

NO. 65 OF 1996: FILMS AND PUBLICATIONS ACT, 1996.

PRESIDENT'S OFFICE

No. 1811.

8 November 1996

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**It is hereby notified that the President has assented to the following Act which is
hereby published for general information:-**

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 Review Board to repeal certain laws; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)

(Assented to 30 October 1996.)

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

CHAPTER 1

Definitions

Definitions

1. In this Act, unless the context otherwise indicates-

- (i) **"Board"** means the Film and Publication Board, established by section 3; (xi)
- (ii) **"certificate"**, in relation to a film, means the certificate referred to in section 18, issued in respect of the classification of a film; (xiii)
- (iii) **"chief executive officer"** means the chief executive officer of the Board referred to in section 4(1)(a); (v)
- (iv) **"classification"**, means any decision by the Board in terms of this Act; (vii)
- (v) **"classification committee"** means a classification committee referred to in section 10; (viii)
- (vi) **"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; (xii)
- (vii) **"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; (ii)
- (viii) **"degrade"** means advocate a particular form of hatred which is based on gender;
- (ix) **"distribute"**-
 - (a) in relation to a film, without derogating from the ordinary meaning of that word, includes sell, hire out or offer or keep for sale or hire and, for purposes of section 26(1)(a) and (b), includes hand or exhibit a film to a person under the age of 18 years;
 - (b) in relation to a publication, without derogating from the ordinary meaning of

that word, includes display in public, or sell, hire out or offer or keep for sale or hire and, for purposes of section 25(a) and (b), includes hand or display a publication to a person under the age of 18 years; (xvi)

- (x) "**distributor**", in relation to a film, means a person who conducts business in the selling, hiring out or exhibition of films; (xvii)
- (xi) "**executive committee**" means the executive committee referred to in section 4(3); (xiv)
- (xii) "**film**" means-
 - (a) any sequence of visual images recorded on any substance, whether a film, magnetic tape, disc or any other material, in such manner that by using such substance such images will be capable of being seen as a moving picture;
 - (b) the soundtrack associated with and any exhibited illustration relating to a film as defined in paragraph (a);
 - (c) any picture intended for exhibition through the medium of any mechanical, electronic or other device; (i)
- (xiii) "**in public**", without derogating from the ordinary meaning of that word, includes any place to which admission is obtained for any consideration, direct or indirect, or by virtue of membership of any association of persons or contribution towards any fund; (vi)
- (xiv) "**Minister**" means the Minister to whom the administration of this Act has been assigned; (ix)
- (xv) "**publication**" means-
 - (a) any newspaper, book, periodical, pamphlet, poster or other printed matter;
 - (b) any writing or typescript which has in any manner been duplicated;
 - (c) any drawing, picture, illustration or painting;
 - (d) any print, photograph, engraving or lithograph;
 - (e) any record, magnetic tape, soundtrack, except a soundtrack associated with a

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

- (f) computer software which is not a film;
- (g) the cover or packaging of a film; and
- (h) any figure, carving, statue or model; (x)

(xvi) "**Review Board**" means the Film and Publication Review Board; (iii)

(xvii) "**this Act**" includes the regulations made in terms of section 31; (iv)

(xviii) "v
isual presentation" means a drawing, picture, illustration, painting or photograph, or a drawing, picture, illustration, painting or photograph produced through or by means of computer software on a screen or a computer print-out. (xviii)

CHAPTER 2

Film and Publication Board:

Film and Publication Review Board

Object of Act

2. The object of this Act shall be to regulate the distribution of certain publications and the exhibition and distribution of certain films, in the main by means of classification, the imposition of age restrictions and the giving of consumer advice, due regard being had to the fundamental rights enshrined in the Constitution of the Republic. Establishment of Film and Publication Board and Film and Publication Review Board

3.

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

Constitution of Board

4.

- (1) The Board shall consist of-
 - (a) a chief executive officer;
 - (b) such number of senior personnel, chief examiners and examiners 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.
- (2) The chief executive officer shall be the chairperson of the Board.
- (3) The chief executive officer and the senior personnel mentioned in subsection (1)(b) shall constitute the executive committee of the Board, and the chief executive officer and such number of such personnel as is equal to one half of the total number of such personnel shall constitute a quorum of the executive committee.
- (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 Board shall have a casting vote.

