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CONTENTS • INHOUD

No.

Page
No. Gazette
No.**GENERAL NOTICES**

Home Affairs, Department of

General Notices

1385	Publication of Civil Union Bill, 2006, as introduced into Parliament.....	3	29237
1386	Publication of Films and Publications Amendment Bill, 2006, as introduced into Parliament.....	22	29237
1387	Publication of Immigration Amendment Bill, 2006, as introduced into Parliament.....	38	29237

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GENERAL NOTICES

NOTICE 1385 OF 2006

DEPARTMENT OF HOME AFFAIRS

PUBLICATION OF CIVIL UNION BILL, 2006, AS INTRODUCED INTO PARLIAMENT

Interested parties are invited to submit comments on the Civil Union Bill, 2006 [B26—2006], as introduced into Parliament by the Minister of Home Affairs during September 2006, on or before 6 October 2006 to—

Mr M R Mankge

Secretary: Portfolio Committee on Home Affairs

P O Box 15

Cape Town

8000

Tel: (021) 403-3826

Fax: (021) 403-2808

E-mail: mmankge@parliament.gov.za

Copies of the Bill can also be obtained from—

- (a) the Government Printers – Cape Town and Pretoria;
- (b) the Director: Drafting, Legal Services, Department of Home Affairs, 270 Maggs Street, Waltloo, Pretoria, Tel: (012) 810-8031/8032; and
- (c) the Department of Home Affairs' website, namely: www.dha.gov.za.

REPUBLIC OF SOUTH AFRICA

CIVIL UNION BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 29169 of 31 August 2006). (The English text is the official text of the Bill)

(MINISTER OF HOME AFFAIRS)

[B 26—2006]

ISBN 0-9802545-0-7

BILL

To provide for the solemnisation of civil partnerships; the legal consequences of civil partnerships; the legal recognition of domestic partnerships; the enforcement of the legal consequences of domestic partnerships; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 9(1) of the Constitution of the Republic of South Africa, 1996, provides that everyone is equal before the law and has the right to equal protection and benefit of the law;

AND WHEREAS section 9(3) of the Constitution provides that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;

AND WHEREAS section 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected;

AND NOTING that the family law dispensation as it existed after the commencement of the Constitution did not provide for same-sex couples to enjoy the status and the benefits coupled with the responsibilities that marriage accords to opposite-sex couples;

AND NOTING that there is no legal recognition or protection for same-sex and opposite-sex couples in permanent domestic partnerships,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,
as
follows:—

CHAPTER 1

INTRODUCTORY PROVISIONS

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Definitions

1. In this Act, unless the context otherwise indicates—

“**Administration of Estates Act**” means the Administration of Estates Act, 1965 (Act No. 66 of 1965);

“**child of a domestic partnership**” includes—

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(a) any child born as a result of sexual relations between the domestic partners; or

(b) any child of either domestic partner; or

(c) any child adopted by the domestic partners jointly; or

(d) any other child who was a dependant of the domestic partners—

(i) at the time when the domestic partners ceased to live together; or

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(ii) if at that time the domestic partners had not ceased to live together, at the time immediately before an application under this Act; or

(iii) at the date of the death of one of the domestic partners;

“**civil partner**” means a partner in a civil partnership concluded in terms of this Act;

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“**civil partnership**” means the voluntary union of two adult persons of the same sex that is solemnised and registered in accordance with the procedures prescribed in this Act to the exclusion, while it lasts, of all others;

“**civil union**” means a civil partnership or a domestic partnership;

“**Compensation for Occupational Injuries and Diseases Act**” means the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

25

“**contribution**” means—

(a) the financial and non-financial contributions made directly or indirectly by the domestic partners—

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(i) to the acquisition, maintenance or improvement of any joint property, or separate property of either of the domestic partners or to the financial resources of either or both of them; or

(ii) in terms of a registered partnership agreement; and

(b) the contributions, including any contributions made in the capacity of homemaker or parent, made by either domestic partner to the welfare of the other domestic partner or to the welfare of the family constituted by them and a child of the domestic partners;

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Provided that there is no presumption that a contribution referred to in paragraph (a) is of greater value than a contribution referred to in paragraph (b);

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“**court**” means, for purposes of Chapter 3 of this Act, a High Court or a family court established under section 2(k) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

“**domestic partner**” means a partner in a domestic partnership and includes a former domestic partner;

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“**domestic partnership**” means a registered domestic partnership or unregistered domestic partnership and includes a former domestic partnership;

“**duty of support**” means the responsibility of each registered domestic partner to provide for the other partner's basic living expenses while the registered partnership exists;

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“**family**” includes partners in a domestic partnership and their dependants;

“**family home**” means the dwelling used by either or both domestic partners as the only or principal family residence, together with any land, buildings, or improvements attached to that dwelling and used wholly or principally for the purposes of the domestic partnership household;

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“**financial matters**”, in relation to parties to a registered partnership agreement, means matters with respect to—

(a) the property of either or both of the parties; or

(b) the financial resources of either or both of the parties;

"financial resources", in relation to either or both of the domestic partners, includes—

- (a) a prospective claim or entitlement in respect of a scheme, fund or arrangement under which pension, retirement or similar benefits are provided;
- (b) property which, pursuant to the provisions of a discretionary trust, may become vested in or used or applied in or towards the purposes of the partners or either of them; 5
- (c) property, the alienation or disposal of which is wholly or partly under the control of the partners or of either of them and which is lawfully capable of being used or applied by or on behalf of the partners or by either of them in or towards their or his or her own purposes; and 10
- (d) any other benefit with a value;

"household goods" means corporeal property, owned separately or jointly by the domestic partners, intended and used for the joint household—

- (a) and includes the following movable goods: 15
 - (i) household furniture;
 - (ii) household appliances, effects, or equipment;
 - (iii) household articles for family use or amenity or household ornaments, including tools, garden effects and equipment;
 - (iv) motor vehicles, caravans, trailers or boats, used wholly or principally, in each case, for family purposes; 20
 - (v) accessories of goods to which subparagraph (iv) applies;
 - (vi) household pets; and
- (b) includes any of the goods mentioned in paragraph (a) that are in the possession of either or both domestic partners under a credit agreement or conditional sale agreement or an agreement for lease or hire; but 25
- (c) does not include—
 - (i) movable goods used wholly or principally for business purposes;
 - (ii) money or securities for money; and
 - (iii) heirlooms; 30

"Identification Act" means the Identification Act, 1997 (Act No. 68 of 1997);

"interested party" means any party with an interest, or who could reasonably be expected to have an interest, in the joint property of the domestic partners or the separate property of either of the domestic partners or in a partnership debt;

"Intestate Succession Act" means the Intestate Succession Act, 1987 (Act No. 81 of 1987); 35

"joint property" means household goods and property owned jointly in equal or unequal shares by the domestic partners;

"Maintenance of Surviving Spouses Act" means the Maintenance of Surviving Spouses Act, 1990 (Act No. 27 of 1990); 40

"maintenance order" means an order for the payment, including the periodical payment, by a domestic partner of sums of money towards the maintenance of the other domestic partner;

"Marriage Act" means the Marriage Act, 1961 (Act No. 25 of 1961);

"marriage officer" means— 45

- (a) a marriage officer ex officio or so designated by virtue of section 2 of the Marriage Act; or
- (b) any minister of religion, or any person holding a responsible position in, any religious denomination or organisation designated as a marriage officer under section 5 of this Act; 50

"Mediation in Certain Divorce Matters Act" means the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987);

"Minister" means the Cabinet member responsible for the administration of Home Affairs;

"partnership debt" means a debt that has been incurred, or to the extent that it has been incurred— 55

- (a) by the domestic partners jointly; or
- (b) in the course of a common enterprise of the domestic partnership carried on by the partners, whether individually, together or with another person; or
- (c) for the purpose of acquiring, improving, or maintaining joint property of the domestic partners; or 60
- (d) for the benefit of both domestic partners in the course of managing the affairs of the common household; or

- (e) for the purpose of bringing up any child of a domestic partnership;
- "periodic maintenance order"** means an order for the payment of periodic sums of money by a domestic partner towards the maintenance of the other domestic partner;
- "prescribed"** means prescribed by this Act or by regulation made under this Act; 5
- "property"** includes any present, future or contingent right or interest in or to movable or immovable, corporeal or incorporeal property, money, a debt and a cause of action;
- "registered domestic partnership"** means a relationship that has been registered as a domestic partnership under Chapter 3 of this Act; 10
- "registered partnership agreement"** means a written agreement concluded between and undersigned by prospective registered domestic partners to regulate the financial matters pertaining to their partnership;
- "registration officer"** means any person who has been designated to be a registration officer under section 17 of this Act; 15
- "separate property"** means property of domestic partners that is not joint property;
- "termination certificate"** means a certificate issued by a registration officer to the effect that a registered domestic partnership has been terminated in the manner provided for in Chapter 3 of this Act; 20
- "unregistered domestic partnership"** means a relationship between two adult persons who live as a couple and who are not related by family.

CHAPTER 2

CIVIL PARTNERSHIPS

Objectives of Chapter 25

2. The objectives of this Chapter are—
- to regulate the solemnisation and registration of civil partnerships; and
 - to provide for the legal consequences of the solemnisation and registration of civil partnerships.

Relationships to which Chapter applies 30

3. This Chapter applies to civil partners joined in a civil partnership.

Solemnisation of civil partnership

4. (1) A marriage officer may solemnise a union between two adult persons of the same sex in accordance with the provisions of this Chapter.
- (2) Subject to this Chapter, a marriage officer has all the powers as conferred upon him or her by the Marriage Act to solemnise a civil partnership in terms of this Chapter. 35

Designation of ministers of religion and other persons attached to churches as marriage officers

5. (1) Any religious denomination or organisation may apply in writing to the Minister to be designated as a religious organisation that may solemnise civil partnerships. 40
- (2) The Minister may designate such a religious denomination or organisation as a religious institution that may solemnise civil partnerships under this Act, and must, from time to time, publish particulars of all religious institutions so designated in the *Gazette*.
- (3) The Minister may, on request of any designated religious institution referred to in subsection (2), revoke the designation under that subsection and must publish such revocation in the *Gazette*. 45
- (4) The Minister and any officer in the public service authorised thereto by him or her may designate, upon receiving a written request from any minister of religion or any person holding a responsible position in any designated religious institution to be, as long as he or she is such a minister or occupies such position, a marriage officer for the purpose of solemnising civil partnerships in accordance with this Chapter and according to the rites of that religion. 50

(5) Every designation of a person as a marriage officer under subsection (4) shall be by written instrument and the date as from which it shall have effect and any limitation to which it is subject shall be specified in such instrument.

