



Province of the
EASTERN CAPE

SPORT, RECREATION,
ARTS & CULTURE

**EASTERN CAPE
FILM AND VIDEO POLICY**

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FOREWORD

The Eastern Cape Department of Sport, Recreation Arts and Culture takes pleasure to present the Eastern Cape Film and Video Policy on behalf of Provincial government. The Eastern Cape Film and Video Policy aims to promote transformation of the film industry in the province. It aims to facilitate a process where film development is adequately funded to meet its mandate for the upliftment of social and economic conditions of the province; and ensures adequate collaboration among stakeholders.

According to the Quarterly Labour Force Survey released by Statistics South Africa in August 2021, the Eastern Cape has the highest unemployment rate at 47%. Reports point to the Covid-19 pandemic as the exacerbating factor to market woes. It is becoming more apparent that strategies to stimulate the ailing economy of the province's challenges are necessary and should be prioritised. The policy is premised on the following issues:

Firstly, the allocation of Equitable share is dependent on a province's demographic, and the Eastern Cape is disadvantaged by a shrinking purse due to the immigration of its working class to other provinces. Secondly, the volatile political environment is marred with service delivery unrest and protests. This warrants for a new outlook in support of job creation and social cohesion. Thirdly, the Department has not implemented a robust programme for the development of industry practitioners across its various value chains. The policy will give the Department an opportunity to explore the cross functional integrations that can be leveraged for servicing the public, as well as improve on its internal operational efficiencies. Lastly, COVID-19 has challenged the efficiencies in the operating model for the performing arts in the Department. The industry has come to a standstill due to the inability to host events where artists were able to take advantage of platforms provided to make a living. This has challenged the adaptability of the Department to changing environments.

The policy aims to adopt film as an outward servicing function to not only be about creating content on internal events or activities of the Department but recognizes it for the positive impact it has in attracting young and vibrant skills to the province and having a positive spin off on exposing the province to the international film and video markets. Through the policy, the Eastern Cape Department of Sport, Recreation Arts and Culture intends to focus funding on development, production, research, and training; thus, funding projects for the youth, women and people with disabilities must be ring-fenced and prioritised.

In 2013, the Department of Sport, Recreation, Arts and Culture (DSRAC) developed the Eastern Cape Film and Video Policy in a bid to regulate the film industry and to mobilise other government departments and state-owned entities to collaborate with provincial government. In this regard, provincial government has collaborated with the Eastern Cape Department of Economic Development, Environmental Affairs and Tourism (DEDEAT), the Eastern Cape Provincial Arts and Culture Council (ECPACC), the Eastern Cape Film Hub, the Eastern Cape Development Corporation (ECDC), and municipalities to regulate and transform film and the audio-visual industry in the Eastern Cape. The policy intends to support industry development by encouraging a collaborative approach in training and skills development for local filmmakers. The Department will use it to build a solid skills base in the Eastern Cape through increased production and by providing hands on experience for filmmakers. The intention is to provide economic stimulus and market the Eastern Cape as an attractive tourist destination and develop and showcase Eastern Cape local content nationally and internationally.

In 2019, national government hosted the South African Film Summit which prioritised transformation and innovation in the South African Film / Audio-visual Industry and the 4th Industrial Revolution. Further, national government is in the process of developing a national framework that shall be approved by Cabinet. The Eastern Cape Film and Video Policy provides guidance to provincial government in conjunction with communities, cultural institutions, municipalities as well as to all public and private stakeholders to implement the policy. Promoting the Film Industry in the Eastern Cape is dependent on developing a film culture which considers the aspirations of both the emerging and developing filmmakers of the province. This will be facilitated by the use and involvement of the eight (8) DSRAC Offices to support the District Development model. An enabling regulatory framework was considered in the development of the policy and enables the management interventions. We anticipate that the management interventions identified will put the Eastern Cape on the global scene of the film industry and excelling in the content development.

We are therefore very encouraged by the contribution by all our stakeholders, who took time to contribute to the development of the policy and have made valuable inputs. Members of civil society, stakeholders and social partners are invited to continue to familiarise themselves with the policy as it will foster nation- building, social cohesion and promote socio-economic transformation in the Eastern Cape.

