

REPUBLIC OF SOUTH AFRICA

FILMS AND PUBLICATIONS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 29169 of 31 August 2006)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 27—2006]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

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

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

Amendment of section 1 of Act 65 of 1996, as amended by section 1 of Act 34 of 1999 and section 1 of Act 18 of 2004

1. Section 1 of the Films and Publications Act, 1996 (hereinafter referred to as “the principal Act”), is hereby amended— 5

(a) by the insertion after the definition of “chief executive officer” of the following definition:

“**‘child abuse’**, for the purposes of this Act, means the use of a child in the creation or production of child pornography or for sexual exploitation and includes exhibiting or showing images of sexual conduct to a child or exposing a child to or encouraging a child to witness sexual conduct;” 10

(b) by the insertion after the definition of “classification committee” of the following definition:

“**‘classification office’** means the office established by the Board in terms of section 4A(1)(e);” and 15

(c) by the insertion after the definition of “film” of the following definition:

“**‘interactive computer game’** means a computerised game in which the way the game proceeds and the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the player;” 20

Substitution of section 2 of Act 65 of 1996, as substituted by section 2 of Act 34 of 1999

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

“Objects of Act

2. The objects of this Act shall be to—

- (a) regulate the creation, production, possession, broadcasting and distribution of certain publications, [and certain] films and interactive computer games by means of classification[, **the imposition of age restrictions and the giving of consumer advice, due regard being had in particular to the protection of**] to protect children from exposure to disturbing, harmful or age-inappropriate materials and against sexual exploitation or degradation in publications, films, interactive computer games, on mobile cellular telephones and on the Internet; and
- (b) make the **[exploitative]** use of children in pornographic publications, films, interactive computer games, on mobile cellular telephones or on the Internet, punishable.”.

Amendment of section 4 of Act 65 of 1996, as amended by section 2 of Act 18 of 2004

3. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading: 20
“[Constitution] Composition of Board”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) the chief executive officer and such number of [senior personnel, chief examiners and examiners] members as the Minister may determine having regard to the [likely volume of applications and complaints which will be submitted to the Board in terms of this Act] need to ensure that the membership of the Board is broadly representative of the South African community and relevant stakeholders.”; 25
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- (c) by the deletion of subsection (3); and
- (d) by the substitution for subsection (4) of the following subsection:
“(4) Decisions of the Board [and executive committee] shall be taken by a majority of votes, and in the case of an equality of votes the chairperson of the meeting shall have a casting vote.”. 35

Insertion of section 4A in Act 65 of 1996

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

“Powers and duties of Board

4A. (1) The Board shall—

- (a) in consultation with the Minister, issue directives of general application in accordance with matters of national policy consistent with the purpose of this Act; 40
- (b) establish controls for financial management and accountability within which the classification office contemplated in section 9A must function; 45
- (c) determine and issue a Code of Conduct for members of the Board;
- (d) provide public support for the organisation;
- (e) establish classification office and appoint, in consultation with the Minister with regard to terms and conditions of employment, officers to manage the classification office; 50
- (f) determine the qualifications, experience, terms and conditions of employment of classifiers and appoint such number as may be required, having regard to the likely volume of applications and submissions that will be made to the Board in terms of this Act;

- (g) review, at least four times a year, the administration and management of the classification office to ensure that the objects of the Act are implemented efficiently and that the classification office discharges its obligations and responsibilities in accordance with this Act; and
- (h) exercise and perform such other functions, powers and duties as are conferred or imposed on the Board by or under this Act or any other law.
- (2) When making an appointment in terms of subsection (1)(e), the Board shall have regard not only to the person's personal attributes and integrity, but also to the person's qualifications, knowledge and experience in different aspects of matters likely to come before the classification office.
- (3) When making an appointment in terms of subsection (1)(f), the Board shall ensure broad representation of the South African community in terms of race, ethnicity, gender and religion and may invite the public to nominate persons who may be considered suitable candidates for appointment as classifiers.
- (4) Meetings of the Board shall be convened by the chief executive officer at the request of or in consultation with the chairperson and shall be held at the premises of the Board unless, for *bona fide* reasons, the chairperson directs that a meeting be held at another venue.”.