Constitution of Review Board

5.

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

Members of Board and Review Board to be appointed by President

6.

- (1) The members of the Board and Review Board shall be appointed by the President acting on the advice of the advisory panel referred to in subsection(2).
- (2) The President shall, whenever it is necessary to appoint members of the Board or Review Board, appoint an advisory panel in order to advise him or her with regard to the persons to be appointed as such members, and shall appoint one of the members of the advisory panel as the chairperson thereof.
- (3) (a) The advisory panel shall, with due regard to such procedure as has been determined for the purpose by the Minister, invite members of the public to propose persons whose names will be submitted to the President for appointment as members in

terms of subsection (I).

- (b) Such procedure shall be designed and formulated in order to ensure that the public will be afforded the opportunity to take part in the process of finding suitable candidates in an open and transparent manner.

(4) Persons who are appointed in terms of subsection (I

- (a) shall have experience in or knowledge of any one or more of the following matters: Community development; education; psychology; religion; law; drama; literature; communications science; photography; cinematography; gender matters; children's rights; or any other relevant field of experience as may be prescribed;
- (b) shall not be subject to any disqualification referred to in section 7; and
- (c) shall represent a broad cross-section of the South African community.

Disqualifications with regard to membership of Board or Review Board

7.

- (1) A person shall not be qualified to be appointed as a member of the Board or Review Board, or to be such a member, if he or she-
 - (a) is not a citizen of and is not permanently resident in the Republic;
 - (b) at the time when the appointment is to be made, holds an office of profit in the service of the State;
 - (c) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the film, publishing or printing industry;
 - (d) or his or her spouse, partner or associate, holds an office in or is employed by any company, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (c);
 - (e) is an unrehabilitated insolvent;
 - (f) is subject to an order of a competent court declaring him or her to be mentally ill or mentally disordered;
 - (g) is convicted, after the commencement of this Act, whether in the Republic or

elsewhere, of any offence for which he or she has been sentenced to imprisonment without the option of a fine;

- (h) at any time before the commencement of this Act was, or at any time after such commencement is, convicted-
 - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992);
 - (ii) elsewhere than in the Republic, of any offence corresponding materially with any offence referred to in subparagraph (i); or
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
- (i) has been or is found guilty of any offence in terms of this Act.

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

Period of office of members of Board and Review Board

8.

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

Vacation of and removal from office

9.

- (1) A member of the Board or Review Board 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 Minister, upon information given to him or her by the chief executive officer or the chairperson of the Review Board, issues a certificate to that effect.
- (2) Any member of the Board or Review Board may be removed from office by the President on account of misconduct or inability to perform properly the functions and duties of his or her office: Provided that a member shall be afforded the opportunity, in such manner as may be prescribed, to state his or her case, should he or she wish to do so.

Classification committees

10.

- (1) The executive committee 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, 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 and 18.
- (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) A decision of a classification committee shall for the purposes of this Act be deemed to be a decision of the Board.

Administrative staff of Board and Review Board

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

Remuneration

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

Expenditure

13.

- (1) The expenditure in connection with the performance of the functions, the exercise of the powers and the carrying out of the duties of the Board, Review Board and an advisory panel shall be defrayed from money appropriated by Parliament for the purpose.
- (2) The chief executive officer shall be the accounting officer in respect of all money referred to in subsection (1).
- (3) The books of account and financial statements shall be audited by the Auditor-General.

Annual report

14.

- (1) As soon as practicable after the end of each financial year the Board shall, from information supplied to it by the chief executive officer and the chairperson of the Review Board, compile a report on all the activities of the Board and Review Board during that financial year, and on the financial position of the Board and Review Board as at the end of that financial year.
- (2) That report, together with the audited balance sheet and accounts pertaining to the funds of the Board and Review Board shall be submitted to the Minister, and the Minister shall lay it upon the Table in Parliament within 14 days after receipt thereof if Parliament is then in session, or if Parliament is not then in session, within 14 days of the commencement of the next session.

