

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.

 (English text signed by the President)
 (Assented to 25 January 2022)

ACT

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;
- substitute the phrase “a person who is mentally disabled” or “persons who are mentally disabled” wherever the phrase appears with the phrase “a person with a mental disability” or “persons with mental disabilities”;
- 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.

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

Amendment of section 1 of Act 32 of 2007, as amended by section 48 of Act 7 of 2013, section 1 of Act 5 of 2015 and section 35 of Act 8 of 2017

1. Section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (hereafter referred to as the “principal Act”), is hereby amended— 5

(a) by the substitution of the definition of “care giver” of the following definition:

“ ‘**care giver**’ means any person who, in relation to a person [**who is mentally disabled**] with a mental disability, takes responsibility for meeting the daily needs of or is in substantial contact with such person;” 10

(b) by the substitution for the words preceding paragraph (a) of the definition of “person who is mentally disabled” of the following words:

“ ‘**person [who is mentally disabled] with a mental disability**’ means a person affected by any mental disability, including any disorder or 15

disability of the mind, to the extent that he or she, at the time of the alleged commission of the offence in question, was—"; and
 (c) by the substitution for subparagraph (v) of subsection (3)(d) of the following subparagraph:
 "(v) a person **[who is mentally disabled]** with a mental disability." 5

Amendment of section 2 of Act 32 of 2007

2. Section 2 of 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' [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." 10 15

Amendment of section 5 of Act 32 of 2007

3. Section 5 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 12 of Act 32 of 2007

4. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20
 "(1) Persons who may not lawfully marry each other on account of consanguinity, affinity or an adoptive relationship and who unlawfully and intentionally engage in an act of—
 (a) sexual penetration with each other; or
 (b) sexual violation with each other where one of them is a child, 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, 25
 are, despite their mutual consent to engage in such act, guilty of the offence of incest."

Insertion of new Part in Act 32 of 2007 30

5. 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." 35 40

Substitution of heading to Act 32 of 2007

6. The heading for Chapter 4 of the principal Act is hereby substituted of the following heading:

**“SEXUAL OFFENCES AGAINST PERSONS
[WHO ARE MENTALLY DISABLED]
WITH MENTAL DISABILITIES** 5

Sexual exploitation and sexual grooming of, exposure or display of or causing exposure or display of child pornography or pornography to persons [who are mentally disabled] with mental disabilities and using persons [who are mentally disabled] with mental disabilities for pornographic purposes or benefiting therefrom”. 10

Substitution of section 23 of Act 32 of 2007, as substituted by section 3 of Act 6 of 2012

7. Section 23 of the principal Act is hereby substituted by the following section:

“Sexual exploitation of persons [who are mentally disabled] with mental disabilities 15

23. (1) A person (‘A’) who unlawfully and intentionally engages the services of a complainant [**who is mentally disabled] with a mental disability** (‘B’), for financial or other reward, favour or compensation to B or to a third person (‘C’)— 20

- (a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or
 - (b) by committing a sexual act with B,
- is, in addition to any other offence which he or she may be convicted of, guilty of the offence of sexual exploitation of a person [**who is mentally disabled] with a mental disability.** 25

(2) A person (‘A’) who unlawfully and intentionally offers the services of a person [**who is mentally disabled] with a mental disability** (‘B’) to a third person (‘C’), for financial or other reward, favour or compensation to A, B or to another person (‘D’)— 30

- (a) for purposes of the commission of a sexual act with B by C;
 - (b) by inviting, persuading or inducing B to allow C to commit a sexual act with B;
 - (c) by participating in, being involved in, promoting, encouraging or facilitating the commission of a sexual act with B by C; 35
 - (d) by making available, offering or engaging B for purposes of the commission of a sexual act with B by C; or
 - (e) by detaining B, whether under threat, force, coercion, deception, abuse of power or authority, for purposes of the commission of a sexual act with B by C, 40
- is guilty of an offence of being involved in the sexual exploitation of a person [**who is mentally disabled] with a mental disability.**

(3) A person (‘A’) who— 45

- (a) intentionally allows or knowingly permits the commission of a sexual act by a third person (‘C’) with a person [**who is mentally disabled] with a mental disability** (‘B’) while being a care-giver, parent, guardian, curator or teacher of B; or

