

DRAFT FILM AND PUBLICATION BILL

CONTENTS

PART I

DEFINITIONS

OFFICERS

REPORT OF THE TASK GROUP:

CHAPTER 2

FILM AND PUBLICATION CONTROL BOARD AND REVIEW BOARD

- 2. Members of Board of Film and Publication Control
- 3. Establishment of the Film and Publication Board and Review Board
- 4. Composition of the Board and Review Board
- 5. Functions of the Board
- 6. Term of office
- 7. Disqualification from being a member
- 8. Vacation and removal from office
- 9. Staff of the Board and Review Board
- 10. **DRAFT FILM AND PUBLICATION BILL**
- 11. Form and content
- 12. Powers, functions and duties of the Chief Executive
- 13. Powers to be exercised
- 14. Powers to be exercised
- 15. Powers of the Review Board
- 16. General provisions

CHAPTER 3

PUBLICATIONS: APPLICATIONS

- 17. Applications
- 18. Classification

CHAPTER 4

APPLICANTS: APPLICATIONS

- 19. Applications for classification

CHAPTER 5

APPLICANTS: PUBLICATIONS AND FILMS

- 20. Publications
- 21. Films

PART II

DRAFT FOR A FILM AND PUBLICATION BILL

PREPARED BY THE TASK GROUP: FILM AND PUBLICATION CONTROL

CONTENTS

CHAPTER 1

DEFINITIONS

Definitions

CHAPTER 2

BOARD AND REVIEW BOARD

Primary Objects of Act
Establishment of the Film and Publication Board and Review Board
Constitution of the Board and Review Board
Functions of the Board
Terms of office
Disqualification from being a member
Vacancies and removal from office
Staff of the Board and Review Board
Remuneration
Annual report
Powers, functions and duties of the Chief Executive
Interested party to be heard
Reasons to be furnished
Appeal to the Review Board
Appeal to Supreme Court

CHAPTER 3

PUBLICATIONS: APPLICATIONS

Applications
Classification

CHAPTER 4

FILMS: APPLICATIONS

Applications and classifications

CHAPTER 5

EXEMPTIONS: PUBLICATIONS AND FILMS

Publications
Films

CHAPTER 6

OFFENCES

22. Publications
23. Films
24. Possession
25. Distribution
26. Regulations
27. Transitional arrangements
28. Repeal of Acts
29. Amendment of Businesses Act 1991
30. Short title and commencement

SCHEDULES TO ACT

- | | | |
|-------------|---|---|
| SCHEDULE 1 | - | XX Classification for Publications |
| SCHEDULE 2 | - | X18 Classification for Publications |
| SCHEDULE 3 | - | R18 Classifications for Publications |
| SCHEDULE 4 | - | F18 Classifications for Periodical Publications |
| SCHEDULE 5 | - | Art and Science Exemption for Publications |
| SCHEDULE 6 | - | XX Classification for Films |
| SCHEDULE 7 | - | X18 Classification for Films |
| SCHEDULE 8 | - | Age restrictions for Films |
| SCHEDULE 9 | - | Art and Science exemptions for Films |
| SCHEDULE 10 | - | Promotion of Religious Hatred |
| SCHEDULE 11 | - | Adult premises |
| SCHEDULE 12 | - | "Sexual Conduct" |
| SCHEDULE 13 | - | Acts repealed |

**DRAFT OF THE FILM AND PUBLICATION
BILL**

CHAPTER 1

DEFINITIONS

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

" **Board**" means the Film and Publication Board;

"**certificate**" in relation to a film, means the certificate referred to in section 19 issued in respect of the classification of a film;

"**classification**" means any decision by the Board in terms of this Act;

"**computer software**" means a programme and associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows interactive use;

" **consumer advice**" means that part of the board's decision in regard to a film which advises the public as to the sensitivities which that film could offend;

"**classification committee**" the classification committee referred to in section 5(3);

"**chief executive**" means the chief executive referred to in section 4(1)(a);

"**distribute**" in relation to a film means selling, hiring out or the offering or keeping for sale or hire;

"**distribute**", in relation to a publication, means displaying in public or selling, hiring out or offering or keeping for sale or hire;

"**distributor**", in relation to a film, means a person who conducts business in the selling or hiring out or offering or keeping for sale or hire of films or the exhibition of films;

"**executive committee**", the committee referred to in section 4(2);

"**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 sound track 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.