Functions of chief executive officer

15. The chief executive officer-

- (a) shall, whenever it becomes necessary for the performance of the functions, the exercise of the powers or the carrying out of the duties of the Board or the executive committee, convene a meeting of the Board or the executive committee;
- (b) shall at the request of a classification committee appoint experts to advise that committee with regard to any matter submitted to that committee for its decision;
- (c) shall take such steps as may be necessary to inform the public of the particular purpose and significance of the classification of films and publications, and the purposes of consumer advice;
- (d) shall perform such functions and carry out such duties as may be assigned to or imposed upon him or her in terms of this Act;
- (e) shall appoint a person to monitor and as far as possible to coordinate and rationalise all steps taken for the administration of this Act.

CHAPTER 3

Complaints and Applications concerning Publications

Complaints concerning, and applications for classification and reclassification of, publications

16.

- (1) Any person may lodge a complaint with the Board that any publication distributed in the Republic which has not been decided upon by the Board in terms of this Act, or by a committee in terms of the Publications Act, 1974 (Act No. 42 of 1974), or by the Publications Control Board, established by the Publications and Entertainments Act, 1963 (Act No. 26 of 1963), in terms of that Act, be referred to a classification committee for a decision and classification in terms of section 17.
- (2) Any person may, after the expiry of a period of two years from the date upon which a classification in terms of paragraph (a), (b), (c) or (d) of section 17(1) was published in the Gazette. lodge an application with the Board applying for the imposition of more lenient conditions relating to the distribution of that publication, or that such distribution be freed from all restrictive conditions.
- (3) The chief executive officer shall refer a complaint or application under subsection (1) or (2) to a classification committee for examination and classification.
- (4) No decision shall be taken on any complaint or application lodged in terms of subsection (1) or (2) unless the publisher of that publication has been given a reasonable notice of the place where and the date and time when the application will be heard: Provided that if a periodical publication is the subject of such an application, a notice which is received by the publisher concerned three days prior to the date of such hearing shall be regarded as reasonable notice.

Classification committee shall consider publication and shall classify or refuse to classify

publication

17.

- (1) A classification committee shall, upon submission to it of a complaint or an application in terms of section 16, examine and consider the content of the publication in question and shall with reference to Schedules 1, 2, 3 and 4, read with Schedule 5, or with reference to Schedule 10, classify the publication as-
 - (a) XX, if Schedule 1 or 10,
 - (b) X18, if Schedule 2,
 - (c) R18, if Schedule 3, or
 - (d) F18, if Schedule 4,applies, and shall in the case of an F18 classification, impose any or both of the conditions referred to in Schedule 3 and shall inform the chief executive officer of its decision and the reasons there for and of the classification (if any) and, in the case of an XX classification, of the particular clause of Schedule 1 upon which the decision is based, and in the case of an R18 or F18 classification, of the conditions imposed.
- (2) The chief executive officer shall, if a publication to which an application submitted in terms of-
 - (a) section 16(1) relates, has in terms of a decision of a classification committee been classified as XX, X18, R18 or F18, cause that decision to be published in the Gazette;
 - (b) section 16(2) relates, has been reclassified as requested, or has been freed from all restrictive conditions, cause the latest classification to be published in the Gazette, and shall at the same time refer to the previous classification and indicate that it has been substituted or that it has been withdrawn, as the case may be.

CHAPTER 4

Applications for, and Classification of Films

Applications for classification, and classification of films

18.

- (1) Any person who applies for the classification of a film in terms of this Act, shall submit to the chief executive officer an application in the prescribed form, together with the prescribed fee.
- (2) The chief executive officer shall refer an application submitted to him or her in terms of this section to a classification committee.
- (3) The person who submitted an application in terms of this section shall-
 - (a) at his or her own expense make arrangements for the exhibition of the film to the classification committee concerned, on such premises and date and at such time as the chief executive officer may determine after consultation with such person; and
 - (b) undertake to provide the chief executive officer with a copy of the film in the form in which the film is in terms of the classification permitted to be distributed.
- (4)
 - (a) The classification committee shall examine a film referred to it in terms of subsection (2), and shall classify that film as-
 - (i) XX if it falls under Schedule 6 or 10;
 - (ii) X18 if it falls under Schedule 7;
 - (iii) R18 if it falls under Schedule 8.
 - (b) If a film examined in terms of paragraph (a) falls-
 - (i) under any schedule, the classification committee may, if the excision of a portion or portions of the film would place the film under another Schedule, or outside of all Schedules, classify the film as falling under such other Schedule or outside of all Schedules, as the case may be, subject to the condition that the portion or portions determined by the committee are excised from the film;

