

FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS AMENDED**FILM AND PUBLICATION BOARD
COMPLAINTS HANDLING PROCEDURES**

The Council of the Film and Publication Board has determined the procedure to be followed in conducting an investigation regarding the alleged offence as contained in the Films and Publications Act, 1996 (Act No. 65 of 1996), as amended.

CHAPTER 1**PURPOSE OF PROCEDURES**

1. **Purpose.** – (1) The purpose of these Procedures is to determine –
- (a) the procedure to be followed for lodging complaints with the FPB;
 - (b) the procedure to be followed for processing and screening complaints;
 - (c) the procedure to be followed regarding conclusion of complaints; and
 - (d) the procedure to be followed regarding the institution of proceedings before the Enforcement Committee.

CHAPTER 2**DEFINITIONS**

2. **Definitions.** – In these Procedures, any word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned and, unless the context otherwise indicates –

“**Act**” means the Films and Publications Act, 1996 (Act No. 65 of 1996), as amended;

“**assessment**” means the process of screening a complaint by the FPB to confirm that the FPB has the requisite jurisdiction to receive and investigate the complaint in terms of sections 4, 18E(1) read in conjunction with sections 18F, 18G and 18H of the Act and make an initial finding;

“**association**” means a group of persons organised for a joint purpose;

“**child**” means any person under the age of 18 years;

“**complainant**” means any person, group or class of persons, association, organisation or organ of state as contemplated in clause 6 of these Procedures;

“**complaint**” means a written communication (including a written electronic communication) alleging the distribution of unclassified content, prohibited content or potentially prohibited content in relation to services offered online by any person, including commercial online distributors and non-commercial distributors, in the case of an oral complaint permitted in terms of sub-clause 9 (1) of these Procedures, a complaint which has been reduced to writing in accordance with sub-clause 9 (2) of these Procedures;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**day**” means any calendar day excluding Saturdays, Sundays and public holidays;

“**Enforcement Committee**” means the Enforcement Committee established by section 3 of the Act;

“**FPB**” means the Film and Publication Board, a body established by section 3 of the Act;

“**finding**” means a conclusion reached after an assessment or investigation of a complaint regarding an alleged contravention of the Act;

“**judicial review**” means the review of an administrative action by a court or tribunal as contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

“**organisation**” means an organised body, including a business, political party, trade union and charity;

“**organ of state**” bears the meaning assigned to it in section 239 of the Constitution;

“**person with a mental disability**” means a person aged 18 or over who suffers from a syndrome characterised by clinically significant disturbance in his or her cognition, emotional regulation or behaviour that reflects a dysfunction in his or her psychological, biological, or development processes underlying his or her mental functioning;

“**report**” means a written account given or opinion formally expressed after an investigation, consideration or finding; and

“**respondent**” means any person, group or class of persons, association, organisation or organ of state who is allegedly in contravention of the Act.

CHAPTER 3

LODGING COMPLAINTS

- 3. Complaints which may be investigated by the FPB.** – (1) The FPB has the jurisdiction to conduct or cause to be conducted any investigation on receipt of a complaint by any person alleging the distribution of unclassified content, prohibited content or potentially prohibited content in relation to services offered online by any person, including commercial online distributors and non-commercial distributors.

(2) The FPB has the jurisdiction to conduct or cause to be conducted any investigation referred to in clause 3 (1) above –

(a) on receipt of a complaint; and

(b) on its own accord.

4. Complaints not dealt with by the FPB. – (1) The FPB has no jurisdiction to deal with complaints regarding any contravention of the Act prior to 1 March 2022.

(2) The FPB may reject any complaint, which –

(a) is based on hearsay or rumour, or reports disseminated through the media, provided that the FPB may, if the complaint is reduced in writing and submitted to the FPB, conduct an enquiry to verify any allegation of the distribution of unclassified content, prohibited content or potentially prohibited content in relation to services offered online by any person, including commercial online distributors and non-commercial distributors, that is reported in the media or obtained from any written source and upon verification, such alleged violation must be dealt with in terms of the Act and these Procedures;

(b) is couched in language that is abusive, insulting, rude or disparaging, provided that the FPB may consider a complaint if such language is removed;

(c) is the subject of a dispute before a court of law, tribunal, any statutory body, any entity with internal dispute resolution mechanisms, or settled between the parties, or in which there is a judgment on the issues in the complaint or finding of such court of law, tribunal, statutory body or other body. Provided that no complaint in respect of content distributed by member of the Press Council of South Africa, advertisements produced by a member of the Advertising Regulatory

