

# DRAFT AMENDMENT BILL

REPUBLIC OF SOUTH AFRICA

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

(MINISTER FOR JUSTICE AND CORRECTIONAL SERVICES)

## GENERAL EXPLANATORY NOTE:

[            ]            Words in bold type in square brackets indicate omissions from existing enactments.  
\_\_\_\_\_            Words underlined with a solid line indicate insertions in existing enactments.

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## B I L L

**To amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 by inserting offences relating to child sexual abuse material; and to provide for matters connected therewith.**

**P**arliament of the Republic of South Africa enacts, as follows:—

### **1. Amendment of Act 65 of 1996**

**(a)** The amendment of section 1 of the Films and Publications Act, 1996 by the substitution for the definition of ‘child pornography’ of the following definition:

‘child pornography’ means ‘child pornography’ as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).<sup>11</sup>

**(b)** The amendment of section 1 of the Films and Publications Act, 1996 by the substitution for paragraph (b) of the definition of ‘publication’:

‘(b) any writing or typescript **[which has in any manner been duplicated]**’

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The FPA Amendment Bill has adopted this definition (see clause (1)(b) of the Bill). However as there are two conflicting amendments it is not clear which is the preferred option.

(c) The deletion of sections 24B, 27A<sup>12</sup> and 30B(1)(b) of the Films and Publications Act, 1996.

## 2. Amendment of the long title of Act 32 of 2007

(a) The amendment of the long title of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 by the substitution for the term 'child pornography' by the term 'child sexual abuse material' wherever it appears;

(b) The amendment of the long title of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 by the substitution of the sixth bullet of the following bullet:

- enacting comprehensive provisions dealing with the creation of certain new, expanded or amended sexual offences against children and persons who are mentally disabled, including offences relating to sexual exploitation or grooming, **[exposure to or display of pornography and the creation of child sexual abuse material] to provide for the further protection of children by providing comprehensively for all offences relating to child sexual abuse material as well as the exposure of children to inappropriate adult sexual content**, despite some of the offences being similar to offences created in respect of adults as the creation of these offences aims to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse or exploitation.

## 3. Amendment of the Index of Act 32 of 2007

(a) The Index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by—

(i) the substitution for the heading to Part 3 of Chapter 2 of the following heading:

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

(ii) the substitution for item 10 for the following item:

'Exposure or display of or causing exposure or display of child **[pornography] sexual abuse material** to persons 18 years or older';

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<sup>12</sup> The Commission is cognisant of the development of a number of Bills (including the Cybercrimes Bill and the FPA Amendment Bill) aiming to regulate the interaction between ISPs and government. As these Bills are yet to be enacted the Commission would be remiss to point out that sections 27A and 30B(1)(b) need to be repealed.

**(b)** The Index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by—

(i) the substitution for the heading to Part 2 of Chapter 3 of the following heading:

‘Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child **[pornography]** sexual abuse material to children, offences relating to child sexual abuse material and using children for pornographic purposes or benefiting from child **[pornography]** sexual abuse material’;

(ii) the substitution for item 19 for the following item:

‘Exposure or display of, or causing exposure or display of child **[pornography]** sexual abuse material to children’;

(iii) the insertion after item 19 of the following items:

‘19A. Enticement to view or making child sexual abuse material or pornography accessible to children’;

‘19B. Misleading techniques on the internet’;

‘19C. Offences relating to child sexual abuse material’;

(iv) the substitution for item 20 for the following item:

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

**(c)** The Index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by—

(i) the substitution for the heading of Chapter 4 of the following heading:

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

(ii) the substitution for item 25 for the following item:

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

**(d)** The Index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by—

(i) 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 or offences involving child sexual abuse material and attempt, conspiracy, incitement or inducing another person to commit sexual offence’;

#### 4. Amendment of Act 32 of 2007

(a) The amendment of section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 by the

(i) substitution for the definition of ‘child pornography’ of the following definition:

“child **[pornography]** sexual abuse material” means any live display,<sup>13</sup> image or sequence of images,<sup>14</sup> however created<sup>15</sup> or portrayed,<sup>16</sup> or any description or presentation of a person, real or simulated, who is, or who is<sup>17</sup> depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such live display, image, sequence of images, **[or]** description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such live display, image, sequence of images, or description or presentation<sup>18</sup> of such person –