- (ii) under Schedule 8, the classification committee may determine that the film may be exhibited only to persons of or above a prescribed age, specified by the committee, or that it may be exhibited only after the prescribed consumer advice has been given to viewers.
- (5) An XX or X18 classification shall not be applicable to a film which falls under Schedule 9, or clause 2 of Schedule 10.
- (6) After having reached a decision in terms of subsection (4), read with subsection (5), the classification committee shall inform the chief executive officer of its decision and the reasons there for and, in the case of an XX classification, of the particular clause of Schedule 6 upon which the decision is based and, in the case of any other classification, of the conditions imposed in terms of subsection (4).
- (7) The chief executive officer shall inform the applicant of the decision and the reasons there for and shall furnish the applicant with the applicable certificate, and if the film in question has been classified as XX he or she shall specify the particular clause of Schedule 6 upon which such a classification is based, and shall, in the case of an XX or X18 classification, cause to be published in the Gazette a notice making known the classification and the prescribed details thereof.
- (8) After the expiry of a period of two years from the date on which a decision was conveyed to the applicant, that applicant, or any other interested person, may apply to the Board for a more lenient classification of the film in terms of subsection (4).

CHAPTER 5

Right to Appear, and to Appeal to Review Board and Supreme Court

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

19. Any person who applies for a classification of a film, or the reclassification of a film or

publication, or for a permit, exemption or licence, or who is the publisher of a publication which is the subject of an application for classification, or whose financial interests could be detrimentally affected by a decision of the Board on such application, or with regard to an exemption or permit, the withdrawal of which is being considered, or who appeals to the Review Board against a decision with regard to such an application, shall have the right-

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

Appeal to Review Board

20.

- (1) Any person who applied for the classification of a film, or the publisher or distributor of a publication which formed the subject of any complaint or application in terms of section 16, may within a period of 30 days from the date on which he or she was notified of the decision, which in the case of the classification of a publication shall be the date of publication of the decision in the Gazette, in the prescribed manner appeal to the Review Board.
- (2) The chairperson of the Review Board-
 - (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 Review Board 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 Review Board.
- (3) The Review 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, specifying the clause of Schedule 1 or 6 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: Provided that the classification, as so amended, and the conditions so imposed, shall not be more restrictive than the classification or conditions appealed against.
- (4) The chief executive officer shall in the case of a successful appeal against a decision whereby an application for a permit or licence is refused, issue the requisite permit or licence, subject to the conditions, if any, imposed by the Review Board.
- (5) A decision of the Review Board shall for the purposes of this Act be deemed to be a decision of the Board.

Appeal to Supreme Court

21.

- (1) If a publication or film has in terms of a decision referred to in section 20 been classified as XX or X18, the publisher or distributor of that publication or the person who applied for the classification of that film, may within a period of 30 days from the date on which he or she was notified of the decision in respect of the film, or within 30 days from the date on which the classification of the publication was published in the Gazette, appeal to

the Supreme Court against that decision.

- (2) The Supreme Court may on good cause shown, suspend a decision with regard to a publication pending the outcome of the appeal.
- (3) The Supreme Court may confirm the decision appealed against or may set that decision aside, and give such decision, make such classification and impose such conditions as should in its view have been given, made or imposed.
- (4) A decision of the Supreme Court shall for purposes of this Act be deemed to be a decision of the Board.

CHAPTER 6

Exemptions: Publications and Films

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

22.

- (1) The executive committee 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 if it has good reason to believe that bona fide purposes will be served by such an exemption.
- (2) Where the executive committee 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.
- (3) A newspaper published, and a poster of a newspaper issued as an advertisement of any newspaper, by a publisher who is a member of the Newspaper Press Union of South Africa, shall not be subject to the provisions of this Act.

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

23.

