

# FILMS AND PUBLICATIONS AMENDMENT BILL, [B 37B – 2015]

DEPARTMENT OF  
COMMUNICATIONS

PRESENTATION TO THE  
SELECT COMMITTEE ON  
COMMUNICATIONS AND PUBLIC  
ENTERPRISES (NATIONAL  
COUNCIL OF PROVINCES)

15 AUGUST 2018



the doc

Department:  
Communications  
REPUBLIC OF SOUTH AFRICA



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- ❖ THE BACKGROUND TO THE BILL
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# INTRODUCTION

## DELEGATION (DOC AND FPB TEAM)

- 1) DEPUTY MINISTER PINKY KEKANA
- 2) ADG DR MASHILO BOLOKA
- 3) MR COLLIN DIMAKATSO MASHILE
- 4) MR TSHEGOFATSO KGARABJANG
- 5) MR SANDILE NENE
- 6) MS ABONGILE MASHELE
- 7) MR PANDELIS GREGORIOU



# INTRODUCTION

- ❖ The Film and Publication Board (“Board”) is a statutory body established in terms of the Films and Publications Act, 1996 (Act No. 65 of 1996) (“hereafter the Act”), whose main objective is to regulate the creation, possession, production and distribution of films, games and certain publications with a view to protect children from disturbing and harmful content and to provide information on content to adults to enable them to make informed viewing, gaming and reading choices for both themselves and for children in their care.
- ❖ The Act is also the primary source of legislation regarding the classification of films, games and publications in South Africa.
- ❖ The operation of the Act is known primarily through the classification labels appearing on the covers of DVDs or associated with films at cinemas on or on television.
- ❖ The Act sets up a Film and Publication Board (hereafter “the Board”) which is empowered to appoint classification committees to classify films, games and publications referred to them by the chief executive officer of the Board.



# INTRODUCTION

- ❖ All films and games have to be classified before distribution in South Africa and distributors of such films and games must be registered with the Board.
- ❖ Publications are dealt with separately from films and games and are assessed only on receipt by the Board of a complaint.
- ❖ The Act further creates criminal offences with respect to “child pornography” and grooming-type offences.
- ❖ Internet Service Providers are required to register with the Board to facilitate the disputes against “child pornography”.



# THE PURPOSE OF FILMS AND PUBLICATIONS ACT

- ❖ The ethos underpinning the Act was to shift away from the notion of a censorship board to a classification authority providing South African's with the information required to make a choice about what they wanted to watch or play.
- ❖ The objects of the Act are to be broadened to criminalise explicitly the possession, production and distribution of child pornography and to create offences for “non-compliance with classification of the Board”.
- ❖ The current Act was written for and implemented in a world of cinemas, video stores and adult premises, the Internet and the ongoing communications revolution mean that we now consume content in completely different ways.
- ❖ One of the most important aspects of the Bill is the attempt to establish a legislative basis for the regulation by the Board of content in digital form distributed through electronic media.



# THE BACKGROUND TO THE BILL

- ❖ The main objective of the Board is to regulate the creation, possession, production and distribution of films, games and certain publications with a view ***to protect children from disturbing and harmful content*** and to provide information on content to adults to enable them to make informed viewing, gaming and reading choices for both themselves and for children in their care.
- ❖ The Act further makes the use of children in, and the exposure of children to, pornography, punishable.
- ❖ Until recently, the Board has predominantly focused its classification and monitoring attention and activities on physical platforms and less on digital platforms and social media. The increasing demands for online content and technological advances require the Board to extend its focus to the regulation of content on these diverse platforms.
- ❖ In this regard, it is necessary for the applicable legislation, policies and procedures to reflect these demands and technological advances.