"Minister" means the Minister to whom the administration of this Act is assigned;

"public" without derogating from the ordinary meaning thereof, 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 by virtue of any contribution towards any fund;

"visual 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 print-out;

"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, sound track (except a sound-track associated with a film) or any other object in or on which sound has been recorded for reproduction;
- (f) computer software which does not fall within the definition of film;
- (g) the cover or packaging of a film;

"publish" means the issue of a publication or film to the public;

"Review Board" means the Film and Publication Review Board.

"this Act" includes the regulations published thereunder.

CHAPTER 2

FILM AND PUBLICATION BOARD

FILM AND PUBLICATION REVIEW BOARD

2. Primary objects of Act - The objects of this Act are to establish a Film and Publication Board and a Film and Publication Review Board to regulate in the main by means of classification, age restrictions and consumer advice the distribution of certain

publications and the exhibition and distribution of films, with due regard to the fundamental rights in Chapter 3 of the Constitution of the Republic of South Africa, 1993.

3. Establishment of the Film and Publication Board and Review Board - (1) There is hereby established two juristic persons to be known as the Film and Publication Board and the Film and Publication Review Board which shall exercise the powers, functions and duties conferred upon them by this Act.

(2) The Board and Review Board shall function without any political or other bias or interference and shall be independent from the government and its administration.

4. Constitution of the Board and the Review Board - (1) The Board shall consist of the following members -

- (a) a chief executive as chairperson of the Board;
- (b) the number of senior personnel which the Minister deems necessary in the light of the likely volume of applications; and
- (c) the number of chief examiners and examiners which the Minister deems necessary in the light of the likely volume of applications.

(2) The chief executive and the senior personnel shall constitute an executive committee, the quorum of which shall be the chief executive plus half of the members of the senior personnel.

(3) The Review Board shall consist of the following members -

- (a) a chairperson;
- (b) a deputy chairperson who shall act as chairperson in the chairperson's absence, who is designated by the President and is otherwise one of the eight members mentioned in (c); and
- (c) eight members who have a right to be members of each session of the Review Board: provided that three members, including the chairperson, shall constitute a quorum.

(4) The members in subsection (1) and (3) shall be appointed by the President, according to the following principles, namely -

- (i) participation by the public in the nomination process;
- (ii) transparency and openness;

- (iii) appointment on the advice of an independent advisory panel appointed by the President, who designates the chairperson, and which functions for such a term and according to the procedures prescribed by the Minister;
- (iv) appointment with due consideration of the objects and qualifications set out in sections 2 and 7 and the provisions of subsection (5)

(5) Persons appointed in terms of subsection (4) shall have experience or knowledge in any one or more of the following: community development; education; psychology; religion; law; drama; literature; communications science; photography; cinematography; or any other field of experience or knowledge deemed to be relevant by the President.

5. Functions of the Board - (1) The Board shall consist of the number of classification committees which the executive committee deems necessary and appoints to deal with applications from time to time.

(2) The Board shall act as functionary in regard to the making of certain regulations and shall be convened by the chief executive with 7 days written notice to members and its quorum shall be half of the members plus one.

(3) A classification committee shall be constituted as follows:

- (a) a chief examiner as designated by the executive committee; and
- (b) at least one examiner as designated by the executive committee.

(4) Decisions of the Review Board, Board, Executive Committee or of a classification committee shall be taken by way of a majority of votes and, except in the case of a classification committee with two members only, the chairperson, chief executive or chief examiner, as the case may be, shall have a casting vote where the votes are equal.

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

(6) The seats of the Board and the Review Board shall be determined by the Minister.

6. Terms of office - (1) The chairperson of the Review Board, the chief executive of the Board, the senior personnel and the chief examiners shall hold office for a period of five years as from the date of their appointment.

(2) An examiner shall hold office for a period of three years as from the date of his or her appointment.

(3) A member may, at any time with at least three months written notice tendered to the Minister, resign from office.