- (1) The provisions of section 26(1)(a) and (b) shall not prohibit the exhibition of any film to any person in the course of his or her business as a distributor of films, or to the representative of such distributor acting for the purposes of such business.
- (2) The executive committee 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 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 like notice withdraw the exemption.
- (3) A person who is or is deemed to be the holder of a broadcasting licence in terms of the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993), and who is subject to section 56(1) or (2) of that Act, shall be exempt from the duty to apply for classification of a film and, subject to section 26(4), shall in relation to the exhibition of a film not be subject to any classification made by the Board or any condition impose in relation to the exhibition of the film by the Board under section 18(4)(b).

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

24.

- (1) Any person may, notwithstanding the provisions of section 25(b), 26(1)(b) or 28(2). exhibit in public or distribute any publication or film classified in terms of a decision of the Board which has been published in the Gazette as XI 8 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 within premises forming part of a building.

- (2) Any exemption granted in terms of subsection (1) may be suspended by the executive committee for a period not exceeding one year, if the executive committee, 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 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 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 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 publications and films to persons under the age of 18 years.

CHAPTER 7

Prohibition of Conduct Contrary to Classifications

Prohibition of distribution of publications contrary to classifications

25. Any person who knowingly-

- (a) distributes or advertises for distribution a publication classified as XX in terms of a decision of the Board which has been published in the Gazette;

- (b) distributes a publication classified as X18 in terms of such a decision so published;
- (c) distributes a publication, classified as R18 or F18 in terms of such a decision so published, in conflict with a condition referred to in section 17(1)(c) or (d), imposed in respect of the distribution of such publication;
- (d) publishes any publication without having printed in such publication his or her name and the prescribed particulars of his or her business address, shall be guilty of an offence.

Prohibition relating to exhibition, distribution or advertisement of films

26.

(1) Any person who knowingly-

- (a) exhibits in public or distributes any film which has not been classified by the Board, or which has been classified as XX in terms of a decision of the Board which has been published in the Gazette;
- (b) exhibits in public or distributes any film which has been classified as X18 in terms of such a decision which has been so published;
- (c) does not in an advertisement of a film contained in a publication, including a newspaper or advertisement referred to in section 22(3) or (4), or on the cover and packaging of a film indicate the classification, age restriction and consumer advice which in terms of a decision of the Board applies in respect
- (d) exhibits in public or distributes any film without having been registered with the Board as an exhibitor or distributor of films;
- (e) without the approval of the chief executive officer exhibits in public or distributes an advertisement or a trailer of a film which has been classified as X18 in terms of a decision of the Board published in the Gazette, during the same screening session or on the same video as a film or video which may not be exhibited or distributed to persons under the age of 18;
- (f) exhibits in public or distributes any film in conflict with any condition imposed by the Board in terms of section 18(4)(b), shall be guilty of an offence.

- (2) Any person who publishes a film, or a copy of a film, which has been classified by the Board, or which has been approved in terms of the Publications Act, 1974 (Act No. 42 of 1974), at any time after the commencement of the Publications Amendment Act, 1992, to any other person, including a distributor of films, shall when he or she delivers the film or the copy to such other person, furnish that person with a certificate in the prescribed form, stating-
- (a) that the film has been so classified or so approved;
 - (b) if the particular classification was made subject to a condition that a specified portion or portions were to be excised from the film, that the portion or portions concerned have been excised;
 - (c) that the film has been classified in terms of a decision of the Board as X18 or R18, if that is the case;
 - (d) the age restriction, if any, imposed in terms of such a decision, in respect of the exhibition of the film;
 - (e) particulars of the consumer advice, if any, which in terms of such a decision, applies to the film.
- (3) Any person who-
- (a) knowingly publishes a film to any other person without furnishing him or her with the certificate as required by subsection (2);
 - (b) knowingly furnishes a certificate which does not contain all the particulars required in terms of subsection (2); or
 - (c) furnishes a certificate containing incorrect particulars knowing that the particulars contained in that certificate are incorrect, shall be guilty of an offence.
- (4) (a) Any person who knowingly broadcasts a film which has been classified as XX in terms of a decision of the Board which has been published in the Gazette or who knowingly broadcasts a film which has not been classified but which falls within Schedule 6 read with Schedule 9, or Schedule 10, shall be guilty of an offence.
- (b) A person shall not be convicted of a contravention of paragraph (a), unless the State either proves the classification concerned or proves that the Board has not given a decision which is to the effect that the film referred to in that paragraph does not

fall within Schedule 6 read with Schedule 9, or Schedule 10.