I thank you



FEZEKA NKOMONYE

MEC FOR SPORT, RECREATION, ARTS AND CULTURE

DATE: 25/04/2022

1. INTRODUCTION

- 1.1 The Eastern Cape has a rich and diverse cultural and natural heritage. It boasts some of the world's unspoilt picturesque coastlines and locations offering an alternative for local and international film productions. However, there are currently no standards that guide the film industry in the province.
- 1.2 The Eastern Cape Province has adopted a Developmental strategy (Vision 2030) within which the plans to becoming an enterprising and connected province where all people reach their potential has been stated as an explicit ideal. The Department contributes to the 2019 – 2021 MTSF Priority 6 - Social Cohesion & Safe Communities of the National Development Plan.
- 1.3 The department in collaboration with the Eastern Cape Department of Economic Development, Environmental Affairs and Tourism (DEDEAT), through the Eastern Cape Development Corporation (ECDC), municipalities and private stakeholders use the policy to reposition the Eastern Cape as a destination of choice for both local and international film productions.
- 1.4 The policy will give impetus to economic growth in the province. Further, the development of the film industry is seen as a catalyst for nation-building, social cohesion, and transformation in the Eastern Cape.
- 1.5 Further, the policy will contribute to the growth and development of local filmmakers through increased productions, training, workshops, exhibitions, markets and various entertainment platforms thus contributing towards job creation.

2. PURPOSE

- 2.1 The purpose of this policy is to position the Eastern Cape as a globally competitive, diverse and sustainable industry and a destination of choice for filmmaking and production.
- 2.2 Furthermore, it seeks to:
 - 2.2.1 Establish guidelines to direct film activities and film production in the province;

2.2.2 To outline procedures for the management of processes to be followed by the film industry;

2.2.3 Provide clarity surrounding the roles of relevant government departments, be it at national, provincial, and local government, institutions as well as municipalities whose services are required.

3. SCOPE

3.1 The policy covers the film and video industry in the Eastern Cape including actors, artists, filmmakers, writers, and productions by local and international filmmakers. The policy includes national and provincial departments, government institutions, municipalities as well as internal and external stakeholders.

4. PROBLEM STATEMENT

4.1 The province operates within a strenuous environment with a shrinking fiscus exacerbated by increased loss of its working class to other provinces. The province struggles to retain a vast majority of its working class who should be contributing to the provincial economic ecosystem that if having the correct stimulus, would have a positive spin-off for the increasing unemployment rate.

4.2 The political environment warrants a new outlook in where the department places effort. The priority area adopted by the Department of Sport, Recreation, Arts and Culture is to create a developmental environment for supporting job creation and social cohesion.

4.3 The Department has not implemented a robust development programme that is integrating its other functions/ business units. This will likely if left to continue, result in unmeasurable gains and minimal degrees of success with limited sustainable value.

4.4 Film is seen as an internal servicing function which is events driven and needs to be remodelled to becoming a service delivery function, appreciating it for the potential to contribute positively to socio-economic development of the province at large.

4.5 Digital evolution presents a whole new spectrum of opportunities which have diversified the industry. The lack of research and development, and focused investment in the diversification of skills to adapt to the changing technology may hamper and delay the

incubation of this emerging industry in the province. It is imperative to ensure that the development of the sector also enables alignment to the digital revolution, and an environment that can keep up to the fast-paced changes characteristic of digitisation.

- 4.6 Film development has not leveraged on the impendent potential of programme integration in the objectives shared with other business units of the Department. The status quo tends to create artificial rivalry for scarce financial, technical, and professional resources within the Department and more adverse, split focus in operations.
- 4.7 There is no consistency, criteria or standard that is utilised in managing local and international productions being filmed in the Eastern Cape.
- 4.8 There is also no consistency with reference to funding and resourcing of artists and film productions in the province.
- 4.9 It is therefore due to this lack of guidelines that the Department of Sport, Recreation, Arts and Culture has put together this policy advised by a legislative framework to direct and manage the film industry and production activities in the Eastern Cape.

