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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION  
PROJECT 107: SEXUAL OFFENCES  
REPORT ON PORNOGRAPHY AND CHILDREN**

On 23 June 2021 the Commission approved the Report on Sexual Offences (Pornography and Children) and its submission to the Minister of Justice and Correctional Services. As part of the overarching investigation into the review of all sexual offences, this report seeks to review the legislative framework that currently applies to children in respect of exposure to pornography and child sexual abuse material (the Commission's preferred term for child pornography) within the larger framework of all statutory and common law sexual offences.

Five main topics are addressed in this report, namely:

- Access to or exposure of a child to pornography;
- Creation and distribution of child sexual abuse material;
- Consensual self-child sexual abuse material (sexting);
- Grooming of a child and other sexual contact crimes associated with or facilitated by pornography or child sexual abuse material; and
- Investigation, procedure & sentencing.

This report aims to address some of the gaps in the manner in which the law currently regulates and protects children from being exposed to pornography or from being used to create child sexual abuse material and makes legislative and non-legislative recommendations. Its purpose is to make legislative proposals for law reform and to make suggestions for addressing implementation challenges underpinned by updated local and comparative research. This approach aligns with the expanded mandate of the Commission's Project 107: Sexual Offences umbrella project on sexual offences i.e.

to encourage action by the appropriate government structures and to galvanise communities to participate in the fight against sexual violence.

**ISSUED BY THE SECRETARY, SA LAW REFORM COMMISSION, CENTURION**

**DATE: 29 March 2022**

A copy of the executive summary of the report and the draft Bill is attached. The contact person for enquiries in respect of the media statement is Ms D Clark: email [dclark@justice.gov.za](mailto:dclark@justice.gov.za). The report is freely available on <http://salawreform.justice.gov.za>.

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## EXECUTIVE SUMMARY

1. As part of the overarching investigation into the review of all sexual offences, this report seeks to provide recommendations for the review of the legislative framework that currently regulates the exposure of children to pornography and child sexual abuse material<sup>1</sup> within the larger framework of all statutory and common law sexual offences. The secondary aim is to consider the need for law reform in relation to the legislative framework governing children and pornography and where necessary to make preliminary recommendations in this regard.

2. The opportunities offered by the mass media to access a varied and vast amount of information, educational material and entertainment and to actively engage in remote communication using electronic tools do not come without risks. One of the risks that children face when engaging with the mass media and using electronic tools in South Africa is that they may intentionally seek or unintentionally be exposed to pornography or child sexual abuse material. The pornography accessed may be illegal or may only be legal for certain adults.<sup>2</sup>

3. Five areas of concern have been identified in this investigation and form the basis of this report:

- Access to or exposure of a child to pornography;
- Creation and distribution of child sexual abuse material;
- Self-generated child sexual abuse material created and distributed by a child;
- Grooming of a child and other sexual contact crimes associated with or which are facilitated by child sexual abuse material; and
- Investigation, procedural matters and sentencing.

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1 The Commission recommends changing the term 'child pornography' to 'child sexual abuse material' in this report. The change emphasizes the true nature of the material and the harm done to children to produce such material. In order to acknowledge the anomaly brought about by self-generated material these declaratory words are added to the term 'child sexual abuse material' to cater for such instances.

2 Pending the operationalizing of the Films and Publications Amendment Act 3 of 2019 South African adults may legally only procure pornography from a dedicated adult store.

4. This report aims to address some of the gaps in the manner in which the law currently regulates and protects children from being exposed to pornography or from being used to create child sexual abuse material. It incorporates submissions made to the South African Law Reform Commission (Commission) in response to its discussion paper, responds to pertinent submissions and makes legislative and non-legislative recommendations. Its purpose is to make legislative proposals for law reform and to make suggestions for addressing implementation challenges underpinned by updated local and comparative research. This approach aligns with the expanded mandate of the Commission's Project 107: Sexual Offences umbrella project on sexual offences i.e. to encourage action by the appropriate government structures and to galvanise communities to participate in the fight against sexual violence.

5. The report has six chapters. Chapter one provides an overview of the investigation and includes reference to the legislative developments in a number of government departments in South Africa. Chapter two focuses on the access to or exposure of a child to pornography (legal adult sexual material). Chapter three looks at the phenomenon of children creating and distributing self-generated sexual material (commonly referred to as "sexting"). It seeks to make proposals for law reform that acknowledge the immaturity of some children whilst recognising the seriousness of this material falling into the hands of sexual exploiters or into the hands of a variety of third parties who may use the material for nefarious purposes. Chapter four investigates the creation and distribution of child sexual abuse material and addresses the need for uniform definitions and a central repository of crimes to deal with these sexual offences. Chapter five addresses the act of grooming a child and the use of pornography and child sexual abuse material in this process. Chapter 6 provides insight into some aspects of the investigation, procedures and sentencing in matters where children have been exposed to pornography or child sexual abuse material; have engaged in the creation or distribution of self-generated sexual material; or have been groomed through the use of pornography or child sexual abuse material to produce child sexual abuse material or to engage in sexual acts. The report contains the Commission's legislative and non-legislative recommendations. The former is contained in a draft Bill which provides an option as to the framing of certain proposed amendments. The report has taken the public response and input gleaned from public and expert workshops during

the discussion paper phase into account in arriving at its final recommendations. The report (with draft legislation) is submitted to the Minister of Justice and Correctional Services for his consideration.

6. In summary, the Commission makes the following recommendations:

**6.1. “Child pornography” or “child sexual abuse material”**

The Commission recommends that the term “child pornography” be substituted with the term “child sexual abuse material” in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (the Sexual Offences Act) and in related legislation. This recommendation accords with the international recognition of this term. In line with this recommendation the revised terminology is used consistently throughout this report, unless the term ‘child pornography’ is referred to in a specific context, such as a quotation.

**6.2 Revision of the Sexual Offences Act definition of “child pornography” (child sexual abuse material)**

The Commission is of the view that for the purposes of this investigation a child should continue to be defined as a person under the age of 18 and not be revised downward to align with the age of sexual consent. The Commission recommends the revision of the definition of “child pornography” in the Sexual Offences Act to include live displays, sequences of images and any of the listed conduct that could be used to advocate, advertise or promote a child for sexual purposes. In line with this amendment the Commission recommends the repeal of the definition of “child pornography” in the Films and Publications Act 65 of 1996 (the Films and Publications Act) and the substitution thereof by reference to the proposed definition of “child sexual abuse material” in the Sexual Offences Act.

**6.3. Child sexual abuse material and related offences to be criminalised in a single statute, the Sexual Offences Act**

The Commission recommends that all offences relating to child sexual abuse material and children’s exposure to pornography be criminalised in the Sexual Offences Act. This means that all pertinent offences in the Films and Publications Act are to be deleted and re-enacted (with the necessary changes) in the Sexual Offences Act. The

Commission neither supports the extension of section 24B of the Films and Publications Act brought about by the Films and Publications Amendment Act 3 of 2019 (the Films and Publications Amendment Act) nor the manner in which the Cybercrimes Act 19 of 2020 (the Cybercrimes Act), after repealing section 24B of the Films and Publications Act, has sought to capture the crimes in section 24B of the Films and Publications Act, in its proposed clause 19A of the Sexual Offences Act.

#### **6.4. Alignment of the definitions of “child sexual abuse material” and “pornography”**

The Commission is of the view that the intention of the creator of child sexual abuse material or pornography is irrelevant in a definitional clause. The Commission has aligned both definitions in the Sexual Offences Act to reflect this. Some smaller amendments are also proposed for purposes of alignment, such as the inclusion of live performances.

#### **6.5. Providing for all technologies**

The Commission is mindful that all existing and newly created offences in the Sexual Offences Act should sufficiently provide for criminal acts committed through the use of present-day technologies such as the Internet, webcams, USB`s and mobile phones and technology yet to be developed. The aim is to draft legislative proposals in such a way that the crimes are not technology dependent or specific.

#### **6.6. Protecting children from exposure to pornography and child sexual abuse material**

The Commission recommends that legislation should comprehensively criminalise all acts of exposing children to pornography and content not suitable for children, in whatever manner, including through advertisement and enticement or by making use of misleading techniques. Unfortunately the full spectrum of such content falls outside the ambit of the present investigation and the Sexual Offences Act since it may not even constitute content of a sexual nature. The Commission endorses the continued

criminalisation of child sexual abuse material and its classification as illegal. The Commission has considered, for purposes of adequate protection, the possibility of ensuring that all devices (new and second hand) could be issued or returned to a default setting that blocks inappropriate content, with an opt-in possibility depending on proof of age of the buyer/user as being 18 and older. Giving effect to this recommendation would serve to protect both the child and the provider, though regulations will be required to provide for effective implementation. Although, presented for consideration, the Commission has been alerted to the fact that the protection provided at device level may be limited. It is further mindful of developments abroad which reflect a move towards multi-layered co-regulation of the online space necessitating collaboration between business, civil society and government. Based on these developments the Commission is of the view that a collaborative approach and solution should be sought by relevant government departments as well as between relevant government departments and regulatory bodies.

#### **6.7. Consensual self-generated child sexual abuse material by and of certain children**

The Commission is mindful of the need to differentiate between child sexual abuse material and the creation or sharing of consensual self-generated child sexual abuse material (sexting) in certain circumstances between children who may engage legally in sexual activity with one another, by providing for a non-prosecution clause for certain children.<sup>3</sup> The proposed clause has been framed as a stand-alone provision recognising the age parameters set by the Sexual Offences Act for legal sexual acts between adolescents. The Commission believes that clause 19D recognises children's rights within the context of their evolving capacity and aligns with the age of consent provisions in sections 15 and 16 of the Sexual Offences Act.

#### **6.8. Live display (performances) involving child sexual abuse material**

The Commission recommends that all aspects of the live display of child sexual abuse material, including the attendance or viewing thereof and the procurement of children to

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<sup>3</sup> Where deemed necessary, provision is made for discretionary referral to a probation officer.

participate therein be criminalised. The Commission is of the view that the definition of “child sexual abuse material” has been sufficiently amended in its proposal to include any presentation of a live performance. The Commission agrees with the proposed inclusion in section 20 of the Sexual Offences Act of “live display”, although termed “live performance”, in the Cybercrimes Act. The formulation of the amendment to this section which currently aims to address using or benefiting from child pornography, however, differs from that of the Cybercrimes Act. Based on the support garnered during the workshops and from respondents to the proposed amendment to section 20 in the draft Bill, the Commission confirms its extension of the section to address instances where children are recruited, coerced or deceived to create, make or produce child sexual abuse material, to assist therewith; or to participate in a live display involving child sexual abuse material.<sup>4</sup> This aligns with the United Nations Convention on the Rights of the Child Committee Guidelines.<sup>5</sup>

## **6.9 Obligation to report commission of offences**

The Commission recommends the inclusion of an obligation to report the commission of offences pertaining to child sexual abuse material or exposure of children to pornography in the Sexual Offences Act. This obligation extends to electronic communication service providers and financial institutions that are aware that their systems or facilities are being used in the commission of an offence involving child sexual abuse material. The Commission recommends the removal of the reporting obligations in the Films and Publications Act relevant to child sexual abuse material and recommends the amendment of section 54 of the Sexual Offences Act, which legislates for the reporting obligation in respect of sexual offences against children or persons with mental disabilities to clearly also apply to a sexual offence involving child sexual abuse material. The Commission furthermore extends the reporting obligation to apply in respect of persons who, for whatever reason, are not able themselves to report the commission of a sexual offence against them.

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4 Delaine Naidoo, child Welfare SA: Gauteng; Ms Vatiswa Jodwana-Blayi NPA (SOCA); Brendan Botha, Break-Free; M Porogo Commission for Gender Equality; and Adv T Buitendag, NPA.

5 UNCRC Committee Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 10 September 2019 par 64.

## **6.10. Evidential and procedural matters and sentencing**

The Commission is of the view that recommendations need to be made on the administrative process to be followed when dealing with these matters, especially with regard to the initial and subsequent contact with the child. These measures could be included in non-legislative recommendations aimed at specific role-players. The Commission, however, specifically proposes the inclusion of the following provisions in the Sexual Offences Act:

- an evidentiary clause (clause 59A) to aid courts in determining that the person in the child sexual abuse material is below the age of 18 or is depicted as such;
- a sentencing clause (clause 56A) for clause 19C offences, previously criminalised in the Films and Publications Act, and for a range of ancillary orders that courts may deem appropriate to make for purposes of protecting children from a sexual offence committed against them, in addition to any sentence imposed;
- a clause (clause 61A) on the management of child sexual abuse material and pornography. In terms of this recommendation court officials and the police may not reproduce any such material except for purposes of evidence in criminal proceedings and must take all reasonable steps to prevent access to this material;
- a clause providing for a report that may serve to limit the reproduction of child sexual abuse material for evidentiary purposes; and
- for court orders regarding the seizure, forfeiture, disposal or destruction of evidence relating to child sexual abuse material or pornography, in clause 61B.

