

ANNEXURE C
AMENDMENTS PROPOSED TO THE CYBERCRIMES BILL
March 2020

ARRANGEMENT OF SECTIONS

- 1.1 On page 3, in line 6, to omit "Distribution" and to substitute "Disclosure".
- 1.2 On page 3, from line 19, to omit " or person in control of computer system".

CHAPTER 1: DEFINITIONS AND INTERPRETATION

2. Clause 1(1)

- 2.1 On page 5, from line 5 to line 15, to omit the definition of "article" and to substitute:

"**article**" means any—

- (a) data;
- (b) computer program;
- (c) computer data storage medium, or
- (d) computer system,

which—

- (i) is concerned with, connected with or is, on reasonable grounds, believed to be concerned with or connected with the commission or suspected commission;
- (ii) may afford evidence of the commission or suspected commission;
or
- (iii) is intended to be used or is, on reasonable grounds, believed to be intended to be used in the commission or intended commission of—
 - (aa) an offence in terms of Part I or Part II of Chapter 2;
 - (bb) any other offence in terms of the laws of the Republic; or

(cc) an offence in a foreign State that is substantially similar to an offence contemplated in Part I or Part II of Chapter 2 or any other offence recognised in the Republic."

2.2 On page 5, after line 50, to insert the following definition:

"Electronic Communications Act, 2005" means the Electronic Communications Act, 2005 (Act No. 36 of 2005);".

2.3 On page 5, from line 51 to line 57, to omit the definition of "electronic communications identity number".

2.4 On page 5, after line 57, to insert the following definitions:

"electronic communications network" means an 'electronic communications network' as defined in section 1 of the Electronic Communications Act, 2005, and includes a computer system;

'electronic communications service' means any service which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services as defined in section 1 of the Electronic Communications Act, 2005;".

2.5 On page 5, from line 58 to line 2 on page 6, to omit the definition of "electronic communications service provider", and to substitute:

"electronic communications service provider" means—

(a) any person who provides an electronic communications service to the public, sections of the public, the State, or the subscribers to such service, under and in accordance with an electronic communications service licence issued to that person in terms of the Electronic Communications Act, 2005, or who is deemed to be licensed or exempted from being licensed as such in terms of that Act; and

(b) a person who has lawful authority to control the operation or use of a private electronic communications network used primarily for providing electronic communications services for the owner's own use and which is exempted from being licensed in terms of the Electronic Communications Act, 2005;".

2.6 On page 6, after line 55 to insert the following definition:

"responsible party" means a 'responsible party' as defined in section 1 of the Protection of Personal Information Act, 2013;"

- 2.7 On page 6, from line 61 to line 62, to omit "commissioned officer referred to in section 33 of the South African Police Service Act, 1995 (Act No. 68 of 1995)" and to substitute "police official of the rank of captain or above".

2.8 Clause 1(2)

- 1.8.1 On page 7, in line 13, after "7(1) or (2)" to insert "of this Act"
- 1.8.2 On page 7, in line 13, after "failure" to insert "by a responsible party".

CHAPTER 2: PART I (CYBERCRIMES)

3. Clause 2

- 3.1 Clause rejected
- 3.2 That the following be a new Clause 2:

"Unlawful access

2. (1) Any person who unlawfully and intentionally performs an act in respect of a computer system or a computer data storage medium which places the person who performed the act or any other person in the position to commit an offence contemplated in subsection (2), section 3(1), 5(1) or 6(1), is guilty of an offence.

(2) (a) Any person who unlawfully and intentionally accesses a computer system or a computer data storage medium, is guilty of an offence.

(b) For purposes of paragraph (a)—

- (i) a person accesses a computer data storage medium, if the person—
- (aa) uses data or a computer program stored on a computer data storage medium; or

- (bb) stores data or a computer program on a computer data storage medium; and
- (ii) a person accesses a computer system, if the person—
 - (aa) uses data or a computer program held in a computer system;
 - (bb) stores data or a computer program on a computer data storage medium forming part of the computer system; or
 - (cc) instructs, communicates with, or otherwise uses, the computer system.
- (c) For purposes of paragraph (b)—
 - (i) a person uses a computer program, if the person—
 - (aa) copies or moves the computer program to a different location in the computer system or computer data storage medium in which it is held or to any other computer data storage medium;
 - (bb) cause a computer program to perform any function; or
 - (cc) obtain the output of a computer program; and
 - (ii) a person uses data, if the person—
 - (aa) copies or moves the data to a different location in the computer system or computer data storage medium in which it is held or to any other computer data storage medium; or
 - (bb) obtain the output of data."