(6) The Minister and any officer in the public service authorised thereto by him or her may, upon receiving a written request from a person designated as a marriage officer under subsection (4), revoke in writing the designation of such person as a marriage officer for purposes of solemnising civil partnerships under this Chapter. 5

Marriage officers may refuse to solemnise civil partnership

6. (1) This Chapter does not, subject to subsection (2), compel a marriage officer to solemnise a civil partnership: Provided that such marriage officer has informed the Minister in writing that he or she objects on grounds of conscience to solemnising civil partnerships in terms of this Chapter. 10

(2) Subsection (1) does not apply to marriage officers designated under sections of this Chapter.

Prohibition of solemnisation of civil partnership without production of identity document or prescribed declaration 15

7. No marriage officer may solemnise any civil partnership unless—

- (a) each of the parties in question produces to the marriage officer his or her identity document issued under the provisions of the Identification Act; or
- (b) each of such parties furnishes to the marriage officer the prescribed affidavit; 20 or
- (c) one of such parties produces his or her identity document referred to in paragraph (a) to the marriage officer and the other furnishes to the marriage officer the affidavit referred to in paragraph (b).

Requirements for solemnisation and registration of civil partnership 25

8. (1) A person may only be a partner in one civil partnership at any given time.

(2) A married person may not register a civil partnership.

(3) A prospective civil partner who has previously been married or registered as a partner in a civil partnership must present a certified copy of the divorce order or death certificate of the former spouse or partner, as the case may be, to the marriage officer as proof that the previous civil partnership or marriage has been terminated. 30

(4) The marriage officer may not proceed with the solemnisation and registration of the civil partnership unless in possession of the relevant documentation referred to in subsection (3).

(5) A civil partnership may only be registered by prospective civil partners who would, apart from the fact that they are of the same sex, not be prohibited by law from concluding a marriage. 35

Objections to civil partnership

9. (1) Any person desiring to raise any objection to any proposed civil partnership shall lodge such objection in writing with the marriage officer who is to solemnise such civil partnership. 40

(2) Upon receipt of any such objection the marriage officer concerned shall inquire into the grounds of the objection and if he or she is satisfied that there is no lawful impediment to the proposed civil partnership, he or she may solemnise the civil partnership. 45

(3) If he or she is not so satisfied he or she must refuse to solemnise the civil partnership and record the reasons for such refusal in writing.

Time and place for and presence of parties and witnesses at solemnisation and registration of civil partnership

10. (1) A marriage officer may solemnise and register a civil partnership at any time on any day of the week, but is not obliged to solemnise a civil partnership at any other time than between the hours of eight in the morning and four in the afternoon. 50

(2) A marriage officer must solemnise and register a civil partnership in a public office or private dwelling-house or on the premises used for such purposes by the marriage officer, with open doors and in the presence of the parties themselves and at least two competent witnesses, but the foregoing provisions of this subsection do not prohibit a marriage officer to solemnise a civil partnership in any place other than a place mentioned herein, if the civil partnership must be solemnised in such other place by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties. 5

(3) No person is competent to enter a civil partnership in terms of this Chapter through any other person acting as his or her representative. 10

Civil partnership formula

11. (1) A marriage officer must inquire as to whether the parties appearing before him or her would prefer their civil partnership to be referred to as a civil partnership or a marriage during the solemnisation ceremony and must thereupon proceed by solemnising the civil partnership in accordance with the provisions of this section and in accordance with the wishes of both parties, if they are in agreement, referring to either a civil partnership or a marriage in reading the formula. If the parties are not in agreement, the marriage officer must, in reading the formula, refer to a civil partnership. 15

(2) In solemnising any civil partnership/marriage, the marriage officer must put the following questions to each of the parties separately, and each of the parties must reply thereto in the affirmative: 20

‘Do you, A.B., declare that as far as you know there is no lawful impediment to your proposed civil partnership/marriage with C.D. here present, and that you call all here present to witness that you take C.D. as your lawful civil partner/spouse?’, and thereupon the parties must give each other the right hand and the marriage officer concerned must declare the civil partnership/marriage solemnised in the following words: 25

‘I declare that A.B. and C.D. here present have been lawfully joined in a civil partnership/marriage.’

(3) If the provisions of this section relating to the questions to be put to each of the parties separately or to the declaration whereby the civil partnership/marriage shall be declared to be solemnised or to the requirement that the parties must give each other the right hand have not been strictly complied with owing to— 30

- (a) an error, omission or oversight committed in good faith by the marriage officer; or 35
- (b) an error, omission or oversight committed in good faith by the parties; or
- (c) the physical disability of one or both of the parties,

and such civil partnership/marriage has in every other respect been solemnised in accordance with the provisions of this Chapter, that civil partnership/marriage shall, provided there was no other lawful impediment thereto, be valid and binding. 40

Registration of civil partnership

12. (1) The prospective partners must individually and in writing declare their willingness to enter into the civil partnership with one another by signing the prescribed document in the presence of two witnesses.

(2) The marriage officer and the two witnesses must sign the prescribed document to certify that the declaration made under section 11(2) was made in their presence. 45

(3) The marriage officer must issue the partners to the civil partnership with a registration certificate stating that they have entered into a civil partnership.

(4) This certificate is prima facie proof that a valid civil partnership exists between the parties referred to in the certificate. 50

(5) Each marriage officer must keep a record of all civil partnerships solemnised by him or her.

(6) The marriage officer must forthwith transmit the civil partnership register and records concerned to the official in the public service with the delegated responsibility for the population register in the area in question. 55

(7) Upon receipt of the said register the official referred to in subsection (6) must cause the particulars of the civil partnership concerned to be included in the population register in accordance with the provisions of section 8(e) of the Identification Act.

Legal consequences of civil partnerships

13. (1) The legal consequences of a marriage apply, with such changes as may be required by the context, to a civil partnership.

(2) With the exception of the Marriage Act, any reference to—

- (a) marriage in any other law, including the common law, includes, with such changes as may be required by the context, a civil partnership as defined in this Act; and 5
- (b) husband, wife or spouse in any other law, including the common law, includes a civil partner as defined in this Act.

CHAPTER 3

10

DOMESTIC PARTNERSHIPS**Objectives of Chapter**

14. The objectives of this Chapter are to ensure the rights of equality and dignity of the partners in domestic partnerships and to reform family law to comply with the applicable provisions of the Bill of Rights, through the— 15

- (a) recognition of the legal status of domestic partners;
- (b) regulation of the rights and obligations of domestic partners;
- (c) protection of the interests of both domestic partners and interested parties on the termination of domestic partnerships; and
- (d) final determination of the financial relationships between domestic partners 20 and between domestic partners and interested parties when domestic partnerships terminate.

Relationships to which Chapter applies

15. This Chapter applies to relationships between domestic partners and between either one or both domestic partners and another party or other parties. 25

Part I***Registered domestic partnerships: Registration procedure*****Partners in registered domestic partnership**

16. (1) A person may be a partner in only one registered domestic partnership at any given time. 30

(2) A person who is married, a partner in a civil partnership or a partner in any other registered domestic partnership may not register a domestic partnership.

(3) A registration officer may not proceed with the registration process of a prospective partner who has previously been married, a partner in a civil partnership or a partner in a registered domestic partnership unless presented with a certified copy of the— 35

- (a) divorce order;
- (b) termination certificate; or
- (c) death certificate of the former spouse or registered partner,

as proof that the previous marriage, civil partnership or registered domestic partnership has been terminated. 40

(4) Persons who would be prohibited by law from concluding a marriage on the basis of consanguinity may not register a domestic partnership.

(5) A relationship may only be registered as a domestic partnership if at least one of the prospective partners is a South African citizen. 45

Registration officers

17. (1) The Minister and any officer in the public service authorised thereto by him or her may designate any officer or employee in the public service or the diplomatic or consular service of the Republic to be a registration officer, either generally or for any specified area, by virtue of his or her office and so long as he or she holds such office. 50

(2) Every designation of a person as a registration officer must be in writing and the date as from which it will have effect and any limitation to which it is subject must be specified in such a written document.

Registration of domestic partnerships

18. (1) Subject to section 16, any two persons may register their relationship as a domestic partnership as provided for in this section. 5

(2) A registration officer must conduct the registration procedure on the official premises designated for that purpose and in the manner provided for in this section.

(3) The prospective partners must individually and in writing declare their willingness to register their domestic partnership by signing the prescribed document in the presence of the registration officer. 10

(4) The registration officer must sign the prescribed document to certify that the declaration referred to in subsection (3) was made voluntarily and in his or her presence.

(5) The registration officer must make notification of the existence of a registered domestic partnership agreement, where applicable, on the registration certificate. 15

(6) The registration officer must issue the partners with a registration certificate stating that they have registered their domestic partnership and, where applicable, attach a certified copy of the registered domestic partnership agreement to the registration certificate.

(7) The registration certificate issued by the registration officer is prima facie proof of the existence of a registered domestic partnership between the partners. 20

(8) Each registration officer must keep a register of all registrations of domestic partnerships conducted by him or her and make a notification of the existence of a registered domestic partnership agreement, where applicable, in the register.

(9) The registration officer must forthwith transmit the said register to the officer in the public service with the delegated responsibility for the population register in his or her district of responsibility. 25

(10) Upon receipt of the said register the delegate must cause the particulars of the registered domestic partnership concerned to be included in the population register in accordance with the provisions of section 8(e) of the Identification Act. 30

Property regime

19. (1) Except as provided in this section, there is no general community of property between partners in a registered domestic partnership.

(2) In the event of a dispute regarding the division of property after a registered domestic partnership has ended, section 34 applies. 35

(3) Registered partners may conclude a registered domestic partnership agreement.