- (a) engaged in an act that constitutes a sexual offence;<sup>19</sup>
- (b) engaged in an act of sexual penetration;
- (c) engaged in an act of sexual violation;
- (d) engaged in an act of self-masturbation;
- (e) displaying the genital organs of such person in a state of arousal or stimulation;
- (f) unduly displaying the genital organs, **[or]** anus or breasts of such person;<sup>20</sup>
- (g) displaying any form of stimulation of a sexual nature of the female breasts;
- (h) engaged in sexually suggestive or lewd acts;
- (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
- (j) engaged in conduct, or activity characteristically associated with sexual intercourse; or
- (k) showing or describing such person –
  - (i) participating in, or assisting or facilitating another person to participate in; or
  - (ii) being in the presence of another person who commits or in any other manner being involved in,

<sup>13</sup> A shortcoming reflected in the EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography. This is included in the Cybercrimes Bill amendment to section 20 of the SOA as a standalone offence.

<sup>14</sup> FPI note that it is not clear that video footage is included.

<sup>15</sup> The use of the word ‘created’ could be problematic. If encryption technology is used of streaming then the material is never ‘created’ in a format that can be accessed because it is not necessarily downloaded or saved anywhere. This question should be asked in conjunction with the insertion of section 19C which expressly includes reference to ‘accessing’ and ‘viewing’.

<sup>16</sup> To cover the ‘real time’ portrayal via webcam or live-streaming as there is no record of it thereafter, it is not ‘created’.

<sup>17</sup> The Cybercrimes Bill inserts the word ‘realistically’ but the Commission is of the view that the word ‘is’ refers to real. An option would be to incorporate the word ‘virtual’ which is not in the OPSC. It is unclear whether comics (anime) would be covered under the word ‘is’ as well.

<sup>18</sup> Insertion as in the Cybercrimes Bill for consistency.

<sup>19</sup> The definition of ‘sexual conduct’ in the FPA includes bestiality but as this is a sexual offence in the SOA it is not necessary to include reference to it in the definition.

<sup>20</sup> SAPS request that the words ‘or breasts’ be included. The words are only included in the definition of ‘child sexual abuse material’ and not ‘pornography’ and are kept gender neutral on purpose. The Commission has made this proposal with the understanding that a defence is provided for in section 56(8) in the interest of a legitimate cultural practice for the exposure or display of the female breasts in terms of section 9 and 22.

- (l) any act contemplated in paragraphs (a) to (j); or showing or describing the body, or parts of the body,<sup>21</sup> of that person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons under 18, that could be used to advocate, advertise or promote a child for sexual purposes<sup>22</sup> or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons’;

- (ii) insertion of the following definition of ‘police official’:

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

- (iii) substitution for the definition of ‘pornography’ of the following definition:

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

- (a) engaged in an act that constitutes a sexual offence;
- (b) engaged in an act of sexual penetration;
- (c) engaged in an act of sexual violation;
- (d) engaged in an act of self-masturbation;
- (e) displaying the genital organs of such person in a state of arousal or stimulation;
- (f) unduly displaying the genital organs or anus of such person;
- (g) displaying any form of stimulation of a sexual nature of the female breasts;
- (h) engaged in sexually suggestive or lewd acts;
- (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
- (j) engaged in conduct or activity characteristically associated with sexual intercourse; or
- (k) showing or describing the body, or parts of the body, of that person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any person or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person or any other person;’

- (b) Chapter 2 is hereby amended by—

- (i) the substitution for the heading to Part 3 of Chapter 2 of the following heading:

‘Persons 18 years or older: Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, exposure or display of or causing exposure or display of genital organs, anus or female breasts (“flashing”), child

<sup>21</sup> This could already include ‘erotic’ posing. Is it necessary to specify it?

<sup>22</sup> Gap highlighted by Mr Chetty and by ICMEC e.g. advertising where to find a website. This phrase is included in the Cybercrimes Bill as part of clause 19A(6) where it is incorporated as an offence.

