**Additional discussion matters to the Films and Publications Amendment Bill**

**Clause 2 read with clause 5 and 6**

* What is the content information in relation to the “Penalty Committee? In respect of both the principal Act and the Bill what will the Penalty Committee do in relation to the functions of the Board and Council? How do all these structures differ and what is their necessity at different capacities as the amendment seeks?
* The independence issue as raised by the submissions, has not been covered by the Department.
* Drafting standard: at clause 6 for consistency to choose whether “10” is written as figure or “ten” as a word. In respect of the new insertion of 6A.

**Clause 16 which amend section 16 of the Principal Act**

* Indeed the CC found that any (prior restraint) prior administrative classification imposed by the state or self- submission of publications to a state body for classification is unconstitutional because section 16 of the Constitution does not have a legal or constitutional requirement that this right be regulated further in order to be implementable.
* At paragraph 51, the CC said freedom of expression is not one of those rights that require regulation in order to have effect or to give it effect. It stands as is. It does not require further regulation like other rights for an example like section 26(2) of the Constitution.
* In its current form the proposed amendment is indeed a unfair, unconstitutional and unlawful restriction of the right to freedom of expression, both on prior administrative required classification or self-submission or self-classification as per the **proposed A list (Department to explain further)** for purposes of obtaining a classification for your work. If the proposed amendment has any link to issuance of a permit by the Board, I worry even with the proposed change the unconstitutionality is still perpetuated. See section 23 and 24 of the Principal Act in this regard.
* The proposed amendment has nothing in respect of clause 16 as a content but only comes in the new suggested definitions. How does that cure the defects raised by the stakeholders and public submissions?
* Whole of section 16(2)(a) of the principal Act must be repealed or taken out of statute book as per the initial proposal of the Bill and that addresses the concern and invalidity the Constitutional Court raised.
* In respect of section 16(2)(b) the Department is only changing “advocates” to “amounts”
* Other indicating that the other existing forms of prohibition under section 16(2)(c) and (d) are already covered in the Constitution, I am not sure what the original drafters of the principal Act meant to achieve. These are already prohibited by the Constitution and so they do not enjoy any constitutional protection. However if anything were to be done in their respect the Committee will require the permission of the NA to enquire into them or deal with them in any way according the NA Rule 286(4)(b).
* Section 16(1) requires any person to request classification for publications.
* Section 18 provides the classification process. The schedules were determining the criteria for classification but now are all repealed together with section 17, so what does the FPB follow as its guideline criteria and what helps the public???

**Clause 18 = section 18 of the Films and Publication Act: child pornography matters De Reuck judgment in paragraph 12 read with 16, 17 -32 and 38**

* It just removes reference to child pornography and additional wording that publication relating to children must comply with guidelines for the protection of children
* De Reuck judgment had dealt with the ambit of this pornography and how it impacts on the freedom of expression right. Basically since the previous Acts have repealed these related provisions it remains to be addressed under Chapter 3 of the Criminal Law Sexual Offences Act. I made copies for members in this regard.

**Clause 24**

* It determines maximum cap of penalties for offences committed in respect of this Act.

**Conclusion**

* The Films and Publications Act is a 1996 Act, which means it was possible deliberated and processed around 1995, at the time when the Constitution process had not been finalised.
* Since its initial enactment there has been 4 amendments most of which include the corrections related to the Constitutional judgments that found certain provisions of this Act unconstitutional and a number which have been repealed. To say the least this Act looks ugly, half empty and borders on being meaningless, with a doubt whether this amendment has hope to give it better life.
* The fact that at this legislative initiation stage a socio-impact assessment (RIA) has not been done, is indeed a huge concern especially in light of the court judgments and the public views during the hearings.
* There is a problem and there is huge uncertainty whether the Bill will sought to rectify that. Perhaps indeed the proper assessment onto the impact of the Act and its proposed current amendment would have assisted all stakeholders involved with a great deal in directing the appropriate way forward.