## **6.11. Inter-sectoral management of child sexual abuse material and the exposure of children to pornography**

6.11.1 The Commission recommends that a multi-disciplinary approach should be followed to prevent, address and investigate child sexual abuse material and that directives and national instructions or standard operating procedures should either be developed or updated with a specific focus on the policing and prosecution of cases

relating to child sexual abuse material. The Commission recommends the inclusion of the Departments of Basic Education, Higher Education and Communications and Digital Technologies in the Inter-sectoral Committee for the Management of Sexual Offence Matters as provided for in the Sexual Offences Act. It recommends that the Departments of Justice and Constitutional Development and Correctional Services, who are already members of the Inter-sectoral Committee, must issue directives regarding all matters relevant to sexual offence matters within the relevant department's purview. The Commission further recommends that the following aspects should be addressed or should receive renewed attention in the national instructions and any directives in respect of all role-players:

- All role-players must develop suitability or psychometric screening programmes to screen persons applying to be involved in the investigation and management of cases involving child sexual abuse material.
- All role-players must develop and provide inter-and intra-departmental or sector training for those who respond to complaints relating to child sexual abuse material first and follow-up investigation and management of cases involving child sexual abuse material. Although section 66 of the Sexual Offences Act provides for training (including social context training) and it forms part of the National Prosecuting Authority training curriculum, it would seem that this aspect needs renewed attention.
- A multi-disciplinary committee must ensure uniformity of data obtained from relevant government departments such as the South African Police Service and the National Prosecuting Authority Sexual Offences and Community Affairs (SOCA). The Commission recommends that record keeping should be standardised and that statistics should be segregated i.e. data on different crimes, according to the section of the Act, should be kept separately.
- All role-players must develop debriefing programs and provide the service to persons responsible for the investigation and management of cases involving child sexual abuse material. The Commission particularly recommends mandatory support programmes or debriefing for all role-players dealing with sexual offences. The directives or national instructions should cause any official to engage in debriefing or a support programme at least twice a year and additionally for specific incidences.

6.11.2 The Commission further recommends that the South African Police Service fast track the establishment of their Victim Identification Data Base and that this data base should be linked to Interpol's International Child Sexual Exploitation Image Database.

6.11.3 Scrutiny of the content of the subsections contained in section 66 of the Sexual Offences Act revealed that there is significant repetition in terms of the areas identified for officials who are tasked with matters related to sexual offences within the context of the mandate of the identified departments. The Commission has heeded the recommendation that uniform areas such as multi-sectoral training, screening and preventative programmes should be clustered together in section 65 of the Sexual Offences Act and that section 66 of the Sexual Offences Act should be streamlined to avoid unnecessary repetition. The Commission therefore presents a Bill which contains options pertinent to section 66 of the Sexual Offences Act and the proposed corresponding schedules. The first and the Commission's preferred option is to streamline the subsections in section 66 of the Sexual Offences Act by retaining only the introductory obligations placed on the relevant Inter-sectoral committee members and delinking the open list of all matters which are reasonably necessary or expedient to dealing with sexual offence matters in dedicated schedules attached to the Bill. The second option amends the relevant subsections in section 66 by augmenting the list in the particular subsection. It is anticipated that if the preferred option is selected that each committee member will bring about a dedicated revision of all existing instructions and directives and provide structure for the development of new directives for new members.

## **6.12 Data retention and preservation orders**

Data retention and preservation provisions have increasingly become a point of discussion in the sphere of child protection online. The Commission recommends the repeal of section 27A(1)(b) of the Films and Publications Act and in its place recommends the enactment of clause 54(2) which places similar obligations on electronic communication service providers and financial institutions with the addition of allowing the South African Police Service reasonable time to investigate the matter before access is restricted. These provisions seek to ensure that digital evidence will be available to law enforcement when needed for the investigation and prosecution of illicit online activity.

### **6.13. Miscellaneous matters**

As some of the proposed amendments to existing legislative provisions applicable to children in the Sexual Offences Act are almost identical in content to those applicable to people with mental disabilities, the Commission recommends that those sections should be similarly amended.

# **DRAFT AMENDMENT BILL**

**REPUBLIC OF SOUTH AFRICA**

**CRIMINAL LAW (CHILDREN: PORNOGRAPHY AND CHILD SEXUAL ABUSE  
MATERIAL) AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory  
summary of Bill published in Government Gazette No. .... of ..... 2021)*

*(The English text is the official text of the Bill)*

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**(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)**

**[B —2021]**

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**GENERAL EXPLANATORY NOTE:**

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

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments

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**BILL**

**To amend—**

- **the Films and Publications Act, 1996, so as to align the definition of ‘child pornography’ in this Act with that of the Criminal Law ((Sexual Offences and Related Matters) Amendment Act, 2007; provide for the circumstances and the manner in which an exception may be made to a prescribed refused classification; provide for the substitution of the term ‘child pornography’ with the term ‘child sexual abuse material’ wherever it appears;**
- **the Criminal Law Amendment Act, 1997 so as to provide for the substitution of the term ‘child pornography’ in Part III of Schedule 2;**
- **the Children’s Act, 2005 so as to provide for the substitution of the term ‘child pornography’ with the term ‘child sexual abuse material’ wherever it appears;**
- **the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to further provide for offences to protect children from exposure to inappropriate adult sexual content; provide for revised terminology that appropriately and accurately reflects the nature of the offence and the harm done to children by substituting the term ‘child pornography’ with the term ‘child sexual abuse material’; comprehensively provide for offences relating to child sexual abuse material in a single**

statute; provide for additional offences relating to child sexual abuse material;

- the Child Justice Act, 2008 so as to provide for the substitution of the term ‘child pornography’ with the term ‘child sexual abuse material’ wherever it appears;

and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows:—

### Amendment of section 1 of Act 65 of 1996

1. Section 1 of the Films and Publications Act, 1996 is hereby amended—

(a) by the substitution for the definition of “child pornography” of the following definition:

“child sexual abuse material” means “child sexual abuse material” as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);; and

(b) by the substitution of the definition of “publication” of the following definition:

“publication” means—

- (a) any newspaper, book periodical, pamphlet, poster or other printed matter;
- (b) any writing or typescript **[which has in any manner been duplicated]**;
- (c) any drawing, picture, illustration or painting;
- (d) any print, photograph, engraving or lithograph;
- (e) any record, magnetic tape, soundtrack or any other object in or on which sound has been recorded for reproduction;
- (f) computer software which is not a film;
- (g) the cover or packaging of a film;
- (h) any figure, carving, statue or model; and
- (i) any message or communication, including a visual presentation,

placed on any distributed network including, but not confined to, the Internet;”.

## **Insertion of section 18C in Act 65 of 1996**

2. The following section is inserted in the Films and Publications Act, 1996 after section 18B—

### **“Circumstances and manner in which an exception may be made to a prescribed refused classification**

**18C.** (1) In the event of child sexual abuse material the Board may only consider an exception to a prescribed refused classification if-

- (a) the film, game or publication is, objectively viewed, of substantial scientific, educational or artistic merit and is in the public interest;
- (b) the depiction, image, scene or description cannot be excised from the film, game or publication without such film, game or publication in a meaningful manner losing its merit and, in addition, would no longer be in the public interest;
- (c) where excision as contemplated in sub-clause (1)(b) is not possible, the application of any other technique that will serve to prevent viewing or having access to the depiction, image, scene or description will not be an effective measure;
- (d) the depiction, image, scene or description is not erotic, explicit or offensive;
- (e) a child had not been used in the creation thereof; and
- (f) the depiction, image, scene or description will not serve to promote the sexual abuse of children and will not violate or offend the sexual integrity or dignity of a child or of children in general.

(2) Where the Board grants an exception to a refused classification of a film, game or publication as provided for in subsection (1), it must—

- (a) appropriately classify the film, game or publication to—
  - (i) protect children from exposure to disturbing, harmful or

- age-inappropriate materials; and
- (ii) inform adult viewers for purposes of making informed choices prior to viewing;
- (b) determined by the justification for the exception, impose restrictions in respect of the manner of distribution and the intended audience
- (3) An exception granted in terms of subsection (1) does not—
- (a) exclude referral to a police official as prescribed in section 16(6) and 18(5) of this Act;
- (b) exclude a criminal prosecution; and
- (c) in itself, serve as a valid defence in criminal proceedings”.

### **Deletion of sections 24B, 27A(1)(b) and 30B(1)(b) of Act 65 of 1996**

3. Sections 24B, 27A(1)(b) and 30B(1)(b) of the Films and Publications Act, 1996 are hereby deleted.

### **Substitution of the words “child pornography” in Act 65 of 1996**

4. The words “child pornography” are substituted for the words “child sexual abuse material”, wherever they appear, in the Films and Publications Act, 1996.

### **Amendment of Part III of Schedule 2 of Act 105 of 1997**

5. Part III of Schedule 2 of the Criminal Law Amendment Act, 1997, is hereby amended by the substitution of the following Part—

#### **“Part III**

Rape or compelled rape as contemplated in Section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively in circumstances other than those referred to in Part I.

Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in Section 17 or 23 or using a child for child sexual abuse material **[pornography]** or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20(1) or 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

Assault with intent to do grievous bodily harm on a child under the age of 16 years.

Any offence in contravention of section 36 of the Arms and Ammunitions Act, 1969 (Act No. 75 of 1969), on account of being in possession of more than 1000 rounds of ammunition intended for firing in an arm contemplated in Section 39(2)(a)(i) of that Act.”

#### **Amendment of section 1 of the Act 38 of 2005**

- 6.** Section 1 of the Children’s Act, 2005 is hereby amended —
- (a) by the substitution for the definition of
- (i) “commercial sexual exploitation” of the following definition:  
““commercial sexual exploitation”, in relation to a child, means the procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or **[pornography]** child sexual abuse material as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or care-giver of the child, or any other person;” and
- (ii) “sexual abuse” of the following definition:  
““sexual abuse”, in relation to a child, means—
- (a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;

- (b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
- (c) using a child in or deliberately exposing a child to sexual activities, child sexual abuse material as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) or pornography; or
- (d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation of a child;”.

(b) by the amendment of subsection (4)(a) of section 120 of the following subsection:

“(4) In criminal proceedings, subject to the provisions of subsection (4A), a person must be deemed unsuitable to work with children—

- (a) on conviction of murder, rape, indecent assault or any sexual offence contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), assault with the intent to do grievous bodily harm, where a child is the victim of any such offence, or any attempt to commit any such offence[, or **possession of child pornography as contemplated in section 24B of the Films and Publications Act, 1996 (Act No. 65 of 1996)]**, or offences in terms of section 4, 5, 7, 8, 9, and involvement in these offences as provided for in section 10 or **[24A(5)]** of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013); or”;

#### **Amendment of section 1 of Act 32 of 2007**

7. Section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, (hereinafter referred to as the “principal Act”) is hereby amended—

(a) by the substitution for the definition of “child pornography” of the following

definition:

“**child [pornography] sexual abuse material**” means any live display, image or sequence of images, however created or portrayed, or any description, text or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such live display, image, sequence of images, [or] description or presentation **[is intended to]** stimulates erotic or aesthetic feelings or not, including any such live display, image, sequence of images, [or] description or presentation of such person—

- (a) engaged in an act that constitutes a sexual offence;
- (b) engaged in an act of sexual penetration;
- (c) engaged in an act of sexual violation;
- (d) engaged in an act of self-masturbation;
- (e) displaying the genital organs of such person in a state of arousal or stimulation;
- (f) unduly displaying the genital organs, **[or]** anus or breasts of such person;
- (g) displaying any form of stimulation of a sexual nature of such person’s breasts;
- (h) engaged in sexually suggestive or lewd acts;
- (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
- (j) engaged in conduct, or activity characteristically associated with an act of sexual penetration [intercourse]; or
- (k) showing or describing such person—
  - (i) participating in, or assisting or facilitating another person to participate in; or
  - (ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or
- (l) showing or describing the body, or parts of the body, of that person in a manner or in circumstances which, within the context, violate or

offend the sexual integrity or dignity of that person or any category of persons under 18, or that could be used to advocate, advertise or promote the use of a child for sexual purposes or that is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons;”;

- (b) by the insertion after the definition of “Director of Public Prosecutions” of the following definitions:

“**electronic communications network**” means an electronic communications network as defined in section 1 of the Electronic Communications Act, 2005, and includes a computer system;

“**electronic communications service**” means any service which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services as defined in section 1 of the Electronic Communications Act, 2005;

