child pornography, propaganda for war or incites imminent violence; or
 - (ii) advocates hatred based on any identifiable group characteristic and 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) bestiality, incest, rape, 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 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 a scene 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 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.
 - (6) A broadcaster who is subject to regulation by the Independent Communications Authority of South Africa shall, for the 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.

Display of classification decisions

- 18A (1) Where a film, game or publication has been classified or exempted from classification in terms of this Act it must—
 - (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 display the following information—
 - (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.

Re-classification

- 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.

CHAPTER 5

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 classification in terms of section 16, 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 interests 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 Appeal Tribunal against a decision with regard to such an application, shall have the right—
- (a) to appear in person before the Board, classification committee or 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, 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 Board or Appeal Tribunal, of the reasons for and grounds upon which such decision is based, which shall include, in the case of a “refused classification” or a “XX” classification of a publication, film or game a reference to the particular section of the Act which formed the basis of the decision.

Appeal to Review Board

- 20 (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 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, in the prescribed manner appeal to the Appeal Tribunal.
- (2) The chairperson of the Appeal Tribunal -
- (a) may, on good cause shown, suspend the decision appealed against in terms of subsection (1), until the decision is given on the appeal;
 - (b) shall convene a meeting of the Appeal Tribunal and inform the appellant of the date and time when the appeal is to be heard;
 - (c) may determine the procedure to be followed;

- (d) may call upon any person who in his or her opinion is an expert on any matter relevant to the appeal, including any person who has experience in or knowledge of any matter referred to in section 6(4), to give assistance to the Appeal Tribunal.
- (3) The Appeal Tribunal 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 should in its view have given, and amend the classification of the film, game or publication, specifying the section of 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 film, game or publication.
- (4) The chief executive officer shall in the case of a successful appeal against a decision whereby an application for 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 Appeal Tribunal.
- (5) A decision of the Appeal Tribunal shall for the purposes of this Act be deemed to be a decision of the Board.

CHAPTER 6

Exemption of persons from certain sections, and exclusions from application of this Act

- 22 (1) The 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 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 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.

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

- 23 (1) The provisions of 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 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 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 like notice withdraw the exemption.

Exemption in respect of distribution of certain publications and films: Adult premises

- 24 (1) Any person may exhibit in public or distribute any film, game or publication or classified in terms of 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 relevant national, provincial or local government laws: Provided that such exhibition or distribution takes place within premises forming part of a building.
- (2) Any exemption granted in terms of subsection (1) may be suspended by the Board for a period not exceeding one year, if the 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 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 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 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 under this Act, with the aim of preventing the delivery of such films, games or publications to persons under the age of 18 years.

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) of this Act which has—
- (a) except with respect to broadcasters that are subject to regulation by the Independent Communications Authority of South Africa and a newspaper contemplated in section 16(1), 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 contemplated in section 16(1), 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 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 a 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.

- (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.

- (3) 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.

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 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.

Sections 25, 26 and 27 of the Act were repealed by the Films & Publications Amendment Act No.3 of 2009.

CHAPTER 7

Registration and other obligations of Internet service providers¹¹

- 27A (1) Every Internet service provider shall-
- (a) register with the Board in the manner prescribed by regulations made under this Act; and
 - (b) take all reasonable steps to prevent the use of their services for the hosting or distribution of child pornography.
- (2) If an Internet service provider has knowledge that its services are being used for the hosting or distribution of child pornography, such Internet service provider shall-
- (a) take all reasonable steps to prevent access to the child pornography by any person;
 - (b) report the presence thereof, as well as the particulars of the person maintaining or hosting or distributing or in any manner contributing to such Internet address, to a police official of the South African Police Service; and
 - (c) take all reasonable steps to preserve such evidence for purposes of investigation and prosecution by the relevant authorities.
- (3) An Internet service provider shall, upon request by the South African Police Service, furnish the particulars of users who gained or attempted to gain access to an Internet address that contains child pornography.
- (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.

