

# FILMS AND PUBLICATIONS ACT NO. 65 OF 1996

[ASSENTED TO 30 OCTOBER, 1996]  
[DATE OF COMMENCEMENT: 1 JUNE, 1998]

(Unless otherwise indicated)

*(Afrikaans text signed by the President)*

This Act has been updated to *Government Gazette* 45959 dated 25 February, 2022.

## as amended by

Films and Publications Amendment Act, No. 34 of 1999  
Prevention and Combating of Corrupt Activities Act, No. 12 of 2004  
[with effect from 27 April, 2004]  
  
Films and Publications Amendment Act, No. 18 of 2004  
Films and Publications Amendment Act, No. 3 of 2009  
  
Cybercrimes Act, No. 19 of 2020  
[with effect from 1 December, 2021]  
  
[Films and Publications Amendment Act, No. 11 of 2019](#)  
[with effect from 1 March, 2022—Unless otherwise indicated.]

## GENERAL NOTE

Section 38 of Act No. 3 of 2009 **substitutes the words “Review Board” for the words “Appeal Tribunal”, wherever they occur.**

Section 32 of Act No. 11 of 2019 **substitutes the expression “Internet” of the expression “internet” wherever it occurs.**

## ACT

**To provide for the classification of certain films and publications; to that end to provide for the establishment of a Film and Publication Board and a Film and Publication Appeal Tribunal; to repeal certain laws; and to provide for matters connected therewith.**

## ARRANGEMENT OF SECTIONS

[Arrangement of Sections amended by s. 33 (a)–(n) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

### CHAPTER 1

#### *Definitions*

1. Definitions

### CHAPTER 2

#### *Film and Publication Board, Council, Appeal Tribunal and Enforcement Committee*

2. Objects of Act
3. [Establishment of Film and Publication Board, Council, Appeal Tribunal and Enforcement Committee](#)
4. Composition of Council
- 4A. Powers and duties of Council
5. Composition of Appeal Tribunal
6. [Members of Council and Appeal Tribunal to be appointed by Minister](#)
- 6A. [Composition of Enforcement Committee](#)

- 6B. Powers and duties of Enforcement Committee
- 6C. Removal of members of Enforcement Committee from office
- 7. Disqualifications with regard to membership of Council, Appeal Tribunal or Enforcement Committee
- 8. Period of office of members of Council, Appeal Tribunal and Enforcement Committee
- 9. Removal from office
- 9A. Composition, functions and management of Board
- 10. Classification committees
- 11. Administrative support for Council, Appeal Tribunal and Enforcement Committee
- 12. Remuneration
- 13. Expenditure
- 14. Annual report
- 15. . . . .
- 15A. Functions and powers of compliance officers

### CHAPTER 3

#### *Complaints and Applications concerning Publications*

- 16. Classification of publications
- 17. . . . .

### CHAPTER 4

#### *Classification of films and games, self-classification, accreditation, complaints and prohibited content*

- 18. Classification of films and games
- 18A. . . . .
- 18B. . . . .
- 18C. Self-classification
- 18D. Approval of accredited foreign or international classification systems by the Council
- 18E. Complaints against content services distributed online
- 18F. Prohibition against distribution of private sexual photographs and films
- 18G. Prohibition against filming and distribution of films and photographs depicting sexual assault and violence against children
- 18H. Prohibition against propaganda for war; incitement of imminent violence and advocacy of hatred that is based on identifiable group characteristics, and that constitutes incitement to cause harm
- 18I. Display of classification decisions
- 18J. Re-classification

### CHAPTER 5

#### *Right to appear and to appeal to Appeal Tribunal*

- 19. 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
- 20. Appeal to Appeal Tribunal
- 21. . . . .

### CHAPTER 6

#### *Exemptions: Publications and Films*

- 22. Exemption of persons from certain sections, and exclusions from application of this Act
- 23. Exhibition of films to distributor of films not prohibited by this Act
- 24. Exemption in respect of distribution of certain publications and films: Adult premises
- 24A. Prohibitions, offences and penalties on possession of films, games and publications
- 24B. Offences and penalties in respect of child pornography and sexual exploitation of children
- 24C. Obligations of internet access and service providers
- 24D. Prohibition, offences and penalties for submission of false and misleading information to online submission system of Board
- 24E. Prohibitions, offences and penalties on distribution of private sexual photographs and films
- Prohibitions, offences and penalties on filming and distribution of

- 24F. films and photographs depicting sexual assault and violence against children
- 24G. Prohibitions, offences and penalties on propaganda for war, incitement of imminent violence, and advocacy of hatred based on an identifiable group characteristic and that constitutes incitement to cause harm

## CHAPTER 7

### *Prohibition of Conduct Contrary to Classifications*

25. . . . .
26. . . . .
27. . . . .
- 27A. Registration and other obligations of internet service providers
28. . . . .
29. . . . .
30. . . . .
- 30A. Extra-territorial jurisdiction
- 30B. Presumptions and proof

## CHAPTER 8

### *Regulations, Amendment and Repeal of Laws*

31. Regulations
- 31A. Procedure for making regulations
32. . . . .
33. Repeal of laws
34. Amendment of Act 71 of 1991
35. Short title and commencement
- Schedule 1 . . . . .
- Schedule 2 . . . . .
- Schedule 3 . . . . .
- Schedule 4 . . . . .
- Schedule 5 . . . . .
- Schedule 6 . . . . .
- Schedule 7 . . . . .
- Schedule 8 . . . . .
- Schedule 9 . . . . .
- Schedule 10 . . . . .
- Schedule 11 . . . . .
- Schedule 12 Acts repealed

## CHAPTER 1

### *Definitions*

**1. Definitions.**—In this Act, unless the context otherwise indicates—

**“Appeal Tribunal”** means the Appeal Tribunal established by section 3;  
 [Definition of “Appeal Tribunal” inserted by s. 1 (a) of Act No. 3 of 2009.]

**“Board”** means the Film and Publication Board, established by section 3;

**“certificate”** means, in relation to a film or game, the certificate referred to in section 18, issued in respect of the classification of a film;

[Definition of “certificate” substituted by s. 1 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“chief executive officer”** means the chief executive officer of the Board referred to in section 4 (1) (c);  
 [Definition of “chief executive officer” substituted by s. 1 (b) of Act No. 3 of 2009.]

**“child pornography”** means child pornography as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);

[Definition of “child pornography” inserted by s. 1 (a) of Act No. 34 of 1999, amended by s. 1 (a) of Act No. 18 of 2004 and substituted by s. 1 (c) of Act No. 3 of 2009 and by s. 1 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“classification”**, means any decision by the Board in terms of this Act;

**“classification committee”** means a classification committee referred to in section 10;

**“commercial online distributor”** means a distributor in relation to films, games and publications which are

distributed for commercial purposes using the internet;

[Definition of "commercial online distributor" inserted by s. 1 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"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;

**"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;

**"Council"** means the Council established by section 3;

[Definition of "Council" inserted by s. 1 (d) of Act No. 3 of 2009.]