4. Clause 3

- 4.1 On page 8, in line 8, after "data," to insert "or the output of data".
- 4.2 On page 8, in line 11, after "data," to insert "or the output of data".

5. Clause 4

- 5.1 On page 8, in line 29, after "2(1)", to insert "or (2)".
- 5.2 On page 8, in line 34, after "2(1)", to insert "or (2)".

6. Clause 5

- 6.1 On page 8, in line 54 to omit "." and to substitute ",".

6.2 On page 8, after line 54 to insert "held in a computer system or a computer data storage medium."

7. Clause 7

7.1 On page 9, in line 21, after "2(1)", to insert "or (2)".

7.2 On page 9, in line 29, after "2(1)", to insert "or (2)".

8. Clause 9

On page 10, in line 5, after "person" to insert ",",

9. Clause 11

9.1 On page 10, from line 27 to line 32, to omit paragraph (b) and to substitute:

"(b) For purposes of paragraph (a), a "**restricted computer system**" means any data, computer program, computer data storage medium or computer system—

(i) under the control of, or exclusively used by—

(aa) a financial institution; or

(bb) an organ of state as set out in section 239 of the Constitution of the Republic of South Africa, 1996, including a court; and

(ii) which is protected by security measures against unauthorised access or use."

9.2 On page 10, from line 36 to line 46, to omit paragraphs (a) to (g) and to substitute:

"(a) endanger the life or cause serious bodily injury to, or the death of, any person, or any number or group of persons;

(b) cause serious risk to the health or safety of the public or any segment of the public; or

(c) create a serious public emergency situation,".

CHAPTER 2: PART II (MALICIOUS COMMUNICATIONS)

10. Clause 13

On page 11, after line 4, to insert the following definition:

"**discloses**' in respect of a data message referred to in sections 14, 15 and 16, means to—

- (a) send the data message to a person who is the intended recipient of the electronic communication or any other person;
- (b) store the data message on an electronic communications network, where the data message can be viewed, copied or downloaded; or
- (c) send or otherwise make available to a person, a link to the data message that has been stored on an electronic communication network, where the data message can be viewed, copied or downloaded;"

11. Clause 14

11.1 On page 11, in line 13, to omit "makes available, broadcasts or distributes" and to substitute "discloses".

11.2 On page 11, in line 14, to omit "a computer system" and to substitute "an electronic communications service".

12. Clause 15

12.1 On page 11, in line 20, to omit "(1)".

12.2 On page 11, from line 20 to line 21, to omit "makes available, broadcasts or distributes" and to substitute "discloses".

12.3 On page 11, in line 21, to omit "a computer system" and to substitute "an electronic communications service".

12.4 On page 11, in line 36, after "data message", to insert "or information".

13. Clause 16

13.1 On page 11, in line 38, to omit "**Distribution**" and to substitute "**Disclosure**".

- 13.2 On page 11, from line 39 to line 40, to omit "makes available, broadcasts or distributes" and to substitute "discloses".
- 13.3 On page 11, in line 40, to omit "a computer system" and to substitute "an electronic communications service".
- 13.4 On page 11, from line 52 to line 3 on page 12, to omit items (aa) and (bb) and to substitute:
- "(aa) B is nude, the genital organs or anal region of B is displayed, or if B is a woman or a transgender person, their breasts are displayed; or
- (bb) the covered genital or anal region of B is displayed or if B is a woman or transgender person, their covered breasts are displayed, in a manner that violates or offends the sexual integrity or dignity of B;".

CHAPTER 2: PART IV (COMPETENT VERDICTS)

14. Clause 18

- 14.1 On page 12, in line 29, after "2(1)" to insert "or (2)".
- 14.2 On page 12, in line 36, after "2(1)" to insert "or (2)".
- 14.3 On page 12, in line 43, after "2(1)" to insert "or (2)".
- 14.4 On page 12, in line 50, after "2(1)" to insert "or (2)".
- 14.5 On page 13, in line 5, after "2(1)" to insert "or (2)".
- 14.6 On page 13, in line 33, after "2(1)" to insert "or (2)".
- 14.7 On page 13, in line 42, after "2(1)" to insert "or (2)".