“**electronic communications service provider**” means—

(a) any person who provides an electronic communications service to the public, sections of the public, the State, or the subscribers to such service, under and in accordance with an electronic communications service licence issued to that person in terms of the Electronic Communications Act, 2005, or who is deemed to be licenced or exempted from being licenced as such in terms of that Act; and

(b) a person who has lawful authority to control the operation or use of a private electronic communications network used primarily for providing electronic communications services for the owner’s own use and which is exempted from being licenced in terms of the Electronic Communications Act, 2005;”

“**financial institution**” means a ‘financial institution’ as defined in

section 1 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);”;

(c) by the insertion after the definition of “genital organs” of the following definition:

“**Internet**” means “Internet” as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

(d) by the insertion after the definition of “person who is mentally disabled” of the following definition:

“**police official**” means a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No.68 of 1995);” and;

(e) by the substitution for the definition of “pornography” of the following definition:

“**pornography**” means any live display, image or sequence of images, however created or portrayed, or any description text or presentation of a person, real or simulated, who is 18 years or older, of an explicit or sexual nature, whether such live display, image, sequence of images, description or presentation **[that is intended to]** stimulates erotic or aesthetic feelings or not, including any such live display image, sequence of images, or description or presentation of such person—

- (a) engaged in an act that constitutes a sexual offence;
- (b) engaged in an act of sexual penetration;
- (c) engaged in an act of sexual violation;
- (d) engaged in an act of self-masturbation;
- (e) displaying the genital organs of such person in a state of arousal or stimulation;
- (f) unduly displaying the genital organs **[or]** anus or breasts of such person;
- (g) displaying any form of stimulation of a sexual nature of the

**[female]** breasts;

- (h) engaged in sexually suggestive or lewd acts;
- (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
- (j) engaged in conduct or activity characteristically associated with an act of sexual penetration [intercourse]; or
- (k) showing or describing the body, or parts of the body, of that person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any person or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person or any other person;" and

(f) by the insertion after subsection (3) of the following subsections:

- "(4) For purposes of this Act, a person is regarded as having knowledge of a fact if—
- (a) that person has actual knowledge of the fact; or
  - (b) the court is satisfied that—
    - (i) the person believes that there is a reasonable possibility of the existence of the fact; and
    - (ii) the person has failed to obtain information to confirm the existence of that fact,

and "knows" or "knowing" must be construed accordingly.

- (5) For purposes of this Act, a person ought reasonably to have known or suspected a fact if the conclusions that he or she sought to have reached are those which would have been reached by a reasonably diligent and vigilant person having both—
- (a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and
  - (b) the general knowledge, skill, training and experience that he or she in fact has."

## **Amendment of the title to Part 3 of Chapter 2 of Act 32 of 2007**

8. The title to Part 3 of Chapter 2 of the principal Act is hereby amended by the substitution of the following title:

“Persons 18 years or older: Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, exposure or display of or causing exposure or display of genital organs, anus or female breasts ("flashing"), child **[pornography]** sexual abuse material or pornography to persons 18 years or older, or engaging sexual services of persons 18 years or older”;

## **Substitution of section 10 of Act 32 of 2007**

9. Section 10 of the principal Act is hereby substituted for the following section:

**“Exposure or display of or causing exposure or display of child sexual abuse material or pornography to persons 18 years or older**

10. (1) A person (“A”) who unlawfully and intentionally, whether for the sexual gratification of A or of a third person (“C”) or not, exposes or displays or causes the exposure or display of child **[pornography]** sexual abuse material to a complainant 18 years or older (“B”), with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of child **[pornography]** sexual abuse material to a person 18 years or older.”

(2) A person ("A") who unlawfully and intentionally, whether for the sexual gratification of A or of a third person ("C") or not, exposes or displays or causes the exposure or display of pornography to a complainant 18 years or older ("B") without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display

of pornography to a person 18 years or older.”.

### **Amendment of the title to Part 2 of Chapter 3 of Act 32 of 2007**

10. The title of Part 2 of Chapter 3 of the principal Act is hereby amended by the substitution of the following title:

***“Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child [pornography] sexual abuse material or pornography to children, offences relating to child sexual abuse material and using, coercing, recruiting and deceiving of children for, [pornographic] purposes of, or benefiting from, child [pornography] sexual abuse material”.***

### **Amendment of section 18 of Act 32 of 2007**

11. Section 18 of the principal Act is hereby amended —

(a) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs:

“(b) manufactures, produces, possesses, distributes or facilitates the manufacture, production or distribution of a publication, **[or]** film, game or other material that promotes or is intended to be used in the commission of a sexual act with or by “B”;

(c) supplies, exposes or displays to a third person (‘C’)—

(i) an article which is intended to be used in the performance of a sexual act;

(ii) child **[pornography]** sexual abuse material or pornography;  
or

(iii) a publication, **[or]** film, game or other material,  
with the intention to encourage, enable, instruct or persuade C to

perform a sexual act with B; or”; and

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

- “(2) A person ('A') who—
- (a) supplies, exposes or displays to a child complainant ('B')—
    - (i) an article which is intended to be used in the performance of a sexual act;
    - (ii) child sexual abuse material **[pornography]** or pornography; or
    - (iii) a publication, **[or]** film, game or other material, with the intention to encourage, enable, instruct, or persuade B to perform a sexual act;
  - (b) commits any act with or in the presence, whether physical or remote, of B or who describes the commission of any act to or in the presence, whether physical or remote, of B with the intention to encourage or persuade B or to diminish or reduce any resistance or unwillingness on the part of B to—
    - (i) perform a sexual act with A or a third person ('C');
    - (ii) perform an act of self-masturbation in the presence, whether physical or remote, of A or C or while A or C is watching;
    - (iii) be in the presence, whether physical or remote, of or watch A or C while A or C performs a sexual act or an act of self-masturbation;
    - (iv) be exposed to child sexual abuse material **[pornography]** or pornography;
    - (v) be used for **[pornographic]** purposes of creating child sexual abuse material as contemplated in section 20(1); or
    - (vi) expose his or her body, or parts of his or her body to A or C in a manner or in circumstances which violate or offend the sexual integrity or dignity of B;
  - (c) arranges or facilitates a meeting or communication with B by any

means from, to or in any part of the world, with the intention that A will commit a sexual act with B;

- (d) having met or communicated with B by any means from, to or in any part of the world, invites, persuades, seduces, induces, entices or coerces B—
  - (i) to travel to any part of the world in order to meet A with the intention to commit a sexual act with B; or
  - (ii) during such meeting or communication or any subsequent meeting or communication to—
    - (aa) commit a sexual act with A;
    - (bb) discuss, explain or describe the commission of a sexual act; or
    - (cc) provide A, by means of any form of communication including electronic communication, with **[any image, publication, depiction, description or sequence of] child [pornography] sexual abuse material** of B himself or herself or any other person;or
- (e) having met or communicated with B by any means from, to or in any part of the world, intentionally travels to meet or meets B with the intention of committing a sexual act with B,  
is guilty of the offence of sexual grooming of a child.”.

### **Substitution of section 19 of Act 32 of 2007**

**12.** The following section is hereby substituted for section 19 of the principal Act:

**“Exposure or display of, or causing exposure or display of child sexual abuse material or pornography to children**

**19.** A person (‘A’) who unlawfully and intentionally exposes or displays or causes the exposure or display of [—

- (a) any image, publication, depiction, description or sequence of ]child [pornography] sexual abuse material or pornography[;
- (b) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of a sexual nature of a child, which may be disturbing or harmful to, or age-inappropriate for children, as contemplated in the Films and Publications Act, 1996 (Act No. 65 of 1996), or in terms of any other legislation; or
- (c) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of pornography or an act of an explicit sexual nature of a person 18 years or older, which may be disturbing or harmful to, or age-inappropriate, for children, as contemplated in the Films and Publications Act, 1996, or in terms of any other law],  
through any means to a child ('B'), with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of child [pornography] sexual abuse material or pornography to a child.”.

### **Insertion of sections 19A, 19B, 19C and 19D in Act 32 of 2007**

13. The following sections are hereby inserted after section 19 of the principal Act:

#### **“Providing access to or enticing a child to access child sexual abuse material or pornography**

**19A.** (1) A person ('A') who unlawfully and intentionally entices a child ('B') to access child sexual abuse material or pornography by –

(a) advertising;

(b) providing or inviting access to; or

(c) distributing,

child sexual abuse material or pornography through any means, with or without the consent of B, is guilty of the offence of enticing a child to access child

sexual abuse material or pornography.

(2) A person, including an electronic communications service provider ('A')—

- (a) who unlawfully and intentionally provides a child ('B') with, or allows B to engage with, any form of technology or device including a mobile phone, that is capable of accessing the Internet, social media or other digital content, without ensuring that the default setting blocks access to child sexual abuse material and pornography, is guilty of the offence of making child sexual abuse material or pornography accessible to a child;
- (b) who overrides, disables or circumvents or in any other manner removes the default setting blocking access to child sexual abuse material is guilty of the offence of making child sexual abuse material accessible to a person;
- (c) who, in circumstances other than provided for in subsection (3) overrides, disables or circumvents or in any other manner removes the default setting blocking access to pornography is guilty of the offence of making pornography accessible to a child; or
- (d) who fails to take reasonable steps to ensure that child sexual abuse material or pornography is not made accessible, exposed or displayed to a child ('B'), through any means, is guilty of the offence of negligently making accessible, exposing or displaying child sexual abuse material or pornography to a child.

(3) The default setting blocking access to pornography may only be removed by the electronic communications service provider providing a service to that device upon request of the user of the device who must provide proof that she or he is over the age of 18 years.

(4) An electronic communications service provider who, when uninstalling the default setting fails to keep a register as prescribed in subsection (6) or as may be prescribed in subsection (7) is guilty of an offence.

(5) Any request to an electronic communications service provider for re-instatement of the default setting blocking access to pornography must be recorded in the register by the electronic communications service provider to reflect such reinstatement.

(6) Subject to any regulations made pursuant to subsection (7) a register must be kept containing—

- (a) the date of the application and removal of the default setting;
- (b) the International Mobile Equipment Identity number and a description of the device;
- (c) personal particulars of the applicant including the applicant's full name, contact number and residential address;
- (d) a copy of the applicant's identity document, driver's licence or passport;
- (e) a declaration by the applicant that the device will be used by him or her and he or she is aware that allowing a child to use the device constitutes a criminal offence;
- (f) the full printed name, identification number and signature of the person or employee responsible for removing the default setting; and
- (g) in the event of reinstatement of the default setting, the date thereof, the International Mobile Equipment Identity number and a description of the device and the name of the employee effecting the re-instatement.

(7) The Minister, in consultation with the Minister of Communications and Digital Technologies, and subject to section 67 (a), may make regulations pertaining to the steps to be taken by electronic communications service providers as required in subsection 2 (d) and pertaining to the register provided for in subsection (4).

(8) Access to the register may only be allowed upon an order of a court authorising access.

(9) Any person who—

- (a) unlawfully and intentionally allows unauthorised access; or
- (b) unlawfully and intentionally accesses a register without authorisation, is guilty of an offence and liable upon conviction to a fine or two years' imprisonment or to both such fine and imprisonment

(10) Any magistrate or justice may issue an order authorising access to the register upon the written application of a commissioned police officer which sets out sufficient reasons for the need to have access to the register.

(11) An affidavit by an employee of an electronic

communications service provider having access to the register and pertaining to the information on the register regarding any instrument identified by an International Mobile Equipment Identity number shall serve as prima facie proof of the contents thereof in any subsequent criminal proceedings and the provisions of section 212(1), (2), (3), (12) and (13) of the Criminal Procedure Act,1977, shall find application with the necessary changes required by the context.

### **Misleading techniques on the Internet**

**19B.** (1) A person who unlawfully and intentionally creates or uses any technique including embedding words, or digital images into the source code of a website, an advertisement or domain name, to deceive a person into viewing or being exposed to child sexual abuse material or pornography is guilty of the offence of creating or using a technique to expose a person to child sexual abuse material or pornography.

(2) For purposes of this section—

- (a) 'domain name' has the meaning assigned to it in section 1 of the Electronic Communications and Transactions Act 2002 (Act No. 25 of 2002); and
- (b) 'source code' means the combination of text and other characters comprising the content, both viewable and non-viewable, of a webpage, including any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.

### **Offences relating to child sexual abuse material**

**19C.** (1) A person who unlawfully and intentionally creates, makes or produces child sexual abuse material, is guilty of the offence of creating, making or producing child sexual abuse material.

(2) A person who unlawfully and intentionally—

- (a) downloads;

- (b) possesses;
- (c) accesses; or
- (d) views child sexual abuse material,

is guilty of the offence of downloading, possessing, accessing or viewing child sexual abuse material.

(3) A person who unlawfully and intentionally in any manner—

- (a) makes available;
- (b) distributes or allows for distribution;
- (c) transmits;
- (d) sells or offers for sale;
- (e) procures or offers to procure;

child sexual abuse material is guilty of the offence of making child sexual abuse material available.