(4) Where no notification of the existence of a registered domestic partnership agreement has been effected on or no copy of such registered domestic partnership agreement has been attached to a registration certificate as required in section 18(5) and (6), and where no notification of the existence of such a registered domestic partnership agreement has been made as required in section 18(8), such agreement binds only the parties to the agreement. 40

Registered domestic partnership agreement

20. (1) In proceedings regarding the division of property between registered partners under this Chapter, a court may consider the fact that the parties have concluded a registered domestic partnership agreement and the terms thereof, provided that the registered domestic partnership agreement has been noted on and attached to the registration certificate. 45

(2) If the court, having regard to all the circumstances, is satisfied that giving effect to a registered domestic partnership agreement would cause serious injustice, it may set aside the registered domestic partnership agreement or parts thereof. 50

(3) In deciding under subsection (2) whether giving effect to a registered domestic partnership agreement would cause serious injustice, the court may have regard to—

- (a) the terms of the registered domestic partnership agreement;
- (b) the time that has elapsed since the registered domestic partnership agreement was concluded; 55

- (c) whether the registered domestic partnership agreement was unfair or unreasonable in the light of all the circumstances at the time it was made;
 - (d) whether the registered domestic partnership agreement has become unfair or unreasonable in the light of any changes in circumstances since it was made, and whether those changes were foreseen by the parties, or not; 5
 - (e) the fact that the parties wished to achieve certainty as to the status, ownership, and division of property by entering into the registered domestic partnership agreement;
 - (f) the contributions of the parties to the registered domestic partnership; and
 - (g) any other matter that the court considers relevant. 10
- (4) A court may make an order under this section notwithstanding that the registered domestic partnership agreement purports to exclude the jurisdiction of the court to make that order.
- (5) A court must decide any other matter regarding a registered domestic partnership agreement on the applicable principles of the law of contract. 15

Part II

Legal consequences of registered domestic partnerships

Duty of support

21. Registered partners owe each other a duty of support in accordance with each partner's financial means and needs. 20

Limitation on disposal of joint property

22. A registered partner may not without the consent of the other registered partner sell, donate, mortgage, let, lease or otherwise dispose of joint property.

Right of occupation of family home

23. (1) Both registered partners are entitled to occupy the family home during the existence of the registered domestic partnership, irrespective of which of the registered partners owns or rents the property. 25
- (2) The registered partner who owns or rents the family home may not evict the other registered partner from the family home during the existence of the registered domestic partnership without providing him or her with suitable alternative accommodation. 30

Part III

Termination of registered domestic partnership

Termination of registered domestic partnerships

24. (1) A registered domestic partnership terminates upon— 35
- (a) the death of one or both registered partners;
 - (b) agreement by the partners; or
 - (c) a court order to terminate the registered domestic partnership, as provided for in this Chapter.
- (2) A death certificate, termination certificate issued under this Chapter or a termination order made by the court under this Chapter is prima facie proof that such a registered domestic partnership has ended. 40

Termination by agreement

25. (1) A registration officer must conduct the termination procedure on the official premises used for that purpose and in the manner provided for in this section.
- (2) Registered partners who intend to terminate their domestic partnership must present the registration officer with a certified copy of the registration certificate as proof that a registered domestic partnership exists between them. 45

(3) Registered partners must individually and in writing declare their desire to terminate the registered domestic partnership by signing the prescribed document in the presence of a registration officer.

(4) The registration officer must sign the prescribed document to certify that the declaration referred to in subsection (3) was made voluntarily and in his or her presence. 5

(5) The registration officer must issue the registered partners with a certificate stating that their domestic partnership has been terminated and make a notification of the existence of a termination agreement, where applicable, on the certificate.

(6) Each registration officer must keep a register of all registered domestic partnerships terminated by him or her and make a notification of the existence of a termination agreement, where applicable, in the register. 10

(7) The registration officer must forthwith transmit the said register and documents concerned to the officer in the public service with the delegated responsibility for the population register in his or her district of responsibility.

(8) Upon receipt of the said register the delegate must cause the particulars of the terminated domestic partnership to be included in the population register in accordance with the provisions of section 8(e) of the Identification Act. 15

Termination agreement

26. (1) Registered partners who want to terminate their registered domestic partnership as provided for in section 25, may conclude a termination agreement to regulate the financial consequences of the termination of their registered domestic partnership. 20

(2) A termination agreement must be in writing, signed by both registered partners and must declare that it is entered into voluntarily by both partners.

(3) A termination agreement may provide for— 25

- (a) the division of joint and separate property;
- (b) one registered partner to pay maintenance to the other registered partner;
- (c) arrangements regarding the family home; and
- (d) any other matter relevant to the financial consequences of the termination of the registered domestic partnership. 30

Termination by court order

27. (1) Registered partners who have minor children from the registered domestic partnership and who intend to terminate the registered domestic partnership must apply to the court for a termination order.

(2) An application for the termination of a registered domestic partnership must be made to the court in accordance with the provisions of the Supreme Court Act, 1959 (Act No. 59 of 1959). 35

Welfare of minor children

28. (1) A court may not order the termination of a registered domestic partnership unless the court is satisfied that the provisions made or contemplated with regard to the welfare of any minor child or dependent child of the registered domestic partnership are in the best interests of such child. 40

(2) In order to determine that the circumstances set out in subsection (1) exist, the court may order that an investigation be instituted and for that purposes the provisions of section 4 of the Mediation in Certain Divorce Matters Act apply, with the changes required by the context. 45

(3) Before making the termination order, the court must consider the report and recommendations referred to in section 4(1) of the Mediation in Certain Divorce Matters Act.

(4) In order to determine that the circumstances set out in subsection (1) exist, the court may order any person to appear before it and may order either or both the registered partners to pay the costs of an investigation and appearance. 50

(5) A court granting an order to terminate a registered domestic partnership may, in regard to the maintenance and education of a dependent child of the registered domestic partnership or the custody or guardianship of, or access to, a minor child of the registered domestic partnership, make any order which it deems fit and may in particular, if in its opinion it would be in the interests of such minor child to do so, grant 55

to either parent the sole guardianship or the sole custody of the minor, and the court may order that, on the predecease of the parent to whom the sole guardianship of the minor is granted, a person other than the surviving parent must be the guardian of the minor, either jointly with or to the exclusion of the surviving parent.

(6) Unless otherwise ordered by a court, the rights of and obligations towards children of a registered partner under any other law are not affected by the termination of the registered domestic partnership. 5

(7) For the purposes of this section the court may appoint a legal practitioner to represent a child at the proceedings and may order either or both the registered partners to pay the costs of the representation. 10

Children of registered partners of opposite sex

29. Where a child is born into a registered domestic partnership between persons of the opposite sex, the male partner in the registered domestic partnership is deemed to be the biological father of that child and has the legal rights and responsibilities in respect of that child that would have been conferred upon him if he had been married to the biological mother of the child. 15

Part IV

Maintenance after termination of registered domestic partnership

Maintenance after termination

30. (1) In the absence of an agreement, a court may, after termination of a registered domestic partnership as provided in section 24(1)(b) and (c), upon application, make an order which is just and equitable in respect of the payment of maintenance by one registered partner to the other for any specified period or until the registered partner in whose favour the order is given— 20

- (a) dies; 25
- (b) marries;
- (c) enters into a civil partnership; or
- (d) enters into a registered domestic partnership, whichever event occurs first.

(2) When deciding whether to order the payment of maintenance and the amount and nature of such maintenance, the court must have regard to the— 30

- (a) respective contributions of each partner to the registered domestic partnership; 30
- (b) existing and prospective means of each of the registered partners;
- (c) respective earning capacities, future financial needs and obligations of each of the registered partners; 35
- (d) age of the registered partners;
- (e) duration of the registered domestic partnership;
- (f) standard of living of the registered partners prior to the termination of the registered domestic partnership; and
- (g) any other factor which in the opinion of the court should be taken into account. 40

Maintenance after death

31. For purposes of this Chapter, a reference to “spouse” in the Maintenance of Surviving Spouses Act must be construed to include a registered partner.

Intestate succession

32. For purposes of this Chapter, a reference to “spouse” in the Intestate Succession Act must be construed to include a registered partner. 45

Delictual claims

33. (1) For the purpose of claiming damages in a delictual claim, partners in a registered domestic partnership are deemed to be spouses in a legally valid marriage.

(2) A partner in a registered domestic partnership is not excluded from instituting a delictual claim for damages based on the wrongful death of the other partner merely on the ground that the partners have not been legally married.

(3) A partner in a registered domestic partnership is a dependant for purposes of the Compensation for Occupational Injuries and Diseases Act.

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Part V

Property division after termination of registered domestic partnership

Property division

34. (1) In the event of a dispute regarding the division of property after a registered domestic partnership has ended, one or both registered partners may apply to a court for an order to divide their joint property or the separate property, or part of the separate property of the other registered partner.

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(2) Upon an application for the division of joint property, a court must order the division of that property which it regards just and equitable with due regard to all relevant factors.

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(3) Upon an application for the division of separate property or part of the separate property, a court may order that the separate property or part of the separate property of the other registered partner as the court regards just and equitable be transferred to the applicant.

(4) A court considering an order as contemplated in subsections (2) and (3) must take into account—

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- (a) the existing means and obligations of the registered partners;
- (b) any donation made by one partner to the other during the subsistence of the registered domestic partnership;
- (c) the circumstances of the registered domestic partnership;
- (d) the vested rights of interested parties in joint and separate property;
- (e) the existence and terms of a registered domestic partnership agreement, if any; and
- (f) any other relevant factors.

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(5) A court granting an order contemplated in subsection (3) must be satisfied that it is just and equitable to do so by reason of the fact that the registered partner in whose favour the order is granted made direct or indirect contributions to the maintenance or increase of the separate property or part of the separate property of the other registered partner during the subsistence of the registered domestic partnership.

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(6) A court granting an order contemplated in subsection (3) may, on application by the registered partner against whom the order is granted, order that satisfaction of the order be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments and the delivery or transfer of specified assets, as the court regards just and equitable.

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Application to be made within two years after termination of registered domestic partnership

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35. (1) Except as otherwise provided by this section, an application to a court for an order under section 34 must be made not later than two years after the termination of the registered domestic partnership.

(2) A court may, at any time after the expiration of the period referred to in subsection (1), grant leave to an applicant to apply to the court for an order under section 33, where the court is satisfied, having regard to such matters as it considers relevant, that greater hardship would be caused to that applicant if the leave were not granted than would be caused to the respondent if the leave were granted.