**[pornography] sexual abuse material** to persons 18 years or older, or engaging sexual services of persons 18 years or older’;

(ii) the substitution for the heading of section 10 of the following heading:

‘Exposure or display of or causing exposure or display of child **[pornography] sexual abuse material** to persons 18 years or older’;

(c) Chapter 2 is hereby amended by—

(i) the substitution for the heading to Part 2 of Chapter 3 of the following heading:

‘Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child **[pornography] sexual abuse material** to children, offences relating to child sexual abuse material and using children for pornographic purposes or benefiting from child **[pornography] sexual abuse material**’;

(ii) the substitution for subsection 18(1)(c) of the following subsection:

- (c) supplies, exposes or displays to a third person (‘C’) –
- (i) an article which is intended to be used in the performance of a sexual act;
  - (ii) child **[pornography] sexual abuse material** or pornography; or
  - (iii) a publication or film,
- with the intention to encourage, enable, instruct or persuade C to perform a sexual act with B; or’

(iii) the substitution for section 19 of the following section:

**‘Exposure or display of, or causing exposure or display of child **[pornography] sexual abuse material** or pornography to children**

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

- (a) **[any image, publication, depiction, description or sequence of ]**child **[pornography] sexual abuse material** or pornography;
- (b) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of a sexual nature of a child, which may be disturbing or harmful to, or age-inappropriate for children, as contemplated in the Films and Publications Act, 1996 (Act No. 65 of 1996), or in terms of any other legislation; or
- (c) any image, publication, depiction, description or sequence containing a visual presentation, description or representation of pornography or an act of an explicit sexual nature of a person 18 years or older, which may be disturbing or harmful to, or age-inappropriate, for children, as contemplated in the Films and Publications Act, 1996, or in terms of any other law,

through any means to a child ('B'), with or without the consent of B, is guilty of the offence of exposing or displaying or causing the exposure or display of child [pornography] sexual abuse material or pornography to a child.'

(iv) the insertion after section 19 of the following items:

**19A. Enticement to view or making child sexual abuse material or pornography accessible to children**

- (1) A person ('A') who unlawfully and intentionally advertises, provides access to or distributes to a child ('B'), or entices B to view any of the items or categories listed in section 19 through any means, with or without the consent of B, is guilty of the offence of enticing a child to view child sexual abuse material or pornography.
- (2) A person ('A'), including a manufacturer or distributor of any technology or device or electronic communications service provider –
  - (a) who unlawfully and intentionally provides a child ('B') with or allows B to engage with any form of technology or device including a mobile phone, that is capable of accessing the internet, social media or other digital content, without ensuring that the default setting blocks access to child sexual abuse material or pornography, is guilty of the offence of making child sexual abuse material or pornography accessible to a child;
  - (b) who uninstalls the default setting blocking access to child sexual abuse material is guilty of the offence of making child sexual abuse material accessible;
  - (c) who uninstalls the default setting blocking access to pornography without valid identification proving that the requester is a user over the age of 18, is guilty of the offence of making pornography accessible to a child;
  - (d) who, when uninstalling the default setting blocking access to pornography fails to keep a register as prescribed is guilty of an offence;
  - (e) who fails to take reasonable steps to ensure that any of the items or categories listed in section 19 through any means is not made accessible, exposed or displayed to a child ('B'), is guilty of the offence of negligently making accessible, exposing or displaying child sexual abuse material or pornography to a child.
- (3) The Minister must make regulations pertaining to the register provided for in subclause 2(d) and pertaining to the minimum requirements on the steps to be taken as required in subclause 2(e).