7. Disqualifications from being a member - A person shall not be appointed under section 4 if he or she -

- (a) is not a citizen of and not permanently resident in the Republic;
- (b) at the relevant time holds an office of profit under the State;
- (c) at the relevant time is, or during the preceding 12 months was, a member of the Transitional Executive Council or Parliament or of any other legislature contemplated in the Constitution of the Republic of South Africa, or if he or she is or was a member of any local authority;
- (d) at the relevant time is, or during the preceding 12 months was, an office-bearer or employee of any party, movement, organization or body of a party political nature;
- (e) 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;
- (f) 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 (e);
- (g) is an unrehabilitated insolvent;
- (h) is subject to an order of a competent court declaring such person to be mentally ill or disordered;
- (i) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which such person has been sentenced to imprisonment without the option of a fine;
- (j) at any time prior to the date of commencement of this Act was convicted, 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); or

(ii) elsewhere, 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

(k) has been convicted of an offence under this Act.

8. Vacancies and removal from office - (1) There shall be a vacancy in the Board or the Review Board when -

(a) a member becomes subject to a disqualification referred to in section 7;

(b) a member's written resignation, tendered as contemplated in section 6(3), takes effect; or

(c) a member is removed from office in terms of subsection (3).

(2) A vacancy in the Board or Review Board shall be filled by the appointment of another person by the President, in the same manner as provided for in section 4 of this Act, as soon as may be reasonably practicable after the occurrence of such vacancy, and any member so appointed shall hold office for the unexpired period of his or her predecessor's term of office.

(3) A member may be removed from office by the President on account of misconduct or inability to perform the duties of his or her office.

9. Staff of the Board and Review Board - (1) The chief executive shall be in charge of the financial, administrative and clerical functions of the Board and he or she may appoint such staff as he or she deems necessary with a view to assisting him or her with all such events as may arise through the exercise and performance of the Board's powers, functions and duties in terms of this Act.

(2) The chief executive shall be the accounting officer, charged with the responsibility to ensure that all monies received and payments made on behalf of the Board or Review Board are duly accounted for.

10. Remuneration - (1) The members of the Board, Review Board and the staff of the Board and Review Board, the advisory panel and experts shall be paid such remuneration and allowances and be entitled to such perquisites as the Minister, in consultation with the Minister of State Expenditure, may determine.

(2) The expenditure in connection with the exercise of the Board and Review Board's powers and the performance of their duties and functions shall be paid out of money appropriated from state funds for such purpose.

11. **Annual report** - (1) The Board shall furnish to the Minister as soon as may be reasonably practicable after the end of each financial year, a report in regard to the functions, activities, affairs and financial position of the Board and Review Board in respect of such financial year.

(2) An annual report submitted in terms of subsection (1) shall be Tabled in the National Assembly by the Minister within 14 days after receipt thereof if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

12. **Powers, Functions and duties of Chief Executive** - Without derogating from the provisions of section 9 the chief executive shall have the following powers, functions and duties, namely -

- (a) to call a meeting of the executive committee to appoint a classification committee to decide upon an application in terms of this Act;
- (b) to call a meeting of the executive committee to appoint an additional examiner on a classification committee in the event of an equality of votes in that committee, where it consists of an equal number of examiners;
- (c) to designate a member of the senior personnel to act in his or her stead during his or her absence;
- (d) to appoint experts at the request of a classification committee to advise that committee or him or herself for purposes of the better achievement of the purposes of this Act;
- (e) to grant or withdraw a permit or an exemption under this Act;
- (f) to call a meeting of the Board with seven days written notice to consider regulations or the annual report;
- (g) to ensure that the public is informed about the classification and consumer advice system; and
- (h) to appoint a person to co-ordinate measures for the enforcement of this Act.

13. **Interested party to be heard** - The Board or the chief executive shall not decide upon any application unless it has afforded a reasonable opportunity to the publisher or his representative in the case of a publication, or an applicant in the case of a film, as the case may be, to be heard personally or by way of legal representation: provided that if a periodical publication has already been distributed or is in the process of distribution, 60 hours notice to the publisher of the date, time

and place of the hearing shall be deemed to be reasonable notice: and, provided further, that if the publisher has not complied with the provisions of section 22(d), such notice shall not be necessary.

14. **Reasons to be furnished** - (1) The Board, the chief executive and the Review Board shall furnish in writing full reasons for a decision as well as the names of the members who partook in that inquiry and shall, if so requested by an interested party, furnish that party with the written reasons.