# THE BACKGROUND TO THE BILL

- ❖ In view of the aforementioned, it has thus become necessary to evaluate whether the Act and other pieces of legislation are still aligned with the constitutional values of the Republic of South Africa, aimed at protecting children against disturbing and harmful content, and whether the Act makes adequate provisions for technological advances, especially on online, social and media platforms.
- ❖ Research commissioned by the Board (conducted by PYGMA Consulting and Bridge IT) highlighted gaps in the current Act and further urgent amendments thereto.
- ❖ In May 2012, the Appeal Tribunal ruled against the FPB in the classification of “The Spear”.
- ❖ In September 2012, the Constitutional Court in the matter *PMSA v Minister of Home Affairs and Another* (CCT 113/11) declared section 16(2) of the Act unconstitutional. The sections required publishers, with the exception of registered newspapers, to submit intended publications containing sexual conduct that violates or shows disrespect for the right to human dignity, degrades a person or constitutes incitement to cause harm, Board for prior approval.



# THE BACKGROUND TO THE BILL

- ❖ The court held that the prior classification system limited the right to freedom of expression in section 16 of the Constitution and was not justifiable. The court also held that the unequal treatment of magazines as compared to newspapers without justification was in breach of the right to equality and the legality principle.
- ❖ In 2013, the Appeal Tribunal found the regulations of the Act dealing with the process for handling child pornography not aligned to the constitutional case of *De Reuck v DPP* 2004 (1) SA 406 CC and ruled against the FPB.
- ❖ In the recent years there has been an proliferation of posting and uploading of private sex video and videos depicting violence on Facebook, twitter and You-tube.



# THE BACKGROUND TO THE BILL

- ❖ The Films and Publications Amendment Bill, 2015 seeks to amend the Act so as to—
  - ❖ align the definition of child pornography to the definition in terms of the Constitutional Court judgment in the case of *De Reuck v Director of Public Prosecutions* 2004 (1) SA 406 CC;
  - ❖ give effect to the constitutional amendments of section 16(2)(a) as instructed by the Constitutional Court in *Print Media v Minister of Home Affairs and another* (CCT 113/11);
  - ❖ decriminalise the online distribution of adult content on all platforms including digital platforms;
  - ❖ provide for the establishment of a co-regulation system that will allow for accreditation by the Board of independent classification bodies to classify their own digital films, games and publications; and
  - ❖ provide for an effective penalty regime in support of, amongst others, the co-regulation approach.



# THE BACKGROUND TO THE BILL

- ❖ The Bill seeks to align with international best practice on matters regarding the regulation of distribution of online content.
- ❖ The Bill further seeks to strengthen efforts to combat the online distribution of illegal content as defined in the Act.
- ❖ The Bill seeks to establish a co-regulation regime for classification of digital content distributed online.
- ❖ The Bill seeks to amplify responsibilities of internet service providers in matters regarding the protection of children against sexual content.
- ❖ The Bill seeks to address the shortcomings in relation to classification, compliance monitoring and usage of new media & social networking sites.
- ❖ The Bill also seeks to align certain definitions to various judgements of the constitutional court and the Appeals Tribunal.
- ❖ The Bill establishes a penalty committee to address public complaints and administrative offences committed by distributors and industry.
- ❖ The Bill also provides for the accreditation of foreign classification systems for online content.



# THE PURPOSE OF THE AMEMNDMENT BILL

- ❖ Notice of introduction of a Bill to the Parliament on 23 October 2015: The Minister of Communications introduced a Films and Publications Amendment Bill to the Parliament during November 2015.
- ❖ The notice states that the intention of the Bill is to:
  - ❖ insert and amend certain definitions;
  - ❖ provide for the establishment of, the composition of, and appointment of, members of the Penalty Committee and to provide for the powers and duties of the Penalty Committee;
  - ❖ to regulate online distribution of digital films and digital games;
  - ❖ to extend the functions of the Film and Publication Board of monitoring compliance with the Films and Publications Act to include online distributors in respect of the requirements to comply with the Films and Publications Act;



# THE PURPOSE OF THE AMEMNDMENT BILL

- ❖ ...The notice further states that the intention of the Bill is to:
  - ❖ to revise and further regulate the functions of compliance officers regarding entering and inspection of premises and facilities in which the business of the sale, hire or exhibition of films or games is being conducted;
  - ❖ to further regulate the classification of publications, films and games;
  - ❖ to provide for independent industry classification bodies accreditation thereof by the Film and Publication Board;
  - ❖ to provide for classification of publications, films and games by the independent industry classification bodies;
  - ❖ to provide for foreign classification systems and approval thereof by the Film and Publication Board; and
  - ❖ to provide for the use of classification ratings issued by a foreign classification authority or body.



