

REPUBLIC OF SOUTH AFRICA

NATIONAL FILM AND VIDEO FOUNDATION BILL

*(As amended by the Portfolio Committee on Arts, Culture and Language, Science and
Technology (National Assembly))*

(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

[B 17B—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE NASIONALE STIGTING VIR ROLPRENTE EN VIDEO'S

*(Soos gewysig deur die Portefeuljekomitee oor Kuns, Kultuur en Taal, Wetenskap en
Tegnologie (Nasionale Vergadering))*

(MINISTER VAN KUNS, KULTUUR, WETENSKAP EN TEGNOLOGIE)

[W 17B—97]

ISBN 0 621274518

BILL

To establish a juristic person to be known as the National Film and Video Foundation; to determine its objects, functions and method of work; to prescribe the manner in which it is to be managed and governed; to regulate its staff matters and financial affairs; and to provide for matters connected therewith. “

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

Definitions

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

- (i) “chief executive officer” means the chief executive officer appointed in terms 5 of section 13(1); (iv)
- (ii) “Council” means the Council contemplated in section 6; (vi) “”
- (iii) “Director-General” means the Director-General: Arts, Culture, Science and Technology; (ii)
- (iv) “executive committee” means the executive committee established in terms 10 of section 9; (ix)
- (v) “financial year” means the period from 1 April in any year to 31 March in the following year; (i)
- (vi) “Foundation” means the National Film and Video Foundation established by section 2; (viii) 15
- (vii) “Minister” means the Minister of Arts, Culture, Science and Technology; (v)
- (viii) “prescribed” means prescribed by regulation; (x)
- (ix) “regulation” means a regulation made under this Act; (vii)
- (x) “this Act” includes the regulations. (iii)

Establishment of Foundation

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2. There is hereby established a juristic person to be known as the National Film and Video Foundation.

Objects of Foundation

3. The objects of the Foundation are—

- (a) to develop and promote the film and video industry; 25
- (b) to provide, and encourage the provision of, opportunities for persons, especially from disadvantaged communities, to get involved in the film and video industry;
- (c) to encourage the development and distribution of local film and video products; 30
- (d) to support the nurturing and development of and access to the film and video industry; and
- (e) in respect of the film and video industry, to address historical imbalances in the infrastructure and distribution of skills and resources.

Functions of Foundation

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4. (1) Subject to subsection (3) and in order to achieve its objects, the Foundation may—

- (a) render support, including, but not limited to, financial support, advice and information, to any person, organisation or institution;
 - (b) determine which field of the film and video industry should have preference for the purpose of support thereof;
 - (c) investigate and determine the need for support of any person, organisation or institution; 5
 - (d) conduct research into any field of the film and video industry;
 - (e) establish, compile and maintain databases, including, but not limited to, databases of persons, organisations, institutions, equipment and facilities connected with the film and video industry; 10
 - (f) make bursaries and loans available to students for local and overseas studies;
 - (g) liaise with a member of the executive council of each province designated by the Premier of the Province, in order to promote the film and video industry more effectively throughout the Republic and to ensure co-ordination in the distribution of funds at national and provincial level; 15
 - (h) make funds available to the members contemplated in paragraph (g) for such distribution as the Council may determine;
 - (i) nationally and internationally facilitate and promote liaison between individuals and institutions;
 - (j) make grants and grant loans to any person, organisation or institution in order to provide facilities to support the development and promotion of the film and video industry; 20
 - (k) co-operate with any person, organisation and institution;
 - (l) enter into agreements with any person, organisation or institution, upon such conditions as may be agreed upon; 25
 - (m) purchase or otherwise acquire, or possess, hire, alienate, let, pledge or otherwise encumber movable and, with the approval of the Minister, granted with the concurrence of the Minister of Finance, immovable property;
 - (n) with the approval of the Minister, granted with the concurrence of the Minister of Finance, on such terms and against such security as may be agreed upon, raise money by way of loans; and 30
 - (o) generally, do everything which is necessary to achieve its objects.
- (2) The Foundation shall—
- (a) at the request of the Minister advise the Minister on matters concerning the film and video industry; 35
 - (b) publish information on its objects and functions;
 - (c) perform such duties in respect of its objects as the Minister may assign to it;
 - (d) undertake or procure the undertaking of such investigations and research concerning its objects as the Minister may assign to it;
 - (e) in conjunction with the Departments of Trade and Industry and of Education, investigate the viability of establishing a national film school; 40
 - (f) promote the distribution and showing of local films and videos throughout the Republic and the showing of local films and videos on television;
 - (g) liaise with the Independent Broadcasting Authority to encourage the use of local content programmed on television; and 45
 - (h) approach the film and video industry and other interested parties for financial contributions to the Film and Video Initiative, referred to in section 18.