CHAPTER 2: PART V (SENTENCING)

15. Clause 19

- 15.1 On page 13, in line 58, after "2(1)" to insert "or (2)".
- 15.2 On page 14, in line 22, after "2(1)" to insert "or (2)".

15.3 On page 14, in line 25, to omit "a" and to substitute "the".

**CHAPTER 2: PART VI: ORDERS TO PROTECT COMPLAINANT FROM THE
HARMFUL EFFECT OF MALICIOUS COMMUNICATIONS**

16. Clause 20

16.1 Clause rejected

16.2 That the following be a new Clause 2:

"Orders to protect victim pending finalisation of criminal proceedings

20. (1) A complainant (hereinafter referred to as the applicant) who lays a charge with the South African Police Service that an offence contemplated in section 14, 15 or 16 has allegedly been committed against him or her, may on an *ex parte* basis in the prescribed form and manner, apply to a magistrate's court for a protection order pending the finalisation of the criminal proceedings to—

- (a) prohibit any person to disclose or further disclose the data message which relates to the charge; or
- (b) order an electronic communications service provider whose electronic communications service is used to host or disclose the data message which relates to the charge to remove or disable access to the data message.

(2) The court must as soon as is reasonably possible consider an application submitted to it in terms of subsection (1) and may, for that purpose consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of proceedings.

(3) If the court is satisfied that there is—

- (a) *prima facie* evidence that an offence referred to in section 14, 15 or 16, has allegedly been committed against the applicant;

- (b) reasonable grounds to believe that a person referred to in subsection (1)(a) disclosed the data message in question; or
- (c) reasonable grounds to believe that the electronic communications service of the electronic communications service provider is used to host or was or is used to disclose the data message in question,

the court may, subject to such conditions as the court may deem fit, issue the order referred to in subsection (1), in the prescribed form.

(4) The order, referred to in subsection (3), must be served on the person referred to in subsection (1)(a) or electronic communications service provider referred to in subsection (1)(b), in the prescribed manner: Provided, that if the court is satisfied that the order cannot be served in the prescribed manner, the court may make an order allowing service to be effected in the form or manner specified in that order.

(5) An order referred to in subsection (3) is of force and effect from the time it is issued by the court and the existence thereof has been brought to the attention of the person referred to in subsection (1)(a) or electronic communications service provider referred to in subsection (1)(b).

(6) A person referred to in subsection (1)(a), other than the person who is accused of having committed the offence in question, or an electronic communications service, referred to in subsection (1)(b) may, within 14 days after the order has been served on him, her or it in terms of subsection (4) or within such further period as the court may allow, upon notice to the magistrate's court concerned, in the prescribed form and manner, apply to the court for the setting aside or amendment of the order referred to in subsection (3).

(7) (a) The court must as soon as is reasonably possible consider an application submitted to it in terms of subsection (6) and may for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.

(b) The court may if good cause has been shown for the variation or setting aside of the protection order, issue an order to this effect.

(8) The court may, for purposes of subsections (2) and (7), in the prescribed form and manner cause to be subpoenaed any person as a witness at those proceedings or to provide any book, document or object, if the evidence of that person or book, document or object appears to the court essential to the just decision of the case.

(9) Any person referred to in subsection (1)(a) or an electronic communications service provider, referred to in subsection (1)(b), that fails to comply with an order referred to in subsection (3) or any variation thereof, is guilty of an offence.

(10) Any person who is subpoenaed in terms of subsection (8) to attend proceedings and who fails to—

- (a) attend or to remain in attendance;
 - (b) appear at the place and on the date and at the time to which the proceedings in question may be adjourned;
 - (c) remain in attendance at those proceedings as so adjourned; or
 - (d) produce any book, document or object specified in the subpoena,
- is guilty of an offence.

(11) The provisions in respect of appeal and review as provided for in the Magistrates' Courts Act, 1944, and the Superior Courts Act, 2013, apply to proceedings in terms of this section.

(12) For purposes of this section and sections 21 and 22 "to host a data message" means to store the data message on an electronic communications network that is used to provide an electronic communications service, where it can be viewed, copied or downloaded."

17. Clause 21

- 17.1 On page 15, from line 31 to 32, to omit "**or person in control of computer system**".