(2) A copy of the full reasons in terms of subsection (1) shall be kept available for inspection by any member of the public at the office of the Board, during office hours.

15. **Appeal to the Review Board** - (1) An applicant in the case of a film and a publisher or distributor of a publication may appeal to the Review Board within 30 days of the date on which he or she was notified of the Board's decision in the case of a film or the decision was published in the Gazette, in the case of a publication.

(2) An applicant for an exemption or permit may within 30 days of the date on which he or she was notified of the executive committee's decision, appeal to the Review Board against that decision.

(3) The Chairperson of the Review Board shall have the following powers, functions and duties -

- (a) to suspend a decision of the Board or executive committee, on good cause shown, until the outcome of the appeal;
- (b) to convene a Review Board, with 48 hours notice, whenever an appeal against a decision of the Board or the executive committee is to be heard in terms of this Act;
- (c) to determine the procedures to be followed in the hearing of an appeal;
- (d) to allow relevant evidence to be led or handed in; and
- (e) to write full reasons for the decision of the Review Board.

(4) After having heard the appellant and the Board or executive committee personally or by way of legal representation the Review Board may -

- (a) uphold or set aside the decision of the Board or executive committee;

- (b) favourably amend the conditions imposed by the Board or executive committee; or
- (c) with the consent of the appellant amend the conditions in accordance with the appellant's petition.

(5) A decision of the Review Board is deemed to be a decision of the Board or executive committee, as the case may be, for purposes of this Act.

16. Appeal to Supreme Court - (1) Where the Board has classified a film or a publication as XX or X18, the applicant in the case of a film or the publisher or distributor in the case of a publication, may within 30 days of the date on which he or she was notified of the decision, in the case of a film, or within 30 days of the date on which the classification, in the case of a publication, was published in the *Gazette*, appeal to the Supreme Court against that classification.

(2) The Supreme Court may on good cause shown, suspend a decision of the Review Board in regard to a publication until the outcome of the appeal.

(3) The Supreme Court may uphold, set aside or favourably amend the classification of the Review Board.

(4) A decision of the Supreme Court is deemed to be a decision of the Board for purposes of this Act.

CHAPTER 3

PUBLICATIONS: APPLICATIONS

17. Applications - (1) Any person may apply to the Board that a publication which has been published in the Republic and which has not been adjudicated upon by the Board, a publications committee under the Publications Act 1974 or the Board under the Publications and Entertainments Act 1963, be referred to a classification committee for a decision in terms of section 18.

(2) After a period of two years has lapsed since the decision of the Board in terms of subsection (7) was published in the *Gazette*, any person may apply to the Board for a more favourable classification of the publication in terms of section 18.

(3) A publisher of a periodical publication which has been classified as F18 may, at any time, apply to the Board for the withdrawal of such a classification.

(4) The executive committee shall refer an application under subsection (1) or (3) to a classification committee for consideration of the application in terms of section 18.

(5) The executive committee shall refer an application under subsection (2) to a classification committee and that committee shall inquire into the matter afresh in accordance with section 18.

(6) The chief executive shall publish the decision of the Board in the Gazette if it has been classified or reclassified in terms of section 18 or if its classification has been amended in terms of subsection (2).

18. Classification - (1) A classification committee shall classify -

- (a) a publication as XX if, in its opinion, it falls under Schedule 1 or 10 of this Act;
- (b) a publication as X18 if, in its opinion, it falls under Schedule 2 of this Act;
- (c) a publication as R18 if, in its opinion, it falls under Schedule 3 of this Act; or
- (d) a periodical publication as F18 if in its opinion it falls under Schedule 4 of this Act and the publisher consents to such classification: provided that a classification committee may, on application impose a XX or X18 classification on any single issue of a periodical publication if, in its opinion, it falls under the terms of paragraph (a) or (b), as the case may be.

(2) Subsections (1)(a) and (b) shall not be applicable to a publication which falls under Schedule 5 or Clause 2 of Schedule 10 of this Act.

CHAPTER 4

FILMS: APPLICATIONS

19. Applications and Classification - (1) Any person who applies to the Board for the classification of a film under this Act, shall submit an application for the approval of the film on the prescribed form together with the prescribed fee, to the chief executive.

(2) After a period of two years has lapsed since the decision of the Board in terms of subsection (7), any person may apply to the Board for a more favourable classification of the film in terms of subsection (7).