(3) The Foundation shall not itself establish, acquire or operate any organisation or institution connected with the film and video industry, but may initiate projects which it considers necessary in pursuit of its objects, provided that such projects are undertaken in partnership with existing organisations or institutions which have the capacity to undertake the projects. 50

Performance of functions outside Republic

5.(1) The Foundation may, in order to achieve its objects, render such support as may be prescribed to any person who is a South African citizen in any territory outside the Republic.

(2) This Act shall, as far as it can be applied with the necessary changes, apply in

connection with the performance by the Foundation of its functions under subsection (1) as if the territory in which it so performs its functions were part of the Republic.

Establishment and composition of Council, tenure of office and filling of vacancies

6. (1) The Foundation shall act through a council consisting of no fewer than nine and no more than 14 members. 5

(2)(a) The members shall be appointed by the Minister from a short list of no more than 22 names.

(b) Nominations for inclusion in the short list shall be obtained from the public in the prescribed manner.

(c) Any member of the public may object in writing to the nomination of any person. 10

(3)(a) The first meeting of the Council shall be held at such time and place as the Minister may determine.

(b) The Director-General shall preside at that meeting.

(4)(a) The chairperson of the Council shall be appointed by the Minister from amongst the members of the Council and such person shall be the chairperson for the period for which he or she was appointed as a member of the Council. 15

(b) If the position of chairperson becomes vacant the Minister shall, subject to paragraph (a), appoint another member as chairperson.

(c) If the chairperson is absent from a meeting of the Council, the members present shall elect one of their members to preside at that meeting. 20

(5)(a) Subject to paragraph (b), a member of the Council shall hold office for a period not exceeding three years and shall be eligible for reappointment after a further three years have elapsed.

(b) At the end of the members' term of office, three members shall be re-elected by the Council to serve for a further three years, after which they shall not be eligible for reappointment until a further three years have elapsed. 25

(6) A member of the Council may at any time be removed from office by the Council if there is sufficient reason for doing so, subject to the approval of the Minister.

(7) Any vacancy on the Council shall be filled in the manner in which the member who vacates the office was required to be appointed, and any member so appointed shall hold office for the unexpired portion of the period for which the member who vacates the office was appointed: Provided that the Minister shall, if the vacancy occurs in the Council's first term, fill the vacancy by appointing a candidate from the short list. 30

(8)(a) No member shall serve on the Council on a full-time basis.

(b) Members of the Council shall, in respect of their service, receive such allowances as the Minister with the concurrence of the Minister of Finance may determine, either in general or in a particular case. 35

(9) Members of the Council shall not be eligible for grants from the Council during their term of office.

Qualifications of members of Council and circumstances under which they vacate office 40

7. (1) (a) The members of the Council shall be persons who have—

(i) special knowledge or experience in the film and video industry; or

(ii) specialist skills which are not directly related to the film and video industry but which would be beneficial to the Council. 45

(b) A member of the Council shall not hold office in any political party or political organisation,

(c) The composition of the Council shall be broadly representative of the—

(i) stakeholders in the video and film industry; and

(ii) South African population. 50

(2) No person shall be appointed as a member of the Council—

- (a) if that person is an unrehabilitated insolvent;
 - (b) if that person has been convicted of an offence and in respect thereof sentenced to imprisonment without the option of a fine; or
 - (c) unless that person is a South African citizen permanently resident in the Republic. 5
- (3) A member of the Council shall vacate office if he or she—
- (a) becomes disqualified in terms of this section from being appointed as a member of the Council;
 - (b) is according to law detained as a mentally ill person;
 - (c) has, without the leave of the Council, been absent from three consecutive meetings of the Council; 10
 - (d) is removed from office as contemplated in section 6(6); or
 - (e) resigns by written notice addressed to the Minister.