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Notification of termination of a registered domestic partnership

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36. (1) When a registered domestic partnership is terminated, both registered partners are liable to give written notice of the termination to interested parties.

(2) When one or both registered partners die, the surviving registered partner or the executor of the estate of either registered partner is liable to give written notice of the termination of the registered domestic partnership to interested parties.

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Interests of other parties

37. (1) A court considering an application under this Chapter must have regard to the interests of a bona fide purchaser of, or other person with an interest or vested right in, property concerned.

(2) A court may make any order proper for the protection of the rights of interested parties. 5

Part VI***Unregistered domestic partnerships*****Court application**

38. (1) One or both unregistered partners may, after the unregistered domestic partnership has ended through death or separation, apply to a court for a maintenance order, an intestate succession order or a property division order. 10

(2) When deciding an application for an order under this Chapter, a court must have regard to all the circumstances of the relationship, including such of the following matters as may be relevant in a particular case— 15

- (a) the duration and nature of the relationship;
- (b) the nature and extent of common residence;
- (c) the degree of financial dependence or interdependence, and any arrangements for financial support, between the unregistered partners;
- (d) the ownership, use and acquisition of property; 20
- (e) the degree of mutual commitment to a shared life;
- (f) the care and support of children of the domestic partnership;
- (g) the performance of household duties;
- (h) the reputation and public aspects of the relationship; and
- (i) the relationship status of the unregistered partners with third parties. 25

(3) A finding in respect of any of the matters mentioned in subsection (2), or in respect of any combination of them, is not essential before a court may make an order under this Chapter, and regard may be had to further matters and weight be attached to such matters as may seem appropriate in the circumstances of the case.

(4) A court may not make an order under this Chapter regarding a relationship of a person who, at the time of that relationship, was also in a civil marriage, civil partnership or registered domestic partnership with a third party. 30

(5) A court may only make an order under this Chapter regarding a relationship where at least one of the parties to the relationship is a South African citizen or has a certificate of naturalisation in respect of South Africa. 35

Maintenance

39. Unregistered partners are not liable to maintain one another and neither partner is entitled to claim maintenance from the other, except as provided in this Chapter.

Application for maintenance order after separation

40. (1) A court may, after the separation of unregistered partners upon application of one or both of them, make an order which is just and equitable in respect of the payment of maintenance by one unregistered partner to the other for a specified period. 40

(2) When deciding whether to order the payment of maintenance and the amount and nature of such maintenance, the court must have regard to the age of the unregistered partners, the duration of the unregistered domestic partnership and the standard of living of the unregistered partners prior to separation, as well as the following matters— 45

- (a) the ability of the applicant to support himself or herself adequately in view of him or her having custody of a minor child of the domestic partnership;
- (b) the respective contributions of each unregistered partner to the domestic partnership; 50
- (c) the existing and prospective means of each unregistered partner;
- (d) the respective earning capacities, future financial needs and obligations of each unregistered partner;

(e) the relevant circumstances of another unregistered domestic partnership or customary marriage of one or both unregistered partners, where applicable, in so far as they are connected to the existence and circumstances of the unregistered domestic partnership, and any other factor which in the opinion of the court should be taken into account.

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Application for a maintenance order after death of unregistered partner

41. (1) A surviving unregistered partner may after the death of the other unregistered partner, bring an application to a court for an order for the provision of his or her reasonable maintenance needs from the estate of the deceased until his or her death, remarriage or registration of a registered domestic partnership, in so far as he or she is not able to provide therefor from his or her own means and earnings.

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(2) The surviving unregistered partner does not, in respect of a claim for maintenance, have a right of recourse against any person to whom money or property has been paid, delivered or transferred in terms of section 34(11) or 35(12) of the Administration of Estates Act, or pursuant to an instruction of the Master in terms of section 18(3) or 25(1)(a)(ii) of that Act.

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(3) The provisions of the Administration of Estates Act apply with the changes required by the context to a claim for maintenance of a surviving unregistered partner, subject to the following:

- (a) The claim for maintenance of the surviving unregistered partner must have the same order of preference in respect of other claims against the estate of the deceased as a claim for maintenance of a dependent child of the deceased has or would have against the estate if there were such a claim;
- (b) in the event of competing claims of the surviving unregistered partner and that of a dependent child of the deceased the court must make an order that it regards just and equitable with reference to all the relevant circumstances of the unregistered domestic partnership;
- (c) in the event of competing claims of an unregistered partner and that of a surviving customary spouse, the court must make an order that it regards just and equitable with reference to the existence and circumstances of multiple relationships between the deceased and an unregistered partner, and between the deceased and a customary spouse;
- (d) in the event of a conflict between the interests of the surviving unregistered partner in his or her capacity as claimant against the estate of the deceased and the interests in his or her capacity as guardian of a minor dependent child of the domestic partnership, the court must make an order that it regards just and equitable with reference to all the relevant circumstances of the unregistered domestic partnership; and
- (e) the executor of the estate of a deceased spouse has the power to enter into an agreement with the surviving unregistered partner and the heirs and legatees having an interest in the agreement, including the creation of a trust, and in terms of the agreement to transfer assets of the deceased estate or a right in the assets to the surviving unregistered partner or to impose an obligation on an heir or legatee in settlement of the claim of the surviving unregistered partner or part thereof.

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Determination of reasonable maintenance needs of surviving unregistered partner

42. When determining the reasonable maintenance needs of the surviving unregistered partner, the court must consider—

- (a) the amount in the estate of the deceased available for distribution to heirs and legatees;
- (b) the existing and expected means, earning capacity, financial needs and obligations of the surviving unregistered partner;
- (c) the standard of living of the surviving unregistered partner during the subsistence of the unregistered domestic partnership and his or her age at the death of the deceased;
- (d) the existence and circumstances of multiple relationships between the deceased and an unregistered partner, and between the deceased and a customary spouse; and
- (e) any other factor that it regards relevant.

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Intestate succession

43. (1) Where an unregistered partner dies intestate, his or her surviving unregistered partner may bring an application to a court, subject to subsections (2) and (3), for an order that he or she may inherit the intestate estate.

(2) Where the deceased is survived by an unregistered partner as well as a descendant, such unregistered partner inherits a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Cabinet member responsible for the administration of Justice by notice in the *Gazette*, whichever is the greater, as provided for in the Intestate Succession Act.

(3) In the event of a dispute between a surviving unregistered partner and the customary spouse of a deceased partner regarding the benefits to be awarded, a court may, upon an application by either the unregistered partner or the customary spouse, make an order that it regards just and equitable with reference to all the relevant circumstances of both relationships.

Property division

44. (1) In the absence of agreement, one or both unregistered partners may apply to court for an order to divide their joint property or the separate property, or part of the separate property of the other unregistered partner.

(2) Upon an application for the division of joint property, a court must order the division of that property which it deems just and equitable with due regard to all relevant factors.

(3) Upon an application for the division of separate property or part of the separate property, a court may order that the separate property or such part of the separate property of the other unregistered partner as the court regards just and equitable be transferred to the applicant.

(4) A court considering an order contemplated in subsections (2) and (3) must take into account—

- (a) the existing means and obligations of the partners;
- (b) any donation made by one partner to the other during the subsistence of the unregistered domestic partnership;
- (c) the circumstances of the unregistered domestic partnership;
- (d) the vested rights of interested parties in joint and separate property; and
- (e) any other relevant factors.

(5) A court granting an order contemplated in subsection (3) must be satisfied that it is just and equitable to do so by reason of the fact that the unregistered partner in whose favour the order is granted, made direct or indirect contributions to the maintenance or increase of the separate property or part of the separate property of the other party during the existence of the unregistered domestic partnership.

(6) A court granting an order contemplated in subsection (3) may, on application by the unregistered partner against whom the order is granted order that satisfaction of the order be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments and the delivery or transfer of specified assets, as the court regards just and equitable.

(7) A court may make any order proper for the protection of the rights of interested parties.

Application to be made within two years after termination of relationship

45. (1) Except as otherwise provided by this section, an application to a court for an order under this Chapter must be made not later than two years after the date on which an unregistered domestic partnership has been terminated through separation or death.

(2) A court may, at any time after the expiration of the period referred to in subsection (1), grant leave to an applicant to apply to the court for an order under this Chapter, where the court is satisfied, having regard to such matters as it considers relevant, that greater hardship would be caused to that applicant if the leave was not granted than would be caused to the respondent if the leave were granted.

CHAPTER 4

MISCELLANEOUS

Offences and penalties

46. (1) Any marriage officer who purports to solemnise a civil partnership which he or she is not authorised under this Act to solemnise or which to his or her knowledge is legally prohibited, and any person not being a marriage officer who purports to solemnise a civil partnership, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding twelve months. 5

(2) Any marriage officer who demands or receives any fee, gift or reward for or by reason of anything done by him or her as marriage officer in terms of this Act shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding six months. 10

(3) Any—

(a) marriage officer who knowingly solemnises a civil partnership; or 15
(b) registration officer who knowingly registers a domestic partnership, in contravention of the provisions of this Act, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding six months.

(4) Any person who makes for any of the purposes of this Act, any false representation or false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury. 20

Regulations

47. (1) The Minister may make regulations as to—

- (a) the form and content of certificates, notices, affidavits and declarations for the purposes of this Act; 25
- (b) the fees payable for any certificate issued or any act performed in terms of this Act; and
- (c) generally, any matter which by this Act is required or permitted to be prescribed or which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved or that the provisions of this Act may be effectively administered. 30

(2) Such regulations may prescribe penalties for a contravention thereof—

- (a) of a fine not exceeding the amount that, in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), may be imposed as an alternative to imprisonment for a period of six months; or 35
- (b) in lieu of payment of a fine referred to in paragraph (a), of imprisonment for a period not exceeding six months.