**"degrade"** . . . . .

[Definition of "degrade" deleted by s. 1 (b) of Act No. 18 of 2004.]

**"distribute"** in relation to a film, game or a publication, without derogating from the ordinary meaning of that word, includes—

- (a) to stream content through the internet, social media or other electronic mediums;
- (b) to sell, hire out or offer or keep for sale or hire, including using the internet; and
- (c) for purposes of sections 24A and 24B, 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 thereof by such a person;

[Definition of "distribute" substituted by s. 1 (c) of Act No. 18 of 2004, by s. 1 (e) of Act No. 3 of 2009 and by s. 1 (d) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"distributor"** means a person who conducts the business of distributing films, games or publications and includes a commercial online distributor;

[Definition of "distributor" substituted by s. 1 (e) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"domestic violence"** means the explicit depictions or descriptions of—

- (a) physical abuse;
- (b) sexual abuse; or
- (c) 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;

[Definition of "domestic violence" inserted by s. 1 (f) of Act No. 3 of 2009 and amended by s. 1 (f) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"Enforcement Committee"** means the committee established in terms of section 3;

[Definition of "Enforcement Committee" inserted by s. 1 (g) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"executive committee"** . . . . .

[Definition of "executive committee" deleted by s. 1 (g) of Act No. 3 of 2009.]

**"explicit sexual conduct"** means graphic and detailed visual presentations or descriptions of any conduct contemplated in the definition of "sexual conduct" in this Act;

[Definition of "explicit sexual conduct" inserted by s. 1 (h) of Act No. 3 of 2009.]

**"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, including using the internet, or device;

[Definition of "film" substituted by s. 1 (i) of Act No. 3 of 2009 and by s. 1 (h) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"game"** means a computer game, video game or other interactive computer software for interactive game playing, including games accessed or played using the internet, where the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the game player or players;

[Definition of "game" inserted by s. 1 (j) of Act No. 3 of 2009 and substituted by s. 1 (i) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"harmful"** means causing emotional, psychological or moral distress to a person, whether it be through a film, game or publication through any on or offline medium, including through the internet and "harm" has the corresponding meaning;

[Definition of "harmful" inserted by s. 1 (j) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“hate speech”** includes any speech, gesture, conduct, writing, display or publication, made using the internet, which is prohibited in terms of section 16 (2) of the Constitution of the Republic of South Africa, 1996, which propagates, advocates or communicates words against any person or identifiable group, which words could reasonably be construed to demonstrate a clear intention to be harmful, to incite harm and promote or propagate hatred against the said person or identifiable group.

[Definition of “hate speech” inserted by s. 1 (j) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“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;

[Definition of “identifiable group characteristic” inserted by s. 1 (j) of Act No. 3 of 2009.]

**“Independent Communications Authority of South Africa”** means the body established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

[Definition of “Independent Communications Authority of South Africa” inserted by s. 1 (k) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“internet”** means the internet as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

[Definition of “internet” inserted by s. 1 (k) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“internet address”** means a website, a bulletin board service, an Internet chat-room or newsgroup or any other Internet or shared network protocol address;

[Definition of “Internet address” inserted by s. 1 (d) of Act No. 18 of 2004.]

**“internet service provider”** means any person who carries on the business of providing access to the Internet by any means;

[Definition of “Internet service provider” inserted by s. 1 (d) of Act No. 18 of 2004.]

**“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;

[Definition of “in public” substituted by s. 1 (k) of Act No. 3 of 2009.]

**“magazine”** includes an online publication of a magazine;

[Definition of “magazine” inserted by s. 1 (l) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“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;

[Definition of “matters of public interest” inserted by s. 1 (l) of Act No. 3 of 2009.]

**“Minister”** means the Minister to whom the administration of this Act has been assigned;

**“newspaper”** . . . . .

[Definition of “newspaper” inserted by s. 1 (m) of Act No. 3 of 2009 and deleted by s. 1 (m) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“non-commercial online distributor”** means any person who distributes content using the internet, or enables content to be distributed by a user of online services, for personal or private purposes;

[Definition of “non-commercial online distributor” inserted by s. 1 (n) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“online medium”** means any website, communication or messaging system, social media facility or similar facility which is connected to the publicly available internet, and any public telecommunications messaging system;

[Definition of “online medium” inserted by s. 1 (n) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“permit”** means the permit issued by the Board pursuant to section 23 (2) to an online distributor wherein the online distributor is exempted from submitting films and games to the Board for classification, subject to such terms and conditions as the Board may deem fit;

[Definition of “permit” inserted by s. 1 (n) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“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;

[Definition of “possession” inserted by s. 1 (e) of Act No. 18 of 2004.]

**“prescribed”** means prescribed by regulation;

[Definition of “prescribed” inserted by s. 1 (n) of Act No. 3 of 2009.]

**“Press Council of South Africa”** means a voluntary independent self-regulatory body established in terms of the Constitution of the Press Council of South Africa and which has adopted the Press Council Constitution, which includes the Code of Ethics and Conduct for South African Print and Online Media;

[Definition of “Press Council of South Africa” inserted by s. 1 (o) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“prohibited content”** means content which amounts to propaganda for war, incitement of imminent violence, advocacy of hatred that is based on an identifiable group characteristic, and that constitutes incitement to cause harm, or is prohibited in sections 16 (2), 16 (4) and 18 (3);

[Definition of “prohibited content” inserted by s. 1 (o) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“publication”** means, and includes, where applicable, any of the following, published using the internet—

(a) any newspaper, magazine, book, periodical, pamphlet, poster or other printed matter;

[Para. (a) substituted by s. 1 (q) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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, or any other object in or on which sound has been recorded for reproduction;

[Para. (e) substituted by s. 1 (o) of Act No. 3 of 2009.]

(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 content made available using the internet, excluding a film or game;

[Definition of “publication” amended by s. 1 (p) of Act No. 11 of 2019 w.e.f. 1 March, 2022. Para. (i) added by s. 1 (b) of Act No. 34 of 1999 and substituted by s. 1 (r) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“Review Board”** . . . . .

[Definition of “Review Board” deleted by s. 1 (p) of Act No. 3 of 2009.]

**“self-classification”** for the purposes of a permit contemplated in section 23 (2), means the rating and classification of films, games and publication with regard to the suitability for audiences in terms of the Board’s classification guidelines and the Act;

[Definition of “self-classification” inserted by s. 1 (s) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“sexual conduct”** includes—

(a) genitals in a state of arousal or stimulation, real or simulated;

(b) undue display of genitals or of the anal region;

(c) rape;

(d) masturbation;

(e) bestiality;

(f) sexual intercourse with a person or a human corpse, including anal or oral sexual intercourse;

(g) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, anus, vagina, testicles or penis, with or without any object;

(h) the penetration of a vagina or anus with any object;

(i) oral genital contact; or

(j) oral anal contact;

[Definition of “sexual conduct” inserted by s. 1 (f) of Act No. 18 of 2004 and substituted by s. 1 (t) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**“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;

[Definition of “sexual violence” inserted by s. 1 (q) of Act No. 3 of 2009.]