Meetings of Council

8. (1) The Council shall meet at least four times a year, and meetings shall be held at such times and places as the Council may determine. 15
- (2) The chairperson may at any time convene a special meeting of the Council, which shall be held at such time and place as the chairperson may direct.
- (3) A quorum for a meeting of the Council shall be a majority of its members.
- (4) Any decision of the Council shall be taken by resolution of the majority of the members present at any meeting of the Council, and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote as a member of the Council. 20
- (5) A member of the Council shall not vote or in any manner participate in the proceedings at any meeting of the Council nor be present at the venue where such a meeting is held, if, in relation to any matter before the Council, he or she has any interest which precludes him or her from performing his or her functions as a member of the Council in a fair, unbiased and proper manner. 25

Executive committee

9. (1) The Council shall establish an executive committee— 30
- (a) which shall consist of the chairperson, vice-chairperson and such other members of the Council as the Council may determine, but which shall not exceed 25 per cent of the Council's total membership at the time; and
 - (b) which shall, subject to the direction of the Council, exercise the powers and perform the duties conferred or imposed upon the Council by or under this Act. 35
- (2) The chairperson of the Council shall be the chairperson of the executive committee.
- (3) (a) The executive committee shall meet at such times and places as the chairperson of that committee may direct. 40
- (b) A quorum for a meeting of the executive committee shall be the majority of its members.

Committees of Council

10. (1) The Council may nominate one or more committees, which may, subject to the instructions of the Council, perform such functions of the Council as the Council may determine. 45
- (2) A committee referred to in subsection (1) shall consist of such number of members of the Council and employees of the Foundation, if any, as the Council may deem necessary, and the Council may at any time dissolve or reconstitute such committee.
- (3) If a committee consists of more than one member, the Council shall designate a member of the committee to be the chairperson thereof. 50
- (4) The Council shall pay a member of a committee who is not an employee of the Foundation such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance,
- (5) The Council shall not be absolved from the performance of any function entrusted to any committee of the Council in terms of this section. 55

Advisory panels

11. (1) The Council may establish an advisory panel for every field of the film and video industry it deems necessary.

(2) Every advisory panel shall consist of no more than five persons who have achieved distinction or have special knowledge or experience in the field in question. and who are not members of the Council. 5

(3) An advisory panel shall advise the Council on the merits of applications for grants and on any matter relating to the field for which it was established.

(4) Every meeting of an advisory panel shall be chaired by a Council member.

(5) The Council shall appoint persons to an advisory panel on the basis of nominations obtained from the public as prescribed. 10

(6) An advisory panel shall meet at least twice a year before Council meetings.

(7) A member of an advisory panel shall hold office for a period not exceeding two years. and may be appointed on the same or a different panel after a further two years have elapsed. 15

(8) A member of an advisory panel shall be appointed on such conditions. including conditions relating to remuneration for attending meetings and for services rendered. as the Minister may determine with the concurrence of the Minister of Finance.

(9) The Council may at any time terminate the membership of a member of an advisory panel if sufficient reason exists therefor. 20

(10) A member of an advisory panel shall not vote or in any manner participate in the proceedings at any meeting of the advisory panel nor be present at the venue where such a meeting is held, if. in relation to any matter before the advisory panel, he or she has any interest which precludes him or her from participating as a member of the advisory panel in a fair. unbiased and proper manner. 25

Right of appeal

12. (1) Any person who feels aggrieved at any action or decision that the Council has taken or made in terms of this Act may. within 30 days from the date on which the action or decision in question was taken or made known by the Council. and after having given notice to the Council as prescribed. appeal to the Minister in the prescribed manner. 30

(2) The Minister shall appoint one or more independent assessors with knowledge of the film and video industry to assist him or her.