(b) owns, leases, rents, manages, occupies or has control of any movable or immovable property and intentionally allows or knowingly permits such movable or immovable property to be used for purposes of the commission of a sexual act with B by C, is guilty of the offence of furthering the sexual exploitation of a person **[who is mentally disabled] with a mental disability.** 5

(4) A person ('A') who intentionally receives financial or other reward, favour or compensation from the commission of a sexual act with a person **[who is mentally disabled] with a mental disability** ('B') by a third person ('C'), is guilty of an offence of benefiting from the sexual exploitation of a person **[who is mentally disabled] with a mental disability.** 10

(5) A person ('A') who intentionally lives wholly or in part on rewards, favours or compensation for the commission of a sexual act with a person **[who is mentally disabled] with a mental disability** ('B') by a third person ('C'), is guilty of an offence of living from the earnings of the sexual exploitation of a person **[who is mentally disabled] with a mental disability.** 15

(6) A person ('A'), including a juristic person, who—
 (a) makes or organises any travel arrangements for or on behalf of a third person ('C'), whether that other person is resident within or outside the borders of the Republic, with the intention of facilitating the commission of any sexual act with a person **[who is mentally disabled] with a mental disability** ('B'), irrespective of whether that act is committed or not; or 20

(b) prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual act with B, is guilty of an offence of promoting sex tours with persons **[who are mentally disabled] with mental disabilities.**" 25 30

Amendment of section 24 of Act 32 of 2007

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

(a) by the substitution for the heading of the following heading:
"Sexual grooming of persons [who are mentally disabled] with mental disabilities"; 35

(b) by the substitution for subsection (1) of the following subsection:
 "(1) A person ('A') who—
 (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; 40
 (ii) child pornography or pornography; or
 (iii) a publication or film,
 with the intention to encourage, enable, instruct or persuade C to perform a sexual act with a person **[who is mentally disabled] with a mental disability** ('B'); or 45
 (b) arranges or facilitates a meeting or communication between C and B by any means from, to or in any part of the world, with the intention that C will perform a sexual act with B, is guilty of the offence of promoting the sexual grooming of a person **[who is mentally disabled] with a mental disability.**" 50

(c) by the substitution for the words preceding subparagraph (i) of subsection (2)(a) of the following words:
"(a) supplies, exposes or displays to a person [who is mentally disabled] with a mental disability ('B')—"; and

(d) by the substitution for the words following subsection (2)(e) of the following words:

“is guilty of the offence of sexual grooming of a person [**who is mentally disabled**] with a mental disability.”

Substitution of section 25 of Act 32 of 2007

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9. Section 25 of the principal Act is hereby substituted for the following section:

“**Exposure or display of or causing exposure or display of child pornography or pornography to persons [who are mentally disabled] with mental disabilities**

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 or pornography to a complainant [**who is mentally disabled**] with a mental disability (‘B’), is guilty of the offence of exposing or displaying or causing the exposure or display of child pornography or pornography to a person [**who is mentally disabled**] with a mental disability.”

Substitution of section 26 of Act 32 of 2007

10. Section 26 of the principal Act is hereby substituted for the following section:

“**Using persons [who are mentally disabled] with mental disabilities for pornographic purposes or benefiting therefrom**

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26. (1) A person (‘A’) who unlawfully and intentionally uses a complainant [**who is mentally disabled**] with a mental disability (‘B’), whether for financial or other reward, favour or compensation to B or to a third person (‘C’) or not—

(a) for the purpose of creating, making or producing; 25

(b) by creating, making or producing; or

(c) in any manner assisting to create, make or produce,

any image, publication, depiction, description or sequence in any manner whatsoever, of pornography or child pornography, is guilty of the offence of using a person [**who is mentally disabled**] with a mental disability for pornographic purposes. 30

(2) 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 using a person [**who is mentally disabled**] with a mental disability for pornographic purposes.” 35

Amendment of section 30 of Act 32 of 2007

11. Section 30 of the principal Act is hereby amended by the substitution for subparagraph (ii) of subsection (1)(b) of the following subparagraph: 40

“(ii) a person [**who is mentally disabled**] with a mental disability.”