# THE PURPOSE OF THE AMEMNDMENT BILL

- ❖ ...The notice also states that the intention of the Bill is to:
  - ❖ to provide for the right of appeal against classifications issued by independent industry classification bodies;
  - ❖ to provide for exemptions in respect of online distribution of films and games;
  - ❖ to further provide for the obligations of internet service providers regarding curbing the use of their services in advocating racism and hate speech
  - ❖ to revise and strengthen penal provisions; and
  - ❖ and to provide for matters connected therewith.



# FILMS AND PUBLICATIONS AMENDMENT BILL 2015 [B37-2015] HISTORY

- ❖ **[28 October 2015]:** Notice of introduction of a Bill to the Parliament National Assembly (proposed section 75) and explanatory summary of Bill was done.
- ❖ **[23/30 November 2015]:** The Bill was referred to the Committee on 23 November 2015 and formally introduced into Parliament: Films and Publications Amendment Bill 2015 [B37-2015].
- ❖ **[23 February 2016]:** The Department of Communications briefed the Portfolio Committee on Communications on the Films and Publications Board Amendment Bill.
- ❖ **[7 April 2016]:** An advert calling for submissions on the Bill was published: the deadline for written submissions was on **29 April 2016**.
- ❖ **[19 April 2016]:** Following a number of requests pointing out the inadequacy of the consultation period, the Portfolio Committee extended the date for submissions on the Film and Publications Amendment Bill 2015 to **26 May 2016**.
- ❖ **[30-31 August 2016]:** Hearings on the Films and Publications Amendment Bill [B37-2015] in Parliament/The Committee held public hearings on 30 and 31 August 2016 and considered proposed amendments to the Bill.

# FILMS AND PUBLICATIONS AMENDMENT BILL 2015 [B37-2015] HISTORY

- ❖ **[20 September 2016]**: DOC response: submissions by stakeholders on the Films and Publications Amendment Bill.
- ❖ **[7 March 2017]**: Parliamentary Portfolio Committee on Communications conducted further deliberations on the Films and Publications Amendment Bill / The Department of Communications provided feedback on the deliberations to the Portfolio Committee on Communications on the Films and Publications Board Amendment Bill.
  - ❖ THE FINAL TARIFF STRUCTURE RELATED TO THE BILL
  - ❖ SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)
  - ❖ AN EXTENSIVE CLAUSE-BY-CLAUSE AMENDMENT LIST
- ❖ **[16 May 2017]**: Briefing by the Department of Planning, Monitoring and Evaluation on the compliance of the Films and Publications Amendment Bill [B37 – 2015] with Socio-Economic Impact Assessment System (SEIAS) & DoC presentation on further deliberations on Bill.



# FILMS AND PUBLICATIONS AMENDMENT BILL

## 2015 [B37-2015] HISTORY

❖ [23 May 2017]: Interim report of the Portfolio Committee on Communications on the Films and Publications Amendment Bill [B 37 - 2015] (National Assembly – sec 75):

- ❖ Whilst inquiring into the subject of the Bill and conducting the public hearings and deliberations, the Committee realised that was necessary to amend other provisions of the principal Act which were not included in the Bill.
- ❖ The Committee amended other provisions in the Act beyond the scope of the Bill.
- ❖ The amendments which the Committee was seeking amendments include but are not limited to the definitions, section 4A and section 31A.
- ❖ The Committee also amended certain other provisions of the principal Act and requested the permission from the National Assembly in order to report/include on further amendments to the principal Act other than those presented in the Bill.
- ❖ NA Rule 286(4)(c) stipulates that when a Committee deals with a bill amending provisions of legislation, and the Committee intends to propose amendments to other provisions of the principal Act, the Committee must seek the permission of the Assembly to do so.

