

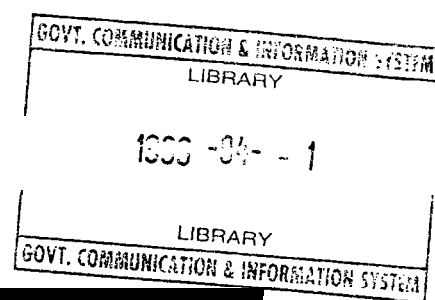
REPUBLIC OF SOUTH AFRICA

FILMS AND PUBLICATIONS AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill)

(MINISTER OF HOME AFFAIRS)

[B 35—99]



REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP FILMS EN PUBLIKASIES

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp)

(MINISTER VAN BINNELANDSE SAKE)

ISBN

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.
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BILL

To amend the Films and Publications Act, 1996, so as to provide for the appointment of members of the Film and Publication Board and the Film and Publication Review Board by the Minister; and to provide for the protection of children against mental, physical and sexual exploitation or coercion to engage in the production of a pornographic film, publication or visual presentation; 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

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

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

“ ‘child pornography’ includes any image, real or simulated, however created, depicting a person who is or who is shown as being under the age of 18 years, engaged in sexual conduct or a display of genitals which amounts to sexual exploitation, or participating in, or assisting another person to engage in sexual conduct which amounts to sexual exploitation or degradation of children:’. 10

(b) by the addition of the following paragraph to the definition of “publication”:

“(i) any message or communication, including a visual presentation placed on any distributed network including, but not confined to, the Internet.”; and 15

(c) by the substitution of the definition of “visual presentation” for the following definition:

“ ‘visual presentation’ means— 20

(a) a drawing, picture, illustration, painting, photograph or image; or

(b) a drawing, picture, illustration, painting, photograph or image or any combination thereof, produced through or by means of computer software on a screen or a computer printout.’.

Substitution of section 2 of Act 65 of 1996 25

2. The following section is 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 and distribution of certain publications and certain films 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 children against sexual exploitation or degradation in publications, films and on the Internet; and
 - (b) make the exploitative use of children in pornographic publications, films or on the Internet punishable.”

Substitution of section 6 of Act 65 of 1996

3. The following section is substituted for section 6 of the principal Act:

“Members of Board and Review Board to be appointed by Minister

- 6.(1) The members of the Board and Review Board shall be appointed by the Minister by notice in the *Gazette* after consultation with the Cabinet.
- (2) The Minister may, whenever it is necessary to appoint members of the Board or Review Board, appoint an advisory panel to advise him or her with regard to the persons who are to be appointed as such members, and shall appoint one of the members of the advisory panel as the chairperson thereof.
- (3) The Minister, or the advisory panel may invite members of the public to propose persons who may be considered for appointment.
- (4) (a) A member of the Board or Review Board appointed in terms of subsection (1) shall—
- (i) be a fit and proper person;
 - (ii) be of good character; and
 - (iii) not be disqualified in terms of section 7.
- (b) A member of the Board or Review Board shall have experience in, or knowledge of, any one or more of the following matters:
- (i) Community development;
 - (ii) education;
 - (iii) psychology;
 - (iv) religion;
 - (v) law;
 - (vi) drama;
 - (vii) literature;
 - (viii) communications science;
 - (ix) photography;
 - (x) cinematography;
 - (xi) gender matters;
 - (xii) children’s rights;
 - (xiii) any other relevant field Of experience as maybe prescribed”.

Substitution of section 9 of Act 65 of 1996

4. The following section is substituted for section 9 of the principal Act:

“Removal from office

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

(4) A member of the Board or Review 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 executive officer or the chairperson of the Review Board, issues a certificate to that effect.”

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Amendment of section 19 of Act 65 of 1996

5. Section 19 of the principal Act is amended by the substitution for the words preceding paragraph (a) of the following words:

“The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for a decision and classification in terms of section 17, and 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-”

Amendment of section 20 of Act 65 of 1996

6. Section 20 of the principal Act is amended by the substitution for subsection (1) of 20 the following subsection:

“(1) The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for a decision and classification in terms of section 17, and 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.”

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Amendment of section 21 of Act 65 of 1996

7. Section 21 of the principal Act is amended by the substitution for subsection(1) of the following subsection:

“(1) The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for a decision and classification in terms of section 17, and 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] High Court against that decision.”

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Amendment of section 27 of Act 65 of 1996

8. Section 27 of the principal Act is amended for subsection (1) of the following subsection:

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“(1) [Any] A person [who] shall be guilty of an offence if he or she knowingly—
(a) creates, 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] of child pornography; or
(b) creates, distributes, produces, imports or is in possession of a film which contains a scene or scenes [referred to in clause (1) of Schedule 6, read with Schedule 9,] of child pornography.
[shall be guilty of an offence]”

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Amendment of Schedule 1 to Act 65 of 1996

9. Schedule 1 to the principal Act is amended by the substitution for paragraph (a) of clause (1) of the following paragraph:

“(a) child pornography”.

Amendment of Schedule 6 to Act 65 of 1996

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10. Schedule 6 to the principal Act is amended by the substitution for paragraph (a) of clause (1) of the following paragraph:

“(a) child pornography”.

Short title

11. This Act is called the Films and Publications Amendment Act. 1999.

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**MEMORANDUM ON THE OBJECTS OF THE FILMS AND
PUBLICATIONS BILL, 1999****PART 1****1. BACKGROUND**

The Films and Publications Act, 1996 (Act No. 65 of 1996), presents difficulties in the procedures for the appointment of members of the Film and Publication Board, and the Film and Publication Review Board. The Bill introduces a new procedure for the appointment of members to the Boards. It gives the Minister the power to appoint the members of the Boards. It provides for the protection of children from sexual exploitation by making such exploitation punishable. It extends the definition of "publication" to include visual presentation and child pornography. It creates new offences connected with the use of Internet.

PART 2**2. CLAUSE-BY-CLAUSE-ANALYSIS**

Clause 1 amends certain definitions,

Clause 2 outlines the objects of the Act.

Clause 3 provides for the appointment of members by the Minister instead of the President.

Clause 4 provides for the removal of members from office.

Clause 5 provides for the right of appearance and representation.

Clause 6 provides for appeal to the Review Board.

Clause 7 provides for appeal to the High Court.

Clause 8 provides for prohibition to possess certain publication and films.

Clause 9 amends Schedule 1.

Clause 10 amends Schedule 6.

Clause 11 provides for a short title.

PART 3**3. PERSONS AND BODIES CONSULTED**

The following persons or bodies were consulted:

The Task Team on Child Pornography on the Internet.

The Department of Welfare and Population Development.

The Department of Health,

PART 4**PARLIAMENTARY PROCEDURE**

In the opinion of the Department and the State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution since it does not contain any provision to which the procedure established by section 74 or 76 applies,