**“social media”** includes the various online technology tools and forms electronic communication via the internet, such as websites for social networking and micro blogging through which users create online communities to share information, ideas, personal messages and other content;

[Definition of "social media" inserted by s. 1 (u) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"streaming"** means the delivery of films by an online distributor or broadcaster, including the online streaming or downloading of films and catch-up services that enable time-shifted viewing of a film online, to the end user of an online delivery medium, including the internet;

[Definition of "streaming" inserted by s. 1 (u) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**"this Act"** includes the regulations made in terms of section 31;

**"visual presentation"** means—

- (a) a drawing, picture, illustration, painting, photograph or image; or
- (b) 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 print-out.

[Definition of "visual presentation" substituted by s. 1 (c) of Act No. 34 of 1999.]

(Date of commencement of s. 1: 16 January, 1998.)

## CHAPTER 2

### *Film and Publication Board, Council, Appeal Tribunal and Enforcement Committee*

[Ch. 2, heading substituted by s. 2 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**2. Objects of Act.**—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;

[Para. (b) amended by s. 3 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

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

[Para. (c) amended by s. 3 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (d) criminalise the possession, production and distribution of child pornography; and

[Para. (d) added by s. 3 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (e) create offences for non-compliance with this Act.

[S. 2 substituted by s. 2 of Act No. 34 of 1999 and by s. 2 of Act No. 3 of 2009. Para. (e) added by s. 3 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**3. Establishment of Film and Publication Board, Council, Appeal Tribunal and Enforcement Committee.**—(1) There is hereby established—

- (a) a juristic person which shall be known as the Film and Publication Board;

- (b) the Council;

[Para. (b) amended by s. 4 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (c) an Appeal Tribunal; and

[Para. (c) amended by s. 4 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (d) an Enforcement Committee,

[Para. (d) added by s. 4 (d) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

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, the Council, the Enforcement Committee and the Appeal Tribunal shall be independent, impartial and must perform their functions without fear, favour, or prejudice and act in accordance with applicable law.

[Sub-s. (2) substituted by s. 4 (e) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (3) The seat of the Board shall be determined by the Council in consultation with the Minister.

[S. 3 substituted by s. 3 of Act No. 3 of 2009 and amended by s. 4 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]



**4. Composition of Council.**—(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 per cent plus one of its total number of members.

[S. 4 amended by s. 2 of Act No. 18 of 2004 and substituted by s. 4 of Act No. 3 of 2009.]

**4A. Powers and duties of Council.**—(1) The Council shall—

- (a) in consultation with the Minister, issue directives of general application, including classification guidelines, regarding the accreditation contemplated in section 18D, in accordance with matters of national policy consistent with the purpose of this Act;

[Para. (a) substituted by s. 5 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (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 Minister 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;

[Para. (f) amended by s. 5 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (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; and

[Para. (g) amended by s. 5 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (h) appoint the Enforcement Committee members in terms of section 6A.

[Para. (h) added by s. 5 (d) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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.

[S. 4A inserted by s. 5 of Act No. 3 of 2009.]

**5. Composition of Appeal Tribunal.**—(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.

[Sub-s. (2) substituted by s. 3 of Act No. 18 of 2004.]

(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.

[S. 5 amended by s. 6 of Act No. 3 of 2009.]

(Date of commencement of s. 5: 16 January, 1998.)

**6. Members of Council and Appeal Tribunal to be appointed by Minister.**—(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.

[S. 6 substituted by s. 3 of Act No. 34 of 1999 and by s. 7 of Act No. 3 of 2009.]

**6A. Composition of Enforcement Committee.**—(1) The Enforcement Committee shall consist of four members plus a chairperson, and such chairperson must be a retired judge of the High Court of South Africa.

(2) The members of the Enforcement Committee must be appointed by the Council.

(3) The members of the Enforcement Committee shall have experience in or knowledge of any one or more of the following fields:

- (a) law;
- (b) law enforcement;
- (c) regulatory matters;
- (d) film, games, publications, arts, literature;
- (e) digital technology and electronic communications; or
- (f) sentencing.

(4) A member of the Enforcement Committee appointed in terms of subsection (2) shall—

- (a) be a fit and proper person;
- (b) be of good character; and
- (c) not be disqualified in terms of section 7.

(5) A quorum for a session of the Enforcement Committee shall be the chairperson plus two members and where the votes are equal, the chairperson shall have a deciding vote.

[S. 6A inserted by s. 6 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**6B. Powers and duties of Enforcement Committee.**—(1) The Enforcement Committee shall—

- (a) investigate all cases referred to it by the Board for adjudication in respect of non-compliance with any provision of the Act by a distributor, exhibitor or any other person to whom the Act applies, except persons to whom sections 24A, 24B, 24C and 27A (2),(3) and (4) apply;
- (b) adjudicate all cases and make appropriate findings, after the Board and the respondent have been heard or granted a reasonable opportunity to be heard;
- (c) hear evidence under oath or affirmation or evidence by affidavit and come to a finding when it is convinced on a consideration of all the facts before it that such a finding is fair, reasonable and justified;
- (d) where appropriate—
  - (i) impose a fine;
  - (ii) as prescribed, suspend a registration certificate; or
  - (iii) through the Board, refer a matter to the National Director of Public Prosecutions for prosecution and, in such a case, the Enforcement Committee shall not make a finding; and
- (e) where a fine is not paid, at the instance of the chief executive officer, apply to a court for the enforcement of such a fine as a civil debt to the Board.

(2) The finding of a contravention by the Enforcement Committee in terms of subsection (1) shall not be regarded as a conviction in respect of a criminal offence and no prosecution for that offence shall thereafter be competent.

(3) An aggrieved person may appeal to the Appeal Tribunal against a finding of the Enforcement Committee.

(4) The Minister may, from time to time and after consultation with the Board, by notice in the *Gazette*, adjust the amount of fines that may be imposed by the Enforcement Committee in accordance with the average of the consumer price index, as published from time to time in the *Gazette*, for the immediately preceding 12 months multiplied by the number of years that the amount has remained the same.

(5) The chairperson, members of the Enforcement Committee and each member of the staff of the Enforcement Committee, must not—

- (a) engage in any activity that may undermine the integrity of the Enforcement Committee;
- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
- (c) make private use of, or profit from any confidential information obtained as a result of performing that person's official functions in the Enforcement Committee; or
- (d) divulge any information referred to in paragraph (iii) to any third party, except as required as part of that person's official functions within the Enforcement Committee.

[S. 6B inserted by s. 6 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**6C. Removal of members of Enforcement Committee from office.**—(1) The Council may remove a member of the Enforcement Committee from office on the grounds of incapacity, incompetence, misconduct or misrepresentation.