Board or content broadcast by a broadcaster regulated by the Independent Communications Authority of South Africa, may be entertained by the FPB;

- (d) is an anonymous complaint;
- (e) is viewed to be frivolous, misconceived, unwarranted, incomprehensible or does not comply with the provisions of the Act and these Procedures;
- (f) is lodged after the expiry of a period of 90 (ninety) days from the date upon which an alleged distribution of unclassified content, prohibited content or potentially prohibited content in relation to services offered online by any person, including commercial online distributors and non-commercial distributors, occurred; or
- (g) is an oral complaint and which cannot be reduced to writing.

5. Place of lodging a complaint. – (1) A complaint must be lodged at the Head Office of the FPB and may be –

- (a) Delivered by hand at –

The Film and Publication Board
Eco Glade 2
420 Witch Hazel Street
Eco Park
Centurion
0169

- (b) Addressed by post to –

The Film and Publication Board
Private Bag X31

Highveld Park

0169

(c) Transmitted by electronic mail to clientsupport@fpb.org.za.

6. Who can lodge a complaint. – (1) Complaints in terms of these Procedures may be lodged by –

- (a) any person acting in their own interest;
- (b) any person acting on behalf of another person who cannot act in their own name;
- (c) any person acting as a member of or in the interests of a group or class of persons;
- (d) any person acting in the public interest; or
- (e) any association or organisation acting in the interest of its members:

(2) If a child or a person with a mental disability wishes to lodge a complaint, they must be assisted by a parent, an appropriate adult or a guardian who is not the cause of the alleged contraventions of the Act.

7. Information required when lodging a complaint. – (1) In lodging a complaint, the complainant must –

- (a) indicate whether the complaint is lodged personally or on behalf of another person, group or class of persons, association, organisation or organ of state and, if so, provide particulars;
- (b) provide the following personal information –
 - (i) full names of the complainant;

- (ii) the physical and postal address of the complainant; and
 - (iii) the telephone number of the complainant and their e-mail address, if available.
- (c) provide the following information regarding the alleged distribution of unclassified content, prohibited content or potentially prohibited content in relation to services offered online by any person, including commercial online distributors and non-commercial distributors –
- (i) the date and place of occurrence of the alleged distribution of unclassified content, prohibited content or potentially prohibited content;
 - (ii) the nature of the distribution of unclassified content, prohibited content or potentially prohibited content, alleged;
 - (iii) particulars of any person, group or class of persons, association, organisation or organ of state who or which is allegedly in contravention, if known;
 - (iv) the names and addresses of any person who may provide information relevant to the complaint;
 - (v) information regarding other mechanisms which the complainant has employed in an attempt to resolve the complaint, if any;
 - (vi) particulars of any person who has been involved in an attempt to resolve the complaint, if any; and
 - (vii) any other relevant information or supporting documents that can be used during the investigation.

- 8. Confidentiality.** – (1) A complainant may, when lodging a complaint, or at any stage thereafter, request that their personal particulars be kept confidential and not be disclosed to any person outside the FPB's offices if such complaint relates to –
- (a) the distribution of private sexual photographs and films, as per section 18F of the Act;
 - (b) the filming and distribution of films and photographs depicting sexual violence and violence against children, as per section 18G of the Act; and
 - (c) propaganda for war; incitement of imminent violence and advocacy of hatred that is based on identifiable group characteristics, and that constitutes incitement to cause harm, as per section 18H of the Act.
- (2) If the complainant is a child or a person with a mental disability, the personal information of the complainant must be kept confidential and not be disclosed to any person outside the FPB's office.
- (3) Any other confidentiality request, other than a request contemplated in clauses 8 (1) and 8 (2) of these Procedures, must be supported by a written statement explaining why the information is confidential.
- (4) If a complainant has requested that their particulars be kept confidential and the FPB is of the view that these particulars are necessary in order to resolve the complaint, the FPB must, in writing –
- (a) inform the complainant within 7 (seven) days of receipt of such request of the particulars, which in the FPB's view, must be disclosed;
 - (b) explain to the complainant the reasons therefor; and
 - (c) request the complainant's written consent to disclose such particulars.

- (5) The FPB may, if disclosure of the complainant's particulars is in its view necessary to resolve the complaint, decline to investigate the complaint if the complainant refuses the request as contemplated in clause 8 (4)(c) of these Procedures.
- (6) The FPB must, within 7 (seven) days of its decision inform the complainant, in writing, of its decision, giving full reasons and advising the complainant of their right of judicial review.