5. OBJECTIVES

The objective of the policy is to:

- 5.1 Provide an all-encompassing, inclusive framework within which film production must take place in the province;
- 5.2 Enable Transformation of the film industry in the Eastern Cape Province;
- 5.3 Encourage government departments and institutions to develop guidelines for funding for local film productions and local filmmakers;
- 5.4 Encourage district and local municipalities to develop by laws to manage film products at district level;
- 5.5 Encourage a collaborative approach for providing funding, resources, and support, opportunities to local filmmakers especially those from disadvantaged communities;

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- 5.6 Build a solid skills base in the Eastern Cape through increased production and by providing hands on experience for filmmakers;
 - 5.7 Provide economic stimulus and market the Eastern Cape as an attractive tourist destination;
 - 5.8 Develop and showcase Eastern Cape local content nationally and internationally;
 - 5.9 Showcase talent, locations and infrastructure through productions undertaken in the province;
 - 5.10 Encourage film and TV producers to employ provincial personnel and facilities for film productions;
 - 5.11 Invest in marketing and distribution in order to enhance the branding of the products, locations and capabilities of the Eastern Cape.

6. LEGISLATIVE FRAMEWORK

The following legislative and frameworks will guide the implementation of the policy:

6.1 Constitution of the Republic of South Africa Act, Act No. 108 of 1996

According to Section 217 (1 to 3) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) – Procurement “Section 217

(1) When an organ of state in the national, provincial, or local sphere of government or any other institution identified in national legislation, contracts for goods and services, it must do so in accordance with a system, which is fair, equitable, transparent, competitive, and cost-effective.

(2) Sub-section (1) does not prevent the organs of state or institutions referred to in that sub- section from implementing a procurement policy providing for-

- a. Categories of preference in the allocation of work; and
- b. The protection or advancement of persons or categories of persons disadvantaged by unfair discrimination (underlined for the purpose of this policy).

(3) National legislation must prescribe a framework within which the policy referred to in sub- section (2) may be implemented”.

6.2 Other targeted legislated mandate

There are various pieces of legislation that govern the achievement of the primary and secondary procurement objectives set out in the Constitution.

6.2.1 Promotion of equality and prevention of unfair discrimination act (Act No. 4 of 2000)

The Section 9 of the Bill of Rights contained in the Constitution (Act 108 of 1996) states that equality includes the full and equal enjoyment of all rights and freedoms and that no person may unfairly discriminate directly or indirectly against anyone. To this effect, the Promotion of Equality, and the Prevention of Unfair Discrimination Act (Act 4 of 2000) was promulgated.

The Act prohibits unfair discrimination against any person on the grounds of race or gender and requires that reasonable steps be taken to accommodate the needs of such persons. A schedule attached to the Act provides an illustrative list of unfair practices in certain sectors. This list cites "unfairly limiting access to contractual opportunities for supplying goods and services" as an unfair practice.

6.2.2 *Preferential Procurement Policy Framework Act (Act No 5. Of 2000)*

Section 217(3) of the Constitution does allow for procurement policy that provides for categories of preference in allocating contracts and the protection and advancement of persons, or categories of persons, disadvantaged by unfair discrimination. This section requires legislation to prescribe an implementation framework for South Africa's preferential procurement policy. In response to this requirement the Preferential Procurement Policy Framework Act (PPPFA) (Act 5 of 2000) was promulgated. This Act requires that organs of state establish their preferential procurement policy and implement it in accordance with a prescribed framework.

6.2.3 *Traditional Leadership and Governance Framework Act 41 of 2003*

To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders; to provide for houses of traditional leaders; to provide for the functions and roles of traditional leaders; to provide for dispute resolution and the establishment of the Commission on Traditional Leadership Disputes and Claims; to provide for a code of conduct; to provide for amendments to the Remuneration of Public Office Bearers Act, 1998; and to provide for matters connected therewith.

6.2.4 *Local Government: Municipal Finance Management: No.56 of 2003*

To secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith.

