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28 January 2022

No. 45823

THE PRESIDENCY

No. 787

28 January 2022

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 13 of 2021: Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021

DIE PRESIDENSIE

No. 787

28 Januarie 2022

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 13 van 2021: Wysigingswet op die Strafregwysigingswet (Seksuele Misdrywe en Verwante Aangeleenthede), 2021



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Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 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.					

(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

and to provide for matters connected therewith.

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

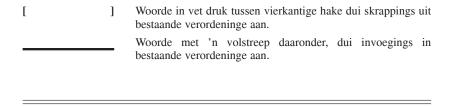
Amendment of section 1 of Act 32 of 2007, as amended by section 48 of Act 7 of 2013, section 1 of Act 5 of 2015 and section 35 of Act 8 of 2017

- **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—
 - (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;";
 - (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

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ALGEMENE VERDUIDELIKENDE NOTA:



(Engelse teks deur die President geteken) (Goedgekeur op 25 Januarie 2022)

WET

Tot wysiging van die Strafregwysigingswet (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, ten einde—

- die trefwydte van die misdryf van bloedskande uit te brei;
- 'n nuwe misdryf van seksuele intimidasie in te voeg;
- die frase "persoon wat verstandelik gestremd is" of "persone wat verstandelik gestremd is" waar die frase ook al voorkom met die frase "persoon met 'n verstandelike gestremdheid" of "persone met verstandelike gestremdhede" te vervang:
- die invoeging van die besonderhede van persone in die Nasionale Register vir Seks-oortreders verder te reël;
- die lys van persone wat ingevolge Hoofstuk 6 van die Wet beskerm word, uit te brei;
- die lys van persone wat aansoek kan doen by die Registrateur van die Nasionale Register vir Seks-oortreders uit te brei;
- die verwydering van die besonderhede van persone uit die Nasionale Register vir Seks-oortreders verder te reël; en
- die aanmeldingsplig van persone wat daarvan bewus is dat seksuele misdrywe teen persone wat kwesbaar is, gepleeg is, verder te reël,

en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

IE PARLEMENT van die Republiek van Suid-Afrika verorden, soos volg:—

Wysiging van artikel 1 van Wet 32 van 2007, soos gewysig deur artikel 48 van Wet 7 van 2013, artikel 1 van Wet 5 van 2015 en artikel 35 van Wet 8 van 2017

- 1. Artikel 1 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007 (hierna die "Hoofwet" genoem), word hierby gewysig—
 - (a) deur die woorde wat paragraaf (a) van die omskrywing van "persoon wat verstandelik gestremd is" voorafgaan deur die volgende woorde te vervang:
 - "'persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid' iemand wat deur enige verstandelike gestremdheid, met inbegrip van enige afwyking of gestremdheid van die verstand, tot so 'n mate aangetas is dat hy of sy, ten tyde van die beweerde pleeg van die betrokke misdryf—";
 - (b) deur die omskrywing van "sorggewer" deur die volgende omskrywing te vervang:
 - "'sorggewer' iemand wat, met betrekking tot iemand [wat verstandelik gestremd is] met 'n verstandelike gestremdheid, die verant-

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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 <u>any</u> '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.".

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:
 - "(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,
 - 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

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."

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woordelikheid vir die daaglikse behoeftes van sodanige persoon aanvaar of in wesenlike kontak met sodanige persoon is;"; en

- (c) deur subparagraaf (v) van subsartikel (3)(d) deur die volgende subparagraaf te vervang:
 - "(v) 'n persoon is [wat verstandelik gestremd is] met 'n 5 verstandelike gestremdheid.".

Wysiging van artikel 2 van Wet 32 van 2007

- **2.** Artikel 2 van die Hoofwet word hierby gewysig deur paragraaf (g) deur die volgende paragraaf te vervang:
 - "(g) 'n Nasionale Register vir Seks-oortreders in te stel ten einde 'n rekord van persone in te stel wat aan [seksuele misdrywe teenoor kinders en persone wat verstandelik gestremd is,] enige 'seksuele misdryf', soos in artikel 40 omskryf, skuldig bevind is ten einde sodanige persone te verbied om in diens geneem te word op 'n wyse wat hulle in 'n posisie plaas om met [kinders of persone wat verstandelik gestremd is] persone wat kwesbaar is, te werk of [toegang tot hulle te hê of] in 'n posisie van gesag of toesig oor hulle geplaas te word."

Wysiging van artikel 5 van Wet 32 van 2007

3. Artikel 5 van die Hoofwet word hierby gewysig deur subartikel (2) te skrap.

Wysiging van artikel 12 van Wet 32 van 2007

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- **4.** Artikel 12 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) Persone wat nie wettiglik met mekaar op grond van bloedverwantskap, aanverwantskap of 'n aannemingsverhouding mag trou nie en wat wederregtelik en opsetlik 'n handeling van—
 - (a) seksuele penetrasie met mekaar; of
 - (b) seksuele skending met mekaar waar een van hulle 'n kind is en die daad van seksuele skending was van so 'n aard dat dit afkeurenswaardig vir die volwasse persoon was om onder die omstandighede sodanig op te tree,

pleeg, is, ondanks hul gesamentlike toestemming om sodanige handeling te pleeg, 30 skuldig aan die misdryf van bloedskande.".

Invoeging van nuwe Deel in Wet 32 van 2007

5. Die volgende Deel word hierby na Deel 4 van Hoofstuk 2 van die Hoofwet ingevoeg:

"Deel 5

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Seksuele intimidasie

Seksuele intimidasie

14A. Iemand ('A') wat wederregtelik en opsetlik 'n dreigement uiter of oordra aan 'n klaer of klaagster ('B') wat 'n redelike geloof van dreigende gevaar in B opwek dat B, of 'n derde party ('C') wat 'n lid van die familie van B is of enige iemand anders wat in 'n noue verhouding met B is, is skuldig aan die misdryf van seksuele intimidasie en kan by skuldigbevinding gestraf word met die straf waarmee 'n persoon wat weens die werklike pleging van daardie misdryf skuldig bevind is, gestraf kan word."

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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

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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 10 for pornographic purposes or benefiting therefrom".

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 15 mental disabilities

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')-

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(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 25 disabled] with a mental disability.

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- (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')—
- (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;
- by participating in, being involved in, promoting, encouraging or facilitating the commission of a sexual act with B by C;

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- (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

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sexual act with B by C, 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-
- (a) intentionally allows or knowingly permits the commission of a sexual act by a third person ('C') with a person [who is mentally 45 disabled] with a mental disability ('B') while being a care-giver, parent, guardian, curator or teacher of B; or

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Vervanging van opskrif van Wet 32 van 2007

6. Die opskrif van Hoofstuk 4 van die Hoofwet word deur die volgende opskrif vervang:

"SEKSUELE MISDRYWE TEENOOR PERSONE [WAT VERSTANDELIK GESTREMD IS] MET VERSTANDELIKE GESTREMDHEDE

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Seksuele uitbuiting en seksuele aanvoring van, blootstelling of vertoon of veroorsaking van blootstelling of vertoon van kinderpornografie of pornografie aan persone [wat verstandelik gestremd is] met verstandelike gestremdhede en gebruik van 10 persone [wat verstandelik gestremd is] met verstandelike gestremdhede vir pornografiese doeleindes of voordeeltrekking daaruit".