(3) The Minister may. after consultation with the assessors. confirm, set aside or amend any action or decision contemplated in subsection (1).

Chief executive officer

13. (1) The Council shall appoint a full-time chief executive officer for the Council.

(2) The chief executive officer shall be responsible for the management of the affairs of the Council. and shall report on those affairs to the Council as often as may be required by the Council.

(3) The chief executive officer shall be appointed for such period and subject to such conditions. including conditions relating to the payment of remuneration and allowances. as the Council may. subject to section 15(1)(b). determine, and may be reappointed on the expiry of his or her period of office. 40

(4) Whenever the chief executive officer is absent for any reason or unable to carry out his or her duties, or whenever there is a vacancy in the office of chief executive officer. the Council may. subject to such conditions and the payment of such remuneration and allowances as it may determine in the manner contemplated in subsection (3), appoint an employee of the Foundation to act as chief executive officer during such absence or inability. or until a chief executive officer has been appointed in terms of subsection (1), and that employee shall, whilst so acting. have all the powers and perform all the duties of the chief executive officer. 45 50

Accounting officer

14. (1) In addition to the other functions entrusted to the chief executive officer by or under this Act, he or she shall be the accounting officer charged with the responsibility of accounting for all money received and the utilisation thereof and be responsible for the property of the Foundation.

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(2) (a) The accounting officer may—

(i) delegate to an employee of the Foundation a power conferred upon the accounting officer by or under this Act;

(ii) authorise such employee to perform a duty assigned by or under this Act to the accounting officer.

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(b) A delegation under paragraph (a) shall not prohibit the exercise of the power in question or the performance of the duty in question by the accounting officer.

Staff and conditions of service

15. (1) (a) The Council may, subject to paragraph (b) and on such conditions as it may determine, appoint such number of employees as it deems necessary to enable the Foundation to perform its functions.

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(b) The Foundation shall out of its own funds pay to its employees such remuneration, allowances, subsidies and other benefits as the Council may determine in accordance with a system approved for that purpose by the Minister with the concurrence of the Minister of Finance.

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(c) The Council may, on such conditions as it may deem fit and if the employee consents thereto, second an employee, either for a particular task or for a period of time, to the service of a department of State, an organisation or institute in the Republic on condition that such employee's rights, privileges and benefits by virtue of his or her conditions of service as an employee of the Foundation are not adversely affected by such secondment.

(2) The Council may on such conditions and against such security as may be prescribed by the Minister with the concurrence of the Minister of Finance—

(a) lend money to an employee, or provide collateral security, including guarantees, to a registered financial institution in respect of a loan granted to an employee by that financial institution, to enable such employee to acquire, improve or enlarge immovable property for residential purposes;

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(b) lend money to an employee to enable him or her to become a member of a pension fund approved by the Council or to have a break in service on account of approved leave without full pay reckoned as pensionable service.

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Financing

16. (1) The funds of the Foundation shall consist of—

(a) money appropriated by Parliament to finance the functions of the Council;

(b) money paid to the Council by users of its services;

(c) donations or contributions received from any source;

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(d) interest on investments;

(e) money in the Funds established by section 18; and

(f) income derived under this Act from any other source.

(2) (a) The Foundation shall utilise its funds to defray expenses in connection with the performance of its functions: Provided that at least 75 per cent of the funds contemplated in subsection (1) (a) shall be distributed as grants in support of the film and video industry, unless otherwise approved by the Minister,

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(b) The Foundation shall utilise any money contemplated in subsection (1) (a) in accordance with the statement of its estimated income and expenditure referred to in subsection (3), as approved by the Minister: Provided that, subject to paragraph (a), the Foundation may utilise any amount or portion of any amount required to be so utilised for a particular purpose in connection with a specified matter, for any other purpose in connection with such matter: Provided further that the Foundation may with the approval of the Minister utilise any balance of such money remaining at the end of the

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financial year of the Foundation for any expenses in connection with the performance of its functions.