Short title and commencement

48. This Act is called the Civil Union Act, 2006, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 40

MEMORANDUM ON THE OBJECTS OF THE CIVIL UNION BILL, 2006

1. BACKGROUND

The Constitutional Court, in the matters of *Minister of Home Affairs v Fourie (Doctors for Life International and Others, Amici Curiae); Lesbian and Gay Equality Project and Others v Minister of Home Affairs* 2006(1) SA 524 (CC) (the Fourie-case), declared that the definition of marriage under the common law and the marriage formula as set out in section 30(1) of the Marriage Act, 1961 (Act No. 25 of 1961), were inconsistent with the Constitution and invalid to the extent that they failed to provide the means whereby same-sex couples could enjoy the status and the benefits coupled with the responsibilities that marriage accorded to heterosexual couples. The Court ordered Parliament to correct these defects in the law by 1 December 2006, failing which section 30(1) of the Marriage Act, 1961 (Act No. 25 of 1961), will be read as including the words "or spouse" after the words "or husband". In arriving at its decision the Court considered the two options proposed by the South African Law Reform Commission and concluded that these were two firm proposals for legislative action, but it stated further that this does "not, however, necessarily exhaust the legislative paths which could be followed to correct the defect". The Bill was drafted in response to the Constitutional Court's judgment in the Fourie-case.

2. OBJECTS OF THE BILL

The object of the Civil Union Bill, 2006 is twofold, in that it provides for the conclusion of—

- (a) a civil union or marriage between persons of the same sex solemnised before the State with all legal consequences of a marriage;
- (b) a domestic partnership between partners in a permanent relationship, whether of a heterosexual or homosexual nature, who do not wish to marry or enter into a civil partnership or marriage, but with legal consequences provided for in the Bill.

3. DEPARTMENTS/BODIES CONSULTED

- Department of Justice and Constitutional Development; and
- The South African Law Reform Commission consulted extensively before completing their report.

4. FINANCIAL IMPLICATIONS FOR STATE

There will be financial implications with regard to the solemnisation (i.e. designation and training of registration officers) and registration (i.e. development of new registration systems and forms) of civil unions and domestic partnerships.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Home Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

NOTICE 1386 OF 2006**DEPARTMENT OF HOME AFFAIRS****PUBLICATION OF FILMS AND PUBLICATIONS AMENDMENT BILL, 2006,
AS INTRODUCED INTO PARLIAMENT**

Interested parties are invited to submit comments on the Films and Publications Amendment Bill, 2006 [B27—2006], as introduced into Parliament by the Minister of Home Affairs during September 2006, on or before 6 October 2006 to—

Mr M R Mankge

Secretary: Portfolio Committee on Home Affairs

P O Box 15

Cape Town

8000

Tel: (021) 403-3826

Fax: (021) 403-2808

E-mail: mmankge@parliament.gov.za

Copies of the Bill can also be obtained from—

- (a) the Government Printers – Cape Town and Pretoria;
- (b) the Director: Drafting, Legal Services, Department of Home Affairs, 270 Maggs Street, Waltloo, Pretoria, Tel: (012) 810-8031/8032; and
- (c) the Department of Home Affairs' website, namely: www.dha.gov.za.

REPUBLIC OF SOUTH AFRICA

FILMS AND PUBLICATIONS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 29169 of 31 August 2006)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 27—2006]

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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.

BILL

To amend the Films and Publications Act, 1996, so as to insert certain definitions; to amend the composition and provide for the functions and powers of the Board; to provide for the appointment and powers of compliance officers; to provide for the composition, functions, powers and management of the classification office; and to repeal certain Schedules to the Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 65 of 1996, as amended by section 1 of Act 34 of 1999 and section 1 of Act 18 of 2004

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

- (a) by the insertion after the definition of “chief executive officer” of the following definition:
- “ ‘child abuse’, for the purposes of this Act, means the use of a child in the creation or production of child pornography or for sexual exploitation and includes exhibiting or showing images of sexual conduct to a child or exposing a child to or encouraging a child to witness sexual conduct;”
- (b) by the insertion after the definition of “classification committee” of the following definition:
- “ ‘classification office’ means the office established by the Board in terms of section 4A(1)(e);”; and
- (c) by the insertion after the definition of “film” of the following definition:
- “ ‘interactive computer game’ means a computerised game in which the way the game proceeds and the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the player;”.

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

2. The following section is hereby substituted for section 2 of the principal Act:

“Objects of Act

2. The objects of this Act shall be to—

- (a) regulate the creation, production, possession, broadcasting and distribution of certain publications, [and certain] films and interactive computer games 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] to protect children from exposure to disturbing, harmful or age-inappropriate materials and against sexual exploitation or degradation in publications, films, interactive computer games, on mobile cellular telephones and on the Internet; and
- (b) make the [exploitative] use of children in pornographic publications, films, interactive computer games, on mobile cellular telephones or on the Internet, punishable.”.

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

3. Section 4 of the principal Act is hereby amended—

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

“[Constitution] Composition of Board”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the chief executive officer and such number of [senior personnel, chief examiners and examiners] members as the Minister may determine having regard to the [likely volume of applications and complaints which will be submitted to the Board in terms of this Act] need to ensure that the membership of the Board is broadly representative of the South African community and relevant stakeholders.”;
- (c) by the deletion of subsection (3); and
- (d) by the substitution for subsection (4) of the following subsection:

“(4) Decisions of the Board [and executive committee] shall be taken by a majority of votes, and in the case of an equality of votes the chairperson of the meeting shall have a casting vote.”.

Insertion of section 4A in Act 65 of 1996

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

“Powers and duties of Board

4A. (1) The Board shall—

- (a) in consultation with the Minister, issue directives of general application in accordance with matters of national policy consistent with the purpose of this Act;
- (b) establish controls for financial management and accountability within which the classification office contemplated in section 9A must function;
- (c) determine and issue a Code of Conduct for members of the Board;
- (d) provide public support for the organisation;
- (e) establish classification office and appoint, in consultation with the Minister with regard to terms and conditions of employment, officers to manage the classification office;
- (f) determine the qualifications, experience, terms and conditions of employment of classifiers and appoint such number as may be required, having regard to the likely volume of applications and submissions that will be made to the Board in terms of this Act;

- (g) review, at least four times a year, the administration and management of the classification office to ensure that the objects of the Act are implemented efficiently and that the classification office discharges its obligations and responsibilities in accordance with this Act; and
- (h) exercise and perform such other functions, powers and duties as are conferred or imposed on the Board by or under this Act or any other law.
- (2) When making an appointment in terms of subsection (1)(e), the Board shall have regard not only to the person's personal attributes and integrity, but also to the person's qualifications, knowledge and experience in different aspects of matters likely to come before the classification office.
- (3) When making an appointment in terms of subsection (1)(f), the Board shall ensure broad representation of the South African community in terms of race, ethnicity, gender and religion and may invite the public to nominate persons who may be considered suitable candidates for appointment as classifiers.
- (4) Meetings of the Board shall be convened by the chief executive officer at the request of or in consultation with the chairperson and shall be held at the premises of the Board unless, for *bona fide* reasons, the chairperson directs that a meeting be held at another venue.”.

Amendment of section 5 of Act 65 of 1996, as amended by section 3 of Act 18 of 2004

5. The following heading is hereby substituted for the heading to section 5 of the principal Act:

“[Constitution of Review] Composition of Appeal Board”.

Insertion of section 5A in Act 65 of 1996

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

“Powers and duties of Appeal Board

5A. The Appeal Board shall—

- (a) hear and determine any appeal lodged in terms of this Act; and
- (b) have the powers necessary to determine the procedures and forms for the submission of appeals and the procedures to be followed at the hearing of appeals submitted to it.”.

Amendment of section 6 of Act 65 of 1996, as substituted by section 3 of Act 34 of 1999

7. Section 6 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister[,], or the advisory panel may invite members of the public to [propose] nominate persons [who may be considered] for appointment.”.

Amendment of section 7 of Act 65 of 1996, as amended by section 36 of Act 12 of 2004

8. Section 7 of the principal Act is hereby amended by the substitution in subsection (1)(h) for subparagraph (i) of the following subparagraph:

- “(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);”.

Amendment of section 9 of Act 65 of 1996, as substituted by section 4 of Act 34 of 1999

9. Section 9 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

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

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Insertion of section 9A in Act 65 of 1996

10. The following section is hereby inserted in the principal Act after section 9:

“Composition, functions, powers and management of classification office

9A. (1) The classification office shall consist of the chief executive officer and the number of officers determined by the Board having regard to the functions, powers and responsibilities of the classification office.

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(2) The functions of the classification office shall be to—

(a) ensure that children are protected against child abuse and in so doing to—

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(i) examine and determine the classification of any film, interactive computer game or publication submitted to the Board under this Act; and

(ii) determine, in accordance with any classification guidelines issued by the Board, the conditions to be imposed on the distribution, exhibition and possession of any film, interactive computer game or publication classified in terms of this Act;

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(b) determine an application made under section 22 for an exemption from any provision of this Act in respect of any film, interactive computer game or publication;

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(c) determine an application made under section 18(1) for registration as a distributor or exhibitor of films or interactive computer games;

(d) issue, in consultation with all relevant stakeholders, classification guidelines to be used in determining what is disturbing, harmful or age-inappropriate for children in films, interactive computer games and publications;

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(e) publish classification guidelines every 12 months and to invite all relevant stakeholders to make representations regarding such guidelines, to consider all representations made and, if necessary, to amend the guidelines on the basis of such representations; and

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(f) make regulations relating to—

(i) the procedures and forms for making any application or submission under this Act;

(ii) the form of any certificate to be issued in terms of this Act;

(iii) the format and details of the display of decisions of the Board with respect to films, interactive computer games and publications classified in terms of this Act; and

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(iv) generally any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

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(3) The classification office shall have all the powers reasonably necessary to enable it to carry out the duties and exercise the functions necessary for the effective achievement of the objects of this Act.

(4) The chief executive officer shall be responsible for all matters relating to the administration and management of the classification office, including—

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(a) the appointment of administrative staff;

(b) the appointment of compliance officers;

(c) the allocation of spheres of responsibility among and between management officers;

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(d) acting as an arbitrator in interpersonal disputes or when management structures reach a deadlock;

- (e) providing help and assistance with programme development and management;
- (f) the submission of the annual report and financial statements as prescribed by the Public Finance Management Act, 1999 (Act No. 1 of 1999), and Treasury Regulations.

(5) The chief executive officer may delegate any power conferred on him or her.”

Substitution of section 10 of Act 65 of 1996

11. The following section is hereby substituted for section 10 of the principal Act:

“Classification committees

10. (1) The [executive committee] classification office shall appoint so many classification committees as often as may be necessary, each of which shall consist of [a chief examiner, designated by the executive committee, and at least one examiner, so designated,] at least three classifiers, one of whom shall be designated the chairperson to perform or carry out with regard to films and publications, referred to them by the chief executive officer in terms of sections 16(3) and 18(2), the functions and duties assigned to or imposed on them in terms of sections 16(4) and 18(3).

