

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**CRIMINAL LAW (SEXUAL
OFFENCES AND RELATED
MATTERS) AMENDMENT ACT
AMENDMENT BILL**

[B 16—2020]

*(As agreed to by the Portfolio Committee on Justice and Correctional Services
(National Assembly))*

[B 16A—2020]

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AMENDMENTS AGREED TO

**CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS)
AMENDMENT ACT AMENDMENT BILL**

[B 16—2020]

CLAUSE 1

1. Clause rejected and replaced with the following clause:

Amendment of section 2 of Act 32 of 2007

1. Section 2 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (hereafter referred to as the “principal Act”), is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) establishing a National Register for Sex Offenders in order to establish a record of persons who are or have been convicted of any sexual offences **[against children and persons who are mentally disabled]**, as defined in section 40, so as to prohibit such persons from being employed in a manner that places them in a position to work with or have **[access to or]** authority or supervision over or care of **[children or persons who are mentally disabled]** persons who are vulnerable.”.

CLAUSE 3

1. On page 3, in line 8, after “child” to insert the following:

“and the act of sexual violation was of such a nature that it was reprehensible for the adult person to have acted in that manner under the circumstances concerned.”.

CLAUSE 4

1. Clause rejected and replaced with the following clause:

Insertion of new Part in Act 32 of 2007

4. The following Part is hereby inserted after Part 4 of Chapter 2 of the principal Act:

“Part 5

Sexual intimidation

Sexual intimidation

14A. A person (“A”) who unlawfully and intentionally utters or conveys a threat to a complainant (“B”) that inspires a reasonable belief of imminent harm in B that a sexual offence will be committed against B, or a third party (“C”) who is a member of the family of B or any other person in a close relationship with B, is guilty of the offence of sexual intimidation and may be liable on conviction to the punishment to which a person convicted of actually committing a sexual offence would be liable.”.

CLAUSE 5

1. Clause rejected and replaced with the following clause:

Amendment of section 40 of Act 32 of 2007, as amended by section 36 of Act 8 of 2017

5. Section 40 of the principal Act is hereby amended—

- (a) by the substitution for the definition of “employer” of the following definition:

“‘**employer**’ means—

(a) any—

- (i) department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (ii) other functionary or institution when exercising a power or performing a duty in terms of the Constitution of the Republic of South Africa, 1996, or a provincial constitution or exercising a public power or performing a public function in terms of any legislation,

which[—

(aa)] employs employees who, in any manner and during the course of their employment, will be placed in a position to work with a **[child]** person who is vulnerable or in a position of authority, supervision or care of a [child or will gain access to a child or places where children or persons who are mentally disabled are present or congregate] person who is vulnerable; or

[(bb)] employs employees who, in any manner and during the course of their employment, will be placed in a position to work with a **person who is mentally disabled or in a position of authority, supervision or care of a person who is mentally disabled or will gain access to a person who is mentally disabled or places where persons who are mentally disabled are present or congregate; or]**

(b) any person, organisation, institution, club, sports club, association or body who or which, as the case may be—

- (i) employs employees who, in any manner and during the course of their employment, will be placed in a position of authority, supervision or care of a **[child or a person who is mentally disabled]** person who is vulnerable or working with [or will gain access to a child or places where children are present or congregate] a person who is vulnerable; or

- (ii) owns, manages, operates, has any business or economic interest in or is in any manner responsible for, or participates or assists in the management or operation of any entity or business concern or trade relating to the supervision over or care of **[a child or a person who is mentally disabled]** or working with **[or who gains access to a child or a person who is mentally disabled or places where children or persons who are mentally disabled are present or congregate]** a person who is vulnerable,

and ‘**employ**’, ‘**employing**’, ‘**employed**’ and ‘**employment relationship**’ have corresponding meanings;”;

- (b) by the substitution for the definition of “licencing authority” of the following definition:

“**‘licencing authority’** means any authority which is responsible for granting licences or approving the management or operation of any entity, business concern or trade relating to the supervision over or care of a **[child or a person who is mentally disabled]** person who is vulnerable;”;

- (c) by the insertion after the definition of “licencing authority” of the following definition:

