

## PUBLICATIONS AMENDMENT ACT, 1978.

Act No. 109, 1978

## GENERAL EXPLANATORY NOTE:

**[** Words in bold type in square brackets indicate omissions from existing enactments.

       Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the provisions of the Publications Act, 1974, so as to provide for the imposition of conditions in respect of the distribution of certain publications or objects or editions thereof which are not undesirable; for the amendment by the appeal board of certain decisions of committees relating to the giving of public entertainments or specified parts thereof; for the establishment of committees of experts so as to advise the appeal board in certain circumstances; for the transfer of certain powers of the appeal board to the chairman thereof; for the reference of certain questions of law arising in the course of the proceedings before the appeal board, for opinion to a division of the Supreme Court of South Africa; and for matters connected therewith.

*(Afrikaans text signed by the State President.)  
(Assented to 20 June 1978.)*

**BE IT ENACTED** by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 8 of the Publications Act, 1974 (hereinafter referred to as the principal Act), is hereby amended by the insertion after paragraph (b) of subsection (1) of the following paragraph:

Amendment of section 8 of Act 42 of 1974, as amended by section 6 of Act 79 of 1977.

“(bA) distribute a publication or object in conflict with any condition imposed under this Act in respect of the distribution thereof, if such imposition has been made known by notice in the *Gazette*; or”.

2. Section 13 of the principal Act is hereby amended—

Amendment of section 13 of Act 42 of 1974.

(a) by the substitution for subsection (5) of the following subsection:

“(5) The appeal board shall—

(a) consider the declaration, prohibition or decision which forms the subject of an appeal under this section;

(b) decide whether the publication or object or edition in question is undesirable in its opinion; and

(c) (i) if it is of the opinion that such publication or object or edition is not undesirable, set aside the declaration, prohibition or decision in question and, if it is of the opinion that the distribution of such publication or object or edition should be subject to conditions, impose in respect of such distribution such conditions as it may think fit; or

(ii) confirm **[or set aside]** the declaration, prohibition or decision in question.”;

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(b) by the substitution for subsection (6) of the following subsection:

“(6) The director shall without delay inform the appellant of the decision of the appeal board under subsection (5) and, if **the appeal board sets aside the declaration, prohibition or decision** such decision was given under subsection (5) (c), the director shall without delay—

**(i) (a)** make known the decision of the appeal board by notice in the *Gazette*;

**(ii) (b)** withdraw by notice in the *Gazette* the notice published under section 12 (3) in respect of the declaration, prohibition or decision in question; and

**(iii) (c)** if the decision **so set aside** of the appeal board **related** relates to a decision of a committee in respect of an application under section 10 (1) (b) or (c)—

(i) issue a permit for the distribution, subject to such conditions, if any, as the appeal board may have thought fit, or importation (as the case may be) of the edition in question to the person who made that application; or

(ii) amend any permit issued under section 12 (2) by imposing conditions in respect of the distribution of such edition.”

(c) by the insertion after subsection (6) of the following subsection:

“(6A) The conditions which may be imposed under this section or section 14 or 15 by the appeal board in respect of the distribution of a publication or object or edition thereof, may among other things—

(a) require that the publication or object in question, or an edition thereof, shall not be sold, hired out, lent out or otherwise be made available to persons falling within a specified age group;

(b) determine the manner in which the publication or object in question, or an edition thereof, shall be or shall not be displayed or exhibited in public.”

3. Section 14 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) If the appeal board decides that the publication or object or edition in question—

(i) is not undesirable, it shall confirm the decision in question: Provided that—

(aa) if it is of the opinion that the distribution of such publication or object or edition should be subject to conditions, it shall impose in respect of such distribution such conditions as it may think fit;

(bb) if a permit was issued in pursuance of the decision, it shall amend such permit, when applicable, in accordance with a decision referred to in subparagraph (aa);

(ii) is undesirable, it shall set aside the decision in question and, if a permit was issued in pursuance of such decision, it shall withdraw such permit.”;

(b) by the substitution for paragraph (b) of subsection (5) of the following paragraph:

“(b) make known a decision of the appeal board referred to in the proviso to subsection (4) (b) (i) or in subsection (4) (b) (ii) by notice in the *Gazette*.”;

Amendment of section 14 of Act 42 of 1974, as amended by section 8 of Act 79 of 1977.