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

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

(a) by the substitution for the definition of “employer” of the following definition: 5

“**‘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 10

(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, 15

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 are present or congregate] person who is vulnerable; or 20

[(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] 25

(b) any person, organisation, institution, club, sports club, association or body who or which, as the case may be— 30

(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 35

(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, 40 45

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

(b) by the substitution for the definition of “licencing authority” of the following definition: 50

“**‘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;” 55

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

- “**person who is vulnerable**” means a—
- (a) child or a person with a mental disability;
 - (b) female under the age of 25 years who—
 - (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);
 - (ii) receives vocational training at any training institute, other than the institutions referred to in subparagraph (i), or as part of their employment; or
 - (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);
 - (c) person who is being cared for or sheltered in a facility that provides services to victims of crime;
 - (d) person with a physical, intellectual or sensory disability and who—
 - (i) receives community-based care and support services, other than from a family member for;
 - (ii) lives in a building, structure or facility used primarily as a residence for; or
 - (iii) is cared for in a facility providing 24-hour care to, persons with physical, intellectual or sensory disabilities; or
 - (e) person who is 60 years of age or older and who—
 - (i) receives community-based care and support services, other than from a family member for;
 - (ii) lives in a building, structure or facility used primarily as a residence for; or
 - (iii) is cared for in a facility providing 24-hour care to, such persons;”;

(d) by the insertion after the definition of “relevant authority” of the following definition:

- “**sexual offence**” means—
- (a) any—
 - (i) sexual offence in terms of the law as it existed between 16 June 2003 and 15 December 2007;
 - (ii) offence referred to in Chapters 2, 3 and 4 and sections 55 and 71 of this Act;
 - (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
 - (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 with a mental disability between the period of 16 June 2003 and the date of; and
 - (b) any—
 - (i) offence referred to in sections 3 to 10, 12 to 26 and 55 of this Act;
 - (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”.

Substitution of section 41 of Act 32 of 2007

13. The following section is hereby substituted for section 41 of the principal Act:

“Prohibition on certain types of employment by certain persons who have committed sexual offences [against children and persons who are mentally disabled] 5

41. [(1)] A person who has been convicted of the commission of a sexual offence [against a child] or is alleged to have committed a sexual offence [against a child] and has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), whether committed before or after the commencement of this Chapter, whether committed in or outside the Republic, and whose particulars have been included in the Register, may not— 10

- (a) be employed to work with a [child] person who is vulnerable in any circumstances;
- (b) hold any position, related to his or her employment, or for any commercial benefit which in any manner places him or her in any position of authority, supervision or care of a [child] person who is vulnerable, or which, in any other manner, places him or her in a position of authority, supervision or care of a [child or where he or she gains access to a child or places where children are present or congregate] person who is vulnerable;” 20
- (c) be granted a licence or be given approval to manage or operate any entity, business concern or trade in relation to the supervision over or care of a [child] person who is vulnerable [or where children are present or congregate]; or 25
- (d) become the foster parent, kinship care-giver, temporary safe care-giver or adoptive parent of a child or the curator of a person with a mental disability. 25

[(2)] A person who has been convicted of the commission of a sexual offence against a person who is mentally disabled or is alleged to have committed a sexual offence against 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, whether committed before or after the commencement of this Chapter, whether committed in or outside the Republic and whose particulars have been included in the Register, may not— 30

- (a) be employed to work with a person who is mentally disabled in any circumstances;
- (b) hold any position, related to his or her employment, or for any commercial benefit which in any manner places him or her in a position of authority, supervision or care of a person who is mentally disabled, or which, in any other manner, places him or her in a position of authority, supervision or care of a person who is mentally disabled or where he or she gains access to a person who is mentally disabled or places where persons who are mentally disabled are present or congregate; 40
- (c) be granted a licence or be given approval to manage or operate any entity, business concern or trade in relation to the supervision over or care of a person who is mentally disabled or where persons who are mentally disabled are present or congregate; or 45
- (d) become the curator of a person who is mentally disabled.]” 50

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

14. 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.”.