Vervanging van artikel 23 van Wet 32 van 2007, soos vervang deur artikel 3 van Wet 6 van 2012

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7. Artikel 23 van die Hoofwet word hierby deur die volgende artikel vervang:

"Seksuele uitbuiting van persone [wat verstandelik gestremd is] <u>met</u> verstandelike gestremdhede

- 23. (1) Iemand ('A') wat wederregtelik en opsetlik die dienste van 'n klaer of klaagster [wat verstandelik gestremd is] met 'n verstandelike gestremdheid ('B'), gebruik vir finansiële of ander beloning, guns of vergoeding aan B of aan 'n derde persoon ('C')—
- (a) met die doel om 'n seksuele handeling met B te pleeg, ongeag of die seksuele handeling gepleeg is al dan nie; of
- (b) deur 'n seksuele handeling met B te pleeg,
 is, benewens enige ander misdryf waaraan hy of sy skuldig bevind kan
 word, skuldig aan die misdryf van seksuele uitbuiting van 'n persoon
 [wat verstandelik gestremd is] met 'n verstandelike gestremdheid.
- (2) Iemand ('A') wat wederregtelik en opsetlik die dienste van 'n **[klaer of klaagster]** persoon **[wat verstandelik gestremd is]** met 'n verstandelike gestremdheid ('B') aan 'n derde persoon ('C'), aanbied vir finansiële of ander beloning, guns of vergoeding aan A, B of 'n ander persoon ('D')—
- (a) vir doeleindes van die pleeg van 'n seksuele handeling met B deur C;
- (b) deur B uit te nooi, te oorreed of uit te lok om C toe te laat om 'n seksuele handeling met B te pleeg;
- (c) deur deel te neem aan of betrokke te wees by die pleging van 'n seksuele handeling met B deur C of sodanige handeling bevorder, aanmoedig of fasiliteer;
- (d) deur B beskikbaar te stel, aan te bied of aan te wend vir doeleindes van die pleging van 'n seksuele handeling met B deur C; of
- (e) deur B aan te hou, hetsy onder dreigement, mag, dwang, misleiding, misbruik van mag of gesag vir doeleindes van die pleging van 'n seksuele handeling met B deur C,

is skuldig aan 'n misdryf van betrokkenheid by die seksuele uitbuiting van 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid.

- (3) Iemand ('A') wat—
- (a) die pleeg van 'n seksuele handeling deur 'n derde persoon ('C') met 50 'n [klaer of klaagster] persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid ('B') opsetlik toelaat of wetens duld terwyl hy of sy 'n sorggewer, ouer, voog, kurator of onderwyser of onderwyseres van B is; of

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(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.								
(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								

(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.

exploitation of a person [who is mentally disabled] with a mental

(6) A person ('A'), including a juristic person, who—

- (a) makes or organises any travel arrangements for or on behalf of a 20 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 25
- (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.".

Amendment of section 24 of Act 32 of 2007

disability.

- **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";

- (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;

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- (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

(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.";

(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

- (b) enige roerende of onroerende eiendom besit, huur, verhuur, bestuur, okkupeer of beheer daaroor het en opsetlik toelaat of wetens duld dat sodanige roerende of onroerende eiendom gebruik word vir doeleindes van die pleging van 'n seksuele handeling met B deur C, is skuldig aan die misdryf van bevordering van die seksuele uitbuiting van 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid.
- (4) Iemand ('A') wat opsetlik finansiële of ander beloning, guns of vergoeding ontvang uit die pleeg van 'n seksuele handeling met 'n [klaer of klaagster] persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid ('B') deur 'n derde persoon ('C'), is skuldig aan die misdryf van voordeeltrekking uit die seksuele uitbuiting van 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid.
- (5) Iemand ('A') wat opsetlik in die geheel of gedeeltelik leef van belonings, gunste of vergoeding vir die pleeg van 'n seksuele handeling met 'n [klaer of klaagster] persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid ('B') deur 'n derde persoon ('C'), is skuldig aan die misdryf van leef van die opbrengs van die seksuele uitbuiting van 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid.

(6) Iemand ('A'), met inbegrip van 'n regspersoon, wat—

- (a) enige reisreëlings maak of tref vir of namens enige derde persoon ('C'), hetsy sodanige ander persoon binne of buite die grense van die Republiek woonagtig is, met die opset om die pleging van enige seksuele handeling met 'n [klaer of klaagster] persoon [wat 25 verstandelik gestremd is] met 'n verstandelike gestremdheid ('B') te fasiliteer, ongeag of daardie handeling gepleeg is al dan nie; of
- (b) enige inligting op enige wyse druk of publiseer wat bestem is om gedrag te bevorder of te fasiliteer wat 'n seksuele handeling met B daar sou stel,

is skuldig aan die misdryf van die bevordering van sekstoere met persone [wat verstandelik gestremd is] met verstandelike gestremdhede.".

Wysiging van artikel 24 van Wet 32 van 2007

- 8. Artikel 24 van die Hoofwet word hierby gewysig-
 - (a) deur die opskrif deur die volgende opskrif te vervang:

"Seksuele aanvoring van persone [wat verstandelik gestremd is] met verstandelike gestremdhede";

- (b) deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) Iemand ('A') wat-
 - (a) aan 'n derde persoon ('C')—
 - 'n artikel wat bestem is om in die verrigting van 'n seksuele handeling gebruik te word;
 - kinderpornografie of pornografie; of
 - (iii) 'n publikasie of film,
 - verskaf, blootstel of ten toon stel met die opset om C aan te 45 moedig, in staat te stel, te onderrig of te oorreed om 'n seksuele handeling met 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid ('B') te verrig; of
 - 'n ontmoeting of kommunikasie tussen C en B op enige wyse vanaf, na of in enige deel van die wêreld, reël of fasiliteer met 50 die opset dat C 'n seksuele handeling met B sal verrig,
 - is skuldig aan die misdryf van bevordering van die seksuele aanvoring van 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid.";
- (c) deur die woorde wat subparagraaf (i) van subartikel (2)(a) voorafgaan deur 55 die volgende woorde te vervang:
 - "(a) aan 'n klaer of klaagster [wat verstandelik gestremd is] met 'n verstandelike gestremdheid ('B')--"; en

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(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 10 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 15 [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;

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- (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 30 pornographic purposes.
- (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 35 offence of benefiting from using a person [who is mentally disabled] with a mental disability for pornographic purposes."

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:

"(ii) a person [who is mentally disabled] with a mental disability;".

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(d) deur die woorde wat op subartikel (2)(e) volg deur die volgende woorde te vervang:

"is skuldig aan die misdryf van seksuele aanvoring van 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid.".

Vervanging van artikel 25 van Wet 32 van 2007

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9. Artikel 25 van die Hoofwet word hierby deur die volgende artikel vervang:

"Blootstelling of vertoon of veroorsaking van blootstelling of vertoon van kinderpornografie of pornografie aan persone [wat verstandelik gestremd is] met verstandelike gestremdhede

25. Iemand ('A') wat wederregtelik en opsetlik enige beeld, 10 publikasie, uitbeelding, beskrywing of reeks van kinderpornografie of pornografie aan 'n klaer of klaagster [wat verstandelik gestremd is] met 'n verstandelike gestremdheid ('B'), blootstel of vertoon of die blootstelling of vertoon veroorsaak, is skuldig aan die misdryf van blootstelling of vertoon of veroorsaking van blootstelling of vertoon van 15 kinderpornografie of pornografie aan 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid.''.

Vervanging van artikel 26 van Wet 32 van 2007

10. Artikel 26 van die Hoofwet word hierby deur die volgende artikel vervang:

"Gebruik van persone [wat verstandelik gestremd is] met 20 verstandelike gestremdhede vir pornografiese doeleindes of voordeeltrekking daaruit

- **26.** (1) Iemand ('A') wat wederregtelik en opsetlik 'n klaer of klaagster [wat verstandelik gestremd is] met 'n verstandelike gestremdheid ('B'), hetsy vir finansiële of ander beloning, guns of vergoeding aan B of 25 'n derde persoon ('C') al dan nie, gebruik—
- (a) vir die doel van die skepping, maak of vervaardiging;
- (b) deur die skepping, maak of vervaardiging; of
- (c) op enige wyse hulp verleen by die skep, maak of vervaardiging, van enige beeld, publikasie, uitbeelding, beskrywing of reeks op enige 30 wyse ook al van pornografie of kinderpornografie, is skuldig aan die misdryf van die gebruik van 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid vir pornografiese doeleindes.
- (2) Iemand wat wetens en opsetlik op welke wyse ook al finansiële voordeel trek uit, of enige guns, voordeel, beloning, vergoeding of enige 35 ander voordeel ontvang as gevolg van die pleging van enige handeling beoog in subartikel (1), is skuldig aan die misdryf van voordeeltrekking uit die gebruik van 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid vir pornografiese doeleindes.".