(3) The executive committee shall refer an application in terms of subsections (1) or (2) to a classification committee, which shall examine the film in terms of subsection (7).

(4) Any person who applies for the classification or re-classification of a film, shall -

- (a) at his or her own expense make arrangements to exhibit that film to a classification committee referred to in subsection (1) on such premises, on such day and at such time as the chief executive may after consultation with such person determine; and
- (b) undertake to provide the chief executive with a copy of the film in the form in which it is distributed, if required to do so in the certificate.

(5) The classification committee shall furnish the chief executive with its decision and the full reasons therefor.

(6) The chief executive shall furnish the applicant with the applicable certificate or amended certificate and, where a film has been classified as XX or X18, publish such decision in the Gazette.

(7) A classification committee shall classify a film -

- (a) as XX if, in its opinion, it falls under Schedule 6 or 10 of this Act, unless the applicant consents to excisions which would place the film in an X18 or R18 category in the case of Schedule 6 or R18 in the case of Schedule 10;
- (b) as X18 if, in its opinion, it falls under Schedule 7 of this Act, unless the applicant consents to excisions which would place the film in a R18 category;
- (c) as R18 if, in its opinion, it falls under Schedule 8 of this Act, add an adult consumer advice as prescribed, and shall order no excisions;
- (d) as 18 if, in its opinion, it falls under Schedule 8 of this Act and would not justify consumer advice as prescribed, and shall order no excisions;
- (e) as subject to: a lower age restriction than 18 as prescribed if in its opinion it falls under Schedule 8 of this Act; excisions if necessary and consented to by the applicant so as to fit the age restriction; and consumer advice as prescribed;
- (f) as subject to: no age restriction if, in its opinion, it does not fall under Schedule 8 of this Act; excisions if necessary and consented to by the applicant so as to fit the absence of an age restriction; and consumer advice as prescribed.

(8) A XX or X18 classification shall not be applicable to a film which falls under Schedule 9 or Clause 2 of Schedule 10 of this Act.

CHAPTER 5

EXEMPTIONS: PUBLICATIONS AND FILMS

20. Publications - (1) The executive committee may after receipt of an application in the prescribed form and on such conditions as it may deem fit, exempt in writing any person or institution from the provisions of section 22 where it has good reason to believe that the purposes of research shall 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 the purposes of research are no longer served, it may withdraw the exemption.

(3) A newspaper and a poster issued as an advertisement of a 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.

21. Films - (1) The provisions of section 23 shall not be construed so as to prohibit the exhibition of any film to any person in the course of his 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 on such conditions as it may deem fit to impose, either by permit in the prescribed form or by notice in the Gazette exempt from the provisions of section 23 any particular film or any particular class of films or any film intended for exhibition to a particular group of persons or under any particular circumstances, and may after due inquiry, at any time, withdraw any exemption granted under this subsection: provided that if such exemption was granted by notice in the Gazette, the chief executive shall by like notice make known the withdrawal of that exemption.

(3) A Department of State or a broadcaster licensed or deemed to be licensed in terms of the Independent Broadcasting Authority Act 1993 and who is subject to section 56(1) or (2) of that Act, is exempt from the provisions of this Act.

CHAPTER 6

OFFENCES

22. Publications - A person commits an offence who knowingly-

(a) distributes or advertises for distribution a publication which is classified in the Gazette as XX;

- (b) distributes a publication which is classified in the Gazette as X18 in conflict with Schedule 11;
- (c) distributes a publication which is classified in the Gazette as R18 or F18 in conflict with a condition imposed by the Board in terms of Schedule 3;
- (d) publishes a publication without printing fully in that publication his or her name, business address and, if available, telephone and telefax number.

23. **Films** - (1) A person commits an offence who knowingly -

- (a) exhibits a film in public or distributes a film which has not been classified by the Board;
- (b) exhibits a film in public or distributes a film which has been classified XX by the Board;
- (c) exhibits in public or distributes a film which has been classified as X18 in conflict with Schedule 11;
- (d) exhibits in public or distributes a film in conflict with the conditions imposed by the Board;
- (e) does not, when advertising the film in a publication, and on the cover and packaging of the film, indicate its classification, age restriction and consumer advice;
- (f) exhibits in public or distributes a film without having registered as prescribed with the Board as a distributor;
- (g) exhibits in public or distributes an advertisement or a trailer of a film with a X18 classification during the same screening session or on the same video as a film or video with an age restriction which is lower than 18, unless the chief executive or his or her nominee has given his or her approval.