Amendment of section 43 of Act 32 of 2007

15. Section 43 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

“The objects of the Register are to protect **[children and persons who are mentally disabled]** persons who are vulnerable against sexual offenders by—”; and

(b) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of the following subparagraphs:

“(i) have been convicted of a sexual offence **[against a child or a person who is mentally disabled]**, whether committed before or after the commencement of this Chapter and whether committed in or outside the Republic; or

(ii) are alleged to have committed a sexual offence **[against a child or a person who is mentally disabled]** in respect of whom a court, whether before or after the commencement of this Chapter—”.

Amendment of section 44 of Act 32 of 2007

16. Section 44 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:

“(e) a person contemplated in section 47(2) applying for a licence or approval to manage or operate any entity, business concern or trade in relation to the supervision over or care of **[children or persons who are mentally disabled] persons who are vulnerable** in respect of his or her own particulars;”.

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

17. 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, 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.”.

Amendment of section 45 of Act 32 of 2007

18. Section 45 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs (c) and (d) of the following paragraphs, respectively:

“(c) Notwithstanding paragraph (d) an employer must immediately terminate the employment of an employee who fails to disclose a conviction 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 who has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, as contemplated in section 41.

(d) An employer must take reasonable steps to prevent an employee whose particulars are recorded in the Register from continuing to gain access to a **[child or a person who is mentally disabled] person who is vulnerable**, in the course of his or her employment, including, if reasonably possible or practicable to transfer such person from the post or position occupied by him or her to another post or position: Provided that if any such steps to be taken will not ensure the safety of a **[child or a person who is mentally disabled] person who is vulnerable**, the employment relationship, the use of services or access, as the case may be, must be terminated immediately.”.

Amendment of section 46 of Act 32 of 2007, as amended by section 4 of Act 5 of 2015

19. Section 46 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) An employee in the employ of an employer at the commencement of this Chapter, who is or was convicted of a sexual offence **[against a child or a person who is mentally disabled]**, or is alleged to have committed a sexual offence

[against a child or a person who is mentally disabled] and who has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, irrespective of whether or not such offence was committed or allegedly committed during the course of his or her employment, and whose particulars are included or are to be included in the Register, must without delay disclose such conviction or finding to his or her employer. 5

(2) An employee who, after the commencement of this Chapter, applies for employment, must, if he or she has been convicted of a sexual offence [against a child or a person who is mentally disabled] or is alleged to have committed a sexual offence [against a child or a person who is mentally disabled] and who has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, and whose particulars are included or are to be included in the Register, disclose such conviction or finding when applying for employment.”. 10

Amendment of section 47 of Act 32 of 2007, as amended by section 5 of Act 5 of 2015

20. Section 47 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 15

“(1) A licensing authority may not grant a licence to or approve the management or operation of any entity, business concern or trade in relation to the supervision over or care of a [child or a person who is mentally disabled] person who is vulnerable without having determined, by way of an application to the Registrar for a prescribed certificate, whether or not the particulars of such person have been recorded in the Register. 20

(2) A person who, after the commencement of this Chapter, applies for a licence contemplated in subsection (1) to a licensing authority, 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.”. 25

Amendment of section 48 of Act 32 of 2007, as amended by section 6 of Act 5 of 2015 30

21. 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. 35

(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. 40

(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).” 45

Amendment of section 49 of Act 32 of 2007

22. Section 49 of the principal Act is hereby amended by the substitution for subparagraph (iv) of paragraph (b) of the following subparagraph:

- “(iv) the sexual offence **[against a child or a person who is mentally disabled]** in respect of which the person has been convicted, the sentence imposed, the date and place of conviction and sentence, as well as the relevant prisoner identification number, where applicable;”.

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

23. Section 50 of the principal Act is hereby amended— 10

(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]**— 15

- (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; 20
- (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 25

(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]**; 30
- (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), 35

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

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 40

“(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 45
- (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, 50

must, subject to paragraph (c), make an order that the particulars of the person be included in the Register.”; 55

- (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 or 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." 5

Substitution of section 51 of Act 32 of 2007, as amended by section 8 of Act 5 of 2015 10