Amendment of section 5 of Act 65 of 1996, as amended by section 3 of Act 18 of 2004

5. The following heading is hereby substituted for the heading to section 5 of the principal Act:

“**[Constitution of Review] Composition of Appeal Board**”.

Insertion of section 5A in Act 65 of 1996

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

“Powers and duties of Appeal Board

5A. The Appeal Board shall—

- (a) hear and determine any appeal lodged in terms of this Act; and
- (b) have the powers necessary to determine the procedures and forms for the submission of appeals and the procedures to be followed at the hearing of appeals submitted to it.”.

Amendment of section 6 of Act 65 of 1996, as substituted by section 3 of Act 34 of 1999

7. Section 6 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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

Amendment of section 7 of Act 65 of 1996, as amended by section 36 of Act 12 of 2004

8. Section 7 of the principal Act is hereby amended by the substitution in subsection (1)(h) for subparagraph (i) of the following subparagraph:

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

Amendment of section 9 of Act 65 of 1996, as substituted by section 4 of Act 34 of 1999

9. Section 9 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

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

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Insertion of section 9A in Act 65 of 1996

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

“Composition, functions, powers and management of classification office

9A. (1) The classification office shall consist of the chief executive officer and the number of officers determined by the Board having regard to the functions, powers and responsibilities of the classification office.

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(2) The functions of the classification office shall be to—

(a) ensure that children are protected against child abuse and in so doing to—

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(i) examine and determine the classification of any film, interactive computer game or publication submitted to the Board under this Act; and

(ii) determine, in accordance with any classification guidelines issued by the Board, the conditions to be imposed on the distribution, exhibition and possession of any film, interactive computer game or publication classified in terms of this Act;

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(b) determine an application made under section 22 for an exemption from any provision of this Act in respect of any film, interactive computer game or publication;

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

(d) issue, in consultation with all relevant stakeholders, classification guidelines to be used in determining what is disturbing, harmful or age-inappropriate for children in films, interactive computer games and publications;

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(e) publish classification guidelines every 12 months and to invite all relevant stakeholders to make representations regarding such guidelines, to consider all representations made and, if necessary, to amend the guidelines on the basis of such representations; and

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(f) 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;

(iii) the format and details of the display of decisions of the Board with respect to films, interactive computer games and publications classified in terms of this Act; and

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(iv) generally any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

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(3) The classification office shall have all the powers reasonably necessary to enable it to carry out the duties and exercise the functions necessary for the effective achievement of the objects of this Act.

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

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(a) the appointment of administrative staff;

(b) the appointment of compliance officers;

(c) the allocation of spheres of responsibility among and between management officers;

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(d) acting as an arbitrator in interpersonal disputes or when management structures reach a deadlock;

- (e) providing help and assistance with programme development and management;
 - (f) the submission of the annual report and financial statements as prescribed by the Public Finance Management Act, 1999 (Act No. 1 of 1999), and Treasury Regulations.
- (5) The chief executive officer may delegate any power conferred on him or her.”.

Substitution of section 10 of Act 65 of 1996

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

“Classification committees

10. (1) The [executive committee] classification office shall appoint so many classification committees as often as may be necessary, each of which shall consist of [a chief examiner, designated by the executive committee, and at least one examiner, so designated,] at least three classifiers, one of whom shall be designated the chairperson to perform or carry out with regard to films and publications, referred to them by the chief executive officer in terms of sections 16(3) and 18(2), the functions and duties assigned to or imposed on them in terms of sections 16(4) and 18(3).
- [2] Decisions of a classification committee shall be taken by a majority of votes: Provided that where a committee consists of two members only, the executive committee shall in a case where those members differ with regard to the decision which should be taken by the classification committee, appoint a third member to that committee so as to enable the committee to come to a decision.
- (3) [2] A decision of a classification committee shall for the purposes of this Act be deemed to be a decision of the Board.”.

Amendment of section 13 of Act 65 of 1996

12. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The chief executive officer shall be the accounting officer [in respect of all money referred to in subsection (1)].”.