6.2.5 *The Environmental Management and Protection Act, 2010*

An Act respecting the Management and Protection of the Environment, repealing The Clean Air Act, The Environmental Management and Protection Act, 2002, The Litter Control Act and

The State of the Environment Report Act and making consequential amendments to certain Acts

6.2.6 *Broad Based Black Empowerment Act (Act No. 53 of 2003)*

The aim of the Broad Based Black Economic Empowerment Act (Act 53 of 2003) is to redress historical disadvantages and increase opportunities to those previously excluded from participating in the country's mainstream economy. The Act requires that organs of state and all public entities consider and where reasonably possible, apply relevant codes of good practice issued in terms of this Act in developing and implementing a preferential procurement policy. The Act establishes a code of good practice regarding qualification criteria for the issuing of licences or concessions, the sale of state-owned enterprises, the entering partnerships with the private sector and the development and implementation of a preferential procurement policy.

6.3 *The Promotion of Administrative Justice Act (PAJA) (ACT No. 3 of 2000)*

This Act applies to all organs of state and gives effect to the right to administrative action that is lawful, reasonable, and fair as provided in the Bill of Rights presented in Section 33 of the Constitution (Act 108 of 1996). It sets out fair administrative procedures for the judicial review of administrative actions, the questioning of unfair administrative action, the setting aside of administrative action, the correcting of defective action, and the ordering of payment of compensation and remedies in proceedings for judicial review including the prohibition of an administrator from acting in a particular manner.

Decisions made in the public sector regarding actions taken in the evaluation and award of a contract is an administrative decision, and as such is subject to PAJA.

6.4 *Public Prosecutor Act (ACT NO. 23 OF 1994)*

The Public Protector Act empowers the public to lodge complaints with the Public Protector (PP) who can act as an ombudsman and can investigate, report on, and take remedial action on conduct in state affairs or in the public administration that is alleged to be improper. Information or evidence that suggests criminal activity is referred to the South African Police Services (SAPS) and the Director of Public Prosecutions. Non-compliance with tender procedures resulting in irregular or unauthorised expenditure is referred to the Auditor General.

6.5 The prevention and Combating of Corrupt activities Act (ACT NO. 12 OF 2004)

This Act applies to both the public and the private sectors. It defines corruption and related activities as an offence, establishes a register to place certain restrictions (relating to tenders and contracts) on persons and enterprises convicted of corrupt activities and places a duty on certain persons holding a position of authority to report certain corrupt transactions.

The Act also makes it an offence to be an accessory to or after the above-mentioned offences as well as to attempt, conspire or induce another person to commit such offences. Persons convicted of an offence may be fined or imprisoned and their particulars or the particulars of the offending firm will be placed on a register of tender defaulters which will be open to the public.

6.6 The Competitions Act (ACT NO. 89 OF 1998)

The Competitions Act prohibits the following between parties:

- a) *Any restrictive horizontal practice that prevents or lessens competition in markets or involves fixing a purchase or selling price or any other trading conditions; dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or collusive tendering.*
- b) *Any restrictive vertical practice that substantially prevents or lessens competition in a market or establishes a minimum resale price.*

6.7 Promotion of Access to Information Act (ACT NO. 2 OF 2000)

Gives effect to the rights provided for in the Bill of Rights in Section 32 of the Constitution (Act 108 of 1996), namely that everyone has the right of access to information held by the state and any information that is held by another person that is required for the exercise or protection of any rights. The Act sets out the procedures pertaining to the obtaining of records in the public and private sectors, the grounds for refusal of access to information, mandatory disclosures in the public interest, and appeals against decisions of information officers of certain public bodies

6.8 The Public Finance Management Act (ACT NO. 1 OF 1999)

The basic philosophy underlying the PFMA is to "allow managers to manage and be held accountable" for their decisions. To establish the necessary institutional mechanisms in support of this philosophy, the PFMA requires accounting officers and accounting authorities to have:

- a) *an appropriate procurement system which is fair, equitable, transparent, competitive, and cost effective;*
- b) *effective, efficient, and transparent systems of financial and risk management and internal control; and*
- c) *a system for properly evaluating all major capital projects prior to a final decision on the project.*