“**‘person who is vulnerable’** means a—

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| <p>(a) child or a person who is mentally disabled;</p> <p>(b) female under the age of 25 years who—</p> <p>(i) receives tuition at a higher education college, higher education institution or university college as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);</p> <p>(ii) receives vocational training at any training institute, other than the institutions referred to in subparagraph (i), or as part of their employment; or</p> <p>(iii) lives in a building, structure or facility used primarily as a residence for any of the persons referred to in subparagraphs (i) and (ii);</p> <p>(c) person who is being cared for or sheltered in a facility that provides services to victims of crime;</p> <p>(d) person with a physical, intellectual or sensory disability and who—</p> <p>(i) receives community-based care and support services, other than from a family member for;</p> <p>(ii) lives in a building, structure or facility used primarily as a residence for; or</p> <p>(iii) is cared for in a facility providing 24-hour care to, persons with physical, intellectual or sensory disabilities; or</p> <p>(e) person who is 60 years of age or older and who—</p> <p>(i) receives community-based care and support services, other than from a family member for;</p> <p>(ii) lives in a building, structure or facility used primarily as a residence for; or</p> <p>(iii) is cared for in a facility providing 24-hour care to, such persons;”;</p> |
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- (d) by the insertion after the definition of “relevant authority” of the following definition:

“**‘sexual offence’** means—

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| <p>(a) any—</p> <p>(i) sexual offence in terms of the law as it existed between 16 June 2003 and 15 December 2007;</p> <p>(ii) offence referred to in Chapters 2, 3 and 4 and sections 55 and 71 of this Act;</p> <p>(iii) offence referred to in Chapter 2 of the Prevention and Combating of Trafficking in Persons Act, 2013, which was committed for sexual purposes; and</p> <p>(iv) contravention since 16 June 2003 of section 24B(1) or (3) of the Films and Publications Act, 1996 (Act No. 65 of 1996); that was committed against a child or a person who is mentally disabled between the period of 16 June 2003 and the date of; and</p> <p>(b) any—</p> <p>(i) offence in terms of Chapters 2, 3 and 4 and section 55 of this Act;</p> |
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- (ii) offence referred to in Chapter 2 of the Prevention and Combating of Trafficking in Persons Act, 2013, which was committed for sexual purposes; and
- (iii) contravention since 16 June 2003 of section 24B(1) or (3) of the Films and Publications Act, 1996;
 - that was committed after the date of, the commencement of the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021.”; and
- (e) by the deletion of the definition of “**sexual offence against a child**”.

CLAUSE 7

1. Clause rejected and replaced with the following clause:

Amendment of section 42 of Act 32 of 2007, as amended by section 36 of Act 66 of 2008

7. Section 42 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection:

“(1) A National Register for Sex Offenders containing particulars of persons convicted of any sexual offence **[against a child or a person who is mentally disabled]** or are alleged to have committed a sexual offence **[against a child or a person who is mentally disabled]** and who have been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, whether committed before or after the commencement of this Chapter and whether committed in or outside the Republic, must, **[before 30 June 2009, and,]** in accordance with the provisions of this Chapter and the regulations made thereunder, be established and maintained by the Minister.”; and
 - (b) by the substitution for subsection (3) of the following subsections:

“(3) (a) The Registrar must exercise and perform his or her powers, duties and functions subject to the provisions of this Chapter and the regulations made thereunder.

(b) The Registrar may, subject to paragraph (c), delegate any power, duty or function to any other person, but the Registrar remains responsible and accountable for the exercise of the powers and the performance of the duties and functions so delegated.

(c) The Registrar may not delegate his or her function referred to in section 51 to any other person.

(4) Any person may, subject to subsection (5), apply, in the prescribed form, to the Registrar to determine whether the particulars of any person have been included in the Register or not.

(5) The Registrar in considering the application must be satisfied that the—

 - (a) application is not frivolous or vexatious;
 - (b) person who has submitted the application has an interest in the disclosure of the information; and
 - (c) disclosure of the information is in the interest of an identifiable vulnerable person.

(6) Except in so far as it may be necessary for the purposes of this Chapter, any person who willfully discloses or publishes any information to any other person

which he or she has acquired as a result of an application contemplated in subsection (4) or in any other manner, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment.”.

NEW CLAUSE

1. That the following be a new Clause 10:

Insertion of sections 44B and 44C in Act 32 of 2007

10. The following sections are hereby inserted after section 44A of the principal Act:

“Access to Register by National Commissioner of South African Police Service

44B. For the purposes of section 36D(2) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and section 15A(2) of the South African Police Service Act, 1995 (Act No. 65 of 1995), the National Commissioner of the South African Police Service may be granted access to the data base of the Register by the Registrar.

Obligations of Director-General: Home Affairs and Registrar

44C. (1) The Director-General: Home Affairs must inform the Registrar in writing whenever a person’s change in identity has been formally approved and recognised by the Department of Home Affairs by providing the Registrar with that person’s old and new identity details.

(2) The Registrar must endorse the Register accordingly, where necessary.”.