24. The following section is hereby substituted for section 51 of the principal Act:

"Removal of particulars from Register

51. (1) Subject to subsections (2), (2A) and (3), the particulars of a person—
 (a) who— 15
 (i) has been sentenced for a conviction of a sexual offence **[against a child or a person who is mentally disabled]** to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977, without the option of a fine for a period of at least six months but not exceeding eighteen months, whether the sentence was suspended or not, may, on application as contemplated in subsection (3), be removed from the Register after a period of **[ten]** 20 years has lapsed after that person has been released from prison or the period of suspension has lapsed; 25
 (ii) has been sentenced for a conviction of a sexual offence **[against a child or a person who is mentally disabled]** to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977, without the option of a fine for a period of six months or less, whether the sentence was suspended or not, may, on application as contemplated in subsection (3), be removed from the Register after a period of **[seven]** 14 years has lapsed after that person has been released from prison or the period of suspension has lapsed; or 30
 (iii) is alleged to have committed a sexual offence **[against a child or a person who is mentally disabled]** in respect of whom a court, whether before or after the commencement of this Chapter, has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, may, on application as contemplated in subsection (3), be removed from the Register after a period of **[five]** ten years has lapsed after such person has recovered from the mental illness or mental defect in question and is discharged in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002), from any restrictions imposed on him or her; or 35
 (b) who has been sentenced for a conviction of a sexual offence **[against a child or a person who is mentally disabled]** to any other form of lesser punishment or court order may, on application as contemplated in subsection (3), be removed from the Register after a period of **[five]** ten years has lapsed since the particulars of that person were included in the Register. 40 45 50

- (2) The particulars of a person who has—
- (a) been sentenced for a conviction of a sexual offence [**against a child or a person who is mentally disabled**] to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977, with or without the option of a fine for a period exceeding [**eighteen**] 18 months, whether the sentence was suspended or not; or 5
 - (b) two or more convictions of a sexual offence [**against a child or a person who is mentally disabled**], 10
may not be removed from the Register.
- (2A) A person falling into the categories contemplated in subsection (1) or (2), who was a child at the time of the commission of the offence concerned and who was convicted of such offence or a person who was a child at the time of the alleged commission of the offence and 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— 15
- (a) before the implementation of this Chapter, may, at any time before the expiration of the periods referred to in subsection (1), apply to a court for an order that his or her particulars must be removed from the Register by— 20
 - (i) addressing the court on the reasons for such application and showing good cause why it is unlikely that he or she will commit another sexual offence [**against a child or a person who is mentally disabled, as the case may be**]; and 25
 - (ii) submitting to the court an affidavit by him or her stating that no charge relating to a sexual offence [**against a child or a person who is mentally disabled, as the case may be,**] is pending against him or her; or
 - (b) after the implementation of this Chapter, may, at any time before the expiration of the periods referred to in subsection (1), apply to the court referred to in section 50(2)(c) for an order that his or her particulars must be removed from the Register by— 30
 - (i) addressing the court on the reasons for such application and showing good cause why it is unlikely that he or she will commit another sexual offence [**against a child or a person who is mentally disabled, as the case may be**]; and 35
 - (ii) submitting to the court an affidavit by him or her stating that no charge relating to a sexual offence [**against a child or a person who is mentally disabled, as the case may be,**] is pending against him or her. 40
- (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) (a) A person falling into the categories contemplated in subsection (1) may apply, in the prescribed manner, to the Registrar to have his or her particulars removed from the Register. 45
- (b) The Registrar must, after considering the application, remove the particulars of the person contemplated in paragraph (a) from the Register, unless the person concerned has [**an investigation or**] a charge relating to a sexual offence [**against a child or a person who is mentally disabled**] pending against him or her and the relevant [**investigation or**] case has not yet been finalised, in which event the finalisation of the application must be postponed until the Registrar has, in the prescribed manner, received information on the outcome of the [**investigation or**] case. 50 55
 - (c) The Registrar may, at the request of a person whose particulars are included in the Register, remove those particulars from the Register, if the Registrar is satisfied that the entry of those particulars in the Register was clearly in error.