Wysiging van artikel 30 van Wet 32 van 2007

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11. Artikel 30 van die Hoofwet word hierby gewysig deur subparagraaf (ii) van subartikel (1)(b) deur die volgende subparagraaf te vervang:

"(ii) 'n persoon is [wat verstandelik gestremd is] met 'n verstandelike gestremdheid;".

Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021

12

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:

"'employer' means-

- (a) any-
 - 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 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 25 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 30 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 35 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 40 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 45 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;";

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Wysiging van artikel 40 van Wet 32 van 2007, soos gewysig deur artikel 36 van Wet 8 van 2017

12. Ar	tikel 4	0 var	n die Hoofwet	word	hierby gewysig—			
(a)	deur	die	omskrywing	van	"lisensiëringsowerheid"	deur	die	volgende

omskrywing te vervang:

"'lisensiëringsowerheid' enige owerheid wat verantwoordelik is vir die toestaan van lisensies vir of die goedkeuring van die bestuur of bedryf van enige entiteit, besigheidsonderneming of bedryf wat verband hou met die toesig oor of sorg van 'n [kind of 'n persoon wat verstandelik gestremd] persoon wat kwesbaar is;";

(b) deur die invoeging na die omskrywing van "lisensiëringsowerheid" van die volgende omskrywing:

"'persoon wat kwesbaar is' 'n-

- (a) kind of 'n persoon met 'n verstandelike gestremdheid;
- (b) vrou onder die ouderdom van 25 jaar, wat-
 - (i) onderrig by 'n kollege vir hoër onderwys, inrigting vir hoër onderwys of universiteitskollege soos omskryf by artikel 1 van die Wet op Hoër Onderwys, 1997 (Wet No. 101 van 1997), ontvang;
 - praktiese opleiding by enige opleidingsinstelling, anders as die instellings in subparagraaf (i) bedoel, of as deel van hul indiensneming ontvang; of
 - in 'n gebou, struktuur of fasiliteit woon wat hoofsaaklik as woonverblyf vir enige van die persone bedoel in subparagrawe (i) en (ii) gebruik word:
- (c) persoon wat versorg of beskerm word in 'n beskermingsfasiliteit wat dienste aan slagoffers van misdaad verskaf;
- persoon met 'n fisiese, intellektuele of sensoriese gestremdheid en wat-
 - (i) gemeenskapsgebaseerde sorg- en ondersteuningsdienste, anders as vanaf 'n familielid, ontvang vir;
 - woon in 'n gebou, struktuur of fasiliteit wat hoofsaaklik as 'n verblyfplek gebruik word vir; of
 - versorg word in 'n fasiliteit wat 24-uur versorging bied aan, persone met fisiese, intellektuele of sensoriese gestremdhede; of 60-jarige of ouer persoon en wat—
 - gemeenskapsgebaseerde sorg- en ondersteuningsdienste, anders as vanaf 'n familielid, ontvang vir;
 - woon in 'n gebou, struktuur of fasiliteit wat hoofsaaklik gebruik word as 'n verblyfplek vir; of
- (iii) versorg word in 'n fasiliteit wat 24-uur versorging bied aan, sodanige persone;";
- (c) deur die volgende omskrywing na die omskrywing van "Registrateur" in te

'seksuele misdryf'—

(a) enige-

- seksuele misdryf ingevolge die reg wat tussen 16 Junie 2003 en 15 Desember 2007 bestaan het;
- misdryf bedoel in Hoofstukke 2, 3 en 4 en artikels 55 en 71 van hierdie Wet;
- misdryf bedoel in Hoofstuk 2 van die 'Prevention and Combating of Trafficking in Persons Act', 2013, wat vir seksuele doeleindes gepleeg is; en
- oortreding sedert 16 Junie 2003 van artikel 24B(1) of (3) van die Wet op Films en Publikasies, 1996 (Wet No. 65 van 1996), wat teenoor 'n kind of 'n persoon met 'n verstandelike gestremdheid gepleeg is tussen die tydperk van 16 Junie 2003 en die datum van; en
- enige
 - misdryf bedoel in artikels 3 tot 10, 12 tot 26 en 55 van hierdie Wet:

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Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021

1.

(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—
 - 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—
 - 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 20 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—
 - receives community-based care and support services, other than from a family member for;

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- (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 | 55 Matters) Amendment Act Amendment Act, 2021."; and

(e) by the deletion of the definition of "sexual offence against a child".

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- (ii) misdryf bedoel in Hoofstuk 2 van die 'Prevention and Combating of Trafficking in Persons Act', 2013, wat vir seksuele doeleindes gepleeg is; en
- oortreding sedert 16 Junie 2003 van artikel 24B(1) of (3) van die Wet op Films en Publikasies, 1996,

wat na die datum van.

inwerkingtreding van die Wysigingswet op die Strafregwysigingswet (Seksuele Misdrywe en Verwante Aangeleenthede), 2021, gepleeg is.";

- (d) deur die omskrywing van "seksuele misdryf teen 'n kind" te skrap; en
- (e) deur die omskrywing van "werkgewer" deur die volgende omskrywing te 10 vervang:

" 'werkgewer'—

- (a) enige
 - staatsdepartement of administrasie in die nasionale of provinsiale regeringsfeer of enige munisipaliteit in die 15 plaaslike regeringsfeer; of
 - ander funksionaris of instelling wanneer 'n bevoegdheid of 'n verpligting ingevolge die Grondwet van die Republiek van Suid-Afrika, 1996, of 'n provinsiale grondwet uitgeoefen of uitgevoer word, of wat 'n openbare bevoegdheid of 'n 20 openbare funksie ingevolge enige wetgewing uitoefen of

wat[-

- (aa)] werknemers in diens neem wat op enige wyse en gedurende die loop van hul diens, in 'n posisie geplaas sal word om met 'n 25 [kind] persoon wat kwesbaar is, te werk of in 'n posisie van gesag, toesig of sorg oor 'n [kind] persoon wat kwesbaar is, gestel sal word [of toegang sal verkry tot 'n kind of tot plekke waar kinders teenwoordig is of vergader]; of
- [(bb) werknemers in diens neem wat op enige wyse en gedurende 30 die loop van hul diens, in 'n posisie geplaas sal word om met 'n persoon wat verstandelik gestremd is, te werk of wat in 'n posisie van gesag, toesig of sorg oor 'n persoon wat verstandelik gestremd is, gestel sal word of wat toegang sal verkry tot 'n persoon wat verstandelik gestremd is of tot 35 plekke waar persone wat verstandelik gestremd is, teenwoordig is of vergader; of
- (b) enige persoon, organisasie, instelling, klub, sportklub, assosiasie of liggaam wat, na gelang van die geval
 - werknemers in diens neem wat op enige wyse en gedurende 40 die loop van hul diens, in 'n posisie geplaas sal word om met 'n [kind of 'n persoon wat verstandelik gestremd] persoon wat kwesbaar is, te werk of wat in 'n posisie van gesag, toesig of sorg oor 'n [kind of 'n persoon wat verstandelik gestremd] persoon wat kwesbaar is, gestel sal word [of wat 45 toegang sal verkry tot 'n kind of 'n persoon wat verstandelik gestremd is of tot plekke waar kinders of persone wat verstandelik gestremd is, teenwoordig is of vergaderl: of
 - (ii) enige entiteit of besigheidsonderneming of bedryf besit, 50 bestuur, bedryf of wat daarin 'n besigheids- of ekonomiese belang het of wat op enige wyse verantwoordelik is vir of deelneem of bystand verleen aan die bestuur of bedryf daarvan wat verband hou met die toesig oor of sorg van 'n [kind of 'n persoon wat verstandelik gestremd] persoon wat kwesbaar 55 is, of werk met 'n [kind of 'n persoon wat verstandelik gestremd] persoon wat kwesbaar is[, of met die toegang tot 'n kind of 'n persoon wat verstandelik gestremd is of tot plekke waar kinders of persone wat verstandelik gestremd is, teenwoordig is of vergader].

en 'diens', 'indiensneming', 'in diens geneem' en 'diensverhouding' het ooreenstemmende betekenisse; en".

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Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021

16

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]

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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, 10 whether committed in or outside the Republic, and whose particulars have been included in the Register, may not-

- (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 15 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 20 or congregate] person who is vulnerable;";

(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

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(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.