- 17.2 On page 15, in line 35, to omit "identity or address of the person" and to substitute "the particulars of the person referred to in section 20(1)(a) or the electronic communications service provider, referred to in section 20(1)(b), whose service is used to host or was or is used to disclose the data message".
- 17.3 On page 15, from line 39 to line 42, to omit paragraph (b) and to substitute:
"(b) issue a direction in the prescribed form, directing an electronic communications service provider, that is believed to be able to furnish such particulars, to furnish the court in the prescribed manner by means of an affidavit in the prescribed form with—".
- 17.4 On page 15, in line 50, to omit "and".
- 17.5 On page 15, from line 51 to line 57, to omit subparagraph (iv) and to substitute:
(iv) any information that is available to an electronic communications service provider that may be of assistance to the court to identify the person referred to in section 20(1)(b) or the electronic communications service provider referred to in section 20(1)(b), which provides a service to that person;
(v) any information that is available to an electronic communications service provider which—
(aa) confirms whether or not its electronic communications service is used to host or was or is used to disclose the data message in question; or
(bb) may be of assistance to the court to identify the electronic communications service provider whose service is used to host or was or is used to disclose the data message in question; and
(vi) an assessment whether or not the electronic communications service provider is in a position—
(aa) to remove the data message or a link to the data message; or
(bb) to disable access to such pornography or a link to such pornography."

- 17.6 On page 15, from line 59 to line 60, to omit "or person in control of a computer system".
- 17.7 On page 16, in line 1, to omit "(i), (ii), (iii) and (iv)".
- 17.8 On page 16, from line 3 to line 4, to omit "or person in control of a computer system".
- 17.9 On page 16, from line 5 to line 6, to omit "or person in control of a computer system".
- 17.10 On page 16, from line 11 to line 16, to omit subparagraph (II) and to substitute:
- "(ii) the cancellation of the direction on the grounds that—
 - (aa) it does not provide an electronic communications service to the applicant or the person referred to in section 20(1)(b);
 - (bb) the requested information is not available in the records of the electronic communications service provider; or
 - (cc) its service is not used to host or was or is not used to disclose the data message in question."
- 17.11 On page 16, from line 20 to line 21, to omit "or person in control of a computer system".
- 17.12 On page 16, from line 23 to line 24, to omit "or person in control of a computer system".
- 17.13 On page 16, in line 27, to omit "or person in control of a computer system".
- 17.14 On page 16, from line 29 to line 30, to omit "who made available, broadcasted or distributed the data message contemplated in section 14, 15 or 16" and to insert "or electronic communications service provider,".
- 17.15 On page 16, in line 38, after "provider" to omit "," and to insert "or".
- 17.16 On page 16, in line 39, to omit "or person in control of a computer system".
- 17.17 On page 16, in line 42, to omit "or person in control of a computer system".
- 17.18 On page 16, after line 47, to insert:
- "(8) For purposes of this section 'electronic communications identity number' means a technical identification label which represents the origin or destination of electronic communications traffic."

18. Clause 22

- 18.1 On page 16, from lines 57 to 58, to omit all the words from "must" up to "order", and to substitute "which convicts a person of an offence contemplated in section 14, 15 or 16, must order".
- 18.2 On page 16, in line 61, to omit "is" and to insert "has been".
- 18.3 On page 17, in line 1, after "question" to omit "or" and to insert ",".
- 18.4 On page 17, in line 2, after "message" to insert "or any output of the data message".
- 18.5 On page 17, from line 3 to line 4, to omit "or person in control of a computer system".
- 18.6 On page 17, in line 6, to omit "accused" and to insert "person who has been convicted of the offence".
- 18.7 On page 17, in line 7, before "electronic communications service provider" to insert "person or".
- 18.8 On page 17, in line 7, to omit "or person in control of a computer system".
- 18.9 On page 17, in line 12, to omit "or person in control of a computer system".
- 18.10 On page 17, after line 14, to insert:

"(5) An electronic communications service provider who is ordered to remove or disable access to the data message, may, within 14 days after the order has been served on him, her or it, in terms of subsection (3), upon notice to the trial court concerned, in the prescribed form and manner, apply to the court for the setting aside or amendment of the order referred to in subsection (2)(c).

(6) (a) The trial court must as soon as is reasonably possible consider an application submitted to it in terms of subsection (5) and may for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.

(b) The trial court may if good cause has been shown for the variation or setting aside of the order, issue an order to this effect.