Insertion of section 15A in Act 65 of 1996

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

“Functions and powers of compliance officers

- 15A. A compliance officer may, for the purpose of achieving the objects of this Act and of—
- (a) advising distributors and exhibitors of films and interactive computer games of the requirements of this Act with regard to the distribution and exhibition of films and interactive computer games; and
 - (b) ensuring that all films and interactive computer games offered for sale or hire by a distributor have been classified in terms of this Act and that all such films and interactive computer 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 interactive computer games by the Board,
- enter any premises on or in which the business of the sale, hire or exhibition of films or interactive computer games is being conducted, and—
- (i) request the production of a certificate of registration as a distributor or exhibitor of films or interactive computer games issued by the Board and, where relevant, a licence to conduct the business of adult premises issued by a licensing authority as contemplated in section 24 of this Act;

- (ii) examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24(2) of this Act;
- (iii) examine or inspect any film or interactive computer games being offered for sale or hire for compliance with the requirements of this Act with regard to the distribution of that film or interactive computer game; and
- (iv) order that films, interactive computer games and publications being offered for sale or hire that do not comply with the requirements of this Act or any decision of the Board with regard to the distribution of that film, interactive computer game or publication be removed from any display or offer for sale or hire until such products comply with the requirements of this Act or any decision of the Board with regard to their distribution.”.

Substitution of section 16 of Act 65 of 1996

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

“Classification of publications

- 16.** (1) Any person may request, in the prescribed manner, that a publication which is to be or is being distributed in the Republic be classified in terms of this section.
- (2) Any person who, for distribution or exhibition in the Republic, creates, produces, publishes or advertises any publication that contains visual presentations, descriptions or representations of or amounting to—
- (a) sexual conduct;
 - (b) propaganda for war;
 - (c) incitement to imminent violence; or
 - (d) the advocacy of hatred based on any identifiable group characteristic, shall submit in the prescribed manner such publication for examination and classification to the classification office before such publication is distributed, exhibited, offered or advertised for distribution or exhibition.
- (3) The chief executive officer shall refer any publication submitted to the classification office under subsections (1) or (2) to a classification committee consisting of at least three classifiers, one of whom shall be designated as chairperson, for examination and classification of the publication.
- (4) The classification committee shall, in the prescribed manner, examine a publication referred to it and shall—
- (a) classify the publication as a “refused classification” if the publication contains visual presentations, descriptions or representations of—
 - (i) child abuse, propaganda for war or incitement to imminent violence; or
 - (ii) the advocacy of hatred based on any identifiable group characteristic, unless, judged within context, the publication is a *bona fide* documentary or is a publication of scientific and literary merit on a matter of public interest;
 - (b) classify the publication as XX if it contains visual presentations, descriptions or representations of—
 - (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
 - (ii) conduct or an act which is degrading of human beings; or
 - (iii) conduct or an act which constitutes incitement to or encourages or promotes harmful behaviour,
 unless, judged within context, the publication is a *bona fide* documentary or is a publication of scientific, literary or artistic merit, in which event the publication shall be classified X18 or classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials;

- (c) classify the publication as X18 if it contains visual presentations, descriptions or representations of—
- (i) explicit sexual conduct;
 - (ii) the explicit infliction of sexual or domestic violence; or
 - (iii) the explicit effects of extreme violence,
- unless, judged within context, the publication is a *bona fide* documentary or is a publication of scientific, literary or artistic merit, in which event the publication shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials; or
- (d) if the publication contains visual presentations, descriptions or representations which may be disturbing or harmful to or age-inappropriate for children, classify that publication, with reference to the relevant guidelines, by the imposition of appropriate age restrictions and such other conditions as may be necessary to protect children in the relevant age categories from exposure to such materials.
- (5) Where a publication has been classified as a “refused classification” or has been classified XX or X18, the chief executive officer shall cause that classification decision to be published by notice in the *Gazette*, together with the reasons for the decision.”.