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in accordance with its decision set aside such decision or impose the condition or conditions in question in respect of the giving of such entertainment;

(b) in the case of an appeal against a decision in terms of which any condition was imposed—

(i) delete that condition and impose in the place thereof any of the conditions referred to in section 30 (5);

(ii) impose in addition to that condition any of the said conditions; or

(iii) delete that condition.”.

6. Section 35 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection: Amendment of section 35 of Act 42 of 1974.

“(8) The chairman of the appeal board may in **[its]** his discretion consult any person who in the opinion of the **[appeal board]** chairman is an expert on any matter relating to the functions of the appeal board.”.

7. The following sections are hereby inserted in the principal Act after section 35: Insertion of sections 35A and 35B in Act 42 of 1974.

“Committees of experts. **35A.** (1) The chairman of the appeal board may of

his own accord and shall at the request of the directorate or any person referred to in section 13 (1), 14 (3) (b), 23 (1), 24 (2) (b), 31 (1) or 32 (2) (a) appoint a committee of experts to advise the appeal board in respect of a publication or object or an edition of a publication or object, or any film, or any public entertainment or intended public entertainment examined by the appeal board under this Act.

(2) A committee of experts referred to in subsection (1) shall consist of such number of members, but not fewer than three, as may be appointed by the chairman of the appeal board subject to the provisions of section 35B.

(3) Any person who has been designated under section 35B (4) and who is appointed as a member of a committee of experts under subsection (2), shall act as chairman of the committee of experts concerned: Provided that if two persons who have been so designated are appointed as members of the same committee of experts, the person who is determined by the chairman of the appeal board shall act as chairman of the committee of experts concerned, while the other person shall act as chairman of that committee in the absence of the first-mentioned person.

(4) Three members of a committee of experts shall constitute a quorum and the decision of the majority of members present at a meeting of the committee of experts shall be the decision of the committee of experts: Provided that in the event of an equality of votes the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(5) (a) The period of office of members of a committee of experts shall be determined on appointment.

(b) The conditions of office, remuneration and allowances of members of a committee of experts shall be as prescribed.

(6) The advice referred to in subsection (1), together with minority opinions if any, shall, during the examination referred to in the said subsection, be made known to the parties concerned in the examination and shall form part of the documents in which reasons are furnished by the appeal board in terms of the provisions of section 36 (5).

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(c) by the substitution for subsection (6) of the following subsection:

5 “(6) A permit amended or withdrawn by the appeal board under subsection (4), shall be deemed to have been amended or withdrawn on the date on which the amendment or withdrawal was made known by notice in the *Gazette*.”;

(d) by the substitution for subsection (7) of the following subsection:

10 “(7) A decision of the appeal board referred to in the proviso to subsection (4) (b) (i) or in subsection (4) (b) (ii) shall for the purposes of this Act be deemed to be a decision of a committee.”.

4. Section 15 of the principal Act is hereby amended—

15 (a) by the substitution for paragraph (d) of subsection (6) of the following paragraph:

20 “(d) if it decides that the publication or object in question is not undesirable, set aside the decision referred to in subsection (1) which relates to that publication or object and, if it is of the opinion that the distribution of such publication or object should be subject to conditions, impose in respect of such distribution such conditions as it may think fit.”;

Amendment of section 15 of Act 42 of 1974, as amended by section 9 of Act 79 of 1977.

(b) by the substitution for subsection (7) of the following subsection:

25 “(7) The director shall without delay make known a decision of the appeal board under subsection (6) (d) by notice in the *Gazette*.”.

(c) by the substitution for paragraph (b) of subsection (9) of the following paragraph:

30 “(b) If the appeal board decides under the provisions of section 14, as so applied, that the publication or object in question—

35 (i) is not undesirable, it shall confirm the decision referred to in subsection (8): Provided that, if it is of the opinion that the distribution of such publication or object should be subject to conditions, it shall impose in respect of such distribution such conditions as it may think fit;

40 (ii) is undesirable, it shall set aside that decision.”;

(d) by the substitution for paragraph (c) of subsection (9) of the following paragraph:

45 “(c) The director shall without delay make known a decision of the appeal board under the proviso to paragraph (b) (i) or under paragraph (b) (ii) by notice in the *Gazette*.”.