# FILMS AND PUBLICATIONS AMENDMENT BILL

## 2015 [B37-2015] HISTORY

- ❖ In light of NA Rule 286(4)(c), the Committee requested permission of the National Assembly to inquire into and amend additional provisions of the principal Act.
- ❖ **[14 November 2017]:** The Portfolio Committee voted to adopt the Bill to proceed to the National Assembly.
- ❖ **[21 November 2017]:** The Portfolio Committee finalised the Bill to be processed to the National Assembly.
- ❖ **[22 December 2017]:** The Bill set to proceed to the National Assembly lapsed in terms of Rule 333.
- ❖ **[27 February 2018]:** As the Bill had lapsed, it was revived through a motion in a sitting on 27 February 2018 to go before the National Assembly for debate on 6 March 2018.
- ❖ **[06 March 2018]:** NA: Second Reading debate: Films and Publications Amendment Bill [B 37B – 2015]
- ❖ **[06 March 2018]:** Bill passed by National Assembly and transmitted to NCOP for concurrence



# CONSULTATION OF CITIZENS AND STAKEHOLDERS

- ❖ A total of 32 written submissions were received from various civil society organisations; broadcasters, state law enforcing agencies, religious bodies, professional bodies and private companies in the telecommunications sector to name a few.
- ❖ On 30 August 2016, eight (8) organisations and or individuals made oral representations, namely:
  - ❖ (i) South African Communications Forum (SACF);
  - ❖ (ii) Ben Winks, Emma Sadleir and Elizabeth Harrison;
  - ❖ (iii) Cause for Justice;
  - ❖ (iv) Interactive Entertainment South Africa (IESA);
  - ❖ (v) Interactive Advisory Body of South Africa (IABSA);
  - ❖ (vi) e-TV;
  - ❖ (vii) Right-To-Know; and
  - ❖ (viii) Internet Service Providers Association (ISPA).



# CONSULTATION WITH CITIZENS AND STAKEHOLDERS

- ❖ On 31 August 2016, ten (10) more organisations made oral representations, namely:
  - ❖ (i) South African Jewish Board of Directors (SAJBD);
  - ❖ (ii) South African Broadcasting Corporation (SABC);
  - ❖ (iii) Press Council South Africa;
  - ❖ (iv) MultiChoice;
  - ❖ (v) South African National Editors Forum (SANEF);
  - ❖ (vi) National Association of Broadcasters (NAB);
  - ❖ (vii) GoogleSA;
  - ❖ (viii) Media Monitoring Africa (MMA) and SOS Coalition;
  - ❖ (ix) Centre for Constitutional Justice; and
  - ❖ (x) Association of Christian Media (ACM).



# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
<p><b>SECTION 1</b></p> <p>Section 1 of the Bill inserts and amends certain definitions as outlined below.</p> <p>The definition of “artistic” has been revised to mean predominantly aesthetic accordingly to the reasonable person.</p> <p>The definition of “child pornography” has been revised by the deletion of the words “includes” and “or in such a manner that it is capable of being used for the purposes of sexual exploitation”;</p> <p>The definition of “penalty committee” has been added;</p> <p>The definition of “press council” has been added:</p>	<p><b>CLAUSE 1</b></p> <p><b>‘child pornography’</b> means child pornography as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);”;</p> <p><b>‘commercial online distributor’</b> means a distributor in relation to films, games and publications which are distributed for commercial purposes using the internet;”;</p> <p><b>‘distributor’</b> means a person who conducts the business of distributing films, games or publications and includes a commercial online distributor;”;</p>

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
<p><b>SECTION 1</b></p> <p>The definition of “press council” has been added;</p> <p>The definition of “press ombudsman” has been added;</p> <p>The definition of “publication” has been revised to include “website”;</p> <p>The definition of “sexual conduct” has been revised by the deletion of “male” with reference to genitals, and the addition of “anus, vagina, testicles and penis”; and</p> <p>The definition of “social media” has been added.</p>	<p><b>CLAUSE 1</b></p> <p><b>‘Enforcement Committee’</b> means the committee established in terms of section 3;”</p> <p><b>‘game’</b> means a computer game, video game or other interactive computer software for interactive game playing, including games accessed or played using the internet, 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;”;</p>