[(2) Decisions of a classification committee shall be taken by a majority of votes: Provided that where a committee consists of two members only, the executive committee shall in a case where those members differ with regard to the decision which should be taken by the classification committee, appoint a third member to that committee so as to enable the committee to come to a decision.

(3)] (2) A decision of a classification committee shall for the purposes of this Act be deemed to be a decision of the Board.”

Amendment of section 13 of Act 65 of 1996

12. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The chief executive officer shall be the accounting officer [in respect of all money referred to in subsection (1)].”

Insertion of section 15A in Act 65 of 1996

13. The following section is hereby inserted in the principal Act after section 15:

“Functions and powers of compliance officers

15A. A compliance officer may, for the purpose of achieving the objects of this Act and of—

- (a) advising distributors and exhibitors of films and interactive computer games of the requirements of this Act with regard to the distribution and exhibition of films and interactive computer games; and
- (b) ensuring that all films and interactive computer games offered for sale or hire by a distributor have been classified in terms of this Act and that all such films and interactive computer games display, in the prescribed manner, the classification reference number, the age restriction, consumer advice and such other conditions as may have been imposed on the distribution of such films and interactive computer games by the Board,

enter any premises on or in which the business of the sale, hire or exhibition of films or interactive computer games is being conducted, and—

- (i) request the production of a certificate of registration as a distributor or exhibitor of films or interactive computer games issued by the Board and, where relevant, a licence to conduct the business of adult premises issued by a licensing authority as contemplated in section 24 of this Act;

- (ii) examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24(2) of this Act;
- (iii) examine or inspect any film or interactive computer games being offered for sale or hire for compliance with the requirements of this Act with regard to the distribution of that film or interactive computer game; and 5
- (iv) order that films, interactive computer games and publications being offered for sale or hire that do not comply with the requirements of this Act or any decision of the Board with regard to the distribution of that film, interactive computer game or publication be removed from any display or offer for sale or hire until such products comply with the requirements of this Act or any decision of the Board with regard to their distribution." 10

Substitution of section 16 of Act 65 of 1996

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14. The following section is hereby substituted for section 16 of the principal Act:

"Classification of publications

16. (1) Any person may request, in the prescribed manner, that a publication which is to be or is being distributed in the Republic be classified in terms of this section. 20
- (2) Any person who, for distribution or exhibition in the Republic, creates, produces, publishes or advertises any publication that contains visual presentations, descriptions or representations of or amounting to—
- (a) sexual conduct;
 - (b) propaganda for war;
 - (c) incitement to imminent violence; or
 - (d) the advocacy of hatred based on any identifiable group characteristic, shall submit in the prescribed manner such publication for examination and classification to the classification office before such publication is distributed, exhibited, offered or advertised for distribution or exhibition. 25 30
- (3) The chief executive officer shall refer any publication submitted to the classification office under subsections (1) or (2) to a classification committee consisting of at least three classifiers, one of whom shall be designated as chairperson, for examination and classification of the publication. 35
- (4) The classification committee shall, in the prescribed manner, examine a publication referred to it and shall—
- (a) classify the publication as a "refused classification" if the publication contains visual presentations, descriptions or representations of— 40
 - (i) child abuse, propaganda for war or incitement to imminent violence; or
 - (ii) the advocacy of hatred based on any identifiable group characteristic, unless, judged within context, the publication is a *bona fide* documentary or is a publication of scientific and literary merit on a matter of public interest; 45
 - (b) classify the publication as XX if it contains visual presentations, descriptions or representations of— 50
 - (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
 - (ii) conduct or an act which is degrading of human beings; or
 - (iii) conduct or an act which constitutes incitement to or encourages or promotes harmful behaviour, 55
 unless, judged within context, the publication is a *bona fide* documentary or is a publication of scientific, literary or artistic merit, in which event the publication shall be classified X18 or classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials;

- (c) classify the publication as X18 if it contains visual presentations, descriptions or representations of—
- (i) explicit sexual conduct;
 - (ii) the explicit infliction of sexual or domestic violence; or
 - (iii) the explicit effects of extreme violence,
- unless, judged within context, the publication is a *bona fide* documentary or is a publication of scientific, literary or artistic merit, in which event the publication shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials; or
- (d) if the publication contains visual presentations, descriptions or representations which may be disturbing or harmful to or age-inappropriate for children, classify that publication, with reference to the relevant guidelines, by the imposition of appropriate age restrictions and such other conditions as may be necessary to protect children in the relevant age categories from exposure to such materials.
- (5) Where a publication has been classified as a “refused classification” or has been classified XX or X18, the chief executive officer shall cause that classification decision to be published by notice in the *Gazette*, together with the reasons for the decision.”.

Repeal of section 17 of Act 65 of 1996

15. Section 17 of Act 65 of 1996 is hereby repealed.

Substitution of section 18 of Act 65 of 1996, as amended by section 7 of Act 18 of 2004

16. The following section is hereby substituted for section 18 of the principal Act:

“Classification of films and interactive computer games

18. (1) Any person who intends to distribute or exhibit any film or interactive computer game in the Republic shall in the prescribed manner on payment of the prescribed fee—
- (a) register with the Board as a distributor or exhibitor of films or interactive computer games; and
 - (b) submit for examination and classification any film or interactive computer game that has not been classified, exempted or approved in terms of this Act or the Publications Act, 1974 (Act No. 42 of 1974).
- (2) The chief executive officer shall refer any film or interactive computer game submitted to the Board under subsection (1)(b) to a classification committee consisting of at least three classifiers, one of whom shall be designated as chairperson, for examination and classification.
- (3) The classification committee shall, in the prescribed manner, examine the film or interactive computer game referred to it and shall—
- (a) classify the film or interactive computer game as a “refused classification” if the film or interactive computer game—
 - (i) contains depictions or sequences of child abuse, propaganda for war or incites imminent violence; or
 - (ii) advocates hatred based on any identifiable group characteristic, unless, judged within context, the film, is a *bona fide* documentary or a film of scientific merit on a matter of public interest;
 - (b) classify the film or interactive computer game as XX if it depicts—
 - (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
 - (ii) conduct or an act which is degrading of human beings; or
 - (iii) conduct or an act which constitutes incitement to or encourages or promotes harmful behaviour,
 unless, in respect of the film, judged within context, the film is a *bona fide* documentary or is a film of scientific, dramatic or artistic merit, in

which event the film shall be classified X18 or classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials;

- (c) classify the film or interactive computer game as X18 if it depicts— 5
- (i) explicit sexual conduct;
 - (ii) the explicit infliction of sexual or domestic violence; or
 - (iii) the explicit effects of extreme violence,
- unless, in respect of the film, judged within context, the film is a *bona fide* documentary or is a film of scientific, dramatic or artistic merit, in 10
- (d) if the film or interactive computer game contains scenes which may be 15
- disturbing or harmful to or age-inappropriate for children, classify that film or interactive computer game with reference to the relevant guidelines issued by the Board by the imposition of appropriate age restrictions and such other conditions as may be necessary to protect 20
- children in the relevant age categories from exposure to such materials.
- (4) Where a film or interactive computer game has been classified as a “refused classification” or has been classified as XX or X18, the chief executive officer shall cause the classification decision to be published by notice in the *Gazette*, together with the reasons for the decision.”

Insertion of sections 18A and 18B in Act 65 of 1996

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17. The following sections are hereby inserted in the principal Act after section 18:

“Display of classification decisions

18A. (1) Where a film, interactive computer game or publication has been classified or exempted from classification in terms of this Act, it must—

30

- (a) if it is a film or interactive computer game approved for sale or hire, display the following certificate conspicuously and clearly visible on or through the cover or packaging of the cassette or holder of the film or interactive computer game:

CERTIFICATE OF CLASSIFICATION

35

Certificate of Classification No.:

Classification and Consumer Advice:

Any other condition imposed;:

- (b) if it is a publication, either the front of the cover or the wrapper of the publication, where applicable, display the following information— 40

(i) Classification and consumer advice; or

(ii) any other condition aimed at the protection of children; and

- (c) if it is a film approved for exhibition in public, on all advertisements and illustrated exhibitions associated with that film, display the classification, consumer advice and any other condition imposed by the Board with respect to the exhibition of that film in public. 45

(2) The Board may prescribe by regulations the format, including size and design, as well as the manner of the display of certificates of classification on films, interactive computer games and publications approved for distribution. 50

Re-classification

18B. Any person may, after a period of two years from the date when a film, interactive computer game or publication was first examined and classified in terms of this Act, apply, in the prescribed manner, for a less restrictive classification of that film, interactive computer game or publication.” 55

Repeal of section 19 of Act 65 of 1996

18. Section 19 of the principal Act is hereby repealed.

Amendment of section 20 of Act 65 of 1996, as amended by section 6 of Act 34 of 1999 and section 8 of Act 18 of 2004

19. Section 20 of the principal Act is hereby amended—

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

“(1) Any person who has applied for the classification of a film, interactive computer game or publication or any person who has lodged a complaint with the Board that a publication be referred for examination and classification or any person who has applied for registration as a distributor or exhibitor of films or any person who is the subject of a decision rendered by the Board in respect of any matter in terms of this Act may appeal against the decision or finding of the Board to the Appeal Board in the prescribed manner.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) The [Review] Appeal Board may refuse the appeal and confirm the decision in question, or allow the appeal, either wholly or in part, and give such decision as the Board [or executive committee] should in its view have given, and amend the classification of the [publication or] film, interactive computer game or publication, specifying the [clause] section of [Schedule 1 or 6] the Act upon which the classification is in terms of its decision based, and may impose other conditions in respect of the distribution or exhibition of the [publication or] film, interactive computer game or publication.”; and

(c) by the substitution for subsection (4) of the following subsection:

“(4) The chief executive officer shall in the case of a successful appeal against a decision whereby an application for registration, exemption, a permit or licence is refused, issue the requisite certificate of registration, exemption, permit or licence, subject to the conditions, if any, imposed by the [Review] Appeal Board.”.