**19B. Misleading techniques on the internet**

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

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

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

- (1) A person who unlawfully and intentionally creates, makes or produces child sexual abuse material, is guilty of the offence of creating, making or producing child sexual abuse material.
  - (2) A person who unlawfully and intentionally downloads, possesses, accesses or views child sexual abuse material, is guilty of the offence of downloading, possessing, accessing or viewing child sexual abuse material.
  - (3) A person who unlawfully and intentionally in any manner distributes, makes available, transmits, offers for sale, sells, offers to procure or procures child sexual abuse material, or allows child sexual abuse material to be distributed, made available, transmitted, offered for sale, sold, offered to procure or procured, is guilty of the offence of making child sexual abuse material available.
  - (4) A person who unlawfully and intentionally arranges, attends or participates in a live performance involving child sexual abuse material is guilty of the offence of arranging, attending or participating in a live performance involving child sexual abuse material.
  - (5) A person who unlawfully and intentionally advocates, advertises, encourages or promotes child sexual abuse material is guilty of the offence of promoting child sexual abuse material.
  - (6) A person who unlawfully and intentionally processes or facilitates a financial transaction that will facilitate a contravention of subsections (1) to (5) is guilty of an offence.'
- (v) the substitution of section 20 for the following section:
- '(1) A person ("A") who unlawfully and intentionally uses a child complainant ("B"), with or without the consent of B, whether for financial or other reward, favour or compensation to B or to a third person ("C") or not –
    - (a) for purposes of creating, making or producing;
    - (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] child [pornography] sexual abuse material**, is guilty of the offence of using a child for child **[pornography] sexual abuse material**.

- (2) A [Any] person who knowingly and intentionally in any manner whatsoever gains financially from, or receives any favour, benefit, reward, compensation or any other advantage, as the result of the commission of any act contemplated in subsection (1), is guilty of the offence of benefiting from child [pornography] sexual abuse material.
- (3) A person ('A') who unlawfully and intentionally recruits, coerces or deceives a child complainant ('B'), with or without the consent of B, whether for financial or other reward, favour or compensation to B or a third person ('C') or not, for purposes of –
- (a) being used as described in subsection(1); or  
 (b) participating in a live performance involving child sexual abuse material  
is guilty of the offence of recruiting a child for child sexual abuse material.
- (4) A person ('A') who unlawfully and intentionally coerces or deceives a child ('B') through whatever means to provide child sexual abuse material of him or herself in any manner whatsoever is guilty of the offence of coercing or deceiving a child to provide child sexual abuse material.'

(vi) the insertion after section 54 of the following item:

**'54A. Obligation to report commission of offences under sections 19A, B and C**

- (1) Any person who, having knowledge of the commission of any offence referred to in section 19A, B and C, or having reason to suspect that such offence has been or is being committed and unlawfully and intentionally fails to-
- a) Immediately report such knowledge or suspicion to a police official; or  
 b) furnish, at the written request of a police official, all particulars of such knowledge or suspicion,  
is guilty of an offence.
- (2) An electronic communications service provider or financial institution that is aware or becomes aware that its electronic communications system or facilities have or are being used or are involved in the commission of any offence involving child sexual abuse material referred to in sections 19A, B or C and fails to-
- a) immediately report the offence to a police official;  
 b) preserve any information which may be of assistance to a police official investigating the offence;  
 c) comply with all lawful written requests by a police official relating to the investigation and prosecution of such offence;  
 d) take all reasonable steps to prevent access to the child sexual abuse material by any person, unless otherwise instructed by a police official in writing not to take such steps;  
is guilty of an offence.
- (3) A person referred to in subsections (1) and (2)—
- (a) must provide reasons for that knowledge or suspicion to a police official; and  
 (b) who makes the report in good faith, is not liable to civil or criminal proceedings by reason of making such report.'

(vii) the amendment of section 56, by the addition of the following subsections:

'(9) A child ('A') may not be convicted of an offence and the prosecutor must refer A to the probation officer who must deal with A in accordance with the provisions of section 9 of the Child Justice Act, 75 of 2008, with the necessary changes, in the following circumstances –

- (a) A may not be convicted of an offence in terms of sections 19C(1) or 19C(2) if A is the child in the child sexual abuse material;
- (b) A may not be convicted of an offence in terms of section 19 if A is the child in the child sexual abuse material,<sup>23</sup> and the exposure or display is made to a child B, who is 12 years or older and not more than 2 years younger than A, who consented to the exposure or display;
- (c) A may not be convicted of an offence in terms of sections 19, 19C(1), 19C(2) or 20(1) if the child sexual abuse material is of another child with or without A, where the other child depicted consented to the creation of the child sexual abuse material and the exposure or display is only to the other child, and the other child is 12 years or older and not more than 2 years younger than A.
- (d) A may not be convicted of an offence in terms of section 10 if A is also the child in the image and the exposure or display is made to an adult person B.