(4) A person who unlawfully and intentionally advocates, advertises, encourages or promotes child sexual abuse material is guilty of the offence of promoting child sexual abuse material.

(5) A person who unlawfully processes or facilitates a financial transaction while having knowledge or a reasonable suspicion that such transaction will facilitate a contravention of subsections (1) to (4) is guilty of an offence.

### **Consensual self-generated child sexual abuse material by certain children**

**19D.** Where a child (A) is reasonably suspected of having committed an offence—

- (a) in terms of sections 19C(1) or 19C(2) and A is the child in the child sexual abuse material;
- (b) in terms of section 19 and—
  - (i) A is the child in the child sexual abuse material; and
  - (ii) the exposure or display is made to a child B, who is 12 years or older; and
  - (iii) B agreed to the exposure or display;
- (c) in terms of sections 19, 19C(1), 19C(2) or 20(1) and-

- (i) the child sexual abuse material is of another child B with or without A;
  - (ii) B agreed to the creation of the child sexual abuse material and
  - (iii) the exposure or display is only to B; and
  - (iv) B is 12 years or older;
- (d) in terms of section 10 if A is the only child in the image and the exposure or display is made to an adult person B.

A is not criminally liable for the offence and the investigating officer must refer the matter to the prosecutor who must, if satisfied that a *prima facie* case exists, that the prescribed circumstances are met and that the intervention of a probation officer is warranted, refer ('A') to a probation officer who must deal with A in accordance with the provisions of section 9 of the Child Justice Act, 2008 (Act No. 75 of 2008), with the necessary changes.

#### **Substitution of section 20 of Act 32 of 2007**

14. The following section is hereby substituted for section 20 of the principal Act:

**“Using, coercing, recruiting or deceiving children for or benefiting from child [pornography] sexual abuse material**

20. (1) A person (“A”) who unlawfully and intentionally uses, requests, entices, recruits, coerces or deceives a child [**complainant**] (“B”) through whatever means, with or without the consent of B, whether for financial or other reward, favour, benefit, [**or**] compensation or any other advantage to B or to a third person (“C”) or not—

- (a) for purposes of creating, making or producing;
- (b) to [by ]create[ing], make[ing] or produce[ing]; [or]
- (c) to in any manner assist to create, make or produce;[,]
- (d) to provide of him- or herself; or
- (e) to participate in a live display involving.

**[any image, publication, depiction, description or sequence in any manner whatsoever of] child [pornography] sexual abuse material**, is guilty of the offence of using, coercing, recruiting or deceiving a child for child **[pornography] sexual abuse material**.

(2) A **[Any]** person who knowingly and intentionally in any manner whatsoever gains financially from, or receives any favour, benefit, reward, compensation or any other advantage, as the result of the commission of any act contemplated in subsection (1), is guilty of the offence of benefiting from child **[pornography] sexual abuse material**.”.

#### **Amendment of the title to Chapter 4 of Act 32 of 2007**

15. The title to Chapter 4 of the principal Act is hereby amended by the substitution of the following title:

***“Sexual exploitation and sexual grooming of, exposure or display of or causing exposure or display of child [pornography] sexual abuse material or pornography to persons who are mentally disabled and using, coercing, recruiting and deceiving persons who are mentally disabled for pornographic purposes or benefiting therefrom”.***

#### **Amendment of section 24 of Act 32 of 2007**

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

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

“(a) supplies, exposes or displays to a third person (“C”)—

(i) an article which is intended to be used in the performance of a sexual act;

(ii) child **[pornography] sexual abuse material** or pornography;  
or

(iii) a publication, **[or]** film, game or other material,

with the intention to encourage, enable, instruct or persuade C to

perform a sexual act with a person who is mentally disabled (“B”);  
or”; and

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

“(2) A person ('A') who—

(a) supplies, exposes or displays to a person who is mentally disabled ('B')—

(i) an article which is intended to be used in the performance of a sexual act;

(ii) child sexual abuse material **[pornography]** or pornography;  
or

(iii) a publication, **[or] film, game or other material**,  
with the intention to encourage, enable, instruct, or persuade B to perform a sexual act;

(b) commits any act with or in the presence, whether physical or remote, of B or who describes the commission of any act to or in the presence, whether physical or remote, of B with the intention to encourage or persuade B or to reduce or diminish any resistance or unwillingness on the part of B to —

(i) perform a sexual act with A or a third person ('C');

(ii) perform an act of self-masturbation in the presence, whether physical or remote, of A or C or while A or C is watching;

(iii) be in the presence, whether physical or remote, of or watch A or C while A or C performs a sexual act or an act of self-masturbation;

(iv) be exposed to child sexual abuse material **[pornography]** or pornography;

(v) be used for pornographic purposes as contemplated in section 26(1); or

(vi) expose his or her body, or parts of his or her body to A or C in a manner or in circumstances which violate or offend the sexual integrity or dignity of B;

- (c) arranges or facilitates a meeting or communication with B by any means from, to or in any part of the world, with the intention that A will commit a sexual act with B;
  - (d) having met or communicated with B by any means from, to or in any part of the world, invites, persuades, seduces, induces, entices or coerces B—
    - (i) to travel to any part of the world in order to meet A with the intention to commit a sexual act with B; or
    - (ii) during such meeting or communication or any subsequent meeting or communication to—
      - (aa) commit a sexual act with A;
      - (bb) discuss, explain or describe the commission of a sexual act; or
      - (cc) provide A, by means of any form of communication including electronic communication, with **[any image, publication, depiction, description or sequence of]** pornography of B himself or herself or any other person; or
  - (e) having met or communicated with B by any means from, to or in any part of the world, intentionally travels to meet or meets B with the intention of committing a sexual act with B,
- is guilty of the offence of sexual grooming of a person who is mentally disabled.”.

### **Substitution of section 25 of Act 32 of 2007**

17. The following section is hereby substituted for section 25 of the principal Act:

**“Exposure or display of or causing exposure or display of child sexual abuse material or pornography to persons who are mentally disabled**

25. A person (“A”) who unlawfully and intentionally exposes or displays

or causes the exposure or display of **[any image, publication, depiction, description or sequence of] child [pornography] sexual abuse material** or pornography through any means to a complainant who is mentally disabled (“B”), is guilty of the offence of exposing or displaying or causing the exposure or display of child **[pornography] sexual abuse material** or pornography to a person who is mentally disabled.”.

### **Substitution of section 26 of Act 32 of 2007**

18. The following section is hereby substituted for section 26 of the principal Act:

**“Using, coercing, recruiting or deceiving persons who are mentally disabled for pornographic purposes or benefiting therefrom**

26. (1) A person (“A”) who unlawfully and intentionally uses, recruits, coerces or deceives a complainant who is mentally disabled (“B”) through whatever means, whether for financial or other reward, favour, benefit, [or] compensation or any other advantage to B or to a third person (“C”) or not—

- (a) for the purpose of creating, making or producing;
- (b) to[by] create[ing], make[ing] or produce[ing]; [or]
- (c) to in any manner assist to create, make or produce,
- (d) to provide of him- or herself; or
- (e) to participate in a live display involving.

**[any image, publication, depiction, description or sequence in any manner whatsoever, of] pornography or child [pornography] sexual abuse material**, is guilty of the offence of using, coercing, recruiting or deceiving a person who is mentally disabled for pornographic purposes.

(2) **[Any] A** person who knowingly and intentionally in any manner whatsoever gains financially from, or receives any favour, benefit, reward, compensation or any other advantage, as the result of

the commission of any act contemplated in subsection (1), is guilty of the offence of benefiting from using, coercing, recruiting or deceiving a person who is mentally disabled for pornographic purposes.”.

**Substitution of section 54 of Act 32 of 2007**

**19. The following section is hereby substituted for section 54 of the Principal Act:**

**“Obligation to report commission of sexual offences against children or persons who are mentally disabled or otherwise unable to report or sexual offences involving child sexual abuse material and duties connected therewith**

**54. (1) A person who—**

**(a) has knowledge, or has the reasonable belief or suspicion that a sexual offence has been or is being committed—**

**(i) against a child;**

**(ii) against a person who is mentally disabled;**

**(iii) against a person who for whatever reason is not able to report the commission of the offence; or**

**(iv) that involves child sexual abuse material**

**must without undue delay report such knowledge, reasonable belief or suspicion to a designated police official;**

**(b) fails to report such knowledge, reasonable belief or suspicion as contemplated in paragraph (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years of to both a fine and imprisonment.**

**(2) An electronic communications service provider or financial institution that—**

**(a) knows or ought reasonably to know that its electronic communications system or facilities are being used to facilitate the commission of any sexual offence as contemplated in subsection**

(1) must—

- (i) without delay report the offence to a police official;
  - (ii) preserve any information which may be of assistance to a police official investigating the offence;
  - (iii) comply with any written request by a police official relating to the investigation and prosecution of such offence;
  - (iv) take all reasonable steps to prevent access to the child sexual abuse material by any person, unless instructed by a commissioned police officer in writing within two days of having reported the offence not to take such steps;
  - (v) not disclose the fact of having reported or any information regarding the contents of any such report to any other person, including the person in respect of whom the report is, or must be made, other than in accordance with any legislative provisions or for purposes of legal proceedings or in terms of a court order;
- (b) fails to comply with any of the obligations contained in paragraph (a), is guilty of an offence.

(3) A person, electronic communications service provider or institution referred to in subsections (1) and (2)—

- (a) must provide reasons for that knowledge, reasonable belief or suspicion to a police official; and
- (b) who makes the report in good faith, is not liable to civil or criminal proceedings by reason of making such report.

### **Amendment of section 56 of Act 32 of 2007**

**20.** Section 56 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) It is not a valid defense to a charge under section 20(1), in respect of a visual representation that—

- (a) the accused person believed that a person shown in the representation

that is alleged to constitute child **[pornography]** sexual abuse material, was or was depicted as being 18 years or older unless the accused took all reasonable steps to ascertain the age of that person; and

- (b) took all reasonable steps to ensure that, where the person was 18 years or older, the representation did not depict that person as being under the age of 18 years.”

### **Amendment of section 56A of Act 32 of 2007**

21. Section 56A of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

“(3) A person convicted of any offence in terms of section 19C is liable upon conviction to a sentence of 15 years’ imprisonment and in the event of a legal person, to a fine.

(4) If a person is convicted of an offence under section 19C, the court that imposes the sentence must consider, but is not limited to consider, the following factors which may serve in aggravation of sentence:

- (a) The quantity of child sexual abuse material that forms the basis of the conviction;
- (b) the nature of the material concerned, including the level of violence used, or depicted, the age of the child used or depicted, the extent of explicitness of the material and the degree of invasiveness of any deed perpetrated or depicted to be perpetrated on a child;
- (c) the degree to which the accused contributed towards or participated in the commission of the offence;
- (d) the purpose for which the offence was committed; and
- (e) the relationship between the accused and the child involved including the existence of any expectation of trust or whether the accused acted in a position of authority or of taking care of the child.

(5) In addition to any sentence imposed and any order regards placement of the name of a person convicted of a sexual offence against a child including an offence involving child sexual abuse material on the National Register for Sex Offenders as provided for in section 50 and on the Child Protection Register as provided for in the Children's Act, 2005 (Act No. 38 of 2005) the court, subject to a pre-sentence report by a probation officer in consultation with a community corrections official, and for such period as may be determined by the court, whether of immediate effect, whilst serving a sentence or after the serving of the sentence imposed or as conditions of a suspended or partially suspended sentence, may make any order that will serve to protect a child or children in general, including any or all of the following orders—

- (a) that the convicted person may not visit, frequent, or reside in close proximity to any school, premises or places frequented by children;
- (b) that the convicted person may not access the Internet, or may have such qualified access as may be determined by the court;
- (c) that the convicted person may not have access to any device that is able to provide access to the Internet, or that the accused may have such qualified access to such device as may be determined by the court;
- (d) that the convicted person may not employ any child;
- (e) that the convicted person may only be in the presence of any specified child, or in the presence of any child or children in general, when accompanied by another adult person;
- (f) that the convicted person must submit to supervision and monitoring by a community correction official who may apply any technique to limit access to the Internet, including social media platforms, for purposes of preventing access to children and/or child sexual abuse material;
- (g) that the convicted person must accede to any reasonable request by a community correction official for purposes of monitoring compliance with any order made;
- (h) that the convicted person must undergo such therapeutic

interventions as the court may determine appropriate; and  
(i) that the convicted person must pay the cost of any therapeutic treatment needed by a child complainant in respect of the offence for which he or she has been convicted, and that such monies must be paid to the clerk of the court for disbursement to the service provider.

(6) The order referred to in subsection (5) must be accompanied by an order detailing the monitoring of the accused by the community correction official.