9. Format of lodging a complaint. – (1) A complaint to the FPB should be in writing and where –

- (a) it is not possible for a person who wishes to report a complaint to reduce it to writing themselves;
 - (b) it is not possible for a complainant to send a written complaint to the FPB; or
 - (c) the complaint concerns an urgent matter making it inadvisable to insist on a written complaint, the complainant may call the FPB offices and request that the member of staff, duly designated, reduce the complaint to writing on behalf of the complainant and have it confirmed as the true statement of the complaint by the complainant.
- (2) An oral complaint must be reduced to writing by the member of staff, as duly designated, on a form which substantially corresponds with the form provided for in Annexure A to these Procedures.

10. Manner of lodging a complaint. – (1) An oral complaint in person or by telephone as contemplated in clauses 9 (1) of these Procedures may be submitted to the FPB as contemplated in clause 5 of these Procedures.

(2) A written complaint as contemplated in clause 9 (1) of these Procedures may be submitted to the FPB, in the following manner –

- (a) by handing it in during office hours;
- (b) by post;
- (c) by e-mail; or
- (d) by completing and submitting a complaint form online via the FPB's website.

11. Late lodging of a complaint. – (1) The FPB may, on good cause shown, grant condonation to a complainant to lodge a complaint with the FPB after the expiry of 90 (ninety) days from the occurrence of the alleged contravention.

(2) A complainant who wishes to lodge a complaint contemplated in clause 11 (1) must, on request of the FPB, in writing or orally, subject to the provisions of clause 9 (2) of these Procedures, provide the following information –

- (a) the reasons for the delay in lodging the complaint;
- (b) indicate whether the refusal to investigate the complaint will cause prejudice to the complainant, any other person, group or class of persons, association, organisation or organ of state;
- (c) indicate whether, to their knowledge, the complaint has not been resolved;
- (d) indicate whether, to their knowledge, the complaint is ongoing;
- (e) indicate whether, to their knowledge, a practical remedy for or solution to the complaint is available; and

- (f) any other relevant information that the complainant may regard as special circumstances as to why the complaint should be investigated.

CHAPTER 4

PROCESSING OF COMPLAINTS

- 12. Procedure followed after lodging a complaint.** – (1) If the FPB establishes, after conducting an investigation, that there is merit in a complaint or that prohibited, unclassified or potentially prohibited content is being distributed, the FPB may –
- (a) issue a takedown notice in accordance with ECTA in the case of non-commercial online distributors; or
 - (b) in the case of internet service providers, issue a takedown notice in terms of ECTA.
- (2) The notification of acknowledgement of receipt must advise the complainant that their complaint has been registered together with the reference number allocated to the complaint.
- (3) If the FPB makes a finding that the complaint should be rejected or referred, the complainant must, within 7 (seven) days of the finding, be notified thereof, in writing, together with the full reasons for the rejection or referral and be advised of their right of judicial review where a decision is made not to refer the complaint.
- (4) If the FPB makes a finding that the complaint should be referred, the respondent must be furnished with a copy of the complaint and the FPB's written findings pursuant to its investigation.

- (5) Thereafter, the respondent must be given an opportunity to address and/or remedy the complaint within 30 (thirty) days of receiving the notice of referral, before the complaint is referred.
- (6) If the FPB makes a finding that the complaint does not fall within the jurisdiction of the FPB, or could be dealt with more effectively or expeditiously by another organisation, institution, statutory body or institution created by the Constitution or any applicable legislation, the complainant must, within 7 (seven) days of the finding –
- (a) be notified thereof, in writing;
 - (b) be provided with the contact details of the said organisation, institution or body in order to pursue the alternative option themselves (indirect referral); and
 - (c) be advised that they may contact the FPB again should they not be provided with a response from the said organisation, institution or body.
- (7) If the FPB makes a finding that the complaint constitutes a *prima facie* finding that there may have been distribution of unclassified content, prohibited content or potentially prohibited content in relation to services offered online by any person, including commercial online distributors and non-commercial distributors, the complainant must, within 7 (seven) days of the finding, be notified that the complaint is accepted, in writing.
- (8) The timeframes provided for in this clause must be complied with unless special circumstances warrant an extension of the prescribed timeframes. Where special circumstances warrant an extension of the prescribed timeframes, the FPB must, within 3 (three) days prior to the expiry of the prescribed timeframes, inform the complainant of the extension and the special circumstances warranting a longer period, in any manner they deem fit but by keeping written record thereof.