(7) The court may, for purposes of subsections (6)(a), in the prescribed form and manner cause to be subpoenaed any person as a witness at those proceedings or to provide any book, document or object, if the evidence of that person or book, document or object appears to the court essential to the just decision of the case.

(8) Any person who is subpoenaed in terms of subsection (7) to attend proceedings and who fails to—

- (a) attend or to remain in attendance;
- (b) appear at the place and on the date and at the time to which the proceedings in question may be adjourned;
- (c) remain in attendance at those proceedings as so adjourned; or
- (d) produce any book, document or object specified in the subpoena, is guilty of an offence."

18.11 On page 17, in line 15, to omit "(5)" and to substitute "(9)".

18.12 On page 17, in line 21, to omit "(6)" and to substitute "(10)".

19. Clause 23

19.1 On page 17, from line 31 to line 32, to omit "contravenes the provisions of" and to substitute "is convicted of an offence referred to in".

19.2 On page 17, in line 32, after "22(4)" to insert "or (8)".

CHAPTER 3: JURISDICTION

20. Clause 24

20.1 Clause rejected.

20.2 That the following be a new Clause 24:

"Jurisdiction

- 24.** (1) A court of the Republic has jurisdiction to try any offence referred to in Part I or Part II of Chapter 2, if—
- (a) the accused was arrested in the territory of the Republic, on board a vessel, a ship, an off-shore installation, or a fixed platform, or an aircraft registered or required to be registered in the Republic;
 - (b) the person to be charged is—
 - (i) a citizen of the Republic or ordinarily resident in the Republic;
 - (ii) a company, incorporated or registered as such under any law, in the Republic; or
 - (iii) any body of persons, corporate or unincorporated, in the Republic;
 - (c) the offence was committed—
 - (i) in the territory of the Republic; or
 - (ii) on board a vessel, a ship, an off-shore installation, or a fixed platform, or an aircraft registered or required to be registered in the Republic at the time that the offence was committed;
 - (d) any act in preparation of the offence or any action necessary to commit the offence or any part of the offence took place—
 - (i) in the territory of the Republic; or
 - (ii) on board a vessel, a ship, an off-shore installation, or a fixed platform, or an aircraft registered or required to be registered in the Republic at the time when the act, action or part of the offence took place;
 - (e) the offence affects any person, a restricted computer system contemplated in section 11(1)(b), a public body or any business, in the Republic;
 - (f) the offence was committed outside the Republic against—
 - (i) any person who is citizen of the Republic or ordinarily resident in the Republic;
 - (ii) a restricted computer system contemplated in section 11(1)(b);
 - (iii) a company, incorporated or registered as such under any law, in the Republic;

- (iv) any body of persons, corporate or unincorporated, in the Republic; or
- (v) a government facility of the Republic, including an embassy or other diplomatic or consular premises, or any other property of the Republic; or
- (g) the evidence reveals any other basis recognised by law in terms of which the court may assert jurisdiction to try the offence.

(2) Any act alleged to constitute an offence referred to in Part I or Part II of Chapter 2 and which is committed outside the Republic by a person other than a person contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence at the place of its commission, be deemed to have been committed in the Republic if—

- (a) that person is extradited to the Republic; or
- (b) that person—
 - (i) is found to be in the Republic; and
 - (ii) is for one or other reason not extradited by the Republic or if there is no application to extradite him or her.

(3) Where a person is charged with attempting, conspiring, aiding, abetting, inducing, inciting, instigating, instructing, commanding or procuring to commit an offence or as an accessory after the offence, the offence is deemed to have been committed not only at the place where the act was committed, but also at every place where the person so acted.

(4) (a) A prosecution of an offence referred to in Part I or Part II of Chapter 2, which was committed outside the Republic—

- (i) may only be instituted against a person with the written permission of the National Director of Public Prosecutions; and
- (ii) must commence before a court designated by the National Director of public Prosecutions.

(b) A copy of the written permission and designation must be served on the accused and the original thereof must be handed in at the court in which the proceedings are to commence.

(5) The National Commissioner and the National Head of the Directorate, respectively, in consultation with the National Director of Public Prosecutions must issue directives, with which all police officials must comply in the execution of their functions in terms of this Act regarding the investigation of offences that was committed outside the Republic."