(7) Where the convicted person fails to comply with any of the orders imposed in terms of subsection (5) and where such order was not made a condition of a suspended sentence, the accused shall be guilty of an offence and liable to a fine or to imprisonment for a period of two years or both such fine and imprisonment.”.

#### **Insertion of section 59A of Act 32 of 2007**

**22.** The following section is hereby inserted after section 59 of the principal Act:

#### **“Evidence of age of child depicted in child sexual abuse material**

**59A.** (1) In criminal proceedings involving child sexual abuse material, the court may take judicial notice that the person in the child sexual abuse material is, or is depicted as being, under the age of 18.

(2) Subject to section (1), where it is disputed that the person in the child sexual abuse material is, or is depicted as being, under the age of 18, an affidavit or certificate issued pursuant to section 212(4)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), will serve as *prima facie* proof of such age and the provisions of section 212(12) of the Criminal Procedure Act, 1977, will find application with the necessary changes required.”.

## Insertion of section 61A of Act 32 of 2007

23. The following sections are hereby inserted after section 61 of the principal Act:

### “Management of Child Sexual Abuse Material or Pornography

**61A.** (1) Police and court officials having child sexual abuse material or pornography, including any devices in or upon which child sexual abuse material is or might be stored, in their custody—

(a) must take all reasonable steps to prevent access thereto by anyone not having a right of access; and

(b) may not reproduce any such material except for purposes of evidence in criminal proceedings.

(2) Where the Judge or judicial officer presiding at criminal proceedings in which child sexual abuse material will serve as an exhibit or as evidentiary material, is informed by the prosecutor that a report has been prepared which explains in sufficient detail the child sexual abuse material and that, if presented in evidence, it could serve to dispense with the need to present the child sexual abuse material in evidence—

(a) the court must enquire from the legal representative of the accused if he or she consents to the report being presented in evidence in lieu of the child sexual abuse material. Where the accused consents, the police official who compiled the report must be called to give oral evidence regarding the contents of the report; and

(b) the court may of its own motion and must, where so requested by any of the parties, call for the child sexual abuse material to be presented in evidence at any stage of the proceedings.

(3) The Judge or judicial officer presiding at criminal proceedings in which child sexual abuse material, including any devices in or upon which child sexual abuse material is stored, serves as an

exhibit or evidentiary material must issue directives for purposes of ensuring the safe-keeping thereof pending the conclusion of the proceedings.

**Orders to keep secure, remove, disable access to, dispose of and destroy child sexual abuse material**

**61B.** (1) Upon the conclusion of the criminal proceedings, whether the accused is convicted or acquitted of any offence in terms of this Act that involves child sexual abuse material, the Judge or presiding magistrate, after having provided the prosecutor and accused an opportunity to address the court—

- (a) must make an order regards the management of the court record by the Clerk of the court, if the order is made by a magistrate, or by the Registrar of the High Court if the order is made by a Judge;
- (b) must make an order regards the management of any such child sexual abuse material or devices that served as evidence in the proceedings pending appeal and or review proceedings, including the manner of disposal and destruction thereof upon finalisation or abandonment of appeal or review proceedings;
- (c) may, upon application by the prosecutor, make an order that the police official charged with the investigation must destroy any part of, or all child sexual abuse material or any device upon which material is stored that had not been used as evidence in the proceedings and to provide the court with an affidavit to this effect, which affidavit shall be part of the court record;
- (d) must, where so justified by the evidence, direct the police official charged with the investigation to take the required steps for purposes of having any such material hosted by electronic communications service providers removed and access thereto disabled.”.

## Amendment of section 63 of Act 32 of 2007

24. Section 63 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Committee must **[shall]** consist of—
- (a) the Director-General: Justice and Constitutional Development, who will **[shall]** be the chairperson of the Committee;
  - (b) the National Commissioner of the South African Police Service;
  - (c) the National Commissioner of Correctional Services;
  - (d) the Director-General: Social Development;
  - (e) the Director-General: Health; **[and]**
  - (f) the National Director of Public Prosecutions[.]
  - (g) the Director-General: Department of Basic Education;
  - (h) the Director-General: Department of Higher Education and Training; and
  - (i) the Director-General: Department of Communications and Digital Technologies.”

## Amendment of section 65 of Act 32 of 2007

25. Section 65 of the principal Act is hereby amended by—

- (a) the insertion after subparagraph (d) of subsection (1) of the following subparagraph:

- “(e) ensuring the different organs of state provide for—
- (i) appropriate and relevant training, including intra- and intersectoral training, on how to respond to allegations of sexual offences as part of its curricula, in-service and continuous training;

- (ii) appropriate screening policies;
  - (iii) prevention programmes relating to sexual offences;
  - (iv) debriefing programmes including a focussed child sexual abuse material debriefing programme; and
  - (v) the manner in which any child sexual abuse material is kept secured to prevent unauthorised access, possession, reproduction and distribution, or loss or damage thereof;
- for all employees who may manage, be exposed to or investigate cases involving sexual offences.”; and

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

“(3) The Minister must, after consultation with the cabinet members responsible for police [safety and security], correctional services, social development [and] health, basic education, higher education and training, communications and digital technologies and the National Director of Public Prosecutions—

- (a) within one year after the implementation of this Act or any amendment thereof, submit reports to Parliament, by each Department or institution contemplated in section 63(2), on the implementation of this Act, and
- (b) every year thereafter submit such reports to Parliament.”.

#### **Amendment of section 66 of Act 32 of 2007**

**26.** Section 66 of the principal Act is hereby amended<sup>6</sup>—

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

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6 Two options are listed under each of the subsections in section 66 of the principal Act, the first option of which relates to the streamlining of the subsections linked to Schedules 1 to 9 which separately list the obligations of relevant departments in terms of the principal Act; and the second option in which each subsection within section 66 is amended and expanded on without additional Schedules. Option 1 linked to the Schedules 1 to 9 is the Commission’s preferred option.

## Option 1

“(a) The National Commissioner of the South African Police Service must, in consultation with the Minister of Police and after consultation with the Minister, the National Director of Public Prosecutions, the National Commissioner of Correctional Services and the Directors-General: Health **[and]**, Social Development, Basic Education, Higher Education and Training, and Communications and Digital Technologies, issue and publish in the *Gazette* national instructions regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all police officials who are tasked with receiving reports of and the investigation of sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, including those listed in Schedule 1 of the Act **[the following:**

- (i) The manner in which the reporting of an alleged sexual offence is to be dealt with by police officials;**
- (ii) the manner in which sexual offence cases are to be investigated by police officials, including the circumstances in which an investigation in respect of a sexual offence may be discontinued;**
- (iii) the circumstances in which and the relevant sexual offence or offence in respect of which a police official may apply for the HIV testing of an alleged offender as contemplated in section 33;**
- (iv) the manner in which police officials must execute court orders for compulsory HIV testing contemplated in section 33 in order to ensure the security, integrity and reliability of the testing processes and test results;**
- (v) the manner in which police officials must deal with the outcome of applications made and granted in terms of section 31 or 32 in order to ensure confidentiality;**

- (vi) **the manner in which police officials must hand over to the victim or to the interested person, as the case may be, and to the alleged offender the test results; and**
- (vii) **the manner in which police officials must carry out their responsibilities and duties in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b).;]**

## **Option 2**

“(a) The National Commissioner of the South African Police Service must, in consultation with the Minister of Police and after consultation with the Minister, the National Director of Public Prosecutions, the National Commissioner of Correctional Services and the Directors-General: Health [and], Social Development, Basic Education, Higher Education and Training, and Communications and Digital Technologies, issue and publish in the *Gazette* national instructions regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all police officials who are tasked with receiving reports of and the investigation of sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, including the following:

- (i) The manner in which the reporting of an alleged sexual offence is to be dealt with by police officials;
- (ii) the manner in which sexual offence cases are to be investigated by police officials, including the circumstances in which an investigation in respect of a sexual offence may be discontinued;
- (iii) the circumstances in which and the relevant sexual offence or offence in respect of which a police official may apply for the HIV testing of an alleged offender as contemplated in section 33;
- (iv) the manner in which police officials must execute court orders for compulsory HIV testing contemplated in section 33 in order to

ensure the security, integrity and reliability of the testing processes and test results;

- (v) the manner in which police officials must deal with the outcome of applications made and granted in terms of section 31 or 32 in order to ensure confidentiality;
- (vi) the manner in which police officials must hand over to the victim or to the interested person, as the case may be, and to the alleged offender the test results;**[and]**
- (vii) the manner in which police officials must carry out their responsibilities and duties in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b)[.];
- (viii) the manner in which respectful and supportive services are provided to the victim; the rights of the victim to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible
- (ix) the manner in which police officials must act in reports of alleged cases involving child sexual abuse material and pornography:
  - (aa) The expediency with which police officials are to react to the reporting of these cases;
  - (bb) the manner in which these offences are to be investigated including the steps to be taken to have any child in the child sexual abuse material identified and traced;
  - (cc) the manner in which the child victim is to be provided protection, whether identified or not;
  - (dd) the manner of search for and seizure of evidence;
  - (ee) the manner in which the child sexual abuse material or pornography should be kept in safe custody, stored and or disposed of; and
  - (ff) the manner in which effect will be given to court orders relating to the evidence; and
- (x) the development and implementation of a standard operating procedure to determine the manner in which:

- (aa) Undercover operations relating to sexual offences including those sexual offences involving child sexual abuse material must be conducted;
- (bb) the circumstances, expediency and the manner in which an electronic communications service provider is to be instructed not to take steps to prevent access to the child sexual abuse material by any person, the steps to be taken and the reasonable period within which this is to occur; and
- (cc) the service provider is to be instructed to take steps to prevent access after a request not to do so.”;

(b) the substitution for paragraph (a) in subsection (2) of the following paragraph:

### **Option 1**

“(a) The National Director of Public Prosecutions must, in consultation with the Minister and after consultation with the National Commissioners of the South African Police Service and Correctional Services and the Directors-General: Health [and], Social Development, Basic Education, Higher Education and Training and Communications and Digital Technologies, issue and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, including those listed in Schedule 2 of the Act [the following:

- (i) The manner in which sexual offence cases should be dealt with in general, including the circumstances in which a charge may be withdrawn or a prosecution stopped;**
- (ii) the criteria to be used and circumstances in which the prosecution must apply to court for an order that witnesses**

and, in particular, child complainants below the age of 16 years give evidence by means of closed circuit television as provided for in section 158 of the Criminal Procedure Act, 1977, if the court does not make an order on its own initiative in terms of subsection (2)(a) of that section or an application in terms of subsection (2)(b) of that section is not made;

- (iii) the criteria to be used and circumstances in which the prosecution must request the court to consider appointing a competent person as an intermediary as provide for in section 170A of the Criminal Procedure Act, 1977, in respect of witnesses and, in particular, child complainants below the age of 16 years;
- (iv) the circumstances in which the prosecution must request the court to consider directing that the proceedings may not take place in open court as provided for in section 153 of the Criminal Procedure Act, 1977;
- (v) the circumstances in which the prosecution must request the court to consider prohibiting the publication of the identity of the complainant in the case as provided for in section 154 of the Criminal Procedure Act, 1977, or of the complainant's family, including the publication of information that may lead to the identification of the complainant or the complainant's family;
- (vi) the criteria to be used, circumstances and manner in which Directors of Public Prosecutions should authorise and institute a prosecution contemplated in section 16(2), dealing with consensual sexual violation with a child with the view to ensuring uniformity;
- (vii) the criteria to be used, circumstances and manner in which Directors of Public Prosecutions should authorise and institute a prosecution contemplated in section 38(1), dealing with the ascertainment of the HIV status of an alleged offender or disclosure of the results of any HIV tests, with the

- view to ensuring uniformity;**
- (viii) the information to be placed before a court during sentencing, including pre-sentence reports and information on the impact of the sexual offence on the complainant; and**
- (ix) . . .**
- (x) the manner in which prosecutors must carry out their responsibilities and duties in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b).];**

## **Option 2**

“(a) The National Director of Public Prosecutions must, in consultation with the Minister and after consultation with the National Commissioners of the South African Police Service and Correctional Services and the Directors-General: Health [and], Social Development, Basic Education, Higher Education and Training and Communications and Digital Technologies, issue and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, including the following:

- (i) The manner in which sexual offence cases should be dealt with in general, including the circumstances in which a charge may be withdrawn or a prosecution stopped;
- (ii) the criteria to be used and circumstances in which the prosecution must apply to court for an order that witnesses and, in particular, child complainants below the age of 16 years give evidence by means of closed circuit television as provided for in section 158 of the Criminal Procedure Act, 1977, if the court does not make an

order on its own initiative in terms of subsection (2)(a) of that section or an application in terms of subsection (2)(b) of that section is not made;

- (iii) the criteria to be used and circumstances in which the prosecution must request the court to consider appointing a competent person as an intermediary as provide for in section 170A of the Criminal Procedure Act, 1977, in respect of witnesses and, in particular, child complainants below the age of 16 years;
- (iv) the circumstances in which the prosecution must request the court to consider directing that the proceedings may not take place in open court as provided for in section 153 of the Criminal Procedure Act, 1977;
- (v) the circumstances in which the prosecution must request the court to consider prohibiting the publication of the identity of the complainant in the case as provided for in section 154 of the Criminal Procedure Act, 1977, or of the complainant's family, including the publication of information that may lead to the identification of the complainant or the complainant's family;
- (vi) the criteria to be used, circumstances and manner in which Directors of Public Prosecutions should authorise and institute a prosecution contemplated in section 16(2), dealing with consensual sexual violation with a child with the view to ensuring uniformity;
- (vii) the criteria to be used, circumstances and manner in which Directors of Public Prosecutions should authorise and institute a prosecution contemplated in section 38(1), dealing with the ascertainment of the HIV status of an alleged offender or disclosure of the results of any HIV tests, with the view to ensuring uniformity;
- (viii) the information to be placed before a court during sentencing, including pre-sentence reports and information on the impact of the sexual offence on the complainant; **[and]**
- (ix) . . .