¹¹ *Films and Publications Amendment Act, 2004*

Punishment

- 30 (4) (a) If any person who has contravened or failed to comply with section 24A(1), (2)(a), (5), (6), (7), 24C(2) or 27A(1)(a) agrees to abide by a decision of the Board and deposits with the Board such sum as the Board may determine but not exceeding the greater of two thousand rand or twice the prescribed classification costs, where applicable, on each such contravention or failure to comply, 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 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.¹²

Extra-territorial jurisdiction

- 30A (a) Any citizen or permanent resident of the Republic who commits any act outside the Republic which would have constituted an offence under this Act had it been committed within the Republic, shall be guilty of the offence which would have been so constituted and liable to the penalty prescribed for such offence in this Act.
- (b) No prosecution under this section shall be instituted without the written consent of a Director of Public Prosecutions.
- (c) For the purpose of this section, any court in the Republic and any Director of Public Prosecutions shall have jurisdiction.¹³

Presumptions and proof

- 30B (1) If in any prosecution in terms of this Act it is proved that-
- (a) any message or communication, including a visual presentation, was placed on any distributed network, including the Internet, by means of the access provided or granted to a registered subscriber or user, it shall be presumed, in the absence of evidence to the contrary which raises reasonable doubt, that it was so placed by the registered subscriber or user;
- (b) access was gained or attempted to be gained to child pornography on a distributed network, including the Internet, by means of the access provided or granted to a registered subscriber or user, it shall be presumed, in the absence of evidence to the contrary which raises reasonable doubt, that such access was gained or attempted to be gained by the registered subscriber or user.

¹² *Films and Publications Amendment Act, 2004*

¹³ *Films and Publications Amendment Act, 2004*

- (2) If in any prosecution it is necessary to prove that-
- (a) any application for registration or classification in terms of this Act has or has not been made to the Board; or
 - (b) any film, game or publication has or has not been submitted to the Board in terms of this Act; or
 - (c) any decision or classification has or has not been made or that any restriction or condition has or has not been imposed by the Board in terms of this Act; or
 - (d) a certificate of exemption has or has not been issued, granted, withdrawn, cancelled or suspended by the Board; or
 - (e) a decision or classification of the Board has or has not been suspended by the Review Board,

a certificate, issued under the authority of the executive committee of the Board, shall, upon its mere production, be *prima facie* proof of such fact.¹⁴

¹⁴ *Films and Publications Amendment Act, 2004*

CHAPTER 8

Regulations

- 31 (1) The Minister may-
- (a) in consultation with the Minister of Finance, make regulations regarding fees payable in respect of any application, exemption, permit or appeal under this Act;
 - (b) make regulations relating to the procedure with regard to the nomination of persons as candidates for the Council or 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); 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.
- (3)
- (a) Within two years after the commencement of this Act the Board shall publish the guidelines which the Board and the Review Board apply in order to determine what is harmful or disturbing in terms of Schedules 3 and 8 in the *Gazette*.
 - (b) As soon as possible after the lapse of every consecutive period of 12 months after the publication of the guidelines referred to in paragraph (a), the Board shall publish the said guidelines in the *Gazette* and, where necessary, amend them.
 - (c) Together with every publication of guidelines referred to in paragraphs (a) and (b) an appeal shall be made on the public to make representations concerning such guidelines, within 30 days after publication thereof.

Transitional provisions

- 39 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.

Repeal of laws

- 33 The laws mentioned in Schedule 12 are hereby repealed to the extent set out in the third column.

Amendment of Act 71 of 1991

- 34 The *Businesses Act, 1991*, is hereby amended by the addition of the following paragraph to item 2 of Schedule 1:
- "(h) conducting adult premises referred to in section 24 of the *Films and Publications Act, 1996*."

Short title and commencement

- 35 This Act shall be called the **Films and Publications Act, 1996**, and shall come into operation on a date fixed by the President by proclamation in the Gazette. **[Assented to 30 October 1996 but came into full force and effect on 1 June 1998.]**

SCHEDULE 12

ACTS REPEALED (Section 33)

| | | |
|--|--|--------------------------------|
| Act No 44 of 1958 | Post Office Act | The proviso to section 29(2) |
| Act No 37 of 1967 | Indecent or Obscene Photographic Matter Act | The whole |
| Act No 42 of 1974 | Publications Act | The whole |
| Act No 18 of 1977 | Transkei Publications Act | The whole |
| Act No 79 of 1977 | Publications Amendment Act | The whole |
| Act No 109 of 1978 | Publications Amendment Act | The whole |
| Act No 36 of 1979 | Bophuthatswana Publications Act | The whole |
| Act No 44 of 1979 | Publications Amendment Act | The whole |
| Act No 70 of 1979 Publications Act, 1974 | Divorce Act | In so far as it relates to the |
| Act No 15 of 1983 | Venda Publications Act | The whole |
| Act No 60 of 1986 | Publications Amendment Act | The whole |
| Act No 51 of 1991 it relates to the Publications Act, | Transfer of Powers and Duties of the State President Act | In so far as |
| Act No 90 of 1992 | Publications Amendment Act | The whole |
| Act No 206 of 1993 | Abolition of Restrictions on Free Political Activity Act | Section 1 |