[(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 30 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 35 the Register, may not-

be employed to work with a person who is mentally disabled in any circumstances:

hold any position, related to his or her employment, or for any commercial benefit which in any manner places him or her in a 40 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 45 are mentally disabled are present or congregate;

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 50 congregate; or

become the curator of a person who is mentally disabled.]".

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17

Vervanging van artikel 41 van Wet 32 van 2007

13. Artikel 41 van die Hoofwet word hierby deur die volgende artikel vervang:

"Verbod op sekere tipes diens deur sekere persone wat seksuele misdrywe gepleeg het [teenoor kinders of persone wat verstandelik gestremd is]

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- 41. [(1)] Iemand wat aan die pleeg van 'n seksuele misdryf [teenoor 'n kind] skuldig bevind is of wat na bewering 'n seksuele misdryf [teenoor 'n kind] gepleeg het en met wie ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977 (Wet No. 51 van 1977), gehandel is, ongeag of dit voor of na die inwerkingtreding van hierdie Hoofstuk gepleeg is, [en] 10 ongeag of dit binne of buite die Republiek gepleeg is, en wie se besonderhede in die Register opgeneem is, mag-
- (a) onder geen omstandighede in diens geneem word om met 'n [kind] persoon wat kwesbaar is te werk nie;
- geen posisie vul wat met sy of haar diens verband hou of vir enige 15 kommersiële voordeel wat hom of haar op enige wyse in 'n posisie van gesag, toesig of sorg oor 'n [kind] persoon wat kwesbaar is, sal stel nie of wat hom of haar, op enige ander wyse, in 'n posisie van gesag, toesig of sorg oor 'n [kind] persoon wat kwesbaar is, sal stel nie [of waar hy of sy toegang verkry tot 'n kind of tot plekke 20 waar kinders teenwoordig is of vergader nie];
- (c) geen lisensie toegestaan word of goedkeuring ontvang om enige entiteit, besigheidsonderneming of bedryf wat met die toesig of sorg oor 'n [kind] persoon wat kwesbaar is, verband hou[, of waar kinders teenwoordig is of vergader, te bestuur of te bedryf] nie; 25
- (d) nie die pleegouer, familieverwante versorger, tydelike veiligheidsorg-versorger of aannemende ouer van 'n kind of die kurator van 'n persoon met 'n verstandelike gestremdheid word nie.
- [(2) Iemand wat aan die pleeg van 'n seksuele misdryf teenoor 'n 30 persoon wat verstandelik gestremd is, skuldig bevind is of wat na bewering 'n seksuele misdryf teenoor 'n persoon wat verstandelik gestremd is, gepleeg het en met wie ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gehandel is, ongeag of dit voor of na die inwerkingtreding van hierdie Hoofstuk gepleeg is en ongeag of 35 dit binne of buite die Republiek gepleeg is, en wie se besonderhede in die Register opgeneem is, mag-
- (a) onder geen omstandighede in diens geneem word om met 'n persoon wat verstandelik gestremd is, te werk nie;
- geen posisie vul wat met sy of haar diens verband hou of vir 40 enige kommersiële voordeel wat hom of haar op enige wyse in 'n posisie van gesag, toesig of sorg oor 'n persoon wat verstandelik gestremd is, sal stel nie of wat hom of haar, op enige ander wyse, in 'n posisie van gesag, toesig of sorg oor 'n persoon wat verstandelik gestremd is, sal stel nie of waar hy of sy toegang 45 kan verkry tot 'n persoon wat verstandelik gestremd is, of tot plekke waar persone wat verstandelik gestremd is, teenwoordig is of vergader nie;
- (c) geen lisensie toegestaan word of goedkeuring ontvang om enige entiteit, besigheidsonderneming of bedryf wat met die toesig of 50 sorg oor 'n persoon wat verstandelik gestremd is, verband hou, of waar persone wat verstandelik gestremd is teenwoordig is of vergader, te bestuur of te bedryf nie; of
- (d) nie die kurator van 'n persoon wat verstandelik gestremd is, word nie.]".

Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021

18

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 55 or a person who is mentally disabled] in respect of whom a court, whether before or after the commencement of this Chapter—".

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Wysiging van artikel 42 van Wet 32 van 2007, soos gewysig deur artikel 36 van Wet 66 van 2008

- 14. Artikel 42 van die Hoofwet word hierby gewysig-
 - (a) deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) 'n Nasionale Register vir Seks-oortreders wat besonderhede bevat van persone wat aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] skuldig bevind is of wat na bewering 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gepleeg het en met wie ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gehandel is, ongeag of dit 10 voor of na die inwerkingtreding van hierdie Hoofstuk gepleeg is en ongeag of dit binne of buite die Republiek gepleeg is, moet [voor 30 Junie 2009 en] in ooreenstemming met die bepalings van hierdie Hoofstuk en die regulasies daarkragtens uitgevaardig, ingestel en deur die Minister bygehou word."; en

(b) deur subartikel (3) deur die volgende subartikels te vervang:

- "(3) (a) Die Registrateur moet sy of haar bevoegdhede, pligte en werksaamhede behoudens die bepalings van hierdie Hoofstuk en die regulasies daarkragtens uitgevaardig, uitoefen en verrig.
- (b) Die Registrateur kan, behoudens paragraaf (c), enige bevoegdheid, 20 plig of werksaamheid aan enige iemand anders delegeer, maar die Registrateur bly verantwoordelik en verantwoordbaar vir die uitoefening van die bevoegdhede, pligte of werksaamhede aldus gedelegeer.

(c) Die Registrateur kan nie die plig in artikel 51 bedoel, aan enige iemand anders delegeer nie.

- (4) Enige persoon kan, behoudens subartikel (5), op die voorgeskrewe vorm by die Registrateur aansoek doen om vas te stel of die besonderhede van enige iemand in die Register opgeneem is, al dan nie.
- (5) Die Registrateur moet, by oorweging van die aansoek, oortuig wees dat die-
- (a) aansoek nie beuselagtig of kwaadwillig is nie;
- (b) persoon wat die aansoek ingedien het 'n belang in die openbaarmaking van die inligting het; en
- openbaarmaking van die inligting in die belang van 'n identifiseerbare kwesbare persoon is.
- (6) Behalwe in die mate wat dit nodig mag wees vir doeleindes van hierdie Hoofstuk, is enige persoon wat opsetlik enige inligting aan 'n ander persoon openbaar of publiseer wat hy of sy as gevolg van 'n aansoek in subartikel (4) of op enige ander wyse verkry het, skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens drie jaar of met beide sodanige boete en sodanige gevangenisstraf.".

Wysiging van artikel 43 van Wet 32 van 2007

- 15. Artikel 43 van die Hoofwet word hierby gewysig-
 - (a) deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te 45

"Die oogmerke van die Register is om [kinders en persone wat verstandelik gestremd] persone wat kwesbaar is, teen seksuele oortreders te beskerm deur-"; en

- (b) deur subparagrawe (i) en (ii) van paragraaf (a) deur die volgende 50 subparagrawe te vervang:
 - "(i) aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] skuldig bevind is, ongeag of dit voor of na die inwerkingtreding van hierdie Hoofstuk gepleeg is en ongeag of dit binne of buite die Republiek gepleeg is; of
 - (ii) na bewering 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gepleeg het en ten opsigte van wie 'n hof, hetsy voor of na die inwerkingtreding van hierdie Hoofstuk—".

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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 10 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.

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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 25 (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 35 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 40 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 45 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

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Wysiging van artikel 44 van Wet 32 van 2007

- 16. Artikel 44 van die Hoofwet word hierby gewysig deur paragraaf (e) deur die volgende paragraaf te vervang:
 - "(e) iemand in artikel 47(2) beoog wat om 'n lisensie of goedkeuring aansoek doen om enige entiteit, besigheidsonderneming of bedryf wat verband hou met die toesig of sorg oor [kinders of persone wat verstandelik gestremd] persone wat kwesbaar is, te bestuur of te bedryf, ten opsigte van sy of haar eie besonderhede:"

Invoeging van artikels 44B en 44C in Wet 32 van 2007

10 **17.** Die volgende artikels word hierby na artikel 44A van die Hoofwet ingevoeg:

"Toegang tot Register deur Nasionale Kommissaris van Suid-**Afrikaanse Polisiediens**

44B. By die toepassing van artikel 36D(2) van die Strafproseswet, 1977, en artikel 15A(2) van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 65 van 1995), kan die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens toegang tot die databasis van die Register deur die Registrateur gegun word.