CHAPTER 5

CONCLUSION OF COMPLAINTS

13. Conclusion of complaints. – (1) A complaint is concluded under the following circumstances –

- (a) after conclusion of an assessment if the complaint is rejected or in the case of an indirect referral, if no further action is required;
- (b) after conclusion of an investigation where it is found that –
 - (i) there was no distribution of unclassified content, prohibited content or potentially prohibited content in relation to services offered online by any person, including commercial online distributors and non-commercial distributors; or
 - (ii) there was distribution of unclassified content, prohibited content or potentially prohibited content in relation to services offered online by any person, including commercial online distributors and non-commercial distributors, and the said contravention is remedied;
- (c) if a complaint is withdrawn by the complainant and the FPB is satisfied that there are no compelling reasons to proceed with the investigation;
- (d) after resolution of a matter subsequent to the institution of proceedings before the Enforcement Committee as contemplated in clause 14 of these Procedures.

14. Institution of legal proceedings before the Enforcement Committee. – (1) The FPB may institute proceedings before the Enforcement Committee, as contemplated in section 6B (1)(b) of the Act, in its own name, or on behalf of a

person or a group or class of persons at any stage after a complaint contemplated in clause 3 of these Procedures is received.

- 15. Repeal or amendment of Procedures.** – (1) These Procedures remain in force until repealed or amended by the FPB by publication in the *Gazette*.
- 16. Short title and commencement.** – (1) These Procedures are called the Film and Publication Board Complaints Handling Procedures and come into operation on the date of publication hereof in the *Gazette*.



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ANNEXURE A
FILM AND PUBLICATION BOARD
COMPLAINT FORM

For office use only				
Province		City / Town		Complaint Reference Number

Please write clearly and use CAPITAL LETTERS. If there is not enough space on this form for your answer, please use a separate page and send it to us together with this form.

If there is more than one person who would like to send a complaint to us, each person must complete a separate form.

Part A: Your Details	
Full name(s) and Surname	
Identity Number	
Race	
Gender	
Address where you live	
Address where we can send letters	
Telephone number (work)	
Telephone number (home)	
Cellular number	
Email address	

Part B must only be filled in if you are writing on behalf of somebody else, for an association or organisation.

Part B: Details of Person, Association or Organisation	
Name and surname of person on whose behalf you are completing this form	
Identity Number	
Race	
Gender	
Address where they live	
Address where we can send them letters	
Telephone number (work)	
Telephone number (home)	
Cellular number	
Email address	
Details of association, organisation or organ of state on whose behalf you are completing this form	
Full name of the association, organisation or organ of state	
Registration number	
Person we should speak to at the association, organisation or organ of state	
Position of contact person	
Address	
Telephone number	
Cellular number	
Email address	

Part C: The Complaint	
Date	
State the nature of the complaint?	
Where did it happen?	
If you know, which section/s of the Act was or were contravened	

<p>If you know, the full name(s) and surname(s) of person(s), association, organisation or organ of state who contravened the sections of the Act, please tell us</p>	
<p>If you do not know his / her / its / their names, please tell us anything you do know about him / her / it / them</p>	
<p>Did anybody see or hear what happened (only people who actually saw or heard what happened, not people who heard about it from someone else)?</p>	
<p>In your own words, tell us exactly what happened (include all information but be as brief as possible)</p>	
<p>Have you reported the matter to anyone else? If yes, please tell us who you have reported the contravention to</p>	
<p>Were any steps taken by the person / association / organisation / organ of state to resolve the matter?</p>	
<p>What outcome do you propose or expect from this</p>	

complaint (tell us what you would like to achieve with this complaint and the relief sought)?	
Do you need an interpreter when attending any investigations at our offices? If yes, please tell us the language you speak	
Can we use your name in news reports or letters we write regarding this matter / complaint?	
Please tell us how you heard about the Film and Publication Board (e.g. radio advert, newspaper, poster, from a friend, etc.)	

Signature / Mark of Complainant

Date

(on behalf of yourself, another person, association, organisation or organ of state)

If on behalf of another person (including a child or a person with a mental disability), association, organisation or organ of state:

Signature of representative, parent, appropriate adult or guardian

Remember:

- (a) To attach any copies of documents which can assist in this matter.