(2) A decision to remove a member of the Enforcement Committee from office shall be based on a finding of a disciplinary committee appointed by the Council: Provided that a member shall have a right to be heard.

(3) The Council may suspend a member of the Enforcement Committee from office pending the finding of the disciplinary committee referred to in subsection (2A).

(4) A member of the Enforcement Committee shall vacate his or her office when any of the circumstances referred to in section 7 becomes applicable in respect of him or her, and the Council issues him or her with a notice of removal to that effect.

[S. 6C inserted by s. 6 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**7. Disqualifications with regard to membership of Council, Appeal Tribunal or Enforcement Committee.**—(1) A person shall not be qualified to be appointed as a member of the Council, Appeal Tribunal or Enforcement Committee, 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, organisation 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 the 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);

[Sub-para. (i) substituted by s. 36 (1) of Act No. 12 of 2004 and by s. 8 (c) of Act No. 3 of 2009.]

(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

(j) has been or is found guilty of any offence in terms of this Act.

[Sub-s. (1) amended by s. 8 (b) of Act No. 3 of 2009 and by s. 7 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(2) Whenever circumstances in relation to a member of the Council, Appeal Tribunal or Enforcement Committee 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 the member shall become vacant, and the vacancy in such seat shall be filled in accordance with section 6.

[S. 7 amended by s. 8 (a) of Act No. 3 of 2009 and by s. 7 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022. Sub-s.

(2) substituted by s. 8 (d) of Act No. 3 of 2009 and by s. 7 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(Date of commencement of s. 7: 16 January, 1998.)

**8. Period of office of members of Council, Appeal Tribunal and Enforcement Committee.**—(1) Members of the Council, Appeal Tribunal and Enforcement Committee shall be appointed for a period of five years.

[Sub-s. (1) substituted by s. 9 (b) of Act No. 3 of 2009 and by s. 8 (b) and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(2) All such members shall upon expiry of their terms of office be eligible for re-appointment.

(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.

[S. 8 amended by s. 9 (a) of Act No. 3 of 2009 and s. 8 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(Date of commencement of s. 8: 16 January, 1998.)

**9. Removal from office.**—(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 him or her with a certificate to that effect.

[S. 9 substituted by s. 4 of Act No. 34 of 1999 and by s. 10 of Act No. 3 of 2009.]

**9A. Composition, functions and management of Board.**—(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;

[Para. (b) amended by s. 9 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (c) determine an application made under section 18 (1) for registration as a distributor or exhibitor of films or games; and

[Para. (c) substituted by s. 9 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (d) accredit commercial online distributors' classification systems in terms of section 18C;

[Para. (d) added by s. 9 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (e) perform the functions in respect of the complaints procedure in section 18E; and

[Para. (e) added by s. 9 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (f) take such step as may be necessary in regard to—

(i) the accreditation of any foreign or international classification system in relation to the classification of films, games and publications;

(ii) the conclusion of a compliance and online distribution agreement with a commercial online distributor in relation to the online distribution in the Republic, of films, games and publications classified through the accredited foreign or international classification system; and

(iii) the exemption of any commercial online distributor from the classification of films, games and publications in terms of the Act.

[Para. (f) added by s. 9 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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.

[S. 9A inserted by s. 11 of Act No. 3 of 2009.]

**10. Classification committees.**—(1) The Board shall appoint classification committees as may be prescribed.

[Sub-s. (1) substituted by s. 12 of Act No. 3 of 2009.]

(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.

[Sub-s. (2) substituted by s. 12 of Act No. 3 of 2009.]

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

(Date of commencement of s. 10: 16 January, 1998.)

**11. Administrative support for Council, Appeal Tribunal and Enforcement Committee.**—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, Appeal Tribunal and an Enforcement Committee shall be performed by the staff of the Board.

[S. 11 substituted by s. 13 of Act No. 3 of 2009 and by s. 10 of Act No. 11 of 2019 w.e.f 1 March, 2022.]

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

[S. 12 substituted by s. 14 of Act No. 3 of 2009 and by s. 11 of Act No. 11 of 2019 w.e.f 1 March, 2022.]

**13. Expenditure.**—(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 Board, Council, Appeal Tribunal, Enforcement Committee and an advisory panel shall be defrayed from money appropriated by Parliament for that purpose.

[Sub-s. (1) substituted by s. 15 of Act No. 3 of 2009 and by s. 12 (a) of Act No. 11 of 2019 w.e.f 1 March, 2022.]

(1A) All monies lawfully acquired by the Board in the performance of its functions must be utilised to achieve the objects of this Act.

[Sub-s. (1A) inserted by s. 12 (b) of Act No. 11 of 2019 w.e.f 1 March, 2022.]

(2) The chief executive officer shall be the accounting officer of the Board.  
[Sub-s. (2) substituted by s. 15 of Act No. 3 of 2009.]

(3) The books of account and financial statements shall be audited by the Auditor-General.

(Date of commencement of s. 13: 16 January, 1998.)

**14. Annual report.**—(1) The Council shall, as soon as practicable after the end of each financial year, prepare a report on all the activities of the Board, Council, Appeal Tribunal and Enforcement Committee during that financial year, and on the financial position of the Board, Council, Appeal Tribunal and an Enforcement Committee 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 Board, Council, Appeal Tribunal and an Enforcement Committee shall be submitted to the Minister for tabling in Parliament.

[S. 14 amended by s. 4 of Act No. 18 of 2004 and substituted by s. 16 of Act No. 3 of 2009 and by s. 13 of Act No. 11 of 2019 w.e.f 1 March, 2022.]

**15. . . . .**

[S. 15 amended by s. 5 of Act No. 18 of 2004 and repealed by s. 17 of Act No. 3 of 2009.]

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

- (a) advise the 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) ensure that all films and games offered for sale or hire by a distributor or an online distributor have been classified and labelled 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.

(1A) For the purpose of subsection (1), the compliance officer may—

- (a) at all reasonable times, with the consent of the person in charge of such premises or with the assistance of a member of the South African Police Service, enter any premises on or in which the business of the sale, hire or exhibition of films or games is being conducted;
- (b) at all reasonable times, with the consent of the person in charge of such premises or facility or the assistance of the South African Police Services, enter any premises or facilities that are used to store films or games being distributed or intended for distribution, and view and take copies of all the information, reports, documents and other material needed for the inspection of labelling; with the consent of the person in charge of such premises or the assistance of the South African Police Services, enter the premises of any internet access providers to check compliance with this Act;
- (c) review a product list of all films and games offered for sale or hire through the internet which can be accessed by any persons;
- (d) with the consent of the person in charge of operating the online medium or the assistance of the South African Police Services, review a product list of all films and games offered for sale or hire through an online medium which can be accessed by a closed group of persons;
- (e) in the prescribed form, issue a compliance notice and notice to remove from display, including from display in an online medium, unclassified films or games;
- (f) with the consent of the person in charge of such premises or the assistance of the South African Police Services, seize any unclassified film or game or any film or game that does not comply with the requirements of this Act;
- (g) direct that the film, game or publication contemplated in paragraph (vii) be removed from display, including from display in an online medium, or offer for sale or hire until it complies with the requirements of this Act or complies with any decision of the Board with regard to its distribution;
- (h) request the production of a certificate of registration as a distributor or exhibitor of film or games issued by the Board;
- (i) where relevant, request the production of a licence to conduct the business of adult premises issued by a licensing authority contemplated in section 24; and
- (j) with the consent of the person in charge of the premises or the assistance of the South African Police Services, examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24 (2).