- (x) the manner in which prosecutors must carry out their responsibilities and duties in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b)[.];
- (xi) the manner in which protection is provided to the victim, whether identified or not, including the manner in which the victim`s rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible.
- (xii) the manner in which respectful and supportive services are provided to the victim; the rights of the victim to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible;
- (xiii) the manner in which aspects relating to cases involving child sexual abuse material must be dealt with, including:
  - (aa) The circumstances in which ancillary orders provided for in section 56A(5) are to be sought and the steps to be taken for purposes of securing the required report.
  - (bb) the criteria, including factors relating to power and age differentials, to be considered in respect of section 19D.
  - (cc) the manner in which sexual offence cases involving child sexual abuse material must be dealt with, kept in custody, stored and/or disposed of when:
    - (aaa) A case docket is received from a member of the South African Police Service for consideration for prosecution;
    - (bbb) a case is serving before court during the trial;
    - (ccc) a case is concluded in court; or
    - (ddd) when a request for access to the material is received from the defence; and
- (xiv). the criteria to be used and circumstances in which the diversion of a child accused of a sexual offence involving child sexual abuse material or pornography should be considered and the appropriate

conditions of diversion.”;

(c) the substitution in subsection (3) for paragraph (a) of the following paragraph:

**Option 1**

“(a) The Director-General: Health must, in consultation with the Minister of Health and after consultation with National Director of Public Prosecutions, the Directors-General: Justice and Constitutional Development **[and]**, Social Development, Basic Education, Higher Education and Training, and Communications and Digital Technologies and the National Commissioners of the South African Police Service and Correctional Services, publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all medical practitioners and any other relevant persons when dealing with sexual offences cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, **[among others,]** to those listed in Schedule 3 of the Act. [—

- (i) **the administering of Post Exposure Prophylaxis;**
- (ii) **the manner in which court orders for compulsory HIV testing contemplated in section 33 must be executed in order to ensure the security, integrity and reliability of the testing processes and test results;**
- (iii) **the manner in which the HIV test results contemplated in section 37 must be dealt with in order to ensure confidentiality;**
- (iv) **the manner in which the reporting of an alleged sexual offence is to be dealt with if the offence is reported to a designated public health establishment;**
- (v) **the manner in which assistance in the investigation and prosecution of sexual offences, generally, must be provided;**

and

- (vi) **the manner in which medical practitioners and any other relevant persons must carry out their responsibilities and duties in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b) ].”;**

## Option 2

“(a) The Director-General: Health must, in consultation with the Minister of Health and after consultation with National Director of Public Prosecutions, the Directors-General: Justice and Constitutional Development **[and]**, Social Development, Basic Education, Higher Education and Training, and Communications and Digital Technologies and the National Commissioners of the South African Police Service and Correctional Services, publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all medical practitioners and any other relevant persons when dealing with sexual offences cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, **[among others,]** to—

- (i) the administering of Post Exposure Prophylaxis;
- (ii) the manner in which court orders for compulsory HIV testing contemplated in section 33 must be executed in order to ensure the security, integrity and reliability of the testing processes and test results;
- (iii) the manner in which the HIV test results contemplated in section 37 must be dealt with in order to ensure confidentiality;
- (iv) the manner in which the reporting of an alleged sexual offence is to be dealt with if the offence is reported to a designated public health establishment;
- (v) the manner in which assistance in the investigation and

- prosecution of sexual offences, generally, must be provided; **[and]**
- (vi) the manner in which medical practitioners and any other relevant persons must carry out their responsibilities and duties in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b)[.];
  - (vii) the manner in which the reporting of an alleged sexual offence is to be dealt with if the offence is reported to an official employed at a public health establishment or when a sexual offence is suspected or detected by such official during a medical assessment, examination or intervention;
  - (viii) the manner in which respectful and supportive services are provided to the victim of a sexual offence including the manner in which their rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure their safety in as far as is possible;
  - (ix) the manner in which any child sexual abuse material must be secured to prevent unauthorised access, loss or damage; and
  - (x) the manner in which assistance in the investigation and prosecution of sexual offences, generally, must be provided, including:
    - (aa) The forensic medical examination of victims and alleged offenders;
    - (bb) the determination of age where the child sexual abuse material involves unidentified victims or depictions; and
    - (cc) the manner in which any evidence, including child sexual abuse material, must be secured to prevent unauthorized access, loss or damage.”.

(d) the substitution for subsection (3A) of the following subsection:

### **Option 1**

“(3A) The Director-General Social Development must, in

consultation with the Minister of Social Development and after consultation with the Directors-General: Justice and Constitutional Development, Health, Basic Education, Higher Education and Training, and Communications and Digital Technologies, National Director of Public Prosecutions and the National Commissioners of the South African Police Service and Correctional Services, **[issue]** develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all relevant persons who exercise any power or perform any duty in terms of this Act relating to social services, when dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference to those listed in Schedule 4 of the Act **[the responsibilities and duties of these persons in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b)]**.”:

## **Option 2**

“(3A) The Director-General Social Development must, in consultation with the Minister of Social Development and after consultation with the Directors-General: Justice and Constitutional Development, Health, Basic Education, Higher Education and Training, and Communications and Digital Technologies, National Director of Public Prosecutions and the National Commissioners of the South African Police Service and Correctional Services, **[issue]** develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all relevant persons who exercise any power or perform any duty in terms of this Act relating to social services, when dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference to —

- (a) the responsibilities and duties of these persons in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b)[.];
- (b) the manner and the expediency with which social workers are to respond to the disclosure or reporting of an alleged sexual offence;
- (c) the manner in which respectful and supportive services are provided to the victim; the rights of child victims to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure their safety and well-being in as far as is possible;
- (d) the manner in which the child victim of a sexual offence including child sexual abuse material should be protected and referred for other services if necessary including the circumstances when the offender, rather than the victim, should be removed from the communal residence;
- (e) the manner in which assistance in the investigation and prosecution of sexual offences, including matters relating to child sexual abuse material must be provided, including:

  - (i) The procedures that must be followed in the reporting of the sexual offence to a member of the South African Police Service; and
  - (ii) the procedures relating to the safe keeping of the evidence of the alleged sexual offence, including child sexual abuse material to prevent unauthorised access, loss or damage before handing it over to a member of the South African Police Service;
- (f) the manner in which therapy may be provided to a child victim that is required to testify in court proceedings;
- (g) the manner in which probation officers are to deal with children referred in terms of section 19D and any other child in conflict with the law for having committed a sexual offence or that involves child sexual abuse material; how such children are to be assessed; and the investigations required for purposes of the

appropriate interventions to be recommended or for purposes of determining appropriate conditions of diversion; and  
(h) the manner in which to conduct investigations and compile a report when so required for purposes of assisting courts in making any ancillary order as provided for in section 56A(5);”;

(e) the insertion after subsection (3A) of the following subsections:

### **Option 1**

“(3B) The Director-General Basic Education must, in consultation with the Minister of Basic Education and after consultation with the Directors-General: Justice and Constitutional Development, Health, Social Development, Higher Education and Training and the Department of Communications and Digital Technologies, the National Director of Public Prosecutions, and the National Commissioners of the South African Police Service and Correctional Services, develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all educators and any other relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to those listed in Schedule 5 of the Act.;

(3C) The Director-General Higher Education and Training must, in consultation with the Minister of Higher Education and Training and after consultation with the Directors-General: Justice and Constitutional Development, Health, Social Development, Basic Education, and the Department of Communications and Digital Technologies, the National Director of Public Prosecutions and the National Commissioners of the South African Police Service and Correctional Services, develop and publish in the *Gazette* directives

regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all educators and any other relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to those listed in Schedule 6 of the Act.:

(3D) The Director-General Justice and Constitutional Development must, in consultation with the Minister and after consultation the Directors-General: Health, Social Development, Basic Education, Higher Education and Training, and Communications and Digital Technologies, the National Director of Public Prosecutions and the National Commissioners of the South African Police Service and Correctional Services, develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all officials and any other relevant persons when dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to those listed in Schedule 7 of the Act.:

(3E) The Director-General: Department of Communications and Digital Technologies must, in consultation with the Minister of Communications and Digital Technologies and after consultation with the Directors-General: Justice and Constitutional Development, Health, Social Development, Basic Education and Higher Education and Training, the National Director of Public Prosecutions and the National Commissioners of the South African Police Service and Correctional Services, develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all officials and any other

relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to those listed in Schedule 8 of the Act.;

(3F) The National Commissioner of Correctional Services must, in consultation with the Minister and after consultation with the Directors-General: Justice and Constitutional Development, Health, Social Development, Basic Education, Higher Education and Training, and Communications and Digital Technologies, the National Director of Public Prosecutions and the National Commissioner of the South African Police Service, develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all officials and any other relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to those listed in Schedule 9 of the Act.;

## **Option 2**

“(3B) The Director-General Basic Education must, in consultation with the Minister of Basic Education and after consultation with the Directors-General: Justice and Constitutional Development, Health, Social Development, Higher Education and Training and the Department of Communications and Digital Technologies, the National Director of Public Prosecutions, and the National Commissioners of the South African Police Service and Correctional Services, develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all educators and any other relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out

in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to—

- (a) facilitate and ensure continuous training of educators and learners on preventative measures;
- (b) the manner the child victim should be protected and referred for other services if necessary, including the manner in which the victim's rights to equality, privacy, respect and dignity are to be realized and the steps to be taken to ensure the safety of the victim in as far as is possible;
- (c) the manner and expediency with which educators are to respond to a learner or educator reporting an alleged sexual offence, including reporting the alleged sexual offence to the department and a member of the South African Police Service;
- (d) the manner and expediency with which educators are to respond to allegations of sexual abuse by an educator, contractor, employee, intern, volunteer or learner;
- (e) the manner in which a child alleged to have committed a sexual offence or in conflict with the law in respect of a sexual offence must be dealt with;
- (f) the manner in which assistance in the police investigation and prosecution of sexual offences generally must be provided;
- (g) the manner in which evidence of the alleged sexual abuse, child sexual abuse material or any other evidence is to be kept secure before handing it over to a member of the South African Police Service, to prevent unauthorised access, loss or damage; and
- (h) the manner in which learners are to be educated on responsible internet usage, available protective measures and the risks of accessing inappropriate sexual content including that of creating and distributing self-generated content.

(3C) The Director-General Higher Education and Training must, in consultation with the Minister of Higher Education and Training

and after consultation with the Directors-General: Justice and Constitutional Development, Health, Social Development, Basic Education, and the Department of Communications and Digital Technologies, the National Director of Public Prosecutions and the National Commissioners of the South African Police Service and Correctional Services, develop and publish in the Gazette directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all educators and any other relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to—

- (a) facilitate and ensure continuous training of educators and students on preventative and reactive measures;
- (b) the manner the child victim should be protected and referred for other services if necessary; including the manner in which the victim's rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the safety of the victim in as far as is possible;
- (c) the manner and expediency with which lecturers or staff at tertiary institutions are to respond to a student, lecturer or staff reporting an alleged sexual offence, including reporting the alleged sexual offence to the department and a member of the South African Police Service;
- (d) the manner and expediency with which lecturers or staff are to respond to allegations of sexual abuse against a lecturer, staff, contractor, employee, intern, volunteer or student, including reporting the alleged sexual offence to the department and a member of the South African Police Service;
- (e) the manner in which the child in conflict with the law should be dealt with;
- (f) the manner in which assistance in the police investigation and

prosecution of sexual offences generally must be provided;

- (g) the manner in which evidence of the alleged sexual abuse, child sexual abuse material, pornography or any other evidence is to be kept secure before handing it over to a member of the South African Police Service, to prevent unauthorised access, loss or damage; and
- (h) the manner in which students are to be educated on responsible internet usage, available protective measures and the risks of accessing inappropriate sexual content including that of creating and distributing self-generated content.