Repeal of section 21 of Act 65 of 1996

20. Section 21 of the principal Act is hereby repealed.

Amendment of section 22 of Act 65 of 1996

21. Section 22 of the principal Act is hereby amended—

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

“(1) The [executive committee] Board may on receipt of an application in the prescribed form, subject to such conditions as it may deem fit, exempt in writing any person or institution from [sections 25, 27 and 28] section 24A or 24B if it has good reason to believe that *bona fide* purposes will be served by such an exemption.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Where the [executive committee] Board after due inquiry has good reason to believe that the conditions of an exemption are not complied with or that the *bona fide* purposes are no longer present, it may withdraw the exemption.”; and

(c) by the deletion of subsection (3).

Amendment of section 23 of Act 65 of 1996

22. Section 23 of the principal Act is hereby amended—

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

“(1) The provisions of section [26(1)(a) and (b)] 24A(1), (2)(a) and (3) shall not prohibit the exhibition of any film or interactive computer game to any person in the course of his or her business as a distributor of films or interactive computer games, or to the representative of such distributor acting for the purposes of such business.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The [executive committee] Board may in its discretion and subject to such conditions as it may deem fit to impose, either by means of a permit, issued in the prescribed form, or by notice in the *Gazette*, exempt from [section 26] classification any particular film, any particular class of films, or any film intended for exhibition to a particular group of persons or under any particular circumstances, and may at any time, after due inquiry, withdraw any such permit or exemption: Provided that if such exemption was granted by notice in the *Gazette*, the chief executive officer shall by notice withdraw the exemption.”; and

(c) by the deletion of subsection (3).

Amendment of section 24 of Act 65 of 1996

23. Section 24 of the principal Act is hereby amended—

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

“(1) Any person may [notwithstanding the provisions of section 25(b), 26(1)(b) or 28(2),] exhibit in public or distribute any film, interactive computer game or publication [or film] classified as X18 in terms of a decision of the Board which has been published in the *Gazette* [as X18 or a publication which falls within Schedule 2 read with Schedule 5,] if such person is the holder of a licence to conduct the business of adult premises, issued by a licensing authority in terms of section 2, read with item 2 of Schedule 1, of the Businesses Act, 1991 (Act No. 71 of 1991), and if such exhibition or distribution takes place on or from within premises forming part of a building.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) Any exemption granted in terms of subsection (1) may be suspended by the [executive committee] Board for a period not exceeding one year, if the [executive committee] Board, after the holding of an inquiry, is satisfied that—

- (a) notices stating that no person under the age of 18 years may enter or be within such premises were not displayed, in the manner prescribed by the Board, at all entrances to the premises concerned;
- (b) a film, interactive computer game or publication was displayed or [a film was] exhibited within such premises, or in a display window or door forming part thereof, in such a manner or in such a position that the film, interactive computer game or publication [or film] could be seen from any point outside the premises concerned;
- (c) any person under the age of 18 years was allowed to enter or be within the premises concerned; or
- (d) any film, interactive computer game or publication [or film] classified as X18 in terms of a decision of the Board, published in the *Gazette*, was delivered by the person licensed in terms of subsection (1) to conduct such premises—
 - (i) to a person who is not the holder of a similar licence; or
 - (ii) in a manner which was not in accordance with regulations made by the Board, with the aim of preventing the delivery of such films, interactive computer games or publications [and films] to persons under the age of 18 years.”.

Insertion of sections 24A, 24B and 24C in Act 65 of 1996

24. The following sections are hereby inserted in the principal Act after section 24: 50

“Prohibitions, offences and penalties for distribution and exhibition of films, interactive computer games and publications

24A. (1) Any person who knowingly distributes or exhibits in public a film or interactive computer game without first having been registered with the Board as a distributor or exhibitor of films or interactive computer games shall be guilty of an offence and liable, upon conviction, to a fine or

to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(2) Any person who knowingly broadcasts, distributes, exhibits in public, offers for sale or hire or advertises for exhibition, sale or hire any film, interactive computer game or a publication referred to in section 16(2) which has—

- (a) not been classified by the Board;
- (b) been classified as a “refused classification”; or
- (c) been classified as XX,

shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(3) Any person, not being the holder of a licence to conduct the business of adult premises and not being registered with the Board as a distributor or exhibitor of films or interactive computer games, and who knowingly broadcasts, distributes, exhibits in public, offers for exhibition, sale or hire or advertises for sale or hire any film, interactive computer game or a publication which has been classified X18, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) Any person who knowingly distributes a film, interactive computer game or publication classified X18 or which contains depictions, descriptions or sequences of sexual conduct to a person under the age of 18 years, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both to a fine and such imprisonment.

(5) Any person who knowingly distributes a film, interactive computer game or publication which has been classified by the Board without displaying, clearly and conspicuously and in the manner prescribed by regulations made under this Act, the classification reference number, the age restriction, consumer advice and any other condition imposed on the distribution of that film, interactive computer game or publication, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(6) Any person who knowingly advertises a film or interactive computer game in any medium without indicating, clearly and conspicuously so as to be plainly visible to the public, the age restriction, consumer advice and any other condition imposed on the film or interactive computer game being advertised, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(7) Any person who knowingly and without the prior written approval of the Board exhibits in public during the same screening session, or distributes on the same cassette or disc of a film or interactive computer game, a trailer advertising a film or an interactive computer game with a more restrictive classification than the featured film or interactive computer game, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

Prohibition, offences and penalties for possession of films, interactive computer games and publications

24B. (1) Any person who—

- (a) unlawfully possesses;
- (b) creates, produces or in any way contributes to, or assists in the creation or production of;
- (c) imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates, the importation, procurement, obtaining or accessing of; or
- (d) knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or

distributed, or assists in making available, exporting, broadcasting or distributing, any film, interactive computer game or publication which contains depictions, descriptions or sequences of child pornography or the abuse of children or which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.

(2) Any person who, having knowledge of the commission of any offence under subsection (1) or having reason to suspect that such an offence has been or is being committed, and fails to—

- (a) report such knowledge or suspicion as soon as possible to an officer of any South African law enforcement agency; or
 - (b) furnish, at the request of an official of any South African law enforcement agency, all particulars of such knowledge or suspicion,
- shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 10 years or both to a fine and such imprisonment.

(3) Any person who has control over any film, interactive computer game or publication which contains depictions, descriptions or sequences of sexual conduct and who fails to take all reasonable steps to prevent access to such materials by any person under the age of 18 years, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) Any person who, by means of any telecommunication system, communicates with, contacts or sends any message to a child, or accesses or attempts to access any information concerning a child, for the purpose of committing or facilitating the commission of an offence under this Act, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(5) It shall not be a defence to a charge under subsection (4) that the accused believed that the person was older than 18 years unless the accused took reasonable steps to ascertain the age of that person.

Obligations of Internet access and service providers

24C. (1) Internet service providers who provide child-oriented services, including chat-rooms, shall—

- (a) moderate and monitor such services to ensure that such services are not being used by any person for the purpose of the commission of any offence against children;
- (b) prominently display on their home page and pages of such services Internet safety messages, including chat-room safety messages, in a language that will be clearly understood by children;
- (c) provide mechanisms to enable children to report suspicious behaviour by any person in a chat-room to the service or access provider;
- (d) report details of any knowledge of suspicious on-line behaviour by any person towards any child to an official of any South African law enforcement agency; and
- (e) make available to all their subscribers software designed to filter or block their children from access to websites containing pornographic materials and information on the installation and use of such software.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

Repeal of sections 25, 26 and 27 of Act 65 of 1996

25. Sections 25, 26 and 27 of the principal Act are hereby repealed.

Amendment of section 27A of Act 65 of 1996, as inserted by section 12 of Act 18 of 2004

26. Section 27A of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) Any person who—
- (a) fails to comply with subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or
 - (b) fails to comply with subsections (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.”.

Repeal of sections 28 and 29 of Act 65 of 1996

27. Sections 28 and 29 are hereby repealed.

Amendment of section 30 of Act 65 of 1996, as amended by section 15 of Act 18 of 2004

28. Section 30 of the principal Act is hereby amended—

- (a) by the deletion of subsections (1), (1A), (2) and (3); and
- (b) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:

“(a) If any person who has contravened or failed to comply with [section 26(1)(a), (aA), (b), (c), (d), (2) or (3) or 27A(1)] sections 24A(1), (2)(a), (5), (6), (7), 24C(2) or 27A(1)(a) agrees to abide by a decision [of the executive committee] of the Board and deposits with the Board such sum as the [executive committee of] the Board may determine but not exceeding the greater of two thousand rand or twice the prescribed classification costs, where applicable, on each such contravention or failure to comply, [the executive committee of] the Board may, after conducting an enquiry, determine the matter summarily and may, without legal proceedings, order forfeiture by way of penalty of the whole or any part of the amount so deposited.

(b) There shall be a right of appeal to the Minister from any determination or order of the [executive committee of the] Board under paragraph (a), as long as that right is exercised within a period of three months from the date of such determination or order.”.

Amendment of section 30B of Act 65 of 1996, as inserted by section 16 of Act 18 of 2004

29. Section 30B of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

- “(b) any film, interactive computer game or publication [or film] has or has not been submitted to the Board in terms of this Act; or”.

Repeal of section 32 of Act 65 of 1996

30. Section 32 of the principal Act is hereby repealed.

Repeal of Schedules to Act 65 of 1996

31. Schedules 1 to 10 to the principal Act are hereby repealed.

Substitution of words in Act 65 of 1996

32. The principal Act is hereby amended by the substitution for the expression “Review Board”, wherever it occurs, of the expression “Appeal Board”.

Short title and commencement

33. This Act is called the Films and Publications Amendment Act, 2006, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE FILMS AND PUBLICATIONS AMENDMENT BILL, 2006

1. BACKGROUND

The object of the Amendment Bill is to amend the Films and Publications Act, 1996 (Act No. 65 of 1996), hereinafter referred to as the Act, so as to insert certain definitions, amend the composition and provide for the functions and powers of the Board, provide for the appointment and powers of compliance officers, provide for the composition, functions, powers and management of the classification office and repeal certain Schedules to the Act.