(2) Any entry and inspection of premises or facility made in terms of subsection (1) may occur at any reasonable time but must be conducted with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy.

(3) A record shall be kept of any material seized in terms of subsection (1) indicating the purpose of seizure

and the material seized: Provided that the person from whom the material is seized, if identifiable, is provided with a copy of such a record.

(4) In order to give effect to the objects of the Act and fulfillment of the functions of the compliance officer provided for in this section, the Minister may, with the concurrence of the Minister of Police, deploy a member of the South African Police Service within the Board to carry out any compliance or monitoring duties.

[S. 15A inserted by s. 18 of Act No. 3 of 2009 and substituted by s. 14 and of Act No. 11 of 2019 w.e.f 1 March, 2022.]

### CHAPTER 3

#### *Complaints and Applications concerning Publications*

**16. Classification of publications.**—(1) Any person may request, in the prescribed manner, that a publication, other than a publication that is published by a member of the Press Council of South Africa or an advertisement that falls under the jurisdiction of the Advertising Standards Authority of South Africa, which is being distributed in the Republic, be classified in terms of this section.

[Sub-s. (1) substituted by s. 15 (a) of Act No. 11 of 2019 w.e.f 1 March, 2022.]

(2) Any person, except the publisher of a publication contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that—

(a) . . . . .

[Para. (a) deleted by s. 15 (c) of Act No. 11 of 2019 w.e.f 1 March, 2022.]

(b) amounts to propaganda for war;

[Para. (b) substituted by s. 15 (d) of Act No. 11 of 2019 w.e.f 1 March, 2022.]

(c) incites imminent violence; or

[Para. (c) substituted by s. 15 (e) of Act No. 11 of 2019 w.e.f 1 March, 2022.]

(d) advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm and imminent violence,

[Para. (d) substituted by s. 15 (f) of Act No. 11 of 2019 w.e.f 1 March, 2022.]

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.

[Sub-s. (2) amended by s. 15 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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: Provided that the classification committee must render a decision as soon as is possible so as not to unreasonably delay the publication that has been referred to it for classification.

[Sub-s. (3) substituted by s. 15 (g) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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 *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 or age-inappropriate materials;

[Sub-para. (ii) substituted by s. 15 (h) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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;

(iv) explicit infliction of domestic violence; or

(v) explicit visual presentations of extreme violence,



(Editorial Note: Numbering as per original *Government Gazette*.)

unless, judged within context, the publication is 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 or age-inappropriate materials;

[Para. (b) substituted by s. 15 (i) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (c) classify the publication as "X18" if it contains explicit sexual conduct, unless, judged within context, the publication is 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

[Para. (c) substituted by s. 15 (i) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (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.

[S. 16 substituted by s. 19 of Act No. 3 of 2009.]

## 17. . . . .

[S. 17 substituted by s. 6 of Act No. 18 of 2004 and repealed by s. 20 of Act No. 3 of 2009.]

## CHAPTER 4

### *Classification of films and games, self-classification, accreditation, complaints and prohibited content*

[Ch. 4, heading substituted by s. 16 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18. Classification of films and games.**—(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 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 a *bona fide* documentary, is of scientific, dramatic or artistic merit or is on a matter of public interest, in which event the film or game shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;

[Para. (a) amended by s. 17 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (b) classify the film or game 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, conduct or an act which is degrading of human beings;  
(iv) explicit infliction of domestic violence; or  
(v) explicit visual presentations of extreme violence,



(Editorial Note: Numbering as per original *Government Gazette*.)

unless, in respect of the film or game, judged within context, the film or game is 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;

[Para. (b) substituted by s. 17 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (c) classify the film or game as "X18" if it contains explicit sexual conduct, unless, judged within context, the film or game is 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

[Para. (c) substituted by s. 17 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (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 and online streaming, be exempt from the duty to apply for classification of a film or game and, 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.

[S.18 amended by s. 7 of Act No. 18 of 2004 and substituted by s. 21 of Act No. 3 of 2009. Sub-s. (6) substituted by s. 17 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

#### **18A. . . . .**

[S.18A inserted by s. 22 of Act No. 3 of 2009 and repealed by s. 18 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

#### **18B. . . . .**

[S.18B inserted by s. 22 of Act No. 3 of 2009 and repealed by s. 18 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18C. Self-classification.**—(1) The Board may, on application and upon payment of the prescribed fee, by a commercial online distributor approve and accredit such commercial online distributor to conduct classifications of films, games and publications.

(2) A commercial online distributor of films, games or publications contemplated in subsection (1) shall not be subject to section 18 (1) (b) provided that—

- (a) the commercial online distributor referred to in subsection (1) has been accredited by the Board to classify its own films, games or publications;
- (b) the commercial online distributor applies the classification guidelines as determined by the Board in consultation with the Minister;
- (c) the decisions of the commercial online distributor comply with the requirements as may be set by Board from time to time;
- (d) the registered distributors remain subject to classifications which were issued before such commercial online distributor was approved and may apply for re-classification by the Board only after two years of a classification decision of the Board;
- (e) the commercial online distributor informs the Board of all its "XX" and "X18" classifications of films, games and publications and any other classification of films, games and publications so that the Board may publish these classifications in the *Gazette*, after which such classifications are deemed to have been made by the Board; and
- (f) if a film, game or publication is already classified, or is subsequently classified, by the Board the commercial online distributor may not classify or re-classify differently to the Board's classification of the said film, game or publication.

(3) The Board may provide training to commercial online distributors contemplated in subsection (1) in terms of this Act.

(4) The commercial online distributor shall upon demand by the Board make available all its classification decisions in relation to films, games and publications, for auditing purposes.

(5) The accreditation of a commercial online distributor may, after due inquiry, be suspended by the Board—

- (a) if the commercial online distributor acts contrary to the provisions of this section;
- (b) until the Board is satisfied that the commercial online distributor will comply with the provisions of this section in the future, and commercial online distributor may also be subject to prosecution for an offence in terms of this Act.

(6) No film, game or publication may be distributed in the Republic unless it has been classified in terms of section 16, section 18, this section or section 18D, and a clearly visible label indicating the age limit and the nature of content is displayed on or in connection with the film, game or publication and appearing next to the logo of the Board.