(3D) The Director-General Justice and Constitutional Development must, in consultation with the Minister and after consultation the Directors-General: Health, Social Development, Basic Education, Higher Education and Training, and Communications and Digital Technologies, the National Director of Public Prosecutions and the National Commissioners of the South African Police Service and Correctional Services, develop and publish in the Gazette directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all officials and any other relevant persons when dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to—

- (a) the manner in which court records, including charge-sheets and exhibits, containing information pertaining to victims of sexual offences and child sexual abuse material or pornography, must be dealt with including any copying and distribution thereof at all courts;
- (b) the manner in which victims are supported and protected within the court environment;
- (c) the manner in which victims are prepared for testifying in court;

- (d) the manner in which court records, including charge-sheets and exhibits, containing information pertaining to victims of sexual offences and/or child sexual abuse material or pornography, must be kept in custody, stored and disposed of or destroyed; and
- (e) the manner in which an order contemplated in section 50(2)(a) (dealing with an order of a court to include the accused's name in the Register) must be forwarded to and received by the Registrar of the National Register for Sex Offenders so as to ensure the relevant data is captured.

(3E) The Director-General: Department of Communications and Digital Technologies must, in consultation with the Minister of Communications and Digital Technologies and after consultation with the Directors-General: Justice and Constitutional Development, Health, Social Development, Basic Education and Higher Education and Training, the National Director of Public Prosecutions and the National Commissioners of the South African Police Service and Correctional Services, develop and publish in the Gazette directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all officials and any other relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to—

- (a) the manner in which to raise public awareness and to educate the general public in the responsible use of the Internet, including available protective measures to prevent the inadvertent accessing of sexual material or any access to child sexual abuse material;
- (b) the manner in which to collaborate with relevant roleplayers providing or involved in electronic communications services for purposes of ensuring optimal protection to children from accessing child sexual abuse material or pornography, inclusive of minimum

requirements that industry is to comply with and the monitoring of such measures; and

(c) with reference to the classification of publications, films and games, including any other material to be regulated and classified by the Film and Publication Board—

(i) the manner and the expediency with which an offence involving child sexual abuse material or other material that constitutes a sexual offence must be reported to a member of the South African Police Service;

(ii) the manner in which any child sexual abuse material or other material that constitutes a sexual offence, is to be kept secured to prevent loss or damage or unauthorised access, until handing it over to a member of the South African Police Service, including the manner in which further distribution and access of such material is to be prevented and restricted; and

(iii) when exercising a discretion not to refuse classification, the manner in which to protect a child victim, irrespective whether the child is identified or identifiable, inclusive of excision and blurring techniques and, irrespective the fact of classification, the manner and expediency with which the child sexual abuse material or other material that constitutes a sexual offence must be reported to a member of the South African Police Service.

(3F) The National Commissioner of Correctional Services must, in consultation with the Minister and after consultation with the Directors-General: Justice and Constitutional Development, Health, Social Development, Basic Education, Higher Education and Training, and Communications and Digital Technologies, the National Director of Public Prosecutions and the National Commissioner of the South African Police Service, develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for

and which are to be followed by all officials and any other relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of such offences, with particular reference, to—

- (a) the manner in which sexual offence cases, including cases relating to child sexual abuse material, should be dealt with when detected or reported within the correctional services context;
- (b) the manner in which the victim within the correctional services facility is to be provided protection including the manner in which the victim`s rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible;
- (c) the manner in which assistance in the police investigation and prosecution of sexual offences generally must be provided;
- (d) the manner in which the child sexual abuse material or any other evidence is kept secured before handing it over to a member of the South African Police Service, to prevent unauthorised access, loss or damage;
- (e) the development and implementation of assessment tools and therapeutic programmes for persons convicted of sexual offences who are in the care of or monitored or provided with services by the department;
- (f) the manner in which to ensure that Parole Boards receive appropriate recommendations relating to the parole, supervision and necessary community therapeutic services for persons convicted of sexual offences; and
- (g) the manner in which to assist the probation officer for purposes of recommending appropriate ancillary orders as provided for in section 56A(5) including on the manner of monitoring thereof when so required.”; and

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

“(a) The national instructions and directives by each Department or institution, contemplated in this section must be—

- (i) submitted to Parliament within six months after the commencement of this section, before publication in the *Gazette*: Provided that the first national instructions or directives giving effect to section 3 of the Judicial Matters Second Amendment Act, 2013 and the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2020, must be submitted to Parliament within six months after any regulations have been made in terms of section 67(b) and section 19A; and
- (ii) published in the *Gazette*.”.

#### **Amendment of section 67 of Act 32 of 2007**

**27.** Section 67 of the principal Act is hereby amended by the substitution for paragraph (a) in subsection (1) of the following paragraph:

“**67.** The Minister may—

- (a) after consultation with the cabinet members responsible for police **[safety and security]**, correctional services, social development, **[and] health, basic education, higher education and training, communications and digital technologies** and the National Director of Public Prosecutions, make regulations regarding—
  - (i) any matter which is required or permitted by this Act to be prescribed by regulation;
  - (ii) the intersectoral implementation of this Act; and
  - (iii) any other matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act; and”.

#### **Amendment of long title of Act 32 of 2007**

**28.** The long title of the principal Act is hereby amended by the substitution—  
(a) for the fourth bullet of the following bullet:

- creating new statutory offences, for adults, by criminalising the compelling or causing the witnessing of certain sexual conduct and certain parts of the human anatomy, the exposure or display of child sexual abuse material **[pornography]** and the engaging of sexual services of an adult;

(b) for the sixth bullet of the following bullet:

- enacting comprehensive provisions dealing with the creation of certain new, expanded or amended sexual offences against children and persons who are mentally disabled,<sup>7</sup> including specifically substituting the term ‘child pornography’ with the term ‘child sexual abuse material’ so as to provide for revised terminology that appropriately and accurately reflects the nature of the offence and the harm done to children, and including offences relating to sexual exploitation or grooming, **[exposure to or display of pornography and the creation of child]** and offences relating to child sexual abuse material as well as the exposure of children to pornography whether deliberate or otherwise, despite some of the offences being similar to offences created in respect of adults as the creation of these offences aims to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse or exploitation;

(c) for the ninth bullet of the following bullet:

- creating a duty to report sexual offences committed with or against children or persons who are mentally disabled or otherwise unable to report or sexual offences involving child sexual abuse material; and

(d) for the fifteenth bullet of the following bullet:

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7 The advisory committee flags the need to change and expand the term ‘persons with mental disabilities’ to rather refer to all persons with disabilities as persons with physical disabilities are equally vulnerable. It further notes that as the terminology is fluid it may also be advisable to give attention to the manner in which reference is made to this vulnerable group of people.

- making provision for the adoption of a national policy framework regulating all matters in this Act, including the manner in which sexual offences and related matters must be dealt with uniformly, in a co-ordinated and sensitive manner, by all Government departments and institutions and the issuing of national instructions and directives to be followed **[by the law enforcement agencies, the national prosecuting authority and health care practitioners to guide the implementation, enforcement and administration of this Act]** in order to achieve the objects of the Act;”

### **Amendment of preamble of Act 32 of 2007**

**29.** The preamble of the principal Act, is hereby amended by—

(a) the substitution for the fifth paragraph of the following paragraph:

“WHEREAS several international and regional legal instruments, including the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, 1979, **[and]** the United Nations Convention on the Rights of the Child, 1989, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2003, and the African Charter on the Rights and Welfare of the Child 1990, place obligations on the Republic towards the combating and, ultimately, eradicating of abuse and violence against women and children;”; and

(b) the addition after the sixth paragraph of the following paragraph:

“AND WHEREAS, in an ever changing digital environment, an adequate response to address the easy distribution of pornography and child sexual abuse material is required for purposes of effectively protecting children and other vulnerable persons from harm, without unjustifiably limiting children`s rights to human dignity and privacy.

## Amendment of Index of Act 32 of 2007

30. The Index to the principle Act is hereby amended —

- (a) by the substitution for the title to Part 3 of Chapter 2 of the following title:  
“Persons 18 years or older: Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, exposure or display of or causing exposure or display of genital organs, anus or female breasts ("flashing"), child **[pornography]** sexual abuse material to persons 18 years or older, harmful disclosure of pornography or engaging sexual services of persons 18 years or older”;
- (b) by the substitution for item 10 for the following item:  
“Exposure or display of or causing exposure or display of child **[pornography]** sexual abuse material or pornography to persons 18 years or older”;
- (c) by the substitution for the title to Part 2 of Chapter 3 of the following title:  
“Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child **[pornography]** sexual abuse material or pornography to children, offences relating to child sexual abuse material and using, coercing, recruiting and deceiving of children for, **[pornographic]** purposes of, or benefiting from, child **[pornography]** sexual abuse material”;
- (d) by the substitution for item 19 for the following item:  
“Exposure or display of, or causing exposure or display of child **[pornography]** sexual abuse material or pornography to children”;
- (e) by the insertion after item 19 of the following items:  
“19A. Enticement to view or making child sexual abuse material or pornography accessible to children’

'19B. Misleading techniques on the Internet'

'19C. Offences relating to child sexual abuse material'

'19D. Consensual self-generated child sexual abuse material by certain children'

(f) by the substitution for item 20 for the following item:

"Using, coercing, recruiting and deceiving children for or benefiting from child **[pornography]** sexual abuse material";

(g) by the substitution for the title of Chapter 4 of the following title:

"Sexual exploitation and sexual grooming of, exposure or display of or causing exposure or display of child **[pornography]** sexual abuse material or pornography to persons who are mentally disabled and using, coercing, recruiting and deceiving persons who are mentally disabled for pornographic purposes or benefiting therefrom";

(h) by the substitution for item 25 for the following item:

"Exposure or display of or causing exposure or display of child **[pornography]** sexual abuse material to persons who are mentally disabled";

(i) by the substitution for item 26 for the following item:

"Using, coercing, recruiting and deceiving persons who are mentally disabled for pornographic purposes or benefiting therefrom";

(j) by the substitution for the title to Part 1 of Chapter 7 of the following title:

"Miscellaneous offences: Obligation to report commission of sexual offences against children or persons who are mentally disabled or otherwise unable to report, or of sexual offences involving child sexual abuse material and attempt, conspiracy, incitement or inducing another person to commit a sexual offence"; and

### **Option 1<sub>8</sub>**

(k) by the insertion of the following Schedules:

“Schedule 1;  
Schedule 2;  
Schedule 3;  
Schedule 4;  
Schedule 5;  
Schedule 6;  
Schedule 7;  
Schedule 8;  
Schedule 9;  
Schedule 10”;

### **Option 2**

(k) by the insertion of the following Schedule:

“Schedule 1;”;

## **Insertion of Schedules 1 – 9 in Act 32 of 2007**

### **Option 1<sub>9</sub>**

31. Schedules 1 – 9 are inserted in the principle Act as follows —

#### **“Schedule 1**

#### **SOUTH AFRICAN POLICE SERVICE**

#### **(Section 66(1)(a))**

- 1. The manner in which the reporting of an alleged sexual offence is to be dealt with by police officials.**
- 2. The manner in which respectful and supportive services are provided to the victim; the rights of the victim to equality, privacy,**

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8 The Bill contains two options in respect of item 3(k) which relates to the two options provided for in the amendment of section 66 of the principal Act under item 23 and the Schedule to the Act.  
9 The options listed under item 26 relate to the options listed under section 66 of the principal Act, the first option which relates to the streamlining of section 66 linked to Schedules 1 to 9 and the second option in which each subsection within section 66 is amended and expanded on without additional Schedules.

respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible

3. The manner in which sexual offence cases are to be investigated by police officials, including the circumstances in which an investigation in respect of a sexual offence may be discontinued.
4. The manner in which police officials must carry out their responsibilities and duties in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b).
5. The manner in which police officials must act to give effect to aspects covered in Chapter 5 – Services to victims of sexual offences and compulsory HIV testing of alleged sex offenders - :
  - (a) The circumstances in which and the relevant sexual offence or offence in respect of which a police official may apply for the HIV testing of an alleged offender as contemplated in section 33;
  - (b) The manner in which police officials must execute court orders for compulsory HIV testing contemplated in section 33 in order to ensure the security, integrity and reliability of the testing processes and test results;
  - (c) The manner in which police officials must deal with the outcome of applications made and granted in terms of section 31 or 32 in order to ensure confidentiality; and
  - (d) The manner in which police officials must hand over to the victim or to the interested person, as the case may be, and to the alleged offender the test results.
6. The manner in which police officials must act in reports of alleged cases involving child sexual abuse material and pornography:
  - (a) The expediency with which police officials are to react to the reporting of these cases;
  - (b) The manner in which these offences are to be investigated including the steps to be taken to have any child in the child sexual abuse material identified and traced;

- (c) The manner in which the child victim is to be provided protection, whether identified or not;
  - (d) The manner of search for and seizure of evidence;
  - (e) The manner in which the child sexual abuse material or pornography should be kept in safe custody, stored and or disposed of; and
  - (f) The manner in which effect will be given to court orders relating to the evidence.
7. The development and implementation of a standard operating procedure to determine the manner in which:
- (a) Undercover operations relating to sexual offences including those sexual offences involving child sexual abuse material must be conducted;
  - (b) The circumstances, expediency and the manner in which an electronic communications service provider is to be instructed not to take steps to prevent access to the child sexual abuse material by any person, the steps to be taken and the reasonable period within which this is to occur; and
  - (c) The service provider is to be instructed to take steps to prevent access after a request not to do so.