Section 74(4) of the PFMA permits the National Treasury to make regulations or issue instructions applicable to all institutions to which the Act applies concerning the determination of a system which is fair, equitable, transparent, competitive, and cost effective. In terms of the PFMA, National Treasury has issued:

- a) *A Regulatory Framework for Supply Chain Management which has now been incorporated as regulation 16A of the Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities; and*
- b) *Several Supply Chain Management Practice Notes and Circulars.*

6.9 Other Relevant Administration and Sector Specific Legislation or Policies

- a) South African Films and Publications Act No 65 of 1996 (as amended)
- b) Public Service Act, 1994 as amended by Act 30 of 2007
- c) Public Administration Management Act, no 11 of 2014
- d) Copyright Act Amendment Act 9 of 2002
- e) Copyright Amendment Bill, 2019
- f) Protection of Personal Information Act, Act No. 4 of 2013.
- g) The National Heritage Resources Act, 1999 (Act No 25 of 1999)

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- h) Cultural Institutions Act, 1998 (Act No 119 of 1998)
 - i) National Film and Video Foundation (NFVF) Act 73 of 1997
 - j) Cultural Industries Growth Strategy document of 1998
 - k) Independent Authority of South Africa (ICASA) Amendment Act, 2006
 - l) Intergovernmental Relations Act, 2005
 - m) Basic Conditions of Employment Act, 1997 (Act 75 of 1997)

7. PRINCIPLES

The following key principles will guide the Eastern Cape Film and Video Policy:

- (a) **Regulation and governance** – by fostering an enabling environment in partnership with other Public entities, as well as Private Sector, the policy will direct management interventions to ensure institutionalizing film by-laws and coordinating other value chain processes.
- (b) **Empowerment** – This principle will be realised through provision of professional and business mentorship support to foster sustained enterprise development as well as through facilitating the availability of contracting and employment creating opportunities.
- (c) **Transparency** – this principle will guide government departments and institutions in the awarding of funding and resources to the film industry.
- (d) **Transformation and equity in the film industry** – this principle will be realised through maximising Historically Disadvantaged Individuals (HDIs) shareholding in the Eastern Cape film sector.
- (e) **Collaboration and coordination** – The process will require collaboration and coordination among all stakeholders to ensure that the process is as fair, transparent, and as equitable as possible.

8. APPROACH TO THE FILM AND VIDEO IN THE EASTERN CAPE

The approach that is proposed for the film and video industry in the province considers the following:

- (a) Production and Revenue Generating activities will be prioritised in this regard;
- (b) Heritage and Legacy projects in documenting history and heritage of the Eastern Cape will be prioritized;
- (c) Standardizing the management processes of awarding funding and other resources will be improved upon.
- (d) Enforcing governance structures, particularly the Eastern Cape Provincial Film Commission in order to regulate industry activity and encourage collaborative efforts and partnerships.

9. ROLES AND RESPONSIBILITIES

9.1 These are roles and responsibilities of the crucial stakeholders in the implementation of this policy. It must be noted that the list is not absolute.

NO	ROLES	RESPONSIBILITIES
1.	Executive Authority of Sport, Recreation, Arts and Culture	Shall be the custodian and regulate the implementation of the Film and Video Policy. Revision will also be the responsibility of the Department in the Cultural Affairs Programme.
2.	Heads of Institutions	Shall ensure compliance with this policy.
3.	Government departments and institutions	Shall manage and administer film in the province in accordance with the relevant legislation, policies and procedures and shall provide relevant funding and resourcing of the film industry.
4.	Municipalities	Shall ensure implementation of this policy at a district and shall develop relevant by laws at district level.
5.	Employees of government and government institutions	Shall implement and adhere to this policy.