(2) A person who publishes a film or a copy of such a film, which was classified under this Act or approved at any time after the commencement of the Publications Amendment Act 1992, to any other person, including a distributor of films, shall, when delivering the film to such person, furnish him or her with a certificate in the prescribed form in which is stated -

- (a) that the film has been classified under this Act or the Publications Act 1974;

- (b) if the film has been classified on condition that it shall be exhibited only after a specific portion or portions thereof have been excised, that the portion or portions in question have been excised in accordance with that condition;
 - (c) the X18 or R18 classification, if applicable;
 - (d) the age restriction, if any, imposed in respect of the film; and
 - (e) the consumer advice, if any, relating to the film.
- (3) A person who -
- (a) knowingly publishes a film to any other person without furnishing a certificate referred to in subsection (2);
 - (b) knowingly furnishes a certificate which does not contain all the particulars which in terms of that subsection shall be contained in such a certificate; or
 - (c) furnishes a certificate containing incorrect particulars knowing that those particulars are not correct;

commits an offence unless the chief executive or his or her nominee has exempted him or her from one or more of the paragraphs in subsection (2).

24. Possession - (1) A person who knowingly is in possession of a publication or film which falls under Schedule 1 clause (1) read with Schedule 5, or Schedule 6 clause (1) read with Schedule 9 commits an offence.

(2) A person shall only be convicted in terms of subsection (1) if the prosecution proves that the publication or the film has not been classified by the Board as not falling within Schedule 1 clause (1) read with Schedule 5 or Schedule 6 clause (1) read with Schedule 9.

(3) A prosecution in terms of subsection (1) as well as a related application for a search order shall only be instituted under the written authority of the Attorney-General who has jurisdiction in the matter.

25. Distribution - (1) A person who knowingly distributes a publication which falls under Schedule 1 read with Schedule 5 commits an offence.

(2) A person who knowingly distributes a publication which falls under Schedule 2 read with Schedule 5 in conflict with Schedule 11 commits an offence.

(3) A person shall only be convicted in terms of subsection (1) or (2) if the prosecution proves that the publication has not been classified by the Board as not falling under Schedule 1 or 2, as the case may be, read with Schedule 5.

26. **Regulations** - (1) The Minister shall -

(a) make regulations, in consultation with the Minister of State Expenditure, with regard to the fees payable for any application, exemption, permit or appeal under this Act;

(b) make regulations concerning the constitution and procedure of the advisory panel in terms of section 4(3).

(2) The Board shall make regulations with regard to -

(a) the forms for any application or appeal;

(b) the age restrictions and consumer advice in respect of films: provided that no age restriction shall be higher than eighteen years of age;

(c) any matter which under this Act is required or permitted to be prescribed by regulation, and generally any other procedure for the better achievement of the purposes of this Act.

27. **Transitional arrangement** - A publication or film which at the commencement of this Act is subject to any prohibition or condition in terms of the Publications and Entertainments Act 1963 or the Publications Act 1974, shall at the commencement of this Act be subject to reconsideration in terms of sections 17(2) or 19(2) of this Act in spite of the required two year term not having expired.

28. **Repeal of Acts** - The Acts referred to in Schedule 13 are hereby repealed.

29. **Amendment to Businesses Act 1991 (Act no 71 of 1991)** "The Businesses Act 1991 (Act no 71 of 1991) is hereby amended by addition of the following paragraph to Schedule 1, item 2:

(h) keeping or conducting an adult premises as intended in Schedule 11 of the Film and Publication Act 1995".

30. **Short title and commencement** - This Act shall be called the *Film and Publication Act, 1995*, and shall come into operation on a date fixed by proclamation in the *Gazette* by the President.

SCHEDULES

SCHEDULE 1

XX CLASSIFICATION FOR PUBLICATIONS

A publication shall be classified as XX if, judged within the context of the publication as a whole, it contains a visual presentation, simulated or real, of -

- (1) a child who is, or is depicted as being under the age of sixteen years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd exhibition of genitals;
- (2) an explicit act of sexual bestiality; or
- (3) the explicit infliction or explicit effects of extreme violence in a manner which is likely to create a substantial risk of such violence.