Repeal of section 17 of Act 65 of 1996

15. Section 17 of Act 65 of 1996 is hereby repealed.

Substitution of section 18 of Act 65 of 1996, as amended by section 7 of Act 18 of 2004

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

“Classification of films and interactive computer games

18. (1) Any person who intends to distribute or exhibit any film or interactive computer 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 interactive computer games; and
 - (b) submit for examination and classification any film or interactive computer 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 chief executive officer shall refer any film or interactive computer game submitted to the Board under subsection (1)(b) to a classification committee consisting of at least three classifiers, one of whom shall be designated as chairperson, for examination and classification.
- (3) The classification committee shall, in the prescribed manner, examine the film or interactive computer game referred to it and shall—
- (a) classify the film or interactive computer game as a “refused classification” if the film or interactive computer game—
 - (i) contains depictions or sequences of child abuse, propaganda for war or incites imminent violence; or
 - (ii) advocates hatred based on any identifiable group characteristic, unless, judged within context, the film, is a *bona fide* documentary or a film of scientific merit on a matter of public interest;
 - (b) classify the film or interactive computer game as XX if it depicts—
 - (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
 - (ii) conduct or an act which is degrading of human beings; or
 - (iii) conduct or an act which constitutes incitement to or encourages or promotes harmful behaviour,
 unless, in respect of the film, judged within context, the film is a *bona fide* documentary or is a film of scientific, dramatic or artistic merit, in

- which event the film shall be classified X18 or classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials;
- (c) classify the film or interactive computer game as X18 if it depicts— 5
- (i) explicit sexual conduct;
 - (ii) the explicit infliction of sexual or domestic violence; or
 - (iii) the explicit effects of extreme violence,
- unless, in respect of the film, judged within context, the film is a *bona fide* documentary or is a film of scientific, dramatic or artistic merit, in which event the publication shall be classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials; or 10
- (d) if the film or interactive computer game contains scenes which may be disturbing or harmful to or age-inappropriate for children, classify that film or interactive computer 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. 20
- (4) Where a film or interactive computer game has been classified as a “refused classification” or has been classified as XX or X18, the chief executive officer shall cause the classification decision to be published by notice in the *Gazette*, together with the reasons for the decision.”.

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

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

“Display of classification decisions

- 18A.** (1) Where a film, interactive computer game or publication has been classified or exempted from classification in terms of this Act, it must— 30
- (a) if it is a film or interactive computer game approved for sale or hire, display the following certificate conspicuously and clearly visible on or through the cover or packaging of the cassette or holder of the film or interactive computer game: 35
- CERTIFICATE OF CLASSIFICATION**
Certificate of Classification No.:
Classification and Consumer Advice:
Any other condition imposed::
- (b) if it is a publication, either the front of the cover or the wrapper of the publication, where applicable, display the following information— 40
- (i) Classification and consumer advice; or
 - (ii) any other condition aimed at the protection of children; and
- (c) if it is a film approved for exhibition in public, on all advertisements and illustrated exhibitions associated with that film, display the classification, consumer advice and any other condition imposed by the Board with respect to the exhibition of that film in public. 45
- (2) The Board may prescribe by regulations the format, including size and design, as well as the manner of the display of certificates of classification on films, interactive computer games and publications approved for distribution. 50

Re-classification

18B. Any person may, after a period of two years from the date when a film, interactive computer game or publication was first examined and classified in terms of this Act, apply, in the prescribed manner, for a less restrictive classification of that film, interactive computer game or publication.”. 55

Repeal of section 19 of Act 65 of 1996

18. Section 19 of the principal Act is hereby repealed.

Amendment of section 20 of Act 65 of 1996, as amended by section 6 of Act 34 of 1999 and section 8 of Act 18 of 2004

19. Section 20 of the principal Act is hereby amended— 5

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

“(1) Any person who has applied for the classification of a film, interactive computer game or publication or any person who has lodged a complaint with the Board that a publication be referred for examination and classification or any person who has applied for registration as a distributor or exhibitor of films or any person who is the subject of a decision rendered by the Board in respect of any matter in terms of this Act may appeal against the decision or finding of the Board to the Appeal Board in the prescribed manner.”; 10

(b) by the substitution for subsection (3) of the following subsection: 15

“(3) The [Review] Appeal Board may refuse the appeal and confirm the decision in question, or allow the appeal, either wholly or in part, and give such decision as the Board [or executive committee] should in its view have given, and amend the classification of the [publication or] film, interactive computer game or publication, specifying the [clause] section of [Schedule 1 or 6] the Act upon which the classification is in terms of its decision based, and may impose other conditions in respect of the distribution or exhibition of the [publication or] film, interactive computer game or publication.”; and 20