## **Schedule 2**

### **THE NATIONAL DIRECTORATE OF PUBLIC PROSECUTIONS**

#### **(Section 66(2)(a))**

1. The manner in which sexual offence cases should be dealt with in general, including the circumstances in which a charge may be withdrawn or a prosecution stopped.
2. The manner in which protection is provided to the victim, whether identified or not, including the manner in which the victim`s rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible.
3. The manner in which respectful and supportive services are

provided to the victim; the rights of the victim to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible, including:

(a) The criteria to be used and circumstances in which the prosecution must apply to court for an order that witnesses and, in particular, child complainants below the age of 16 years give evidence by means of closed circuit television as provided for in section 158 of the Criminal Procedure Act, 1977, if the court does not make an order on its own initiative in terms of subsection (2)(a) of that section or an application in terms of subsection (2)(b) of that section is not made;

(b) The criteria to be used and circumstances in which the prosecution must request the court to consider appointing a competent person as an intermediary as provide for in section 170A of the Criminal Procedure Act, 1977, in respect of witnesses and, in particular, child complainants below the age of 16 years;

(c) The circumstances in which the prosecution must request the court to consider directing that the proceedings may not take place in open court as provided for in section 153 of the Criminal Procedure Act, 1977;

(d) The circumstances in which the prosecution must request the court to consider prohibiting the publication of the identity of the complainant in the case as provided for in section 154 of the Criminal Procedure Act, 1977, or of the complainant`s family, including the publication of information that may lead to the identification of the complainant or the complainant`s family.

4. The criteria to be used, circumstances and manner in which Directors of Public Prosecutions should authorise and institute a prosecution contemplated in section 16(2), dealing with consensual sexual violation with a child with the view to ensuring

uniformity.

5. The criteria to be used, circumstances and manner in which Directors of Public Prosecutions should authorise and institute a prosecution contemplated in section 38(1), dealing with the ascertainment of the HIV status of an alleged offender or disclosure of the results of any HIV tests, with the view to ensuring uniformity.
6. The information to be placed before a court during sentencing, including pre-sentence reports and information on the impact of the sexual offence on the victim and relevant others.
7. The manner in which aspects relating to cases involving child sexual abuse material must be dealt with, including:
  - (a) The circumstances in which ancillary orders provided for in s56A(5) are to be sought and the steps to be taken for purposes of securing the required report.
  - (b) The criteria, including factors relating to power and age differentials, to be considered in respect of section 19D.
  - (c) The manner in which sexual offence cases involving child sexual abuse material must be dealt with, kept in custody, stored and/or disposed of when:
    - (i) a case docket is received from a member of the South African Police Service for consideration for prosecution;
    - (ii) a case is serving before court during the trial;
    - (iii) a case is concluded in court;
    - (iv) when a request for access to the material is received from the defence.
8. The criteria to be used and circumstances in which the diversion of a child accused of a sexual offence involving child sexual abuse material or pornography should be considered and the appropriate conditions of diversion.

### Schedule 3

#### THE DEPARTMENT OF HEALTH

##### (Section 66(3)(a))

1. The manner in which the reporting of an alleged sexual offence is to be dealt with if the offence is reported to an official employed at a public health establishment or when a sexual offence is suspected or detected by such official during a medical assessment, examination or intervention.
2. The manner in which respectful and supportive services are provided to the victim of a sexual offence including the manner in which their rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure their safety in as far as is possible.
3. The manner in which health care professionals must act to give effect to aspects covered in Chapter 5 – Services to victims of sexual offences and compulsory HIV testing of alleged sex offenders:
  - (a) Matters relating to the administering of Post Exposure Prophylaxis.
  - (b) The manner in which court orders for compulsory HIV testing contemplated in section 33 must be executed in order to ensure the security, integrity and reliability of the testing processes and test results.
  - (c) The manner in which the HIV test results contemplated in section 37 must be dealt with in order to ensure confidentiality.
4. The manner in which medical practitioners and any other relevant persons must carry out their responsibilities and duties in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b).
5. The manner in which any child sexual abuse material must be secured to prevent unauthorised access, loss or damage
6. The manner in which assistance in the investigation and

prosecution of sexual offences, generally, must be provided, including:

- (a) The forensic medical examination of victims and alleged offenders;
- (b) The determination of age where the child sexual abuse material involves unidentified victims or depictions;
- (c) The manner in which any evidence, including child sexual abuse material, must be secured to prevent unauthorized access, loss or damage.”;

#### **Schedule 4**

### **THE DIRECTOR-GENERAL SOCIAL DEVELOPMENT**

(Section 66(3A))

1. The manner and the expediency with which social workers are to respond to the disclosure or reporting of an alleged sexual offence;
2. The manner in which respectful and supportive services are provided to the victim; the rights of child victims to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure their safety and well-being in as far as is possible.
3. The manner in which the child victim of a sexual offence including child sexual abuse material should be protected and referred for other services if necessary including the circumstances when the offender, rather than the victim, should be removed from the communal residence;
4. The manner in which assistance in the investigation and prosecution of sexual offences, including matters relating to child sexual abuse material must be provided, including:
  - (a) The procedures that must be followed in the reporting of the sexual offence to a member of the South African Police Service;
  - (b) The procedures relating to the safe keeping of the evidence of the alleged sexual offence, including child sexual abuse material to prevent unauthorised access, loss or damage

before handing it over to a member of the South African Police Service;

5. The manner in which therapy may be provided to a child victim that is required to testify in court proceedings
6. The manner in which probation officers are to deal with children referred in terms of section 19D and any other child in conflict with the law for having committed a sexual offence or that involves child sexual abuse material; how such children are to be assessed; and the investigations required for purposes of the appropriate interventions to be recommended or for purposes of determining appropriate conditions of diversion.
7. The manner in which to conduct investigations and compile a report when so required for purposes of assisting courts in making any ancillary order as provided for in section 56A(5).
8. The responsibilities and duties of officials in relation to sexual offences courts designated in terms of section 55A and any regulations made in terms of section 67(b).

### **Schedule 5**

#### **THE DIRECTOR-GENERAL BASIC EDUCATION**

(Section 66(3B))

1. Facilitate and ensure continuous training of educators and learners on preventative measures.
2. The manner the child victim should be protected and referred for other services if necessary, including the manner in which the victim`s rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the safety of the victim in as far as is possible.
3. The manner and expediency with which educators are to respond to a learner or educator reporting an alleged sexual offence, including reporting the alleged sexual offence to the department and a member of the South African Police Service.
4. The manner and expediency with which educators are to respond

to allegations of sexual abuse by an educator, contractor, employee, intern, volunteer or learner.

5. The manner in which a child alleged to have committed a sexual offence or in conflict with the law in respect of a sexual offence must be dealt with.
6. The manner in which assistance in the police investigation and prosecution of sexual offences generally must be provided.
7. The manner in which evidence of the alleged sexual abuse, child sexual abuse material, pornography or any other evidence is to be kept secure before handing it over to a member of the South African Police Service, to prevent unauthorised access, loss or damage.
8. The manner in which learners are to be educated on responsible internet usage, available protective measures and the risks of accessing inappropriate sexual content including that of creating and distributing self-generated content.

### **Schedule 6**

#### **THE DIRECTOR-GENERAL HIGHER EDUCATION AND TRAINING**

(Section 66(3C))

1. Facilitate and ensure continuous training of educators, lecturers or tutors and students on preventative and reactive measures.
2. The manner the child victim should be protected and referred for other services if necessary, including the manner in which the victim`s rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible.
3. The manner and expediency with which lecturers or staff at tertiary institutions are to respond to a student, lecturer or staff reporting an alleged sexual offence, including reporting the alleged sexual offence to the department and a member of the South African Police Service.
4. The manner and expediency with which lecturers or staff are to

respond to allegations of sexual abuse against a lecturer, staff, contractor, employee, intern, volunteer or student, including reporting the alleged sexual offence to the department and a member of the South African Police Service.

5. The manner in which the child in conflict with the law should be dealt with.
6. The manner in which assistance in the police investigation and prosecution of sexual offences generally must be provided.
7. The manner in which evidence of the alleged sexual abuse, child sexual abuse material, pornography or any other evidence is to be kept secure before handing it over to a member of the South African Police Service, to prevent unauthorised access, loss or damage.
8. The manner in which students are to be educated on responsible internet usage, available protective measures and the risks of accessing inappropriate sexual content including that of creating and distributing self-generated content.

### **Schedule 7**

## **THE DIRECTOR-GENERAL JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

(Section 66(3D))

1. The manner in which court records, including charge-sheets and exhibits, containing information pertaining to victims of sexual offences and child sexual abuse material or pornography, must be dealt with including any copying and distribution thereof at all courts.
2. The manner in which victims are supported and protected within the court environment.
3. The manner in which victims are prepared for testifying in court.
4. The manner in which court records, including charge-sheets and exhibits, containing information pertaining to victims of sexual offences and/or child sexual abuse material or pornography, must

be kept in custody, stored and disposed of or destroyed.

5. The manner in which an order contemplated in section 50(2)(a) (dealing with an order of a court to include the accused's name in the Register) must be forwarded to and received by the Registrar of the National Register for Sex Offenders so as to ensure the relevant data is captured.

### **Schedule 8**

#### **DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES**

(Section 66(3E))

1. The manner in which to raise public awareness and to educate the general public in the responsible use of the Internet, including available protective measures to prevent the inadvertent accessing of sexual material or any access to child sexual abuse material.
2. The manner in which to collaborate with relevant roleplayers providing or involved in electronic communications services for purposes of ensuring optimal protection to children from accessing child sexual abuse material or pornography, inclusive of minimum requirements that industry is to comply with and the monitoring of such measures.
3. With reference to the classification of publications, films and games, including any other material to be regulated and classified by the Film and Publication Board-
  - (a) the manner and the expediency with which an offence involving child sexual abuse material or other material that constitutes a sexual offence must be reported to a member of the South African Police Service;
  - (b) the manner in which any child sexual abuse material or other material that constitutes a sexual offence, is to be kept secured to prevent loss or damage or unauthorised access, until handing it over to a member of the South African Police Service, including the manner in which further distribution and access of such material is to be

prevented and restricted;

- (c) when exercising a discretion not to refuse classification, the manner in which to protect a child victim, irrespective whether the child is identified or identifiable, inclusive of excision and blurring techniques and, irrespective the fact of classification, the manner and expediency with which the child sexual abuse material or other material that constitutes a sexual offence must be reported to a member of the South African Police Service.

### **Schedule 9**

#### **DEPARTMENT OF CORRECTIONAL SERVICES**

(Section 66(3F))

1. The manner in which sexual offence cases, including cases relating to child sexual abuse material, should be dealt with when detected or reported within the correctional services context.
2. The manner in which the victim within the correctional services facility is to be provided protection including the manner in which the victim`s rights to equality, privacy, respect and dignity are to be realised and the steps to be taken to ensure the victim`s safety in as far as is possible.
3. The manner in which assistance in the police investigation and prosecution of sexual offences generally must be provided.
4. The manner in which the child sexual abuse material or any other evidence is kept secured before handing it over to a member of the South African Police Service, to prevent unauthorised access, loss or damage.
5. The development and implementation of assessment tools and therapeutic programmes for persons convicted of sexual offences who are in the care of or monitored or provided with services by the department.

### **Amendment of Act No. 75 of 2008**

**32.** The words “child pornography” are substituted for the words “child sexual abuse material”, wherever they appear, in the Child Justice Act, 2008.

### **Short title and commencement**

**33.** This Act is called the Criminal Law (Children: Pornography and Child Sexual Abuse Material) Amendment Act, 20XX and comes into operation on a date fixed by the President by proclamation in the *Gazette*.