CHAPTER 4: POWERS TO INVESTIGATE, SEARCH, ACCESS OR SEIZE

21. Clause 25

On page 18, from line 47 to line 50, to omit the definition of "access" and to substitute:

"**access**' includes without limitation to make use of—

- (a) a computer data storage medium, a computer system, their accessories and components and any part thereof and any ancillary device or component thereto; and
- (b) data and a computer program held in a computer data storage medium or a computer system,

to the extent necessary to search for and seize an article;".

22. Clause 26

On page 19, in line 9, to omit "six" and to substitute "12".

23. Clause 29

On page 20, in line 6, after "possession", to omit "of".

24. Clause 32

24.1 On page 21, in line 38, after "in", to insert "paragraph (c) or (d) of".

24.2 On page 21, in line 47, to omit "." and to insert:

": Provided that a police official may, if he or she on reasonable grounds believes—

- (a) that a search warrant will be issued to him under section 29(1)(a) if he or she applies for such warrant; and
 - (b) it is not reasonably practicable, having regard to the urgency of the case or the existence of exceptional circumstances, to make a written or oral application for a search warrant,
- access and perform the powers referred to in paragraphs (c) or (d) of the definition of "seize" without a search warrant."

25. Clause 33

25.1 On page 22, in line 13, after "in", to insert "paragraph (c) or (d) of".

25.2 On page 22, in line 19, to omit "." and to insert:

": Provided that a police official may, if he or she on reasonable grounds believes—

- (a) that a search warrant will be issued to him or her under section 29(1)(a) if he or she applies for such warrant; and
 - (b) it is not reasonably practicable, having regard to the urgency of the case or the existence of exceptional circumstances, to make a written or oral application for a search warrant,
- access and perform the powers referred to in paragraphs (c) or (d) of the definition of "seize" without a search warrant."

26. Clause 34

On page 22, in line 33, after "(1)" to insert ",."

27. Clause 37

On page 23, in line 21, after "computer" to insert "system".

28. Clause 39

28.1 On page 24, from line 47 to line 50, to omit paragraph (a).

28.2 On page 24, in line 51, to omit "(b)" and to substitute "(a)".

28.3 On page 24, in line 52, to omit "(c)" and to substitute "(b)".

29. Clause 40

29.1 On page 25, in line 3, to omit "data which is".

29.2 On page 25, in line 34, after "was" to insert "preserved or otherwise".

29.3 On page 25, in line 39, before "furnish" to insert "to obtain and".

29.4 On page 25, from line 40 to line 45, to omit subsection (4) and to substitute:

"(4) Any indirect communication which is to be intercepted or any real-time communication-related information, archived communication-related information or traffic data which is to be obtained, at the request of an authority, court or tribunal exercising jurisdiction in a foreign State must further be dealt with in the manner provided for in an order referred to in section 48(6), which is issued by the designated judge."

30. Clause 41

On page 25, from line 47 to line 9 on page 26, to omit subsection (1) and to substitute:

"(1) A specifically designated police official may, if he or she on reasonable grounds believes that any person, an electronic communications service provider referred to in section 40(3), or a financial institution, is in possession of, is to receive, or is in control of data as contemplated in paragraph (a) of the definition of "article", with due regard to the rights, responsibilities and legitimate interests of other persons in proportion to the severity of the offence in question, issue an expedited preservation of data direction to such a person, electronic communications service provider or financial institution."

31. Clause 42

31.1 On page 27, from line 2 to line 23, to omit subsection (1) and to substitute:

"(1) A magistrate or judge of the High Court may, on written application by a police official, if it appears to the magistrate or judge, from information on oath or by way of affirmation, as set out in the application, that there are reasonable grounds for believing that any person, electronic

communications service provider or financial institution may receive, is in possession of, or is in control of an article, with due regard to the rights, responsibilities and legitimate interests of other persons in proportion to the severity of the offence in question, issue a preservation of evidence direction."

31.2 On page 27, in line 45, to omit "order" and to insert "direction".

32. Clause 43

On page 28, from line 5 to line 7, to omit "with due regard to the rights, responsibilities and legitimate interests of other persons in proportion to the severity of the offence in question".

33. Clause 44

33.1 On page 28, from line 33 to line 15 on page 29, to omit subsections (1), (2) and (3) and to substitute:

"(1) (a) A police official may, where it is expedient, other than by way of a search for or seizure in terms of a warrant contemplated in section 29(1), to obtain—

- (i) data which is subject to preservation in terms of an expedited preservation of data direction or a preservation of evidence direction; or
- (ii) data as contemplated in paragraph (a) of the definition of "article", which is—
 - (aa) held in a computer system or computer data storage medium; or
 - (bb) available to a computer system,

apply to a magistrate or judge of the High Court for the issuing of a disclosure of data direction.