5. Section 31 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

50 “(6) The appeal board shall consider the decision which is the subject of any appeal or appeals under this section and **[shall] may confirm [or set aside] that decision or may—**

Amendment of section 31 of Act 42 of 1974.

55 (a) in the case of an appeal against a decision in terms of which the giving of the entertainment in question, or any specified part thereof, was prohibited, if it is of the opinion that—

(i) the giving of such entertainment or part thereof is not or will not be undesirable;

60 (ii) the conditions referred to in section 30 (5), or one or more thereof, should be imposed in respect of the giving of such entertainment or part thereof,

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Persons eligible for appointment as members of committee.

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**35B.** (1) No person shall be appointed as a member of a committee of experts unless his name appears on the list referred to in subsection (2).

(2) The chairman of the appeal board shall annually compile a list of the names of the persons to be designated by the Minister under subsection (3).

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(3) Persons designated by the Minister for the purposes of the list referred to in subsection (2), shall be persons who in the opinion of the Minister are by reason of their educational qualifications and special knowledge of and experience in art, language or literature fit to advise the appeal board in respect of a publication or object or an edition of a publication or object, or any film, or any public entertainment or intended public entertainment examined by the appeal board under this Act.

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(4) The Minister shall designate as many of the persons referred to in subsection (1) as he may deem necessary, to serve, subject to the provisions of the proviso to section 35A (3), as chairmen of committees of experts when they are appointed as members thereof.

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(5) The list referred to in subsection (2) shall be supplemented by the chairman of the appeal board from time to time when necessary after the Minister has designated the person or persons concerned."

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8. Section 36 of the principal Act is hereby amended—

Amendment of section 36 of Act 42 of 1974.

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(a) by the substitution in paragraph (b) of subsection (3) for the words preceding subparagraph (i) of the following words:

"The chairman of the appeal board may direct—";

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

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"(c) The chairman of the appeal board may direct any person to appear before the appeal board and may direct such person to give evidence which, in the opinion of the chairman, relates to the matter being considered by the appeal board."

9. The following section is hereby inserted in the principal Act after section 38:

Insertion of section 38A in Act 42 of 1974.

"Statement of question of law for opinion of Supreme Court.

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**38A.** (1) At any stage before giving a decision in terms of this Act, the appeal board may of its own accord and shall at the request of the directorate or any person referred to in section 13 (1), 14 (3) (b), 23 (1), 24 (2) (b), 31 (1) or 32 (2) (a), state any question of law arising in the course of the proceedings in question of the appeal board, in the form of a special case for the opinion of a division of the Supreme Court of South Africa, and shall transmit that special case to the registrar of that court.

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(2) If such special case is stated at the request of any person referred to in section 13 (1), 14 (3) (b), 23 (1), 24 (2) (b), 31 (1) or 32 (2) (a), he shall lodge with the registrar security to such an amount as the registrar may determine, in respect of any such costs as the court may order such person to pay.

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(3) A question of law referred to in subsection (1) may be argued before the court in question and such court may call for such further information, to be supplied by the appeal board, as it may deem fit.

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(4) The court may give such opinion in respect of the special case, as supplemented by the information referred to in subsection (3), if any, and may make such order as to the costs of the proceedings before it, as it may deem fit: Provided that no order of costs

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5 shall be made against any person referred to in section 13 (1), 14 (3) (b), 23 (1), 24 (2) (b), 31 (1) or 32 (2) (a) in any case in which a request as referred to in subsection (1) was not made to the appeal board by such person.

(5) The directorate or any person referred to in subsection (1), shall have a right of appeal to the appellate division of the Supreme Court against an opinion referred to in subsection (4).

10 (6) The provisions of subsection (2) shall apply *mutatis mutandis* in respect of an appeal referred to in subsection (5).

15 (7) An opinion given under subsection (4) or (6) shall be binding on the appeal board when giving the decision referred to in subsection (1)."

10. (1) This Act shall be called the Publications Amendment Act, 1978, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*. Short title and commencement.

(2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.