[S. 18C inserted by s. 19 and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18D. Approval of accredited foreign or international classification systems by the Council.**—(1) The Council may, on application by an online distributor wishing to distribute films, games or publications in the Republic using classification ratings issued by a foreign or international classification authority or body, approve the use of classification ratings issued by the foreign or international classification authority or body.

(2) The Council may approve the application contemplated in subsection (1), subject to such conditions as the Board may consider necessary in relation to the online distribution of films or games.

(3) The Council shall, in considering the application contemplated in subsection (1), take into account—

- (a) the accessibility by the Board of the distributor's online service for compliance, monitoring and auditing purposes; and
- (b) the alignment of the foreign or international ratings to the applicable ratings in terms of the Act and the Council's classification guidelines.

(4) An application in terms of subsection (1) must be accompanied by the payment of the prescribed fee, determined by the Minister.

[S. 18D inserted by s. 19 and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18E. Complaints against prohibited content.**—(1) Any person may complain to the Board about unclassified, prohibited content, or potential prohibited content, in relation to services being offered online by any person, including commercial online distributors and non-commercial online distributors.

(2) If, upon investigation by the Board or by the compliance officers in terms of section 15, it is established that there is merit in the complaint and or that the prohibited content or content being hosted or distributed using the internet constitutes prohibited content in terms of this Act or has not been submitted for examination and classification as required in terms of sections 16, 18, 18C or 18D, the matter must be referred to the Board which may, subject to due process of law—

- (a) in the case of a non-commercial online distributor, issue a take-down notice in accordance with the procedure in section 77 of Electronic Communications and Transactions, 2002 (Act No. 25 of 2002); or
- (b) in the case of internet service providers, issue a take-down notice in terms of section 77 of Electronic Communications and Transactions, 2002 (Act No. 25 of 2002).

(3) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published the prohibited content.

(4) In the case of content hosted outside of the Republic that is found to contain child pornography, the Board shall refer the matter to the South African Police Service or to the hotline in the country concerned for the attention of law enforcement officials in that country.

(5) For the purposes of this section an "internet service provider" means the service provider contemplated in section 70 and section 77 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

[S. 18E inserted by s. 19 and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18F. Prohibition against distribution of private sexual photographs and films.**—(1) No person may expose, through any medium, including the internet and social media, a private sexual photograph or film if the disclosure is made—

- (a) without the consent of the individual or individuals who appear in the photograph or film; and
- (b) with the intention of causing that individual harm.

(2) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

(3) The prohibition referred to in subsection (1) shall apply notwithstanding that the individual who appears in the photograph or film might have consented to the original creation of such photograph or film.

(4) For the purposes of this section and section 24E a photograph or film is "private" if, judging from the context in which the photograph or film is taken or made, it was not intended by any individual in the photograph or

film to be seen by others.

(5) For the purposes of this section a photograph or film is “sexual” if such photograph or film—

- (a) it shows all or part of an individual’s exposed female breasts, anus, genitals or pubic area;
- (b) it shows something that a reasonable person would consider to be sexual because of its nature; or
- (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(6) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published the private sexual photograph or film.

[S. 18F inserted by s. 19 and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18G. Prohibition against filming and distribution of films and photographs depicting sexual violence and violence against children.**—(1) No person may create, produce or distribute in any medium, including the internet, and social media any films or photographs depicting sexual violence and violence against children.

(2) For the purposes of this section “photograph or film” means a still or moving image in any form that—

- (a) consists of, or includes one or more photographed or filmed images; or
- (b) appears to consist of or includes one or more photographed or filmed images.

The prohibition in subsections (1) and (2) shall apply despite that the individual who appears in the photograph or film might have consented to the original creation of such photograph or film.

(3) The reference in subsection (2) (b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.

(4) For the purposes of this section “photographed or filmed image” means a still or moving image that—

- (a) was originally captured by photography or filming, or
- (b) is part of an image originally captured by photography or filming.

(5) For the purposes of this section “filming” means making a recording, on any medium, from which a moving image may be produced by any means.

(6) References to a photograph or film include—

- (a) a negative version of an image described in subsection (2); and
- (b) data stored by any means which is capable of conversion into an image described in subsection (2).

(7) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published a film or photograph depicting sexual assault and violence against children.

[S. 18G inserted by s. 19 and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18H. Prohibition against propaganda for war; incitement of imminent violence and advocacy of hatred that is based on identifiable group characteristics, and that constitutes incitement to cause harm.**—No person may distribute through any medium including the internet and social media, any film, game or publication which amounts to propaganda for war, incites imminent violence or advocates hate speech.

[S. 18H inserted by s. 19 and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18I. Display of classification decisions.**—(1) Where a film, or game has been classified or exempted from classification in terms of this Act, or such film or game has been classified by a commercial online distributor referred to in section 18C, the film or game must—

- (a) if it is a film or game approved for sale or hire, display a label in the prescribed form;
- (b) if it is a film or game approved for sale or hire online, must conspicuously display the Board’s classification decision and logo on the landing page of the online medium, the online medium catalogue and at the point of sale of the commercial online distributor services.

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

(3) No film or game may be distributed in the Republic, unless it has been classified in terms of section 18, 18C or 18D and a clearly visible label indicating the age limit and the nature of content is displayed on or in connection with the film or game.

[S. 18I inserted by s. 19 and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**18J. Re-classification.**—(1) Any person may, after a period of one year from the date when a film, game or publication was first classified in terms of this Act, apply to the Board in the prescribed manner, for a less restrictive classification of that film, game or publication.

(2) Any member of the public who is aggrieved or offended by a classification decision in respect of a film, game or publication, may in prescribed manner and upon payment of a prescribed fee, apply to the Board for re-classification of such film, game or publication.

(3) The Board shall, upon receipt of the application contemplated in subsections (2) and (3), inform the distributor in writing of the application for re-classification and request the distributor to make representations before a decision is made as to whether or not to reclassify the film, game or publication.

[S. 18J inserted by s. 19 and of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

## CHAPTER 5

### *Right to appear and to appeal to Appeal Tribunal*

[Ch. 5 heading substituted by s. 20 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**19. 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.**— Any person who has made a request to the Board for a publication to be referred to a classification committee for classification in terms of section 16 (1) or submitted a publication for classification in terms of section 16 (2), or the person who has applied for the classification 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 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.

[S. 19 amended by s. 5 of Act No. 34 of 1999, substituted by s. 23 of Act No. 3 of 2009 and amended by s. 21 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**20. Appeal to Appeal Tribunal.**—(1) 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 a submission 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 of the Board, in the prescribed manner, appeal to the Appeal Tribunal.

[Sub-s. (1) substituted by s. 6 of Act No. 34 of 1999, by s. 24 (a) of Act No. 3 of 2009 and by s. 22 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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.

[Sub-s. (3) amended by s. 8 of Act No. 18 of 2004 and substituted by s. 24 (b) of Act No. 3 of 2009.]