Verpligtinge van Direkteur-generaal: Binnelandse Sake en Registrateur

- **44C.** (1) Die Direkteur-generaal: Binnelandse Sake moet die Registrateur op skrif in kennis stel wanneer 'n persoon se verandering in identiteit formeel deur die Departement van Binnelandse Sake goedgekeur en aanvaar is, deur die Registrateur van daardie persoon se ou en nuwe identiteitsbesonderhede te voorsien.
- (2) Die Registrateur moet die Register dienooreenkomstig endosseer, | 25 waar nodig.".

Wysiging van artikel 45 van Wet 32 van 2007

- 18. Artikel 45 van die Hoofwet word hierby gewysig deur in subartikel (2) paragrawe (c) en (d), onderskeidelik, deur die volgende paragrawe te vervang:
 - "(c) Ondanks paragraaf (d) moet 'n werkgewer onmiddellik die diens van 'n 30 werknemer beëindig wat versuim om te openbaar dat hy of sy skuldig bevind is aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is] of die feit dat hy of sy na bewering 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gepleeg het en met wie ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gehandel is, soos in artikel 41 beoog. 35
 - (d) 'n Werkgewer moet redelike stappe doen om te verhoed dat 'n werknemer wie se besonderhede in die Register opgeneem is, voortgaan om toegang tot 'n [kind of 'n persoon wat verstandelik gestremd] persoon wat kwesbaar is in die loop van sy of haar diens te verkry, met inbegrip van stappe, indien dit redelik moontlik of doenlik is, om sodanige persoon uit die pos of posisie deur hom of haar 40 gehou, na 'n ander pos of posisie oor te plaas: Met dien verstande dat indien sodanige stappe wat gedoen moet word nie die veiligheid van 'n [kind of 'n persoon wat verstandelik gestremd] persoon wat kwesbaar is, sal verseker nie, die diensverhouding, die gebruik van dienste of toegang, na gelang van die geval, onmiddellik beëindig moet word.".

Wysiging van artikel 46 van Wet 32 van 2007, soos gewysig deur artikel 4 van Wet 5 van 2015

- 19. Artikel 46 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) deur, onderskeidelik, die volgende subartikels te vervang:
 - "(1) 'n Werknemer wat by die inwerkingtreding van hierdie Hoofstuk in die 50 diens van 'n werkgewer is en wat aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] skuldig bevind is of wat na bewering 'n

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[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.

(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 10 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.".

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 15 subsections (1) and (2) of the following subsections, respectively:
 - "(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.
 - (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 25 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.".

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 35 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
 - (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).".

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seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gepleeg het en met wie ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gehandel is, ongeag of sodanige misdryf gedurende die loop van sy of haar diens gepleeg of na bewering gepleeg is al dan nie, en wie se besonderhede in die Register opgeneem is of opgeneem staan te word, moet sodanige skuldigbevinding of bevinding onverwyld aan sy of haar werkgewer openbaar.

(2) 'n Werknemer wat na die inwerkingtreding van hierdie Hoofstuk aansoek doen om in diens geneem te word, moet, indien hy of sy aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] skuldig bevind is of na bewering 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat 10 verstandelik gestremd is,] gepleeg het en ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, mee gehandel is, en wie se besonderhede in die Register opgeneem is of opgeneem staan te word sodanige skuldigbevinding of bevinding openbaar wanneer die aansoek om indiensneming gedoen word."

Wysiging van artikel 47 van Wet 32 van 2007, soos gewysig deur artikel 5 van Wet 15 5 van 2015

20. Artikel 47 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) deur, onderskeidelik, die volgende subartikels te vervang:

"(1) 'n Lisensiëringsowerheid mag nie 'n lisensie toestaan of die bestuur of bedryf van enige entiteit, besigheidsonderneming of bedryf wat met die toesig of 20 sorg oor 'n [kind of 'n persoon wat verstandelik gestremd is] persoon wat kwesbaar is, verband hou, goedkeur sonder om by wyse van 'n aansoek by die Registrateur om 'n voorgeskrewe sertifikaat, vas te stel of die besonderhede van sodanige persoon in die Register opgeneem is al dan nie.

(2) Iemand wat na die inwerkingtreding van hierdie Hoofstuk by 'n 25 lisensiëringsowerheid aansoek doen om 'n lisensie in subartikel (1) beoog, en wie se besonderhede in die Register opgeneem is of opgeneem staan te word, moet openbaar dat hy of sy aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] skuldig bevind is of na bewering 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gepleeg het en 30 ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, mee gehandel is.".

Wysiging van artikel 48 van Wet 32 van 2007, soos gewysig deur artikel 6 van Wet 5 van 2015

21. Artikel 48 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) (a) Iemand wat na die inwerkingtreding van hierdie Hoofstuk aansoek doen om 'n pleegouer, familieverwante versorger, tydelike veiligheidsorg-versorger, aannemende ouer of kurator te word, en wie se besonderhede in die Register opgeneem is of opgeneem staan te word, moet openbaar dat hy of sy aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] skuldig bevind is of na bewering 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gepleeg het en ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, mee gehandel is.

(b) Iemand bedoel in paragraaf (a) wat versuim om aan paragraaf (a) te voldoen, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf van hoogstens sewe jaar of met beide so 'n boete en sodanige gevangenisstraf.

(c) 'n Kind wat onder die toesig en sorg van 'n persoon bedoel by paragraaf (a) is, moet, so gou as redelikerwys moontlik, in ooreenstemming met Hoofstuk 9 van die 'Children's Act', 2005 (Wet No. 38 van 2005), uit die sorg van sodanige 50 persoon verwyder word."

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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—
 - (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 15 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 25 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 30 [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 35 **[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.";

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Wysiging van artikel 49 van Wet 32 van 2007

22. Artikel 49 van die Hoofwet word hierby gewysig deur subparagraaf (iv) van paragraaf (b) deur die volgende subparagraaf te vervang:

"(iv) die seksuele misdryf [teenoor 'n kind of iemand wat verstandelik gestremd is] waaraan die persoon skuldig bevind is, die vonnis wat opgelê is, die datum en plek van skuldigbevinding en vonnis, asook die betrokke gevangeneidentifikasienommer, waar toepaslik;".

Wysiging van artikel 50 van Wet 32 van 2007, soos gewysig deur artikel 37 van Wet 66 van 2008, artikel 7 van Wet 5 van 2015 en artikel 37 van Wet 8 van 2017

- 23. Artikel 50 van die Hoofwet word hierby gewysig—
 - (a) deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) Die besonderhede van die volgende persone moet in die Register opgeneem word:
 - (a) Iemand wat [ingevolge hierdie Wet of enige ander wet]—
 - (i) aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat 15 verstandelik gestremd is,] skuldig bevind is;
 - na bewering 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gepleeg het en ten opsigte van wie 'n hof 'n bevinding ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gemaak of 'n lasgewing 20 uitgereik het:
 - 'n vonnis van gevangenisstraf uitdien of 'n vonnis van gevangenisstraf uitgedien het as gevolg skuldigbevinding aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is]; of
 - 'n vorige veroordeling vir 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] het, of wat nie 'n vonnis van gevangenisstraf vir sodanige misdryf uitgedien het nie; en
 - (b) enigiemand
 - wat in 'n buitelandse jurisdiksiegebied skuldig bevind is aan enige misdryf wat soortgelyk is aan die pleging van 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is];
 - wat in 'n buitelandse jurisdiksiegebied op 'n wyse soortgelyk 35 aan dit wat in paragraaf (a)(ii) beoog word, mee gehandel is; of
 - wie se besonderhede op 'n amptelike Register van enige buitelandse jurisdiksiegebied verskyn as gevolg van 'n skuldigbevinding aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] of as gevolg van 40 'n bevel soortgelyk aan dit wat in paragraaf (a)(ii) beoog word,

hetsy voor of na die inwerkingtreding van hierdie Hoofstuk gepleeg."; (b) deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:

- - kind of 'n persoon wat verstandelik gestremd is,] moet in die teenwoordigheid van die veroordeelde persoon en nadat vonnis deur daardie hof vir die misdryf opgelê is; of
 - 'n bevinding ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gemaak of 'n lasgewing uitgereik het dat 50 die persoon vanweë geestesongesteldheid of geestesgebrek nie oor die vermoë beskik om die verrigtinge dermate te begryp dat hy of sy sy of haar verdediging na behore kan voer nie, of vanweë geestesongesteldheid of geestesgebrek nie strafregtelik toerekenbaar was vir die handeling wat 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] uitmaak nie, moet in die teenwoordigheid van daardie persoon.