- (c) No prosecution shall be instituted in terms of this section without the written authority of the Attorney-General concerned.

Possession of certain publications and films prohibited

27.

- (1) Any person who knowingly-
 - (a) produces, imports or is in possession of a publication which contains a visual presentation referred to in paragraph (a) of clause (1) of Schedule 1, read with Schedule 5; or
 - (b) produces, imports or is in possession of a film which contains a scene or scenes referred to in clause (I) of Schedule 6, read with Schedule 9, shall be guilty of an offence.
- (2) A person shall not be convicted of a contravention of subsection (1), unless the State proves that the Board has not given a decision which is to the effect that the publication or film referred to in that subsection does not contain a representation or a scene or scenes referred to in subsection (1).
- (3) No prosecution shall be instituted in respect of a contravention of subsection (I and no search warrant shall be issued in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in respect of a publication or film which may be involved in such a contravention, without the written authority of the attorney-general concerned.

Distribution of certain publications prohibited

28.

- (1) Any person who knowingly distributes a publication which contains a visual presentation or a description referred to in Schedule 1, read with Schedule 5, shall be guilty of an

offence.

- (2) Any person who knowingly distributes a publication which contains a visual presentation or a description referred to in Schedule 2, read with Schedule 5, or which contains the descriptions referred to in clause (2) of Schedule 2, read with Schedule 5, shall be guilty of an offence.
- (3) A person shall not be convicted of a contravention of subsection (1) or (2) unless the State proves that the Board has not given a decision which is to the effect that the publication which is the subject of the prosecution does not contain a visual presentation referred to in Schedule I or 2, or does not contain the descriptions referred to in clause (2) of Schedule 2.

Advocating war, violence and hatred

29.

- (1) Any person who knowingly distributes a publication which, judged within context-
 - (a) amounts to propaganda for war;
 - (b) incites to imminent violence; or
 - (c) advocates hatred that is based on race, ethnicity, gender or religion, and which constitutes incitement to cause harm, shall be guilty of an offence.
- (2) Any person who knowingly broadcasts, exhibits in public or distributes a film which, judged within context-
 - (a) amounts to propaganda for war;
 - (b) incites to imminent violence; or
 - (c) advocates hatred that is based on race, ethnicity, gender or religion, and which constitutes incitement to cause harm, shall be guilty of an offence.
- (3) Any person who knowingly presents an entertainment or play in public which, judged within context-

- (a) amounts to propaganda for war;
 - (b) incites to imminent violence; or
 - (c) advocates hatred that is based on race, ethnicity, gender or religion, and which constitutes incitement to cause harm, shall be guilty of an offence.
- (4) Subsections (1), (2) and (3) shall not apply to-
- (a) a bona fide scientific, documentary, dramatic, artistic, literary or religious publication, film, entertainment or play, or any part thereof which, judged within context, is of such nature;
 - (b) a publication, film, entertainment or play which amounts to a bona fide discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
 - (c) a publication, film, entertainment or play which amounts to a bona fide discussion, argument or opinion on a matter of public interest.
- (5)
- (a) A prosecution for a contravention of this section shall be instituted only in the Supreme Court, and only under the written authority of the Attorney-general.
 - (b) The Attorney-General who authorises such a prosecution may apply to the Court in which such a prosecution is instituted for an order prohibiting the distribution, public exhibition or broadcast of the publication, film, entertainment or play to which the prosecution relates.
 - (c) The Court referred to in paragraph (b) may if it finds that the publication, film, entertainment or play in question is of the nature referred to in subsection (1), (2) or (3) issue an order prohibiting the distribution, public exhibition or broadcast of the film, publication, entertainment or play.
 - (d) An order issued in terms of paragraph (c) shall remain in operation for a period of two years and shall terminate when the Supreme Court upon an application brought after the lapse of a period of two years for the date upon which it is made, sets aside that order.
- (6) A person shall not be convicted of-
- (a) a contravention of subsection (1)(b) or (2)(b) unless the State proves that the Board has not made a finding in terms of Schedule I read with Schedule 5 or Schedule 6