2. OBJECTS OF THE BILL

The Amendment Bill seeks to ensure that all publications, films and interactive computer games distributed in the Republic, regardless of the medium or format of such distribution, would be subject to the same principles and guidelines to serve the core objective of protecting children from potentially disturbing, harmful and age-inappropriate materials in publications, films, interactive computer games, mobile cellular telephones and on the Internet since child pornography exists wherever there is a computer, a modem for access to the Internet and a mobile cellular telephone. The Amendment Bill further seeks to bring broadcasters of films within the scope of the Act.

The Amendment Bill also seeks to provide for the appointment of compliance officers to monitor compliance with the provisions of the Act. The Bill authorises compliance officers to enter any premises for purposes of requesting the production of a certificate of registration as a distributor or exhibitor of films or interactive computer games, examining or inspecting any premises used for conducting a business of adult premises for compliance with the conditions laid down in the Act or examining or inspecting any films or interactive computer games offered for sale or hire for compliance with the requirements of the Act. Compliance officers are further empowered to order the removal of films, interactive computer games and publications that do not comply with the requirements of the Act or a decision of the Board until such time that such product complies with the requirements of the Act or decision of the Board with regard to distribution.

3. DEPARTMENTS/BODIES CONSULTED

The Bill was forwarded to all Government Departments for comments, as well as a wide range of external stakeholders.

4. FINANCIAL IMPLICATIONS FOR STATE

There will be financial implications with regard to the remuneration of compliance officers to be appointed, but the exact extent thereof is not possible to establish at this stage.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Home Affairs are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

NOTICE 1387 OF 2006**DEPARTMENT OF HOME AFFAIRS
PUBLICATION OF IMMIGRATION AMENDMENT BILL, 2006, AS
INTRODUCED INTO PARLIAMENT**

Interested parties are invited to submit comments on the Immigration Amendment Bill, 2006 [B28—2006], as introduced into Parliament by the Minister of Home Affairs during September 2006, on or before 6 October 2006 to—

Mr M R Mankge

Secretary: Portfolio Committee on Home Affairs

P O Box 15

Cape Town

8000

Tel: (021) 403-3826

Fax: (021) 403-2808

E-mail: mmankge@parliament.gov.za

Copies of the Bill can also be obtained from—

- (a) the Government Printers – Cape Town and Pretoria;
- (b) the Director: Drafting, Legal Services, Department of Home Affairs, 270 Maggs Street, Waltloo, Pretoria, Tel: (012) 810-8031/8032; and
- (c) the Department of Home Affairs' website, namely: www.dha.gov.za.

REPUBLIC OF SOUTH AFRICA

IMMIGRATION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 29169 of 31 August 2006).
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

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.

BILL

To amend the Immigration Act, 2002, so as to define certain words and to substitute a definition; to provide for the clarification and revision of procedures and permits with regard to admission to, residence in and departure from the Republic; to effect certain technical corrections; 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 13 of 2002, as amended by section 2 of Act 19 of 2004

1. Section 1 of the Immigration Act, 2002 (Act No. 13 of 2002), hereinafter referred to as the principal Act, is hereby amended— 5

- (a) by the insertion after the definition of “**admission**” of the following definition:

“**‘affiliate’** means an associate member of a company or organisation;”;
- (b) by the insertion after the definition of “**border**” of the following definition:

“**‘branch’** means a branch as contemplated in section 21A of the Companies Act, 1973 (Act No. 61 of 1973);”;
- (c) by the substitution for the definition of “**depart or departure**” of the following definition:

“**‘depart or departure’** means exiting the Republic from a port of entry to another country in compliance with this Act;”;
- (d) by the insertion after the definition of “**status**” of the following definition:

“**‘subsidiary’** means a subsidiary as defined in section 1(1) of the Companies Act, 1973 (Act No. 61 of 1973);”.

Amendment of section 10 of Act 13 of 2002, as substituted by section 11 of Act 19 of 2004 20

2. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Subject to this Act, upon application in the prescribed manner and on the prescribed form, one of the temporary residence permits contemplated in sections 11 to [23] 24 may be issued to a foreigner.”. 25

Amendment of section 10B of Act 13 of 2002, as inserted by section 12 of Act 19 of 2004

3. Section 10B of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (4)(a), no person, other than a citizen or permanent resident, who is proceeding from a place outside the Republic to a destination outside the Republic, **[including making use of the transit areas of South African ports of entry,]** shall travel through the Republic, unless he or she is in possession of a transit visa issued for that purpose in terms of subsection (2).”.

Amendment of section 11 of Act 13 of 2002, as amended by section 13 of Act 19 of 2004

4. Section 11 of the principal Act is hereby amended—

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

“(1) A visitor’s permit may be issued for any purpose other than those provided for in sections 13 to 24, and subject to subsection (2), by the Director-General in respect of a foreigner who—

(a) complies with section 10A; and

(b) and provides the financial or other guarantees prescribed in respect of his or her departure: Provided that such permit—

[(i)(a) may not exceed three months and upon application may be renewed by the Director-General for a further period which shall not exceed three months; or

[(ii)(b) may be issued by the Director-General upon application for any period which may not exceed three years to a foreigner who has satisfied the Director-General that he or she controls sufficient available financial resources, which may be prescribed, and is engaged in the Republic in—

[(aa)(i) an academic sabbatical;

[(bb)(ii) voluntary or charitable activities;

[(cc)(iii) research; or

[(dd)(iv) any other prescribed activity.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) The holder of a visitor’s permit may not conduct work **[, unless:]** Provided that the holder of a visitor’s permit issued in terms of subsection (1)(a) or (b)(iv) may be authorised by the Director-General in the prescribed manner and subject to the prescribed requirements and conditions to conduct work.”.

Amendment of section 15 of Act 13 of 2002, as amended by section 17 of Act 19 of 2004

5. Section 15 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Director-General may reduce or waive the **[capitalisation requirements] financial or capital contribution** referred to in subsection (1)(a) for businesses which are prescribed to be in the national interest, or when so requested by the Department of Trade and Industry.”.

Amendment of section 19 of Act 13 of 2002, as substituted by section 21 of Act 19 of 2004

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

“(5) An intra-company transfer work permit may be issued by the Director-General to a foreigner who is employed abroad by a business operating in the Republic in a branch, subsidiary or affiliate relationship and who by reason of his or her employment is required to conduct work in the Republic for a period not exceeding **[two] four** years, provided that—”.

Amendment of section 20 of Act 13 of 2002, as amended by section 47 of Act 19 of 2004

7. Section 20 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) The spouse and dependent children accompanying the holder of a retired person permit may be issued with an appropriate permit issued in terms of this Act.”.

Amendment of section 27 of Act 13 of 2002, as substituted by section 28 of Act 19 of 2004

8. Section 27 of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:

“(ii) the application falls within the [yearly limits of available permits prescribed for each sector of industry, trade and commerce, after consultation with the Departments of Trade and Industry, Labour and Education] specific professional category or within the specific occupational class contemplated in section 19(1); and”; and

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) intends to establish or has established a business in the Republic and investing in it or in an established business the prescribed financial or capital contribution to be part of the intended book value, and to the members of such foreigner’s immediate family, provided that—

(i) the Director-General may waive or reduce such [capitalisation requirements] financial or capital contribution for businesses prescribed to be in the national interest or when so requested by the Department of Trade and Industry; and

(ii) the permit shall lapse if the holder fails to prove within two years of the issuance of the permit and three years thereafter, to the satisfaction of the Director-General, that the prescribed financial or capital contribution to be part of the intended book value is still invested as contemplated in this paragraph;”.

Amendment of section 28 of Act 13 of 2002, as amended by section 29 of Act 19 of 2004

9. Section 28 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) is convicted of any of the offences—

(i) listed in Schedules 1 and 2; or

(ii) in terms of this Act;”.

Substitution of heading to Schedule 1 to Act 13 of 2002

10. The following heading is hereby substituted for the heading to Schedule 1 to the principal Act:

“Offences [referred] relating to [in] section 28(a) [and (b)] of this Act”.

Substitution of heading to Schedule 2 to Act 13 of 2002

11. The following heading is hereby substituted for the heading to Schedule 2 to the principal Act:

“Offences [referred] relating to [in] section [28(b)] 28(a) of this Act”.

Short title and commencement

12. This Act is called the Immigration Amendment Act, 2006, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE IMMIGRATION AMENDMENT BILL, 2006

1. BACKGROUND

The main objective of the Bill is to define certain words and to substitute a definition, to provide for the clarification and revision of procedures and permits with regard to admission to, residence in and departure from the Republic, and to effect certain technical corrections to the Immigration Act, 2002 (Act No. 13 of 2002) ("the Act").

2. OBJECTS OF THE BILL

The Bill seeks to include cross-border and transit permits (section 24 of the Act) as temporary residence permits referred to in section 10 of the Act. The Bill further seeks to increase the period for which an intra-company transfer work permit (section 19 of the Act) may be issued.

The Bill also seeks to provide for the issuing of an appropriate permit to the spouse and dependent children accompanying the holder of a retired person permit. It further provides for the withdrawal of a permanent residence permit if the holder thereof has been convicted of an offence in terms of the Act. Furthermore, the Bill seeks to provide for certain technical corrections to the Act.

3. DEPARTMENTS/BODIES CONSULTED

The draft Bill was forwarded to—

- Agriculture;
- American Chamber of Commerce;
- Anglo American;
- Arts and Culture;
- Chamber of Mines;
- Communications;
- Correctional Services;
- COSATU;
- Defence;
- Education;
- Environmental Affairs and Tourism;
- Foreign Affairs;
- German Chamber of Commerce;
- Government Communication and Information System;
- Health;
- Housing;
- Immigration Advisory Board;
- Independent Complaints Directorate (ICD);
- International Business Network;
- Institute for Democracy in South Africa (IDASA);
- Justice and Constitutional Development;
- Labour;
- Land Affairs;
- Lawyers for Human Rights;
- Law Society of South Africa;
- Law Society of the Northern Provinces;
- Legal Resources Centre;
- Minerals and Energy;
- National Intelligence Agency;
- National Treasury;
- National Union of Mineworkers;
- Provincial and Local Government;
- Public Enterprises;
- Public Service and Administration;
- Public Service Commission;
- Public Works;
- Science and Technology;
- Social Development;

- South African Human Rights Commission;
- South African Police Service (SAPS);
- South African Qualifications Authority;
- Sport and Recreation;
- Statistics South Africa;
- The Presidency;
- Trade and Industry;
- Transport; and
- Water Affairs and Forestry.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Home Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.