'n bevel, behoudens paragraaf (c), maak dat die besonderhede van die persoon in die Register opgeneem word.";

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"(a) 'n Hof wat [ingevolge hierdie Wet of enige ander wet]-

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- (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—
 - the prosecutor has made an application to the court for such 10 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 15 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, 20 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 establish- 25 ment 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 30 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 35 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 40 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 Offence 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 60 [and at least three months before the establishment of the Register

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- (c) deur paragraaf (c) van subartikel (2) deur die volgende paragraaf te vervang: "(c) Indien 'n hof 'n persoon ('A'), ingevolge hierdie Wet of enige ander wet aan 'n seksuele misdryf [in paragraaf (a)(i) bedoel,] skuldig bevind en A was 'n kind ten tyde van die pleeg van sodanige misdryf, of indien 'n hof 'n in paragraaf (a)(ii) bedoelde bevinding gemaak het en 'n lasgewing ten opsigte van A wat 'n kind was ten tyde van die beweerde pleeg van die misdryf, uitgereik het, kan die hof nie 'n bevel ingevolge paragraaf (a), uitreik nie, tensy-
 - (i) die aanklaer 'n aansoek tot die hof bring om die uitreiking van sodanige bevel;
 - die hof 'n verslag oorweeg het deur 'n proefbeampte bedoel in artikel 71 van die Child Justice Act, 2008, wat handel met die moontlikheid dat A in die toekoms 'n ander seksuele misdryf [teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die geval,] sal pleeg;
 - A die geleentheid gegun is om die hof toe te spreek oor waarom sy of haar besonderhede nie in die Register opgeneem moet word nie; en
 - (iv) die hof oortuig is dat wesenlike en dwingende omstandighede, op grond van sodanige verslag en enige ander getuienis, 20 bestaan wat die uitreik van die bevel regverdig."
- (d) deur paragraaf (a) van subartikel (5) deur die volgende paragraaf te vervang: "(a) Die Nasionale Kommissaris van Korrektiewe Dienste moet op die voorgeskrewe wyse [en ten minste drie maande voor die instelling van die Register bedoel in artikel 42,] die besonderhede van elke 25 gevangene of voormalige gevangene in artikel 49 bedoel wat hy of sy op rekord het en wat by die inwerkingtreding van hierdie Hoofstuk 'n vonnis van gevangenisstraf uitdien of uitgedien het as gevolg van 'n skuldigbevinding vyf jaar voor die inwerkingtreding van hierdie Hoofstuk aan 'n seksuele misdryf [teenoor 'n kind, met inbegrip van 30 'n misdryf bedoel in artikel 14 van die Wet op Seksuele Misdrywe, 1957 (Wet No. 23 van 1957), aan die Registrateur stuur, en moet, waar moontlik, die beskikbare besonderhede van elke gevangene of voormalige gevangene wat hy of sy op rekord het en wat by die inwerkingtreding van hierdie Hoofstuk 'n vonnis van 35 gevangenisstraf uitdien of uitgedien het as gevolg van 'n skuldigbevinding vyf jaar voor die inwerkingtreding van hierdie Hoofstuk aan 'n seksuele misdryf teenoor 'n persoon wat verstandelik gestremd is, met inbegrip van 'n misdryf in artikel 15 van die Wet op Seksuele Misdrywe, 1957, bedoel, aan die 40 Registrateur stuur,] soos bedoel in paragraaf (a) van die omskrywing van 'seksuele misdryf' in artikel 40 en die Registrateur moet sodanige besonderhede onverwyld in die Register opneem.";
- (e) deur subartikel (6) deur die volgende subartikel te vervang:
 - "(6) Die Nasionale Kommissaris van die Suid-Afrikaanse 45 Polisiediens moet op die voorgeskrewe wyse [en ten minste drie maande voor die instelling van die Register bedoel in artikel 42,] alle beskikbare besonderhede bedoel in artikel 49 wat hy of sy op rekord het van elke persoon wat by die inwerkingtreding van hierdie Hoofstuk 'n vorige veroordeling, vyf jaar voor die inwerkingtreding van hierdie 50 Hoofstuk, vir 'n seksuele misdryf [teenoor 'n kind] het[, met inbegrip van, in die mate wat dit moontlik is, 'n veroordeling vir 'n misdryf bedoel in artikel 14 van die Wet op Seksuele Misdrywe, 1957, en wat 'n vorige veroordeling vir 'n seksuele misdryf teenoor 'n persoon wat verstandelik gestremd is, het, met inbegrip van, in die mate wat 55 dit moontlik is, 'n misdryf in artikel 15 van die Wet op Seksuele Misdrywe, 1957, bedoel,] soos bedoel in paragraaf (a) van die omskrywing van 'seksuele misdryf' in artikel 40 aan die Registrateur stuur, en die Registrateur moet sodanige besonderhede onverwyld in die Register opneem."; en
- deur paragraaf (a) van subartikel (7) deur die volgende paragraaf te vervang: "(a) Die Direkteur-generaal: Gesondheid moet op die voorgeskrewe wyse [en ten minste drie maande voor die instelling van die Register

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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.".

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-

- (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 20 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 25 from prison or the period of suspension has lapsed;
- (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 30 276(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
- (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
- (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.

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bedoel in artikel 42,] die besonderhede in artikel 49 bedoel van elke persoon wat by die inwerkingtreding van hierdie Hoofstuk of in die tydperk van vyf jaar voor die inwerkingtreding van hierdie Hoofstuk, onderhewig is of was aan 'n lasgewing ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, as gevolg van 'n handeling wat 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] soos bedoel in paragraaf (a) van die omskrywing van 'seksuele misdryf' in artikel 40 uitgemaak het, aan die Registrateur stuur, en die Registrateur moet sodanige besonderhede onverwyld in die Register onneem.''

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Vervanging van artikel 51 van Wet 32 van 2007, soos gewysig deur artikel 8 van Wet 5 van 2015

24. Artikel 51 van die Hoofwet word hierby deur die volgende artikel vervang:

"Verwydering van besonderhede uit Register

51. (1) Behoudens subartikels (2), (2A) en (3) kan die besonderhede 15 van iemand—

- (a) wat—
 - (i) weens die skuldigbevinding aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gevonnis is tot gevangenisstraf, periodieke gevangenisstraf, 20 korrektiewe toesig of tot gevangenisstraf in artikel 276(1)(i) van die Strafproseswet, 1977, beoog, sonder die keuse van 'n boete vir 'n tydperk van minstens ses maande maar hoogstens agtien maande, ongeag of die vonnis opgeskort is of nie, op aansoek soos in subartikel (3) beoog, uit die Register 25 verwyder word nadat 'n tydperk van [tien] 20 jaar verstryk het sedert die persoon uit die gevangenis vrygelaat is of die tydperk van opskorting verstryk het;
 - (ii) weens die skuldigbevinding aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] 30 gevonnis is tot gevangenisstraf, periodieke gevangenisstraf, korrektiewe toesig of tot gevangenisstraf in artikel 276(1)(i) van die Strafproseswet, 1977, beoog, sonder die keuse van 'n boete vir 'n tydperk van ses maande of minder, ongeag of die vonnis opgeskort is of nie, op aansoek soos in subartikel (3) 35 beoog, uit die Register verwyder word nadat 'n tydperk van [sewe] 14 jaar verstryk het sedert die persoon uit die gevangenis vrygelaat is of die tydperk van opskorting verstryk het; of
 - (iii) na bewering 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gepleeg het ten opsigte van wie 'n hof, hetsy voor of na die inwerkingtreding van hierdie Hoofstuk, 'n bevinding ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gemaak en 'n lasgewing uitgereik het, op aansoek soos in subartikel (3) beoog uit die Register verwyder word nadat 'n tydperk van [vyf] tien jaar verstryk het sedert die persoon van die betrokke geestesongesteldheid of -gebrek herstel het en ingevolge die 'Mental Health Care Act, 2002' (Wet No. 17 van 2002), vrygestel is van enige beperkings wat op hom of haar geplaas is: of
- (b) wat weens die skuldigbevinding aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gevonnis is tot 'n mindere vorm van straf of 'n hofbevel, op aansoek soos in subartikel (3) beoog, uit die Register verwyder word nadat 'n 55 tydperk van [vyf] tien jaar verstryk het sedert die besonderhede van daardie persoon in die Register opgeneem is.