- read with Schedule 9;
- (b) a contravention of subsection (1)(c) or (2)(c) with reference to gender, unless the State proves that the Board has not made a finding in terms of Schedule 1 read with Schedule 5 or Schedule 6 read with Schedule 9; or
 - (c) a contravention of subsection (1)(c) or (2)(c) with reference to religion, unless the State proves that the Board has not made a finding in terms of Schedule 10.
- (7) It shall not be a defence to a prosecution for a contravention of subsection (1) or (2) that the Board has made a finding that the publication or film falls within Schedule 2 or 7, or that the Board has imposed an age restriction in respect of the exhibition of the film.
- (8) When a Court finds that a film, publication, play or entertainment is of the nature referred to in subsection (1), (2) or (3) the chief executive officer shall publish a notice to that effect in the Gazette and, in the case of a film, cancel any certificate which was issued in terms of section 18: Provided that the authority of the executive committee in terms of sections 22 and 23 is not limited by a court order or finding in terms of this section.

Punishment

30.

- (1) Any person found guilty of a contravention of section 25(a), (b) or (c), 26(1)(a), (b) or (f), 26 (4), 27(1), 28 or 29 may be sentenced to a fine or to imprisonment for a period not exceeding five years, or where the court convicting such person finds that aggravating factors are predominant, both such fine and such imprisonment.
- (2) If a court convicting a person of a contravention referred to in subsection (1), finds that aggravating circumstances are predominant, the court may, if the person so convicted is the holder of a licence to conduct an adult premises referred to in section 24, withdraw such licence and declare that such person shall be disqualified from obtaining another such licence for a period not exceeding 12 months.
- (3) Any person found guilty of a contravention of section 25(d), or 26(1)(c), (d) or (e) or

26(3) may be sentenced to a fine or to imprisonment for a period not exceeding six months.

CHAPTER 8

Regulations, Amendment and Repeal of Laws

Regulations

31.

(1) The Minister shall-

- (a) in consultation with the Minister of Finance, make regulations prescribing the fees which shall be payable in respect of any application, exemption, permit or appeal under this Act;
- (b) make regulations relating to the establishment of, procedure with regard to the nomination of persons as candidates for the Board or Review Board, 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(1).

(2) The Board shall make regulations relating to-

- (a) the form of any application, certificate, permit or exemption;
- (b) the age restriction and consumer advice in connection with films: Provided that no age restriction shall be applied to persons 18 years of age or older; and
- (c) any matter required or permitted to be prescribed, and, generally, procedures aimed at the effective achievement of the objects of this Act.

- (3) (a) Within two years after the commencement of this Act the Board shall publish the guidelines which the Board and the Review Board apply in order to determine what is harmful or disturbing in terms of Schedules 3 and 8 in the Gazette.
- (b) As soon as possible after the lapse of every consecutive period of 12 months after the publication of the guidelines referred to in paragraph (a), the Board shall publish the said guidelines in the Gazette and, where necessary, amend them.

- (c) Together with every publication of guidelines referred to in paragraphs (a) and (b) an appeal shall be made on the public to make representations concerning such guidelines, within 30 days after publication thereof.

Review of certain decisions with regard to publications and films

32. A publication or film which immediately before the commencement of this Act was subject to any prohibition or condition in terms of the Publications and Entertainments Act, 1963 (Act No. 26 of 1963), or the Publications Act, 1974 (Act No. 42 of 1974), shall be subject to a review in terms of section 16(2) or 18(8) of this Act notwithstanding the fact that the two year period determined in those sections has not expired.

Repeal of laws

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

Amendment of Act 71 of 1991

34. The Businesses Act, 1991, is hereby amended by the addition of the following paragraph to item 2 of Schedule 1:

"(h) conducting adult premises referred to in section 24 of the Films and Publications Act, 1996."

Short title and commencement

35. This Act shall be called the Films and Publications Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

SCHEDULE 1

XX CLASSIFICATION FOR PUBLICATIONS

A publication shall be classified as XX if, judged within context

- (1) it contains a visual presentation, simulated or real of-
 - (a) a person who is, or is depicted as being, under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity;
 - (b) explicit violent sexual conduct;
 - (c) bestiality;
 - (d) explicit sexual conduct which degrades a person and which constitutes incitement to cause harm; or
 - (e) the explicit infliction of or explicit effect of extreme violence which constitutes incitement to cause harm;
- (2) it or any independent part thereof, describes predominantly and explicitly the acts defined in clause (1)(a).