SCHEDULE 2

X18 CLASSIFICATION FOR PUBLICATIONS

A publication shall be classified as X18 if -

- (1) judged within the context of the publication as a whole, 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 human genitals in a state of stimulation or arousal; or
- (2) judged as a whole it describes predominantly and explicitly any or all of the acts defined in Schedule 1 or Schedule 2(1) of this Act.

SCHEDULE 3

R18 CLASSIFICATION FOR PUBLICATIONS

A classification committee shall classify as R18 and impose any or both of the following conditions on the distribution of a publication if it is of the opinion that judged as a whole, 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 a specific age up to 18 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

F 18 CLASSIFICATION FOR PERIODICAL PUBLICATIONS

A periodical publication shall be classified as F18 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 representative consents to such an order.

SCHEDULE 5

ART AND SCIENCE EXEMPTION FOR PUBLICATIONS

The XX or X18 classification shall not apply to a bona fide technical, professional, educational, scientific, documentary, literary or artistic publication or any part of a publication which, judged within the context of the publication, is of such a nature.

SCHEDULE 6

XX CLASSIFICATION FOR FILMS

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

- (1) a child who is, or is depicted as being, under the age of 16 years, participating in, engaging in or assisting others to engage in sexual conduct or a lewd exhibition of genitals;
- (2) an explicit prolonged physically violent act or acts concurrent with explicit prolonged sexual conduct;
- (3) explicit acts of sexual bestiality; or
- (4) the explicit infliction of extreme violence which is predominantly present in the film and which is likely to create a substantial risk of such violence.

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 the context of the whole film, of explicit prolonged sexual conduct which, in the case of sexual intercourse, includes an explicit presentation of genitals in a state of arousal or stimulation.

SCHEDULE 8

AGE RESTRICTIONS FOR FILMS

An age restriction shall only be imposed if the classification committee is of the opinion that, judged as a whole, 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

An XX or X18 classification shall not be applicable to a bona fide technical, professional, educational, scientific, documentary, dramatic or artistic film or any part of a film which, judged within the context of the film, is of such a nature.

SCHEDULE 10

PROMOTION OF RELIGIOUS HATRED

(1) A publication or a film which, judged as a whole, promotes hatred against the religious convictions of a section of the population of the Republic, shall be classified XX.

(2) Clause (1) shall not apply to any publication or film

- (a) of a *bona fide* technical, professional, scientific, educational, literary, artistic or dramatic nature or any part thereof which, judged within the context of the publication or film, as a whole, is of such a nature;
- (b) which amounts to a *bona fide* discussion, argument or opinion on a matter pertaining to religion, belief or conscience;
- (c) which amounts to a *bona fide* discussion, argument or opinion on a matter of public interest.

SCHEDULE 11

ADULT PREMISES

- (1) A publication or film classified as X18 shall be distributed or exhibited in public only by a person who -
 - (a) is licensed to do such business with a licensing authority under the Businesses Act, 1991 (Act no 71 of 1991); and
 - (b) conducts his or her business in a fixed, enclosed premises approved by the said licensing authority.
- (2) A distributor or exhibitor in terms of clause (1) shall -
 - (a) not allow a person under the age of 18 years to enter the premises concerned;
 - (b) display in a conspicuous manner at the entrance or entrances of the premises concerned that no person under the age of 18 years shall enter the premises;
 - (c) display the publication or exhibit the film in such a manner that it can only be seen from within the premises concerned; and
 - (d) not distribute a publication or film by way of postal or other delivery unless the delivery is to a person licensed in terms of clause (1)(a)

SCHEDULE 12

SEXUAL CONDUCT

For purposes of these Schedules "sexual conduct" means genitals in a state of stimulation or arousal; an act of masturbation and sexual intercourse, including anal sexual intercourse; fondling or touching by any object of genitals; oral genital contact; or oral anal intercourse.

SCHEDULE 13

ACTS REPEALED

The Publications Act 1974 as amended

The Indecent or Obscene Photographic Matter Act 37 of 1967
as amended.

* (The reference in Schedules 3 and 8 to a classification committee, shall include a reference to the Review Board where applicable).