

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO**

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

**[B 16—2020]**

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

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**AMENDMENTS AGREED TO**

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

**[B 16—2020]**

**CLAUSE 1**

1. Clause rejected and replaced with the following clause:

**Amendment of section 2 of Act 32 of 2007**

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

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

**CLAUSE 3**

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

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

**CLAUSE 4**

1. Clause rejected and replaced with the following clause:

**Insertion of new Part in Act 32 of 2007**

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

**“Part 5**

**Sexual intimidation**

**Sexual intimidation**

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

**CLAUSE 5**

1. Clause rejected and replaced with the following clause:

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

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

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

“‘**employer**’ means—

(a) any—

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

which[—

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

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

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

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

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

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

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

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

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

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

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

“**‘sexual offence’** means—

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

#### CLAUSE 7

1. Clause rejected and replaced with the following clause:

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

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

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

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

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

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

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

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

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

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