6.	Film Structures	Provide baseline information pertaining to practitioners to assist research and statistical analysis and planning in the Department.
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10. POLICY STATEMENTS

10.1 Adopt a transformation agenda for development of the film industry

This will be achieved through undertaking the following interventions:

- a) Development bias will be geared towards historically disadvantaged individuals (HDIs) and emerging filmmakers.
- b) Profiling emerging and established film makers to determine the competency levels in the province.
- c) Design of a film funding model that encourages productions that are not from within the province to spend most of their budgets in the Eastern Cape.
- d) Preferential procurement of opportunities in the film development programmes.
- e) Standardize and provide training opportunities for film practitioners in the province.
- f) Provide mentorship and other support to beneficiary practitioners.
- g) Raise awareness through career guidance initiatives among young people in the province of the career opportunities in the film and television industry.
- h) Maximisation of opportunities with the film and digital media sector for both direct and indirect job creation.

10.2 Promote transparency, accountability, and consultation

This will be achieved through undertaking the following interventions:

- a) Managing operations in a manner that pursues best industry practice.
- b) Government departments and institutions be required to develop operational plans in line with the approved annual film sector plan.
- c) Introduction of a criteria to provide a framework for the categorisation of capacity as well as provide for a mechanism for funding structure.
- d) Ensure compliance to 30-day payment lead times for suppliers in order to not impact of emerging enterprises financial positions and cash-flows.

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- e) Ensure efficiencies in supply chain management particularly in enabling Preferential Procurement in the sector.

10.3 Development of the film market industry for the Eastern Cape province

This will be achieved through undertaking the following interventions:

- a) Establishing content and increase access to the audio-visual heritage of the province through reflecting and sustaining cultural diversity and richness of the Eastern Cape.
- b) Building and maintaining of communication and marketing capacity to profile the sector to stakeholders.
- c) Redressing the market's share, content, and audience development to benefit the historically disadvantaged individuals (HDIs) and emerging filmmakers.
- d) Marketing and promoting the Eastern Cape as a film locations destination of choice, thus maximising the potential of film and television related tourism development opportunities.
- e) Developing indigenous stories of the Eastern Cape as a means of promoting the province's cultural landscape.
- f) Encouraging specialised film exhibition development as well as transferring knowledge for improved management of intellectual property rights through awareness and educational programmes.

10.4 Public and Private Sector Collaboration

This will be achieved through undertaking the following interventions;

- a) Collaborate with private sector, civil society, and all tiers of government on initiatives to build both hard and soft film infrastructure, indigenous content, and the development of the film skills base.
- b) Contribute towards the development of tourism and film induced tourism in collaboration with Eastern Cape Parks and Tourism Development Agency (ECPTDA)
- c) Promote the development of film by-laws in municipalities throughout the Eastern Cape.
- d) Coordinate and facilitate and support the establishment of the Eastern Cape Film Office.
- e) Solicit equitable project funding for the Eastern Cape filmmakers from the National Film and Video Foundation (NFVF).

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- f) Work closely with the private sector and promote the provision of financial assistance for the film and television industry as well as the development and sustainability of film value chain with the relevant institutions' advertising agencies.

10.5 Use of a Database of Targeted Film Practitioners

This will be achieved through undertaking the following interventions:

- a) Identify entry and exit criteria that are objective and clear to comply with the Public Finance Management Act (Act 1 of 1999 as amended by Act 29 of 1999).
- b) Prioritise strategic projects through developing concepts for content development and production.

10.6 Improved Access to Film Infrastructure and Equipment

This will be achieved through undertaking the following interventions:

- a) Assist with the establishment of district municipal/metro film offices and forums for film development.
- b) Establish a provincial film resource centre for pre and postproduction facilities.
- c) Support the establishment of community television stations initiatives in the Eastern Cape.

11. MONITORING AND EVALUATION

- 11.1 The Department of Sport, Recreation, Arts and Culture shall devise a mechanism for monitoring and evaluating the implementation of the Film and Video Policy and assess its impact.

12. POLICY REVIEW

- 12.1 The policy will be reviewed every three (3) years upon its date of approval and may be reviewed before this time, when required.

REFERENCES

1. Constitution of the Republic of South Africa Act, Act No. 108 of 1996
2. The Public Finance Management Act (ACT NO. 1 OF 1999)
3. Promotion of Access to Information Act (ACT NO. 2 OF 2000)
4. South African Films and Publications Act No 65 of 1996 (as amended)
5. National Film and Video Foundation (NFVF) Act 73 of 1997