(b) An application referred to in paragraph (a)(i) must—

- (i) indicate the identity of the police official who applies for the disclosure of data direction;
- (ii) identify the person, electronic communications service provider or financial institution to whom the disclosure of data direction must be addressed;

- (iii) be accompanied by a copy of the expedited preservation of data direction or a preservation of evidence direction or any amendment thereof;
- (iv) contain a description of the data which must be provided and the format in which it must be provided;
- (v) specify the grounds for believing that the data is an article as contemplated in paragraph (a) of the definition of "article"; and
- (vi) comply with any supplementary directives relating to applications for the disclosure of data, which may be issued by the Chief Justice in terms of section 8(3) of the Superior Courts Act, 2013.

(c) An application referred to in paragraph (a)(ii) must—

- (i) indicate the identity of the police official who applies for the disclosure of data direction;
- (ii) identify the person, electronic communications service provider or financial institution to whom the disclosure of data direction must be addressed;
- (iii) contain a description of the data which must be provided and the format in which it must be provided;
- (iv) specify the grounds for believing that the data is an article as contemplated in paragraph (a) of the definition of "article";
- (v) specify the grounds for believing that the data, in question, is held in a computer system or computer data storage medium or is available to a computer system that is under the control of the person, electronic communications service provider or financial institution, referred to in subparagraph (ii), within the area of jurisdiction of the court; and
- (vi) comply with any supplementary directives relating to applications for the disclosure of data, which may be issued by the Chief Justice in terms of section 8(3) of the Superior Courts Act, 2013.

(2) A magistrate or judge of the High Court may, subject to section 4(3) of the Customs and Excise Act, 1964, sections 69(2)(b) and section 71 of the Tax Administration Act, 2011 and section 21(e) and (f) of the Customs Control Act, 2014, on the written application by a police official referred

to in subsection (1), if it appears to the magistrate or judge from information on oath or by way of affirmation, as set out in the application—

- (a) that there are reasonable grounds for believing that—
 - (i) data which is subject to preservation in terms of an expedited preservation of data direction or a preservation of evidence direction, is an article as contemplated in paragraph (a) of the definition of "article"; or
 - (ii) data, which is an article as contemplated in paragraph (a) of the definition of "article", is—
 - (aa) held in a computer system or computer data storage medium; or
 - (bb) available to a computer system, within his or her area of jurisdiction; and
- (b) that it will be in the interests of justice if a disclosure of data direction is issued,

issue the disclosure of data direction, applied for."

33.2 On page 29, in line 16, to omit "(4)" and to substitute "(3)".

33.3 On page 29, in line 19, to omit "(5)" and to substitute "(4)".

33.4 On page 29, after line 22, to insert:

"(b) must specify the format in which the data identified in paragraph (a) must be provided;"

33.5 On page 29, in line 23, to omit "(b)" and to substitute "(c)".

33.6 On page 29, in line 25, to omit "(c)" and to substitute "(d)".

33.7 On page 29, in line 27, to omit "(6)" and to substitute "(5)".

33.8 On page 29, in line 28, to omit "(5)" and to substitute "(4)".

33.9 On page 29, in line 32, to omit "(7)" and to substitute "(6)".

33.10 On page 29, in line 32, to omit "(6)" and to substitute "(5)".

33.11 On page 29, in line 39, to omit "(8)" and to substitute "(7)".

33.12 On page 29, in line 46, to omit "(9)" and to substitute "(8)".

33.13 On page 29, in line 49, to omit "(6)" and to substitute "(5)".

33.14 On page 29, in line 50, to omit "(8)" and to substitute "(7)".

33.15 On page 29, in line 53, to omit "(10)" and to substitute "(9)".

CHAPTER 5: MUTUAL ASSISTANCE

34. Clause 48

34.1 On page 31, in line 12, to omit "(7)" and to substitute "(9)".

34.2 On page 31, in line 51, to omit "(1)" and to substitute "(2)".

34.3 On page 32, in line 15, after "data" to insert "or other article".

34.4 On page 32, in line 15, after "basis" to insert "and be preserved".

34.5 On page 32, from line 28 to line 29, to omit "as contemplated in subsection (6)(c)".

35. Clause 49

On page 32, in line 53, after "person" to insert ",".