(10) It is not a valid defence to a charge under section 18 –

- (a) that the accused person ('A') believed that the person with whom A agreed or made an arrangement was a police official or a person acting under the written direction of a police official; or
- (b) that if the person with whom the accused agreed or made an arrangement was a police official or a person acting under the written direction of a police official, the person referred to did not exist.'

(viii) the amendment of section 56A, by the addition of the following subclauses:

'(3) A person convicted of any offence in terms of section 19C is liable upon conviction to a fine or 15 years' imprisonment;

(4) In addition to any sentence imposed on the accused for an offence in terms of section 19C or an order that the name of the accused be placed on the National Register for Sex Offenders, punishment may include any order that the court, subject to a pre-sentence report by a probation officer, may deem appropriate to protect children from a sexual offence being committed against them, to be complied with for such period as may be determined by the court, including any or all of the following orders-

- (a) that the accused shall not visit, frequent, or reside in close proximity to any school, premises or places frequented by children;
- (b) that the accused shall not access the internet, or that the accused shall have such qualified access as may be determined by the court;
- (c) that the accused shall not have access to any device that is able to provide access to the internet, or that the accused may have such qualified access to such device as may be determined by the court;
- (d) that the accused shall not employ any child;

<sup>23</sup>

The Commission would like to flag these clauses as it is concerned that children may, despite the element of consent, display or expose another child to material in which the child is self-harming or of the child engaging in harmful conduct such as sado-masochism or criminal conduct such as bestiality. The child consenting to receive child sexual abuse material may not fully understand what he or she will be exposed to.

- (e) that the accused may only be in the presence of any specified child, or in the presence of any child or children in general, when accompanied by another adult person;
- (f) that the accused shall submit to supervision and monitoring by a probation officer who may apply any technique to limit access to the internet for purposes of preventing access to children and/or child sexual abuse material;
- (g) that the accused shall accede to any reasonable request by a probation officer for purposes of monitoring compliance with any order made; and
- (h) that the accused shall undergo such therapeutic interventions as the court may determine appropriate.'

(ix) the insertion after section 59 of the following clause:

**'59A Evidence of age of child depicted in child sexual abuse material**

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

(2) Where it is disputed that the child in the child sexual abuse material is, or is depicted as being, under the age of 18, an affidavit or certificate issued pursuant to section 212 (4)(a) of the Criminal Procedure Act, 51 of 1977, shall serve as prima facie proof of such fact and the provisions of section 212 (12) shall find application.'

(x) the insertion after section 61 of the following clauses:

**'61A Management of Child Sexual Abuse Material and Pornography**

(1) Police and court officials having access to images or sequences of images, descriptions, or portrayals of child sexual abuse material or pornography may not reproduce any such material without a court having made a reproduction order.<sup>24</sup>

(2) Police and court officials having access to images or sequences of images, descriptions, or portrayals of child sexual abuse material or pornography, shall take all reasonable steps to prevent access thereto by anyone not having a right of access.

(3) A reproduction order referred to in subsection (1) shall only be made in the presence of substantial and compelling circumstances and shall be accompanied by directives regards the manner in which the material is to be managed including the period for which it may be held and the date upon which it shall be returned to the investigating officer.

(4) Any person who fails to comply with the provisions of subclauses (1) or (2) or the directives of a reproduction order shall be guilty of an offence and liable upon conviction to a fine or 2 years` imprisonment or to both such fine and imprisonment'; and

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<sup>24</sup> Commission is concerned that this proviso may hamper the effective investigation and prosecution of offences involving child sexual abuse material.

**'61B Orders to seize, forfeit, dispose and destroy**

(1) The court that convicts or acquits a person of any offence in terms of this Act that involves child sexual abuse material must order the seizure of all such material and any device that may allow access to child sexual abuse material if not yet seized, and the confiscation and forfeiture of all such material or devices and, to the extent necessary, the future handling, seizure, forfeiture, disposal and or destruction thereof.

(2) Where, following an investigation for any offence in terms of this Act that involves child sexual abuse material, no prosecution is instituted a court may, upon application by a prosecutor, order the confiscation, forfeiture, disposal and destruction of all such material and of any device that may allow access to child sexual abuse material.'