(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.

[Sub-s. (4) substituted by s. 24 (b) of Act No. 3 of 2009.]

(5) A decision of the Appeal Tribunal shall for the purposes of this Act be deemed to be a decision of the

Board.

(6) Where a commercial online distributor of a film or game is a commercial online distributor referred to in section 18C, such commercial online distributor shall not have the right to appeal to the Appeal Tribunal against a classification by that commercial online distributor in line with a Board classification, unless the Board, based on a complaint in terms of section 18G, imposes a more onerous classification, in which case that commercial online distributor may appeal to the Appeal Tribunal against such a classification.

[Sub-s. (6) added by s. 22 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

21. . . . .

[S. 21 substituted by s. 7 of Act No. 34 of 1999 and repealed by s. 25 of Act No. 3 of 2009.]

## CHAPTER 6

### *Exemptions: Publications and Films*

**22. Exemption of persons from certain sections, and exclusions from application of this Act.**—(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 section 24A, 24B or 24C if it has good reason to believe that *bona fide* purposes will be served by such an exemption.

[Sub-s. (1) substituted by s. 26 (a) of Act No. 3 of 2009.]

(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.

[Sub-s. (2) substituted by s. 26 (a) of Act No. 3 of 2009.]

(3) . . . . .

[Sub-s. (3) deleted by s. 26 (b) of Act No. 3 of 2009.]

**23. Exhibition of films to distributor of films not prohibited by this Act.**—(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 and 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 notice withdraw the exemption.

[S. 23 substituted by s. 27 of Act No. 3 of 2009.]

**24. Exemption in respect of distribution of certain publications and films: Adult premises.**—(1) Any person may exhibit in public or distribute any film, game or publication classified as "X18" 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 on or from within premises forming part of a building.

[Sub-s. (1) substituted by s. 28 (a) of Act No. 3 of 2009.]

(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.

[Sub-s. (2) substituted by s. 28 (a) of Act No. 3 of 2009.]

(3) Any person who is registered as a film or game distributor in terms of section 18 (1) (a) may, subject to



an exemption being granted by the Board, distribute a film or game classified as "X18" online, subject to the following conditions—

- (a) The distributor shall ensure to the satisfaction of the Board that children under the age of 18 would not be able to access such a film or game on-line;
- (b) the distributor shall ensure that the classification and age restriction are clearly displayed on the screen of the user throughout the screening;
- (c) the user must confirm that he or she is 18 years or older prior to commencing viewing of the film or playing the game;
- (d) the distributor shall not distribute any promotion of the film or game to be accessed without it being paid for by way of a credit card or another child secure method agreed to by the Board and, for the purposes of this subsection, the promotion of the film shall be subject to the same conditions regarding distribution as the main feature of the film or game;
- (e) the distributor shall keep, solely for his or her private records, a register of all instances where access was granted to a user, whose name, address and verifiable age must be noted in the register kept for that purpose;
- (f) the register referred to in paragraph (e) must be kept for one year from the date when distribution took place;
- (g) the chief executive officer may approach a court *ex parte* for the production of the register referred to in paragraph (e) if he or she has reasonable cause to believe that the online distributor is supplying material to children under the age of 18;
- (h) if the film or game is exhibited online in a public place, that place must be a licensed premises in terms of subsection (1);
- (i) the Board may, after due inquiry, suspend an exemption for a maximum period of 12 months if any of the conditions specified in this subsection have not been met by the distributor;
- (j) a distributor who knowingly or negligently grants access to a film or game classified as "X18" to a child under the age of 18 shall be guilty of an offence as contemplated in section 24A (4); and
- (k) the inquiry instituted by the Board in terms of paragraph (i) must continue even if criminal proceedings have been instituted against the distributor.

[Sub-s. (3) added by s. 23 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**24A. Prohibitions, offences and penalties on possession of films, games and publications.**—(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 not exceeding R150 000 or to imprisonment for a period not exceeding eight 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 (2) which has, except with respect to broadcasters that are subject to regulation by the Independent Communication Authority of South Africa and except with regard to a publication contemplated in section 16 (1)—

- (a) not been classified by the Board;
- (b) been classified as a "refused classification"; or
- (c) been classified as "XX" 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 not exceeding R500 000 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 not exceeding R750 000 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—

- (a) classified as "X18"; or
- (b) which contains depictions, descriptions or scenes of explicit sexual conduct, which would have justified an "X18" classification,

to a person under the age of 18 years, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750 000 or 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 not exceeding R50 000 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 not exceeding R50 000 or to imprisonment for a period not exceeding eight months or to both a fine and such imprisonment.

(7) Any person who knowingly, or who ought to have reasonably known 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 not exceeding R100 000 or to imprisonment for a period not exceeding eight months or to both a fine and such imprisonment.

[S. 24A inserted by s. 29 of Act No. 3 of 2009 and substituted by s. 24 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

## **24B. Offences and penalties in respect of child pornography and sexual exploitation of children.—(1) . . .**

(a) unlawfully possesses child pornography;

[Para. (a) substituted by s. 25 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(b) creates, produces or in any way contributes to, or assists in the creation or production of child pornography;

[Para. (b) substituted by s. 25 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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 child pornography; or

[Para. (c) substituted by s. 25 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(2) . . .

(3) . . .

(4) A court which convicts a person of an offence in terms of subsection (1) (b) may, where a penalty is not prescribed in respect of that offence by any other Act of Parliament, impose a sentence as referred to in section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which that court considers appropriate and which is within that court's penal jurisdiction.

[Sub-s. (4) added by s. 25 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(5) Any person who contravenes subsection (1) (d), is liable—

(a) in the case of a first conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment; or

(b) in the case of a second and subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

[Sub-s. (5) added by s. 25 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(6) Any person who contravenes subsection (1) (a) or (c), is liable—

(a) in the case of a first conviction, to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment;

(b) in the case of a second conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment; or

(c) in the case of a third or subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

[Sub-s. (6) added by s. 25 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(7) Any person who contravenes the provisions of subsection (2), is liable, on conviction, to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

[Sub-s. (7) added by s. 25 (c) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(8) Any person who contravenes the provisions of subsection (3) is liable—

(a) in the case of a first conviction, to a fine of R1 000 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment; or

(b) in the case of a second or subsequent conviction, to a fine of R2 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.