(c) by the substitution for subsection (4) of the following subsection: 25

“(4) The chief executive officer shall in the case of a successful appeal against a decision whereby an application for registration, exemption, a permit or licence is refused, issue the requisite certificate of registration, exemption, permit or licence, subject to the conditions, if any, imposed by the [Review] Appeal Board.”. 30

Repeal of section 21 of Act 65 of 1996

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

Amendment of section 22 of Act 65 of 1996

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

(a) by the substitution for subsection (1) of the following subsection: 35

“(1) The [executive committee] Board may on receipt of an application in the prescribed form, subject to such conditions as it may deem fit, exempt in writing any person or institution from [sections 25, 27 and 28] section 24A or 24B if it has good reason to believe that *bona fide* purposes will be served by such an exemption.”; 40

(b) by the substitution for subsection (2) of the following subsection:

“(2) Where the [executive committee] Board after due inquiry has good reason to believe that the conditions of an exemption are not complied with or that the *bona fide* purposes are no longer present, it may withdraw the exemption.”; and 45

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

Amendment of section 23 of Act 65 of 1996

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

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

“(1) The provisions of section [26(1)(a) and (b)] 24A(1), (2)(a) and (3) shall not prohibit the exhibition of any film or interactive computer game to any person in the course of his or her business as a distributor of films or interactive computer games, or to the representative of such distributor acting for the purposes of such business.”; 50

(b) by the substitution for subsection (2) of the following subsection:

“(2) The **[executive committee]** Board may in its discretion and subject to such conditions as it may deem fit to impose, either by means of a permit, issued in the prescribed form, or by notice in the *Gazette*, exempt from **[section 26]** classification any particular film, any particular class of films, or any film 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.”; and

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

Amendment of section 24 of Act 65 of 1996

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

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

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

(b) by the substitution for subsection (2) of the following subsection:

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

- (a) notices stating that no person under the age of 18 years may enter or be within such premises were not displayed, in the manner prescribed by the Board, at all entrances to the premises concerned;
- (b) a film, interactive computer game or publication was displayed or **[a film was]** exhibited within such premises, or in a display window or door forming part thereof, in such a manner or in such a position that the film, interactive computer game or publication **[or film]** could be seen from any point outside the premises concerned;
- (c) any person under the age of 18 years was allowed to enter or be within the premises concerned; or
- (d) any film, interactive computer game or publication **[or film]** classified as X18 in terms of a decision of the Board, published in the *Gazette*, was delivered by the person licensed in terms of subsection (1) to conduct such premises—
 - (i) to a person who is not the holder of a similar licence; or
 - (ii) in a manner which was not in accordance with regulations made by the Board, with the aim of preventing the delivery of such films, interactive computer games or publications **[and films]** to persons under the age of 18 years.”.

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

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

“Prohibitions, offences and penalties for distribution and exhibition of films, interactive computer games and publications

24A. (1) Any person who knowingly distributes or exhibits in public a film or interactive computer game without first having been registered with the Board as a distributor or exhibitor of films or interactive computer games shall be guilty of an offence and liable, upon conviction, to a fine or

to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

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

- (a) not been classified by the Board;
- (b) been classified as a “refused classification”; or
- (c) been classified as XX,

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

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

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

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

(6) Any person who knowingly advertises a film or interactive computer 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 interactive computer game being advertised, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

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

Prohibition, offences and penalties for possession of films, interactive computer games and publications

24B. (1) Any person who—

- (a) unlawfully possesses;
- (b) creates, produces or in any way contributes to, or assists in the creation or production of;
- (c) imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates, the importation, procurement, obtaining or accessing of; or
- (d) knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or

distributed, or assists in making available, exporting, broadcasting or distributing, any film, interactive computer game or publication which contains depictions, descriptions or sequences of child pornography or the abuse of children or which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

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

- (a) report such knowledge or suspicion as soon as possible to an officer of any South African law enforcement agency; or
 - (b) furnish, at the request of an official of any South African law enforcement agency, all particulars of such knowledge or suspicion,
- shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 10 years or both to a fine and such imprisonment.