(xi) the substitution of subsection 63(2), by the following subsection:

'(2) The Committee shall consist of –  
(a) the Director-General: Justice and Constitutional Development, who shall be the chairperson of the Committee;  
(b) the National Commissioner of the South African Police Service;  
(c) the National Commissioner of Correctional Services;  
(d) the Director-General: Social Development;  
(e) the Director-General: Health; **[and]**  
(f) the National Director of Public Prosecutions[.] and  
(g) the Director-General: Department of Basic Education.'

(xii) the insertion after subparagraph 65(1)(d) of the following subparagraph:

'(e) ensuring the different organs of state provide for, where relevant, appropriate screening policies and debriefing programs.'

(xiii) the substitution of subparagraph 66(1)(a), by the following subparagraph:

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

(xiv) the insertion after subparagraph 66(1)(a)(vi), by the following subparagraph:

'(vii) the manner in which and the expediency with which police officials are to react to the reporting of sexual offences involving child sexual abuse material; the circumstances under which and the manner in which an electronic communications service provider is to be instructed not to take steps to prevent access to the child sexual abuse material by any person; the manner in which these offences are to be investigated including the manner of search and seizure and undercover operations; the steps to be taken to have any

child in the child sexual abuse material identified and the manner in which the victim is to be provided protection, whether identified or not; the steps to be taken to protect the child sexual abuse material from unauthorised access including final disposal thereof.'

(xv) the substitution of subparagraph 66(2)(a), by the following subparagraph:

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

(xvi) the insertion after subparagraph 66(2)(a)(ix), by the following subparagraph:

'(x) the manner in which sexual offences involving child sexual abuse material should be dealt with, the manner in which the victim is to be provided protection, whether identified or not; the steps to be taken to protect the child sexual abuse material from unauthorised access including final disposal thereof; the manner in which a child is to be referred to a probation officer in terms of section 56(9); the criteria to be used and circumstances in which the diversion of a child accused of a sexual offence involving child sexual abuse material or pornography should be considered and the appropriate conditions of diversion.'

(xvii) the substitution of subparagraph 66(3)(a), by the following subparagraph:

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

(xviii) the insertion after subparagraph 66(3)(a)(v), by the following subparagraph:

'(vi) the manner in which assistance in the investigation and prosecution of sexual offences involving child sexual abuse material must be provided, including the determination of age where the material involves unidentified victims or depictions.'

(xvii) the insertion after subparagraph 66(3), by the following subparagraphs:

'(3)(A) The Director-General Basic Education must, in consultation with the Inter-sectoral Committee develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which

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

- (i) equipping educators and learners with knowledge on preventative measures;
- (ii) the manner in which reports of sexual offences should be dealt with in general;
- (iii) the manner and time limit within which sexual offences are to be reported to the SAPS;
- (iv) the manner the child victim should be protected and referred for other services if necessary;
- (v) the manner in which the child in conflict with the law should be dealt with;
- (vi) the manner in which assistance in the investigation and prosecution of sexual offences generally must be provided; and
- (vii) the manner in which child sexual abuse material must be dealt with.’;

‘(3)(B) The Director-General Justice and Constitutional Development must, in consultation with the Inter-sectoral Committee develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all officials and any other relevant persons when dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of offences, with particular reference, among others to –

- (i) the manner court records, including charge-sheets and exhibits, containing information pertaining to victims of sexual offences and/or child sexual abuse material or pornography, must be dealt with including any copying and distribution thereof at all courts; and
- (ii) the manner in which court records, including charge-sheets and exhibits, containing information pertaining to victims of sexual offences and/or child sexual abuse material or pornography, must be disposed of and destroyed.’;

‘(3)(C) The Director-General Social Development must, in consultation with the Inter-sectoral Committee develop and publish in the *Gazette* directives regarding all matters which are reasonably necessary or expedient to be provided for and which are to be followed by all officials and any other relevant persons dealing with sexual offence cases, in order to achieve the objects of this Act as set out in section 2 and the Preamble, particularly those objects which have a bearing on complainants of offences, with particular reference, among others to –

- (i) the manner in which probation officers are to deal with children referred in terms of section 56(9) and any other child in conflict with the law for having committed a sexual offence involving child sexual abuse material;
- (ii) the manner in which they are to be assessed; and
- (iii) the interventions to be recommended for purposes of determining appropriate conditions of diversion.’