



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 530 Cape Town

28 August 2009

No. 32534

THE PRESIDENCY

No. 876

28 August 2009

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

No. 3 of 2009: Films and Publications Amendment Act, 2009.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

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- Words in bold type in square brackets indicate omissions from existing enactments.
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- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 26 August 2009.)

ACT

To amend the Films and Publications Act, 1996, so as to insert, amend and delete certain definitions; to establish and provide for the powers and duties of a Council; to provide for the appointment and functions of compliance officers; to provide for the composition, functions and management of the Board; and to repeal the 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 before the definition of “Board” of the following definition:
“ ‘**Appeal Tribunal**’ means the Appeal Tribunal established by section 3.”;
- (b)

by the substitution for the definition of “chief executive officer” of the following definition:
“ ‘**chief executive officer**’ means the chief executive officer of the Board referred to in section 4(1)[(a)](c);”;
- (c)

by the substitution for the definition of “child pornography” of the following definition: 15
“ ‘**child pornography**’ includes any image, however created, or any description of a person, real or simulated, who is or who is depicted, made to appear, look like, represented or described as being under the age of 18 years—
[(i)](a) engaged in sexual conduct; 20
[(ii)](b) participating in, or assisting another person to participate in, sexual conduct; or

- [(iii)](c) showing or describing the body, or parts of the body, of such a person in a manner or in circumstances which, within context, amounts to sexual exploitation, or in such a manner that it is capable of being used for the purposes of sexual exploitation;”;
- (d) by the insertion after the definition of “**consumer advice**” of the following definition: 5
- “**‘Council’** means the Council established by section 3;”;
- (e) by the substitution for the definition of “**distribute**” of the following definition: 10
- “**‘distribute’**, in relation to a film or a publication, without derogating from the ordinary meaning of that word, includes to sell, hire out or offer or keep for sale or hire and, for purposes of sections [25(a), (b) and (c), 26(1)(a) and (b) and 28(1) and (2)] 24A and 24B, includes to hand or exhibit a film, game or a publication to a person under the age of 18 years, and also the failure to take reasonable steps to prevent access thereto by such a person;”;
- (f) by the insertion after the definition of “**distributor**” of the following definition: 15
- “**‘domestic violence’** means depictions or descriptions of—
- (a) physical abuse; 20
- (b) sexual abuse; or
- (c) emotional, verbal and psychological abuse, and includes any other abusive behaviour involving persons who are or have been in an intimate relationship or who are family members, regardless of gender or sexual orientation;”;
- (g) by the deletion of the definition of “**executive committee**”; 25
- (h) by the insertion after the definition of “**executive committee**” of the following definition: 30
- “**‘explicit sexual conduct’** means graphic and detailed visual presentations or descriptions of any conduct contemplated in the definition of “sexual conduct” in this Act;”;
- (i) by the substitution for the definition of “**film**” of the following definition: 35
- “**‘film’** means[—
- (a)] any sequence of visual images recorded [on any substance, whether a film, magnetic tape, disc or any other material,] in such a manner that by using such [substance] recording such images will be capable of being seen as a moving picture[; 40
- (b) the sound track associated with and any exhibited illustration relating to a film as defined in paragraph (a);
- (c)], and includes any picture intended for exhibition through [the] any medium [of any mechanical, electronic] or [other] device;”;
- (j) by the insertion after the definition of “**film**” of the following definitions: 45
- “**‘game’** means a computer game, video game or other interactive computer software for interactive game playing, where the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the game player or players; 50
- ‘identifiable group characteristic’** means a characteristic that identifies an individual as a member of a group identified by race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and nationality;”;
- (k) by the substitution for the definition of “**in public**” of the following definition: 55
- “**‘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;”;
- (l) by the insertion after the definition of “**in public**” of the following definition: 60
- “**‘matters of public interest’** means discussions, debates or opinions on matters pertaining to the common well-being or general welfare of the public or serving the interests of the public and includes discussions,