CLAUSE 10

1. On page 7, in line 2, to replace “10.” with “11.”

CLAUSE 11

1. On page 7, in line 20, to replace “11.” with “12.”

CLAUSE 12

1. On page 7, in line 39, to replace “12.” with “13.”

CLAUSE 13

1. Clause rejected and replaced with the following clause:

Amendment of section 48 of Act 32 of 2007, as amended by section 6 of Act 5 of 2015

14. Section 48 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) *(a)* A person who, after the commencement of this Chapter, applies to become a foster parent, kinship care-giver, temporary safe care-giver, an adoptive parent or curator, and whose particulars are included or are to be included in the Register, must disclose that he or she has been convicted of a sexual offence

[against a child or a person who is mentally disabled] or that he or she is alleged to have committed a sexual offence **[against a child or a person who is mentally disabled]** and has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977.

(b) A person referred to in paragraph *(a)* who fails to comply with paragraph *(a)*, is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding seven years or to both a fine and such imprisonment.

(c) A child who is in the custody and care of a person contemplated in paragraph *(a)* must, as soon as reasonably possible, be removed from the care of such person in accordance with Chapter 9 of the Children's Act, 2005 (Act No. 38 of 2005).".

CLAUSE 14

1. On page 8, in line 7, to replace "14." with "15."

CLAUSE 15

1. Clause rejected and replaced with the following clause:

Amendment of section 50 of Act 32 of 2007, as amended by section 37 of Act 66 of 2008, section 7 of Act 5 of 2015 and section 37 of Act 8 of 2017

16. Section 50 of the principal Act is hereby amended—

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

“(1) The particulars of the following persons must be included in the Register:

- (a)* A person who in terms of this Act or any other law—
 - (i)* has been convicted of a sexual offence **[against a child or a person who is mentally disabled]**;
 - (ii)* is alleged to have committed a sexual offence **[against a child or a person who is mentally disabled]** in respect of whom a court, has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977;
 - (iii)* is serving a sentence of imprisonment or who has served a sentence of imprisonment as the result of a conviction for a sexual offence **[against a child or a person who is mentally disabled]**; or
 - (iv)* has a previous conviction for a sexual offence **[against a child or a person who is mentally disabled]** or who has not served a sentence of imprisonment for such offence; and
- (b)* any person—
 - (i)* who, in any foreign jurisdiction, has been convicted of any offence equivalent to the commission of a sexual offence **[against a child or a person who is mentally disabled]**;
 - (ii)* who, in any foreign jurisdiction, has been dealt with in a manner equivalent to that contemplated in paragraph *(a)*(ii); or
 - (iii)* whose particulars appear on an official register in any foreign jurisdiction, pursuant to a conviction of a sexual offence **[against a child or a person who is mentally disabled]** or as a result of an order equivalent to that in paragraph *(a)*(ii),

whether committed before or after the commencement of this Chapter.”.

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

“(a) A court that has in terms of this Act or any other law—

- (i) convicted a person of a sexual offence [**against a child or a person who is mentally disabled**] and, after sentence has been imposed by that court for such offence, in the presence of the convicted person; or
- (ii) made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was, by reason of mental illness or mental defect, not criminally responsible for the act which constituted a sexual offence [**against a child or a person who is mentally disabled**], in the presence of that person,

must, subject to paragraph (c), make an order that the particulars of the person be included in the Register.”;

(c) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) If a court has, in terms of this Act or any other law, convicted a person (“A”) of a sexual offence [**referred to in paragraph (a)(i)**] and A was a child at the time of the commission of such offence, or if a court has made a finding and given a direction referred to in paragraph (a)(ii) in respect of A who was a child at the time of the alleged commission of the offence, the court may not make an order as contemplated in paragraph (a) unless—

- (i) the prosecutor has made an application to the court for such order;
- (ii) the court has considered a report by the probation officer referred to in section 71 of the Child Justice Act, 2008, which deals with the probability of A committing another sexual offence [**against a child or a person who is mentally disabled, as the case may be,**] in future;
- (iii) A has been given the opportunity to address the court as to why his or her particulars should not be included in the Register; and
- (iv) the court is satisfied that substantial and compelling circumstances exist based upon such report and any other evidence, which justify the making of such an order.”;

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

“(a) The National Commissioner of Correctional Services must, in the prescribed manner, [**and at least three months before the establishment of the Register referred to in section 42,**] forward to the Registrar the particulars referred to in section 49 of every prisoner or former prisoner which he or she has on record, who, at the commencement of this Chapter, is serving a sentence of imprisonment or who has served a sentence of imprisonment as the result of a conviction for a sexual offence, as referred to in paragraph (a) of the definition of “sexual offence” in section 40, five years preceding the commencement of this Chapter, [**against a child, including an offence referred to in section 14 of the Sexual Offences Act, 1957 (Act No. 23 of 1957), and must, where possible, forward the available particulars of every**

prisoner or former prisoner which he or she has on record, who at the commencement of this Chapter, is serving a sentence of imprisonment or has served a sentence of imprisonment as a result of a conviction, five years preceding the commencement of this Act, for a sexual offence against a person who is mentally disabled, including an offence referred to in section 15 of the Sexual Offences Act, 1957,] and the Registrar must forthwith enter those particulars in the Register.”;