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

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

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

Obligations of Internet access and service providers

24C. (1) Internet service providers who provide child-oriented services, including chat-rooms, shall—

- (a) moderate and monitor such services 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 on their home page and pages of such services Internet safety messages, including chat-room safety messages, in a language that will be clearly understood by children;
- (c) provide mechanisms 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 knowledge of suspicious on-line behaviour by any person towards any child to an official of any South African law enforcement agency; and
- (e) make available to all their subscribers software designed to filter or block their children from access to websites containing pornographic materials and information on the installation and use of such software.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.”.

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

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

Amendment of section 27A of Act 65 of 1996, as inserted by section 12 of Act 18 of 2004

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

- “(4) Any person who—
- (a) fails to comply with subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or
 - (b) fails to comply with subsections (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.”.

Repeal of sections 28 and 29 of Act 65 of 1996

27. Sections 28 and 29 are hereby repealed.

Amendment of section 30 of Act 65 of 1996, as amended by section 15 of Act 18 of 2004

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

- (a) by the deletion of subsections (1), (1A), (2) and (3); and
 - (b) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:
- “(a) If any person who has contravened or failed to comply with [section 26(1)(a), (aA), (b), (c), (d), (2) or (3) or 27A(1)] sections 24A(1), (2)(a), (5), (6), (7), 24C(2) or 27A(1)(a) agrees to abide by a decision [of the executive committee] of the Board and deposits with the Board such sum as the [executive committee of] the Board may determine but not exceeding the greater of two thousand rand or twice the prescribed classification costs, where applicable, on each such contravention or failure to comply, [the executive committee of] the Board may, after conducting an enquiry, determine the matter summarily and may, without legal proceedings, order forfeiture by way of penalty of the whole or any part of the amount so deposited.
- (b) There shall be a right of appeal to the Minister from any determination or order of the [executive committee of the] Board under paragraph (a), as long as that right is exercised within a period of three months from the date of such determination or order.”.

Amendment of section 30B of Act 65 of 1996, as inserted by section 16 of Act 18 of 2004

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

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

Repeal of section 32 of Act 65 of 1996

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

Repeal of Schedules to Act 65 of 1996

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

Substitution of words in Act 65 of 1996

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

Short title and commencement

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

MEMORANDUM ON THE OBJECTS OF THE FILMS AND PUBLICATIONS AMENDMENT BILL, 2006

1. BACKGROUND

The object of the Amendment Bill is to amend the Films and Publications Act, 1996 (Act No. 65 of 1996), hereinafter referred to as the Act, so as to insert certain definitions, amend the composition and provide for the functions and powers of the Board, provide for the appointment and powers of compliance officers, provide for the composition, functions, powers and management of the classification office and repeal certain Schedules to the Act.

2. OBJECTS OF THE BILL

The Amendment Bill seeks to ensure that all publications, films and interactive computer games distributed in the Republic, regardless of the medium or format of such distribution, would be subject to the same principles and guidelines to serve the core objective of protecting children from potentially disturbing, harmful and age-inappropriate materials in publications, films, interactive computer games, mobile cellular telephones and on the Internet since child pornography exists wherever there is a computer, a modem for access to the Internet and a mobile cellular telephone. The Amendment Bill further seeks to bring broadcasters of films within the scope of the Act.

The Amendment Bill also seeks to provide for the appointment of compliance officers to monitor compliance with the provisions of the Act. The Bill authorises compliance officers to enter any premises for purposes of requesting the production of a certificate of registration as a distributor or exhibitor of films or interactive computer games, examining or inspecting any premises used for conducting a business of adult premises for compliance with the conditions laid down in the Act or examining or inspecting any films or interactive computer games offered for sale or hire for compliance with the requirements of the Act. Compliance officers are further empowered to order the removal of films, interactive computer games and publications that do not comply with the requirements of the Act or a decision of the Board until such time that such product complies with the requirements of the Act or decision of the Board with regard to distribution.

3. DEPARTMENTS/BODIES CONSULTED

The Bill was forwarded to all Government Departments for comments, as well as a wide range of external stakeholders.

4. FINANCIAL IMPLICATIONS FOR STATE

There will be financial implications with regard to the remuneration of compliance officers to be appointed, but the exact extent thereof is not possible to establish at this stage.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Home Affairs are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.