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- (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
- (b) two or more convictions of a sexual offence [against a child or a person who is mentally disabled],

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—
- (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 20 the Register by—
 - (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
 - (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 appropriation 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—
 - addressing the court on the reasons for such application and showing good cause why it is unlikely that he or she will 35 commit another sexual offence [against a child or a person who is mentally disabled, as the case may be]; and
 - (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 40 pending against him or her.
- (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 45 her particulars removed from the Register.
- (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.
- (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.

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- (2) Die besonderhede van iemand wat-
- (a) weens die skuldigbevinding aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] gevonnis is tot gevangenisstraf, periodieke gevangenisstraf, korrektiewe toesig of tot gevangenisstraf in artikel 276(1)(i) van die Strafproseswet, 1977, beoog, met of sonder die keuse van 'n boete vir 'n tydperk wat [agtien] 18 maande oorskry, ongeag of die vonnis opgeskort is of nie; of
- (b) twee of meer veroordelings van 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] het,

 mag nie uit die Register verwyder word nie.

(2A) Iemand wat in die kategorieë beoog by subartikel (1) or (2) val, wat 'n kind was ten tyde van die pleeg van die betrokke misdryf en wat skuldig bevind is aan sodanige misdryf of 'n persoon wat 'n kind was ten tyde van die beweerde pleeg van die misdryf ten opsigte van wie 'n hof 15 'n bevinding gemaak en 'n lasgewing ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, uitgereik het—

- (a) voor die inwerkingtreding van hierdie Hoofstuk, kan, te eniger tyd voor die verstryking van die tydperke in subartikel (1) bedoel, by 'n hof aansoek doen om 'n bevel dat sy of haar besonderhede vanuit 20 die Register verwyder moet word deur—
 - (i) die hof toe te spreek oor die redes vir sodanige aansoek en grondige redes aan te voer waarom dit onwaarskynlik is dat hy of sy 'n verdere seksuele misdryf [teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die 25 geval,] sal pleeg; en
 - (ii) 'n beëdigde verklaring deur hom of haar aan die hof voor te lê waarin vermeld word dat geen klag met betrekking tot 'n seksuele misdryf [teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die geval,] teen 30 hom of haar hangend is nie; of
- (b) na die inwerkingtreding van hierdie Hoofstuk, kan, te eniger tyd voor die verstryking van die tydperke in subartikel (1) bedoel, by die hof in artikel 50(2)(c) vermeld aansoek doen om 'n bevel dat sy of haar besonderhede vanuit die Register verwyder moet word 35 deur—
 - (i) die hof toe te spreek oor die redes vir sodanige aansoek en grondige redes aan te voer waarom dit onwaarskynlik is dat hy of sy 'n verdere seksuele misdryf [teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die 40 geval,] sal pleeg; en
 - (ii) 'n beëdigde verklaring deur hom of haar aan die hof voor te lê wat vermeld dat geen klag met betrekking tot 'n seksuele misdryf [teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die geval,] teen hom of haar 45 hangend is nie.
- (2B) Die tydperke wat in subartikel (1) van toepassing is, moet gehalveer word indien die persoon ten tyde van die pleeg van die misdryf 'n kind was.
- (3) (a) Iemand wat in een van die kategorieë in subartikel (1) beoog, 50 val, kan op die voorgeskrewe wyse by die Registrateur aansoek doen om sy of haar besonderhede uit die Register te laat verwyder.
- (b) Die Registrateur moet, na oorweging van die aansoek, die besonderhede van die persoon in paragraaf (a) beoog, uit die Register verwyder, tensy daar ['n ondersoek of] 'n klag oor 'n seksuele misdryf 55 [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] teen die betrokke persoon aanhangig is en die betrokke saak [of ondersoek] nog nie afgehandel is nie, in welke geval die finalisering van die aansoek uitgestel moet word totdat die Registrateur, op die voorgeskrewe wyse, in kennis gestel is van die uitslag van die [ondersoek of] saak.
- (c) Die Registrateur kan, op versoek van iemand wie se besonderhede in die Register opgeneem is, daardie besonderhede uit die Register verwyder indien die Registrateur oortuig is dat die besonderhede duidelik foutiewelik in die Register opgeneem is.

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(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.".

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:

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"(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);

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(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

the manner in which the Director-General: Health must forward particulars of 20 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);".

Substitution of section 54 of Act 32 of 2007

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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] 30 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 40 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.".

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(4) Iemand wat voor die inwerkingtreding van die Wysigingswet op die Strafregwysigingswet (Seksuele Misdrywe en Verwante Aangeleenthede), 2021, vir die verwydering van sy of haar besonderhede uit die Register gekwalifiseer het, kan 'n aansoek ingevolge subartikel (3)(a) by die Registrateur indien en die Registrateur moet die aansoek oorweeg asof die Wysigingswet op die Strafregwysigingswet (Seksuele Misdrywe en Verwante Aangeleenthede), 2021, nie inwerking getree het nie.".

Wysiging van artikel 53 van Wet 32 van 2007

25. Artikel 53 van die Hoofwet word hierby gewysig deur paragrawe (c), (e) en (f) van subartikel (1) deur, onderskeidelik, die volgende paragrawe te vervang:

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"(c) die wyse waarop die Nasionale Kommissaris van Korrektiewe Dienste die besonderhede van gevangenes wat 'n vonnis van gevangenisstraf uitdien as gevolg van die skuldigbevinding aan 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] aan die Registrateur moet stuur soos in artikel 50(5)(a) beoog;

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(e) die wyse waarop die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens die besonderhede van persone wat 'n vorige veroordeling het vir 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik **gestremd is,**] aan die Registrateur moet stuur soos in artikel 50(6) beoog;

(f) die wyse waarop die Direkteur-generaal: Gesondheid die besonderhede van 20 persone wat onderhewig is aan 'n lasgewing ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, as gevolg van 'n handeling wat 'n seksuele misdryf [teenoor 'n kind of 'n persoon wat verstandelik gestremd is,] uitmaak, aan die Registrateur moet stuur soos in artikel 50(7)(a) beoog;".

Vervanging van artikel 54 van Wet 32 van 2007

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26. Artikel 54 van die Hoofwet word hierby deur die volgende artikel vervang:

"Verpligting om pleeg van seksuele misdrywe teenoor [kinders of] persone wat [verstandelik gestremd is] kwesbaar is, aan te meld

54. (1) [(a)] Iemand wat kennis daarvan dra of 'n redelike oortuiging of vermoede het dat 'n seksuele misdryf teenoor 'n [kind] persoon wat 30 kwesbaar is, soos omskryf in artikel 40, gepleeg is, moet sodanige kennis, redelike oortuiging of vermoede onmiddellik by 'n polisie-

beampte aanmeld. [(b)] (2) (a) Iemand wat versuim om sodanige kennis, redelike oortuiging of vermoede soos in [paragraaf (a)] subartikel (1) beoog, aan 35 te meld, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met beide sodanige boete en sodanige gevangenisstraf.