- debates and opinions on matters pertaining to religion, belief or conscience;”;
- (m) by the insertion after the definition of **“Minister”** of the following definition:
“‘newspaper’ includes an on-line publication of a newspaper;”;
- (n) by the insertion after the definition of **“possession”** of the following definition: 5
“‘prescribed’ means prescribed by regulation;”;
- (o) by the substitution for paragraph (e) of the definition of **“publication”** of the following paragraph:
“(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;”; 10
- (p) by the deletion of the definition of **“Review Board”**; and
- (q) by the insertion after the definition of **“sexual conduct”** of the following definition: 15
“‘sexual violence’ means conduct or acts contemplated in the definitions of “sexual conduct” and “explicit sexual conduct” that are accompanied either by force or coercion, actual or threatened, or that induces fear or psychological trauma in a victim;”.

Substitution of section 2 of Act 65 of 1996, as substituted by section 2 of Act 34 of 1999 20

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 regulate the creation, production, possession and distribution of films, games and certain publications to— 25
- (a) provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care;
- (b) protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences; and 30
- (c) make use of children in and the exposure of children to pornography punishable.”.

Substitution of section 3 of Act 65 of 1996

3. The following section is hereby substituted for section 3 of the principal Act:

“Establishment of Film and Publication Board, Council and [Film and Publication Review Board] Appeal Tribunal 35

- 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,] the Council; and 40
- (c) an Appeal Tribunal,
 which shall perform the functions, exercise the powers and carry out the duties[,] assigned to, conferred on or imposed upon them in terms of this Act or any other law. 45
- (2) The Board and [Review Board] the Appeal Tribunal shall [function without any bias and shall] be independent and function without any bias.
- (3) The seat of the Board [and Review Board] shall be determined by the Council in consultation with the Minister.”.

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

4. The following section is hereby substituted for section 4 of the principal Act:

“Composition of Council

- 4.** (1) The Council shall consist of—
- (a) a chairperson and a deputy chairperson appointed by the Minister; 5
 - (b) such number of members, not exceeding seven, as the Minister may appoint having regard to the need to ensure that the membership of the Council is broadly representative of the South African community and relevant stakeholders; and
 - (c) the chief executive officer appointed by the Council in consultation with the Minister. 10
- (2) (a) In the absence of the chairperson the deputy chairperson shall act as chairperson.
- (b) In the absence of the chairperson and the deputy chairperson at a meeting, the Council shall elect one of the members present to act as the chairperson of that meeting. 15
- (3) Decisions of the Council shall be taken by a majority of votes, and in the case of an equality of votes, the chairperson of the meeting shall have the casting vote.
- (4) A quorum of the Council is constituted by fifty per cent plus one of its total number of members.”. 20

Insertion of section 4A in Act 65 of 1996

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

“Powers and duties of Council

- 4A.** (1) The Council shall— 25
- (a) in consultation with the Minister, issue directives of general application, including classification guidelines, in accordance with matters of national policy consistent with the purpose of this Act
 - (b) determine and issue a Code of Conduct for members of the Council;
 - (c) in consultation with the Minister, appoint the chief executive officer; 30
 - (d) in consultation with the Minister, determine the qualifications, experience and terms and conditions of employment of classifiers;
 - (e) appoint such number of classifiers that comply with the determinations contemplated in paragraph (d), as may be required, having regard to the likely volume of applications and submissions that will be made in terms of this Act; 35
 - (f) at least four times a year, review and report to the Minister on the functioning of the Board to ensure that the objects of this Act are implemented efficiently and that the Board discharges its obligations and responsibilities in accordance with this Act or any other law; and 40
 - (g) exercise and perform such other functions, powers and duties as are conferred or imposed on the Council by or under this Act or any other law.
- (2) When making an appointment in terms of subsection (1)(e), the Council shall— 45
- (a) have regard to the person’s personal attributes, integrity, qualifications, knowledge and experience in the different aspects of matters likely to come before the Board; and
 - (b) ensure broad representation of the South African community in terms of race, ethnicity, gender and religion and may invite the public to nominate candidates suitable for appointment as classifiers. 50