(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 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.” 5

Amendment of section 53 of Act 32 of 2007

25. Section 53 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (c), (e) and (f) of the following paragraphs, respectively: 10

- “(c) the manner in which the National Commissioner of Correctional Services must forward particulars of prisoners who are serving a sentence of imprisonment as the result of a conviction for a sexual offence **[against a child or a person who is mentally disabled]** to the Registrar as contemplated in section 50(5)(a); 15
- (e) the manner in which the National Commissioner of the South African Police Service must forward particulars of persons with a previous conviction for a sexual offence **[against a child or a person who is mentally disabled]** to the Registrar as contemplated in section 50(6); and 20
- (f) the manner in which the Director-General: Health must forward particulars of persons who are 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]** to the Registrar as contemplated in section 50(7)(a);” 25

Substitution of section 54 of Act 32 of 2007 25

26. 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. 30

[(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. 35

[(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. 40

(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. 45

(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.”

Amendment of section 56 of Act 32 of 2007, as amended by section 4 of Act 6 of 2012 and section 9 of Act 5 of 2015

27. Section 56 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) A person (‘A’) may not be convicted of an offence in terms of section 12 if, 5
at the time when the sexual act [of sexual penetration] was first committed—
(a) A was below the age of 18 years; and
(b) the other person (‘B’) exercised power or authority over A or a
relationship of trust existed between A and B.”.

Amendment of section 57 of Act 32 of 2007 10

28. Section 57 of the principal Act is hereby amended—

- (a) by the substitution for the heading for section 57 of the following heading:
“**Inability of children under 12 years and persons [who are mentally disabled] with mental disabilities to consent to sexual acts**”; and
(b) by the substitution for subsection (2) of the following subsection: 15
“(2) Notwithstanding anything to the contrary in any law contained, a person [who is mentally disabled] with a mental disability is incapable of consenting to a sexual act.”.

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 20

29. The long title of the principal Act is hereby amended—

- (a) 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.”; 25
(b) by the substitution for the sixth bullet thereof 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] with mental disabilities, including offences relating to sexual exploitation or grooming, exposure to or display of pornography and the creation of child pornography, 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] with mental disabilities in respect of sexual abuse or exploitation.”; and 30 35
(c) by the substitution 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] persons who are vulnerable.”. 40

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

30. The index of the principal Act is hereby amended—
(a) by the insertion after item 14 of the following Part and item: 45

“Part 5

Sexual intimidation

14A. Sexual intimidation”; and

(b) by the substitution for Chapter 4 of the following Chapter:

“CHAPTER 4

SEXUAL OFFENCES AGAINST PERSONS [WHO ARE MENTALLY DISABLED] WITH MENTAL DISABILITIES

Sexual exploitation and sexual grooming of, exposure or display of or causing exposure or display of child pornography or pornography to persons [who are mentally disabled] with mental disabilities and using persons [who are mentally disabled] with mental disabilities for pornographic purposes or benefiting therefrom 5

23. Sexual exploitation of persons **[who are mentally disabled]** with mental disabilities 10

24. Sexual grooming of persons **[who are mentally disabled]** with mental disabilities

25. Exposure or display of or causing exposure or display of child pornography or pornography to persons **[who are mentally disabled]** with mental disabilities 15

26. Using persons **[who are mentally disabled]** with mental disabilities for pornographic purposes or benefiting therefrom”;

(c) by the substitution for item 41 of the following item:

“41. Prohibition on certain types of employment by certain persons who have committed sexual offences **[against children and persons who are mentally disabled]**”;

(d) by the insertion after item 44A of the following items:

“44B. Access to Register by National Commissioner of South African Police Service 25

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

(e) by the substitution for the heading to Part 1 of Chapter 7 of the following heading:

“*Miscellaneous offences: Obligation to report commission of sexual offences against **[children or persons who are mentally disabled]** vulnerable persons and attempt, conspiracy, incitement or inducing another person to commit sexual offence*”;

(f) by the substitution for item 54 of the following item:

“54. Obligation to report commission of sexual offences against **[children or persons who are mentally disabled]** persons who are vulnerable”;

(g) by the substitution for the heading to Part 2 of Chapter 7 of the following heading:

“*Defences and sentencing, inability of children under 12 years and persons **[who are mentally disabled]** with mental disabilities to consent to sexual acts, other evidentiary matters and extra-territorial jurisdiction*”;

(h) by the substitution for item 57 of the following item:

“57. Inability of children under 12 years and persons **[who are mentally disabled]** with mental disabilities to consent to sexual acts”.

Short title and commencement

31. This Act is called the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 50