(c) The Foundation shall utilise any donations or contributions contemplated in subsection (1)(c) in accordance with the conditions, if any, imposed by the donor or contributor concerned.

(3) The Foundation may, in respect of any work completed or service rendered by it under this Act, charge such fees or make such other financial arrangements as it may deem fit.

(4) The Foundation may invest any unexpended portion of its funds with the Corporation for Public Deposits.

(5) The Foundation may establish such reserve funds and deposit therein such amounts as the Minister may approve, with the concurrence of the Minister of Finance.

(6)(a) The Foundation shall in each financial year, at such time as the Minister may direct, submit a statement of the Foundation's estimated income and expenditure during the following financial year, and the Foundation may also during the course of a financial year submit supplementary statements of the Foundation's estimated expenditure for that financial year, to the Minister for approval, granted with the concurrence of the Minister of Finance.

(b) The Foundation shall not incur any expenditure in excess of the total amount approved under paragraph (a).

Audit, annual and financial report

17. (1) The Auditor-General shall audit the accounts and balance sheet of the Foundation.

(2) The Foundation shall—

(a) furnish to the Minister such information as he or she may call for in connection with the activities and financial position of the Foundation;

(b) submit to the Minister an annual report containing a balance sheet, a statement of income and expenditure certified by the Auditor-General and such other particulars as the Minister may require.

(3) The Minister shall table the report referred to in subsection (2)(b) in Parliament within 14 days after receipt [hereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

Establishment and control of Funds

18. (1) There are hereby established two funds to be known as the Film and Video Initiative and the Film Development Fund, respectively.

(2) The funds shall consist of—

(a) money appropriated by Parliament; and

(b) any other money accruing to the Fund in question from any other source.

(3) The purpose of the Film and Video Initiative is to provide funding for feature films and video projects.

(4) The purpose of the Film Development Fund is to provide funding for—

(a) entry level producers and first time directors;

(b) bursaries for study in film making;

(c) short and specialised film and video productions; and

(d) script development.

(5) The Funds shall be controlled and administered by the Foundation in accordance with the provisions of this Act.

(6) The Council shall open separate accounts with a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), in which the money of the respective Funds is to be kept.

Losses and damage

19. (1) If a person who is or was in the employment of the Foundation caused the Foundation loss or damage because he or she—

(a) failed to collect money due to the Foundation for the collection of which he or she is or was responsible;

- (b) is or was responsible for an irregular payment of money of the Foundation or for payment of such money not supported by a proper voucher;
- (c) is or was responsible for fruitless expenditure of money of the Foundation owing to failure to carry out his or her duties;
- (d) is or was responsible for a deficiency in, the destruction of, or any damage to the Foundation's money, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the Foundation: 5
- (e) is or was responsible for a claim against the Foundation owing to failure to carry out his or her duties. 10

the accounting officer shall determine the amount of such loss or damage, and may order that person, by notice in writing, to pay to the Foundation, within 30 days from the date of such notice, the whole or any part of the amount so determined: Provided that the accounting officer may not make such an order before the person concerned has been afforded an opportunity of making representations in writing to the accounting officer regarding the loss or damage which the person is alleged to have caused. 15

(2) If the person contemplated in subsection (1) fails to pay the amount within the period stipulated in the notice in question—

- (a) the amount may, subject to subsections (3) and (4), be deducted from his or her monthly salary: Provided that such deduction shall not in any month exceed one-fourth of such monthly salary; 20
- (b) the accounting officer may, subject to subsections (3) and (4), recover the amount from such person by legal process.