SCHEDULE 2

X18 CLASSIFICATION FOR PUBLICATIONS

A publication shall be classified as X18 if, judged within context-

- (1) it contains a visual presentation, simulated or real, of explicit sexual conduct which, in the case of sexual intercourse, includes an explicit visual presentation of genitals;
- (2) it describes, otherwise than in the case provided for in Schedule 1(2), predominantly and explicitly any or all of the acts described in Schedule I or clause (1).

SCHEDULE 3

R18 CLASSIFICATION FOR PUBLICATIONS

A classification committee or the Review Board shall classify as RI 8 and impose any or both of the following conditions on the distribution of a publication if it is of the opinion that judged within context, it is necessary to protect children in the relevant age group against harmful or disturbing material in the publication-

- (1) that it shall only be distributed to persons older than 18 years of age, or older than a specified younger age and that the publication shall bear a distinct notice of such restriction;
- (2) that it shall only be distributed in a sealed and, if necessary, opaque wrapper which shall also, if applicable, bear the notice referred to in clause (1).

SCHEDULE 4

F18 CLASSIFICATION FOR PERIODICAL PUBLICATIONS

A periodical publication shall be classified as F 18 if the following six issues of such periodical publication are likely to contain material which falls within the scope of Schedule 3 and the publisher or his or her representative consents to such an order.

SCHEDULE 5

ART AND SCIENCE EXEMPTION FOR PUBLICATIONS

The XX or X18 classification shall not be applied in respect of a bona fide scientific, documentary, literary or, except in the case of Schedule 1(1)(a), an artistic publication, or any part of a publication which, judged within context, is of such a nature.

SCHEDULE 6

XX CLASSIFICATION FOR FILMS

A film shall be classified as XX if, judged within context, it contains a scene or scenes, simulated or real, of any of the following:

- (1) a person who is, or is depicted as being, under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity;
- (2) explicit violent sexual conduct;
- (3) bestiality;
- (4) explicit sexual conduct which degrades a person and which constitutes incitement to cause harm; or
- (5) the explicit infliction of extreme violence or the explicit effects of extreme violence which constitutes incitement to cause harm.

SCHEDULE 7

X18 CLASSIFICATION FOR FILMS

A film shall be classified as X18 if it contains a scene or scenes, simulated or real, judged within context, of explicit sexual conduct which, in the case of sexual intercourse, includes an explicit visual presentation of genitals.

SCHEDULE 8

AGE RESTRICTION FOR FILMS

An age restriction may be imposed only if the classification committee or the Review Board is of the opinion that, judged within context, it is necessary to protect children in the relevant age group against harmful or disturbing material in the film.

SCHEDULE 9

ART AND SCIENCE EXEMPTION FOR FILMS

The XX or X18 classification shall not be applicable to a bona fide scientific, documentary, dramatic or, except in the case of Schedule 6(1), an artistic film or any part of a film which, judged within context, is of such a nature.

SCHEDULE 10

PROMOTION OF RELIGIOUS HATRED

- (1) A publication or a film which, judged within context, advocates hatred that is based on religion, and that constitutes incitement to cause harm, shall be classified as XX.
- (2) Clause (1) shall not apply to-
- (a) a bona fide scientific, documentary, dramatic, artistic, literary or religious publication or film, or any part thereof which, judged within context, is of such nature;
 - (b) a publication or film, which amounts to a bona fide discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
 - (c) a publication or film, which amounts to a bona fide discussion, argument or opinion on a matter of public interest.

SCHEDULE 11

SEXUAL CONDUCT

For the purpose of these Schedules "sexual conduct" means genitals in a state of stimulation or arousal; the lewd display of genitals; masturbation; sexual intercourse, which includes anal sexual intercourse; the fondling, or touching with any object, of genitals; the penetration of a vagina or anus with any object; oral genital contact; or oral anal contact.

SCHEDULE 12 **ACTS REPEALED**

(Section 33)

No and year of Act	Title	Extent of repeal
<hr/>		
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