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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## ☐ SECTION 1

**CLAUSE 1**  
“**harmful**” means causing emotional, psychological or moral distress to a person, whether it be through a film, game or publication through any on or offline medium, including through the internet and ‘harm’ has the corresponding meaning;

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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## □SECTION 1

**CLAUSE 1**  
**hate speech**' includes any speech, gesture, conduct, writing, display or publication, made using the internet, which is prohibited in terms of section 16(2) of the Constitution of the Republic of South Africa, 1996, which propagates, advocates or communicates words against any person or identifiable group, which words could reasonably be construed to demonstrate a clear intention to be harmful, to incite harm and promote or propagate hatred against the said person or identifiable group.”;

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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## □ SECTION 1

**CLAUSE 1**

**‘Independent Communications Authority of South Africa’** means the body established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

**‘internet’** means the Internet as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);”

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
<p>□SECTION 1</p>	<p>CLAUSE 1</p> <p>“<b>non-commercial online distributor</b>” means any person who distributes content using the internet, or enables content to be distributed by a user of online services, for personal or private purposes;</p> <p><b>‘online medium’</b> means any website, communication or messaging system, social media facility or similar facility which is connected to the publicly available internet, and any public telecommunications messaging system;</p>

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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**SECTION 1**

**CLAUSE 1**  
“**permit**’ means the permit issued by the Board pursuant to section 23(2) to an online distributor wherein the online distributor is exempted from submitting films and games to the Board for classification, subject to such terms and conditions as the Board may deem fit;”

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY

CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP

□ SECTION 1

CLAUSE 1  
**‘Press Council of South Africa’** means a voluntary independent self-regulatory body established in terms of the Constitution of the Press Council of South Africa and which has adopted the Press Council Constitution, which includes the Code of Ethics and Conduct for South African Print and Online Media; **‘prohibited content’** means content which amounts to propaganda for war, incitement of imminent violence, advocacy of hatred that is based on an identifiable group characteristic, and that constitutes incitement to cause harm, or is prohibited in sections 16(2), 16(4) and 18(3).”

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS  
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CURRENT PROPOSAL AGREED TO  
AND UNDER CONSIDERATION BY  
THE NCOP

## □SECTION 1

### CLAUSE 1

**'self-classification'** for the purposes of a permit contemplated in section 23(2), means the rating and classification of films, games and publication with regard to the suitability for audiences in terms of the

Board's classification guidelines and the Act;";

**'social media'** includes the various online technology tools and forms electronic communication via the internet, such as websites for social networking and micro blogging through which users create online communities to share information, ideas, personal messages and other

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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## □SECTION 1

**CLAUSE 1**  
**‘streaming’** means the delivery of films by an online distributor or broadcaster, including the online streaming or downloading of films and catch-up services that enable time-shifted viewing of a film online, to the end user of an online delivery medium, including the internet;”.

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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## ❑ Section 2

The objects of the Act have been revised by the substitution of the following paragraph

(d) “criminalise the possession, production and distribution of child pornography” in order to extensively provide for the protection of children against child pornography; and the insertion of paragraph (e) in order to create offences for non-compliance with the classification decisions of the FPB.

## CLAUSE 2

Section 2 of the principal Act is hereby amended—

(c) by the addition of the following paragraphs:

“(d) criminalise the possession, production and distribution of child pornography; and

(e) create offences for non-compliance with this Act.”.

ORIGINAL BILL PROPOSALS  
CONSIDERED BY THE NATIONAL  
ASSEMBLY

CURRENT PROPOSAL AGREED TO  
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THE NCOP

☐ **Section 4**

**CLAUSE 5**

“Amendment of section 4A of 65 of 1996, as amended by section 7 of Act 3 of 2009

5. Section 4A of the principal Act is amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) in consultation with the Minister, issue directives of general application, including classification guidelines, regarding the accreditation contemplated in section 18D, in accordance with matters of national policy consistent with the purpose of this Act;”

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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**❑Section 6**  
Section 6 of the Act has been revised with the inclusion of the “Penalty Committee” and provision regarding the membership and required experience of the members thereof.