(3) If, within the period stipulated in the notice in question, the person makes an offer to pay the amount in instalments, the accounting officer may allow payment in such installments as may be reasonable. 25

(4) A person who has been ordered to pay an amount in terms of subsection (1) may, within a period of 30 days from the date of the order, appeal in writing against such order to the Council, stating the grounds of appeal, and the Council may, after such investigation as may be necessary, dismiss the appeal or order that the appellant be exempted, either wholly or partly, from the payment of such amount. 30

Delegations

20. (1) The Council may—

- (a) delegate to the chairperson, the chief executive officer or any other employee of the Foundation any power conferred upon the Council by or under this Act, on such conditions as the Council may determine, but excluding the power to make grants and to grant loans; 35
- (b) authorise the chairperson, chief executive officer or other employee to perform any duty assigned to the Council by or under this Act.

(2) The chief executive officer may— 40

- (a) delegate any power conferred upon the chief executive officer by or under this Act to an employee of the Foundation;
- (b) authorise such employee to perform any duty assigned to the chief executive officer by or under this Act.

(3) A delegation under subsection (1) or (2) shall not preclude the exercise of the power in question by the Council or the chief executive officer, as the case may be. 45

Regulations

21. (1) The Council may, subject to the approval of the Minister and by notice in the *Gazette*, make regulations regarding—

- (a) the procedure at meetings of the Council; 50
- (b) a Code of Conduct for members of the Council and advisory panels in order to prevent conflicts of interest and bringing the Foundation into disrepute.

and, in general, regarding any matter in respect of which the Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) The Minister may, by notice in the *Gazette*, make regulations regarding—

(a) any matter which may or shall be prescribed in terms of this Act;

(b) any other matter which may be necessary or expedient in order to achieve the 5 objects of this Act.

(3) No regulation relating to State revenue or expenditure shall be made by the Council or the Minister except with the concurrence of the Minister of Finance.

(4) Any regulation made under subsection (2) may provide that any person contravening such regulation or failing to comply therewith, shall be guilty of an offence 10 and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Short title and commencement

22. This Act shall be called the National Film and Video Foundation Act, 1997, and shall come into operation on a date fixed by [he President by proclamation in the 15 *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL FILM AND VIDEO FOUNDATION BILL. 1997

In the past the making of films was funded to the exclusion of the majority of filmmakers. There was no emphasis on the development of the film industry. The Department of Arts, Culture, Science and Technology, in consultation with the film industry, has drafted a Film Development Strategy policy document to address the imbalances of the past, drafted legislation to restructure and promote the industry and proposed a mechanism for funding that will focus on the development of young filmmakers and those previously disadvantaged.

The Bill stems from the Film Development Strategy policy document which recognises the importance of the film and video industry and which, given appropriate financial State support, has the potential to generate significant employment, income and investment opportunities. This will be the kind of support that should have a multiplier effect and be in keeping with the aims and objectives of the Reconstruction and Development Programme. The Bill is the first step in the process of restructuring the film industry in South Africa.

The Bill provides for the establishment of the National Film and Video Foundation ("the Foundation") as a juristic person to promote and develop the film and video industry in South Africa. The objectives of the Foundation will be to promote the development of an indigenous, national film and video industry, to support distribution and exhibition, to provide and administer funds towards production purposes and to fund training and development.

The Bill also provides for the composition of a council of the Foundation which must include members from the industry and broadcasting. The Bill further provides room for the Foundation to conduct continuous investigation in order to advise the Minister on legislation, and establish mechanisms to communicate with the public and the industry. The foundation will have no censorship functions.

The following persons and institutions were consulted:

1. Dr Martin Botha, HSRC;
2. Mr Danie Pieterse, Southview Productions;
3. Prof Keyan Tomasselli, Centre for Cultural and Media Studies, University of Natal;
4. Mr Lionel Ngakane, Southern Africa Film Corporation;
5. Mr Carl Fischer, Toron Studios;
6. Mr Mfundu Vundla, Marula Pictures;
7. Mr Anant Singh, Videovision Entertainment;
8. Mr Tshepo Ranto, Centre for Democratic Communications;
9. Mr Michael MacCarthy, Movie Makers International (Pty) Ltd;
10. Mandla Langa;
11. Cape Film and Video Foundation;
12. The Departments of State; and
13. The provincial administrations.

In the opinion of the Department and the State Law Advisers this Bill must be dealt with in terms of section 75 of the Constitution.