[(2) (a) Iemand wat kennis daarvan dra of 'n redelike oortuiging of vermoede het dat 'n seksuele misdryf teenoor 'n persoon wat 40 verstandelik gestremd is, gepleeg is, moet sodanige kennis, oortuiging of vermoede onmiddellik by 'n polisiebeampte aanmeld.

(b) Iemand wat versuim om sodanige kennis, oortuiging of vermoede soos in paragraaf (a) beoog, aan te meld, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met 45 gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met beide sodanige boete en sodanige gevangenisstraf.

(c)] (b) Iemand wat te goeder trou sodanige oortuiging of vermoede aanmeld, is nie siviel of strafregtelik aanspreeklik as gevolg van sodanige aanmelding nie.".

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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, 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

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- 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

- 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 25 pornography, [and] the engaging of sexual services of an adult and
 - sexual intimidation;";

 (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
 - (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;".

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:

"Part 5

Sexual intimidation

14A. Sexual intimidation"; and

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Wysiging van artikel 56 van Wet 32 van 2007, soos gewysig deur artikel 4 van Wet 6 van 2012 en artikel 9 van Wet 5 van 2015

- 27. Artikel 56 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:
 - "(4) Iemand ('A') kan nie aan 'n misdryf ingevolge artikel 12 skuldig bevind word nie indien, op die tydstip toe die [daad van] seksuele [penetrasie] handeling die eerste keer gepleeg is-
 - (a) A onder die ouderdom van 18 jaar was; en
 - (b) die ander persoon ('B') in 'n posisie van mag of gesag teenoor A gestaan het of 'n vertrouensverhouding tussen A en B bestaan het.".

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Wysiging van artikel 57 van Wet 32 van 2007

- 28. Artikel 57 van die Hoofwet word hierby gewysig-
 - (a) deur die vervanging van die opskrif van artikel 57 deur die volgende opskrif: "Onbevoegdheid van kinders onder 12 jaar en persone [wat verstandelik gestremd is] met verstandelike gestremdhede om tot 15 seksuele handelinge toe te stem"; en
 - (b) deur die vervanging van subartikel (2) deur die volgende subartikel: "(2) Ondanks andersluidende bepalings van enige ander wet is 'n persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid, onbevoeg om tot 'n seksuele handeling toe te stem.". 20

Wysiging van lang titel van Wet 32 van 2007, soos gewysig deur artikel 48 van Wet 7 van 2013, artikel 5 van Wet 43 van 2013 en artikel 12 van Wet 5 van 2015

- 29. Die lang titel van die Hoofwet word hierby gewysig-
 - (a) deur die vierde kolpunt daarvan deur die volgende kolpunt te vervang: "nuwe statutêre misdrywe vir volwassenes te skep deur die gedwonge 25 waarneming of veroorsaking van die waarneming van sekere seksuele gedrag en sekere dele van die menslike anatomie, die blootstelling of vertoon van kinderpornografie, [en] die verkryging van seksuele dienste van 'n volwassene en seksuele intimidasie strafbaar te stel;";
 - (b) deur die sesde kolpunt daarvan deur die volgende kolpunt te vervang: "omvattende bepalings te verorden wat handel met die skepping van sekere nuwe, uitgebreide of gewysigde seksuele misdrywe teenoor kinders en persone [wat verstandelik gestremd is] met verstandelike gestremdhede, met inbegrip van misdrywe met betrekking tot seksuele uitbuiting of aanvoring, blootstelling aan of vertoon van pornografie en 35 die skepping van kinderpornografie, ongeag dat sommige van die misdrywe soortgelyk is aan dié wat geskep word met betrekking tot volwassenes, aangesien die skepping van hierdie misdrywe ten doel het om die besondere kwesbaarheid van kinders en persone [wat verstandelik gestremd is met verstandelike gestremdhede ten opsigte 40 van seksuele misbruik of uitbuiting aan te pak;"; en
 - (c) deur die negende kolpunt daarvan deur die volgende kolpunt te vervang: "'n verpligting te skep om seksuele misdrywe aan te meld wat met of teenoor [kinders of persone wat verstandelik gestremd] persone wat kwesbaar is, gepleeg word;".

Wysiging van indeks van Wet 32 van 2007, soos gewysig deur artikel 48 van Wet 7 van 2013 en artikel 1 van Wet 43 van 2013

- 30. Die indeks van die Hoofwet word hierby gewysig-
 - (a) deur die invoeging na item 14 van die volgende Deel en item:

"Deel 5

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Seksuele intimidasie

14A. Seksuele intimidasie"; en

Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021

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(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

- Sexual exploitation of persons [who are mentally disabled] with 10 mental disabilities
- 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 15 disabled] with mental disabilities
- 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 20 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
 - 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] 30 <u>vulnerable persons</u> 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 40 to sexual acts, other evidentiary matters and extra-territorial jurisdiction"; and
- (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 45 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*.

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Wet No. 13 van 2021

(b) deur die vervanging van Hoofstuk 4 deur die volgende Hoofstuk:

"HOOFSTUK 4

SEKSUELE MISDRYWE TEENOOR PERSONE (WAT VERSTAN-DELIK GESTREMD IS] MET VERSTANDELIKE GESTREMD-HEDE

Seksuele uitbuiting en seksuele aanvoring van, blootstelling of vertoon van of veroorsaking van blootstelling of vertoon van kinderpornografie of pornografie aan persone [wat verstandelik gestremd is] met verstandelike gestremdhede en gebruikmaking van persone [wat verstandelik gestremd is] met verstandelike 10 gestremdhede vir pornografiese doeleindes of voordeeltrekking

- 23. Seksuele uitbuiting van persone [wat verstandelik gestremd is] met verstandelike gestremdhede
- Seksuele aanvoring van persone [wat verstandelik gestremd is] 15 met verstandelike gestremdhede
- 25. Blootstelling of vertoon van of veroorsaking van blootstelling of vertoon van pornografie of skadelike materiaal aan persone [wat verstandelik gestremd is] met verstandelike gestremdhede
- 26. Gebruikmaking van persone [wat verstandelik gestremd is] met 20 verstandelike gestremdhede vir pornografiese doeleindes of voordeeltrekking daaruit";
- (c) deur die vervanging van item 41 deur die volgende item:
 - "41. Verbod op sekere tipes diens deur sekere persone wat seksuele misdrywe gepleeg het [teenoor kinders en persone wat 25 verstandelik gestremd is]";
- (d) deur die invoeging na item 44A deur die volgende items:
 - "44B. Toegang tot Register deur Nasionale Kommissaris van Suid-Afrikaanse Polisiediens
 - Verpligtinge van Direkteur-generaal: Binnelandse Sake en Registrateur'';
- (e) deur die vervanging van die opskrif van Deel 1 van Hoofstuk 7 deur die volgende opskrif:
 - "Diverse misdrywe: Verpligting om pleeg van seksuele misdrywe teenoor [kinders of persone wat verstandelik gestremd is] kwesbare 35 persone, aan te meld en poging, sameswering, aansporing of oorhaling van iemand anders om seksuele misdryf te pleeg";
- deur die vervanging van item 54 deur die volgende item:
 - "54. Verpligting om pleeg van seksuele misdryf teenoor [kinders of persone wat verstandelik gestremd] persone wat kwesbaar is, 40 aan te meld":
- (g) deur die vervanging van die opskrif van Deel 2 van Hoofstuk 7 deur die
 - "Verwere, onbevoegdheid van kinders onder 12 jaar en persone [wat verstandelik gestremd is] met verstandelike gestremdhede om tot 45 seksuele handelinge toe te stem, ander bewysregtelike aangeleenthede en ekstra-territoriale jurisdiksie"; en
- (h) deur die vervanging van item 57 deur die volgende item:
 - "57. Onbevoegdheid van kinders onder 12 jaar en persone [wat verstandelik gestremd is] met verstandelike gestremdhede om 50 tot seksuele handelinge toe te stem".

Kort titel en inwerkingtreding

31. Hierdie Wet heet die Wysigingswet op die Strafregwysigingswet (Seksuele Misdrywe en Verwante Aangeleenthede), 2021, en tree in werking op 'n datum deur die President by proklamasie in die Staatskoerant bepaal.

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