**❑Section 7, 8 & 9**  
Sections 7, 8 & 9 of the principal Act has been revised with the inclusion of reference to the “Penalty Committee”.

**CLAUSE 6**  
“Insertion of sections 6A, 6B and 6C in Act 65 of 1996 Composition of Enforcement Committee Powers and duties of Enforcement Committee Removal of members of Enforcement

**CLAUSE 7 (SUBSTITUTION OF HEADING)**  
“Disqualifications with regard to membership of Council [or], Appeal Tribunal or Enforcement Committee”;

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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## □ Section 7, 8 & 9

Sections 7, 8 & 9 of the principal Act has been revised with the inclusion of reference to the “Penalty Committee”.

## CLAUSE 8

Section 8 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Period of office of members of Council [and], Appeal Tribunal and Enforcement Committee”; and

(b) by the substitution for subsection (1) of the following subsection:

“(1) Members of the Council [or], Appeal Tribunal and Enforcement Committee shall be appointed for a period of five years.”.

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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## □ Section 7, 8 & 9

Sections 7, 8 & 9 of the principal Act has been revised with the inclusion of reference to the “Penalty Committee”.

## CLAUSE 9

(c) by the addition in subsection (2) of the following paragraphs:

“(d) accredit commercial online distributors’ classification systems in terms of section 18C;

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
<p><b>❑Section 9A</b> Section 9A has been amended by making provision for accreditation of foreign classification systems, the conclusion of foreign distribution agreements and the exemption of online distributors from the pre-distribution classification requirements in relation to films, games and publications.</p> <p><b>❑Sections 12, 13 &amp;14</b> These sections which deal with remuneration, expenditure and the annual report respectively, have been amended with the inclusion of reference to the Penalty Committee.</p>	<p><b>CLAUSE 9</b> Section 9A of the principal Act is hereby amended— (c) by the addition in subsection (2) of the following paragraphs: (d) accredit commercial online distributors' classification systems in terms of section 18C</p> <p><b>CLAUSE 10</b> “Administrative support for Council [and], Appeal Tribunal and Enforcement Committee Remuneration Annual report</p>

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS  
CONSIDERED BY THE NATIONAL  
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## ❑ Section 15

Functions and powers of compliance officers. This section grant compliance office power to enter any premises, with the consent of the person in charge of such premises, on or in which the business of the sale, hire or exhibition of films or games is being conducted

## CLAUSE 14

The compliance officers are permitted to enter any premises, with the consent of the person in charge of such premises, on or in which the business of the sale, hire or exhibition of films or games is being conducted

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
<p><b>Section 18</b></p> <p>18 C Self classification</p> <p>18 D Approval of accredited foreign or international classification systems by the Council</p> <p>18E Complaints against prohibited content</p> <p>18F Prohibition against distribution of private sexual photographs and Films</p> <p>18G Prohibition against filming and distribution of films and photographs depicting sexual violence and violence against children</p>	<p><b>CLAUSE 19</b></p> <p>18C. (1) The Board may, on application and upon payment of the prescribed fee, by a commercial online distributor approve and accredit such commercial online distributor to conduct classifications of films, games and publications.</p> <p>18D (1) The Council may, on application by an online distributor wishing to distribute films, games or publications in the Republic using classification ratings issued by a foreign or international classification authority or body, approve the use of classification ratings issued by the foreign or international classification authority or body</p>

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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**Section 18**  
18H Prohibition against propaganda for war; incitement of imminent violence and advocacy of hatred that is based on identifiable group characteristics, and that constitutes incitement to cause harm  
18I Display of classification decisions  
Re-classification

**CLAUSE 19**  
18E. (1) Any person may complain to the Board about unclassified, prohibited content, or potential prohibited content, in relation to services being offered online by any person, including commercial online distributors and non-commercial online distributors.