- (e) by the substitution for subsection (6) of the following subsection:

“(6) The National Commissioner of the South African Police Service must, in the prescribed manner, **[and at least three months before the establishment of the Register referred to in section 42,]** forward to the Registrar all the available particulars in his or her possession referred to in section 49 of every person who, at the commencement of this Chapter, has a previous conviction for a sexual offence, as referred to in paragraph (a) of the definition of “sexual offence” in section 40, five years preceding the commencement of this Chapter, **[against a child, including, as far as is possible, an offence referred to in section 14 of the Sexual Offences Act, 1957, and who has a previous conviction for a sexual offence against a person who is mentally disabled, including, as far as is possible, an offence referred to in section 15 of the Sexual Offences Act, 1957,]** and the Registrar must forthwith enter those particulars in the Register.”; and

- (f) by the substitution in subsection (7) for paragraph (a) of the following paragraph:

“(a) The Director-General: Health must, in the prescribed manner **[and at least three months before the establishment of the Register referred to in section 42]**, forward to the Registrar the particulars referred to in section 49 of every person, who, at the commencement of this Chapter or in the period of five years preceding the commencement of this Chapter, is or was subject to a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, as the result of an act which constituted a sexual offence **[against a child or a person who is mentally disabled]**, as referred to in paragraph (a) of the definition of “sexual offence” in section 40, and the Registrar must forthwith enter those particulars in the Register.”.

CLAUSE 16

1. On page 10, in line 8, to replace “**16.**” with “**17.**”
2. On page 11, after line 33, to insert the following:

“(2B) The periods applicable in subsection (1) should be reduced by half if the person was a child at the time of the commission of the offence.”
3. On page 11, from lines 50 to 55, to delete everything and to replace with the following:

(4) Any person who has qualified for the removal of his or her particulars from the Register before the commencement of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2021, may submit an application to the Registrar in terms of subsection (3)(a) and the Registrar must

consider the application as if the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021, had not commenced.”.

CLAUSE 17

1. On page 11, in line 57, to replace “17.” with “18.”

CLAUSE 18

1. Clause rejected and replaced with the following clause:

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] vulnerable”

54. (1) [(a)] A person who has knowledge, reasonable belief or suspicion that a sexual offence has been committed against a [child] person who is vulnerable as defined in section 40 must report such knowledge, reasonable belief or suspicion immediately to a police official.

[(b)] (2)(a) A person who fails to report such knowledge, reasonable belief or suspicion as contemplated in [paragraph (a)] subsection (1), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

[(2) (a) A person who has knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is mentally disabled must report such knowledge, reasonable belief or suspicion immediately to a police official.

(b) A person who 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 or to both a fine and such imprisonment.

[(c)] (b) A person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report.”.

CLAUSE 19

1. On page 12, in line 38, to replace “19.” With “20.”

NEW CLAUSE

1. That the following be a new Clause 21:

Amendment of long title of Act 32 of 2007, as amended by section 48 of Act 7 of 2013, section 5 of Act 43 of 2013 and section 12 of Act 5 of 2015

21. The long title of the principal Act is hereby amended by the substitution for the fourth bullet thereof 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 pornography, **[and]** the engaging of sexual services of an adult and sexual intimidation;”.

CLAUSE 20

1. Clause rejected and replaced with the following clause:

Amendment of index of Act 32 of 2007, as amended by section 48 of Act 7 of 2013 and section 1 of Act 43 of 2013

- 22.** The index of the principal Act is hereby amended—
 (a) by the insertion after item 14 of the following Part and item:

“Part 5

Sexual intimidation

14A. Sexual intimidation”; and

- (b) by the insertion after item 55A of the following items:

“44B. Access to Register by National Commissioner of South African Police Service

44C. Obligations of Director-General: Home Affairs and Registrar”.

CLAUSE 21

1. On page 13, in line 2, to replace “**21.**” with “**23.**”
2. On page 13, in line 3, to replace “2020” with “2021”

LONG TITLE

1. Long title rejected.

NEW LONG TITLE

To amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to—

- extend the ambit of the offence of incest;
- introduce a new offence of sexual intimidation;
- further regulate the inclusion of particulars of persons in the National Register for Sex Offenders;
- extend the list of persons who are to be protected in terms of Chapter 6 of the Act;
- extend the list of persons who are entitled to submit applications to the Registrar of the National Register for Sex Offenders;
- further regulate the removal of particulars of persons from the National Register for Sex Offenders; and
- further regulate the reporting duty of persons who are aware that sexual offences have been committed against persons who are vulnerable, and to provide for matters connected therewith.

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