[S. 24B inserted by s. 29 of Act No. 3 of 2009, deleted by s. 58 read with the Sch. to Act No. 19 of 2020 and amended by s. 25 (a) of Act No. 11 of 2019 with effect from 1 March, 2022. Sub-s. (8) to be added by s. 25 (c) of



**24C. Obligations of internet access and service providers.**—(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 a 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 subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R50 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

[S. 24C inserted by s. 29 of Act No. 3 of 2009 and be substituted by s. 26 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**24D. Prohibition, offences and penalties for submission of false and misleading information to online submission system of Board.**—Any person who furnishes the Board with false or misleading information on the Board’s online submission system with respect to registration online to—

- (a) classify a film or game;
- (b) renew registration; or
- (c) apply for the submission of a game for classification,

shall be guilty of an offence and liable, upon conviction to a fine not exceeding R15 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

[S. 24D inserted by s. 27 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**24E. Prohibitions, offences and penalties on distribution of private sexual photographs and films.**—(1) Any person who knowingly distributes private sexual photographs and films in any medium including the internet and social media, without prior consent of the individual or individuals in the said sexual photographs and films with the intention to cause the said individual harm shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) Any person who knowingly distributes private sexual photographs and films in any medium including through the internet, without prior consent of the individual or individuals and where the individual or individuals in the photographs or films is identified or identifiable in the said photographs and films, shall be guilty of an offence and liable upon conviction, to a fine not exceeding R300 000 or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment.

[S. 24E inserted by s. 27 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**24F. Prohibitions, offences and penalties on filming and distribution of films and photographs depicting sexual assault and violence against children.**—Any person who knowingly creates, produces or in any way contributes to or assists in any film or photograph which contains depictions, descriptions or scenes of sexual assault and violence against children, shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

[S. 24F inserted by s. 27 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**24G. Prohibitions, offences and penalties on propaganda for war, incitement of imminent violence, and advocacy of hatred based on an identifiable group characteristic and that constitutes incitement to cause harm.**—Any person who knowingly distributes in any medium, including the internet and social media any film, game or publication which amounts to propaganda for war, incites imminent violence, or advocates hate speech, shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

[S. 24G inserted by s. 27 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

## CHAPTER 7

### *Prohibition of Conduct Contrary to Classifications*

**25.** . . . . .

[S. 25 amended by s. 9 of Act No. 18 of 2004 and repealed by s. 30 of Act No. 3 of 2009.]

**26.** . . . . .

[S. 26 amended by s. 10 of Act No. 18 of 2004 and repealed by s. 30 of Act No. 3 of 2009.]

**27.** . . . . .

[S. 27 amended by s. 8 of Act No. 34 of 1999 and by s. 11 of Act No. 18 of 2004 and repealed by s. 30 of Act No. 3 of 2009.]

**27A. Registration and other obligations of internet service providers.**—(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 access provider has knowledge that its services are being used for the hosting or distribution of child pornography, propaganda for war, incitement of imminent violence or advocating hatred based on an identifiable group characteristic and that constitutes incitement to cause harm, 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.

[Sub-s. (2) amended by s. 28 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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 subsections (1) and (2) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or

[Para. (a) substituted by s. 28 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (b) fails to comply with subsection (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

[S. 27A inserted by s. 12 of Act No. 18 of 2004. Sub-s. (4) substituted by s. 31 of Act No. 3 of 2009. Para. (b) substituted by s. 28 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

28. ....

[S. 28 amended by s. 13 of Act No. 18 of 2004 and repealed by s. 32 of Act No. 3 of 2009.]

29. ....

[S. 29 amended by s. 14 of Act No. 18 of 2004 and repealed by s. 32 of Act No. 3 of 2009.]

30. ....

[S. 30 amended by s. 15 (a)-(d) of Act No. 18 of 2004, by s. 33 (a)-(b) of Act No. 3 of 2009 and repealed by s. 29 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**30A. Extra-territorial jurisdiction.**—(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.

[S. 30A inserted by s. 16 of Act No. 18 of 2004.]

**30B. Presumptions and proof.**—(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.

(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  
[Para. (b) substituted by s. 34 of Act No. 3 of 2009.]
- (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 Appeal Tribunal,

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.

[S. 30B inserted by s. 16 of Act No. 18 of 2004.]

## CHAPTER 8

### *Regulations, Amendment and Repeal of Laws*

**31. Regulations.**—(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, Appeal Tribunal and Enforcement Committee, further relevant experience in terms of section 6 (4) (a) and the experience of persons who may be appointed as members of the advisory panel referred to in section 6 (2);

[Para. (b) substituted by s. 30 (a) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

- (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.

[Sub-s. (1) substituted by s. 35 (a) of Act No. 3 of 2009.]

(2) . . . . .

[Sub-s. (2) deleted by s. 35 (b) of Act No. 3 of 2009.]

(3) (a) Within two years after the commencement of this Act the Board shall publish the guidelines which the Board and the Appeal Tribunal 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 Council, in consultation with the Minister, shall publish the guidelines in the *Gazette* and, where necessary, amend them.

[Para. (b) substituted by s. 30 (b) of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

(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.

(Date of commencement of sub-s. (3): 16 January, 1998.)

**31A. Procedure for making regulations.**—(1) The Minister must, before making or amending any regulations referred to in section 31, publish a notice in the *Gazette*—

- (a) setting out that draft regulations have been developed;
- (b) specifying where a copy of the draft regulations may be obtained; and
- (c) inviting written comments to be submitted on the proposed regulations within a specified period.

(2) After complying with subsection (1), the Minister may—

- (a) amend the regulations; and
- (b) subject to subsection (3), publish the regulations or directives in final form in the *Gazette*.

(3) (a) The Minister must, within 30 days before publication of the regulations in the *Gazette*, as referred to in subsection (2) (b), table them in Parliament.

(b) Subsection (1) does not apply in respect of any amendment of the regulations as a result of the process referred to in paragraph (a).

[S. 31A inserted by s. 31 of Act No. 11 of 2019 w.e.f. 1 March, 2022.]

**32.** . . . . .

[S. 32 repealed by s. 36 of Act No. 3 of 2009.]

**33. Repeal of laws.**—The laws mentioned in Schedule 12 are hereby repealed to the extent set out in the third column.

**34.** Amends item 2 of Schedule 1 of the *Businesses Act*, No. 71 of 1991, by adding paragraph (h) (date of commencement: 16 January, 1998).

**35. Short title and commencement.**—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*.

**SCHEDULE 1**

[Schedule 1 amended by s. 9 of Act No. 34 of 1999 and by s. 17 of Act No. 18 of 2004 and repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 2**

[Schedule 2 amended by s. 18 of Act No. 18 of 2004 and repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 3**

[Schedule 3 substituted by s. 19 of Act No. 18 of 2004 and repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 4**

[Schedule 4 repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 5**

[Schedule 5 repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 6**

[Schedule 6 amended by s. 10 of Act No. 34 of 1999 and by s. 20 of Act No. 18 of 2004 and repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 7**

[Schedule 7 repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 8**

[Schedule 8 repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 9**

[Schedule 9 repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 10**

[Schedule 10 substituted by s. 21 of Act No. 18 of 2004 and repealed by s. 37 of Act No. 3 of 2009.]

**SCHEDULE 11**

[Schedule 11 repealed by s. 22 of Act No. 18 of 2004.]

**SCHEDULE 12**  
ACTS REPEALED

(Section 33)

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