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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☐ **Section 18 continues**

**CLAUSE 19**

18F. (1) No person may expose, through any medium, including the internet and social media, a private sexual photograph or film if the disclosure is made—

- (a) without the consent of the individual or individuals who appear in the photograph or film; and
- (b) with the intention of causing that individual harm.

18G. (1) No person may create, produce or distribute in any medium, including the internet, and social media any films or photographs depicting sexual violence and violence against children.

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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❑ **Section 18 continues**

## CLAUSE 19

18I. (1) Where a film, or game has been classified or exempted from classification in terms of this Act, or such film or game has been classified by a commercial online distributor referred to in section 18C, the film or game must—

(a) if it is a film or game approved for sale or hire, display a label in the prescribed form.

18J. (1) Any person may, after a period of two years from the date when a film, game or publication was first classified in terms of this Act, apply to the Board in the prescribed manner, for a less restrictive classification of that film, game or publication.

# ORIGINAL AND CURRENT PROPOSALS

## ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY

### ❑ Section 19

“(1) [The Minister or any] 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 16, and any person who applied for the classification of a film or game, or the publisher or distributor of a publication which formed the subject of any complaint or [application] a submission 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 of the Board, in the prescribed manner, appeal to the Appeal Tribunal ”

## CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP

### CLAUSE 21

“(1) [The Minister or any] 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 16, and any person who applied for the classification of a film or game, or the publisher or distributor of a publication which formed the subject of any complaint or [application] a submission 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 of the Board, in the prescribed manner, appeal to the Appeal Tribunal.”

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
<p><input type="checkbox"/> Section 24A “Prohibitions, offences and penalties on [distribution and exhibition] possession of films, games and publications</p> <p>Section 24B “[Prohibition, offences] Offences and penalties [on possession of films, games and publications] in respect of child pornography and sexual exploitation of children”;</p> <p>Section 24C Fine not exceeding R50 000</p>	<p>See clause 27 for the amount on penalty and term of imprisonment</p>

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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Section 24D  
“Prohibition, offences and penalties for submission of false and misleading information to online submission system of Board

See clause 27 for the amount on penalty and term of imprisonment

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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Section 24E  
Prohibitions, offences and penalties on distribution of private sexual photographs and films

Section 24F  
Prohibitions, offences and penalties on filming and distribution of films and photographs depicting sexual assault and violence against children

Section 24G  
Prohibitions, offences and penalties on propaganda for war, incitement of imminent violence, and advocacy of hatred based on an identifiable group characteristic and that constitutes incitement to cause harm

# ORIGINAL AND CURRENT PROPOSALS

ORIGINAL BILL PROPOSALS CONSIDERED BY THE NATIONAL ASSEMBLY	CURRENT PROPOSAL AGREED TO AND UNDER CONSIDERATION BY THE NCOP
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**☐ Section 31  
Procedure for making regulations**

**CLAUSE 31**  
31A. (1) The Minister must, before making or amending any regulations referred to in section 31, publish a notice in the Gazette—  
(a) setting out that draft regulations have been developed;  
(b) specifying where a copy of the draft regulations may be obtained; and  
(c) inviting written comments to be submitted on the proposed regulations within a specified period.

# EXPECTED IMPACT OF THE BILL

- ❖ On whether the Bill will meet Constitutional muster; the following clauses were interpreted to say that they will fail Constitutional muster:
  - ❖ a. Clause 1 (infringes upon freedom of expression);
  - ❖ b. Clauses 15 and 19 (infringe upon right to privacy); and
  - ❖ c. Clauses 4, 5 and 6 (element of public participation, transparency and openness).
- ❖ The Bill is compatible with the rights accorded to citizens of South Africa in accordance with the Constitution and law.



# WAY FORWARD AND CONCLUDING REMARKS

- ❖ It is envisaged that the FPB will implement the Bill, create regulatory certainty and reduce costs for the sector, under its current budget.
- ❖ The State Law Advisors and the Department of Communications are of the opinion that this Bill should be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains provisions to which section 75 of the Constitution applies.



THE END

Thank you