36. Clause 50

On page 33, from line 26 to line 27, to omit "information referred to in subsection (2)(a), together with the copy of the order and affidavit referred to in subsection (2)(b)" and to substitute "traffic data, together with the copy of the order and affidavit referred to in subsection (2)".

37. Clause 51

37.1 On page 33, from line 54 to 55, to omit "this Act" and to substitute "subsection (1)(a) or (b)".

37.2 On page 33, in line 56, after "whether" to insert "such".

CHAPTER 6: DESIGNATED POINT OF CONTACT

38. Clause 52

On page 34, in line 40, to omit "or" and to substitute "and".

CHAPTER 7: EVIDENCE

39. Clause 53

- 39.1 On page 35, in line 26, to omit "designated".
- 39.2 On page 35, in line 27, at the beginning of the line before "by" to insert "designated".

CHAPTER 8: REPORTING OBLIGATIONS AND CAPACITY BUILDING

40. Clause 54

On page 36, in line 18, to omit "computer system" and to substitute "electronic communications service or electronic communications network".

CHAPTER 9: GENERAL PROVISIONS

41. Clause 59

- 41.1 On page 38, from lines 2 to 3, to omit "must make regulations".
- 41.2 On page 38, in line 4, before "to" to insert "must make regulations".
- 41.3 On page 38, in line 7, to omit "form and".
- 41.4 On page 38, in line 9, before "manner" to insert "form and".
- 41.5 On page 38, after line 25 to insert:
"(xiii) form and manner of the application contemplated in section 22(5);
(xiv) form and manner in which the court may subpoena a person as contemplated in section 22(7);".
- 41.6 On page 38, in line 26, to omit "(xiii)" and to substitute "(xv)".
- 41.7 On page 38, in line 28, to omit "(xiv)" and to substitute "(xvi)".
- 41.8 On page 38, in line 30, to omit "(xv)" and to substitute "(xvii)".

- 41.9 On page 38, in line 32, to omit "(xvi)" and to substitute "(xviii)".
- 41.10 On page 38, in line 34, to omit "(xvii)" and to substitute "(xix)".
- 41.11 On page 38, in line 35, to omit "(4)" and to substitute "(3)".
- 41.12 On page 38, in line 36, to omit "(xviii)" and to substitute "(xx)".
- 41.13 On page 38, in line 37, to omit "(6)" and to substitute "(5)".
- 41.14 On page 38, in line 36, to omit "(xix)" and to substitute "(xxi)".
- 41.15 On page 38, in line 38, to omit "(8)" and to substitute "(7)".
- 41.16 On page 38, in line 39, to omit "(xx)" and to substitute "(xxii)".
- 41.17 On page 38, in line 41, to omit "(xxi)" and to substitute "(xxiii)".
- 41.18 On page 38, in line 42, to omit "(xxii)" and to substitute "(xxiv)".
- 41.19 On page 38, in line 43, before "which" to insert "may make regulations".

42. Clause 60

On page 38, in line 56, to omit "2019" and to substitute "2020".

SCHEDULE

43.1 References to Cybercrimes Act "2019" must be amended to "2020" in the Schedule

43.2 On page 40 to substitute:

Act No. 65 of 1996	Films and Publications Act, 1996, as amended by Act No. 11 of 2019	The deletion of section 24B.
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43.3 On page 41

Act No. 105 of 1997	Criminal Law Amendment Act, 1997	Omit " A contravention of section 11(2) of the Cybercrimes Act, 2019.".
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43.4 Pages 41 to 44:

Act No. 70 of 2002	Regulation of	(a) Paragraph (b) at the end of page 41 must
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	Interception of Communications and Provision of Communication related Information Act, 2002	<p>not be underlined.</p> <p>(b) Page 42: Proposed subsection (3), after "law enforcement officer" wherever it occurs to insert "<u>or a person</u>".</p> <p>(c) Page 42, proposed section 4(3)(b)(ii)–</p> <p>(i) after "recorded" to insert ","</p> <p>(ii) the words "before such recording is made" must be aligned at the same paragraph margin as (i) and (ii).</p> <p>(d) Page 42, amendment to section 17(4), to be renumbered as "(c)".</p> <p>(e) Page 43, renaming of Schedule I to be renumbered as "(d)".</p> <p>(f) Page 43, addition of Schedule II to be renumbered as "(e)".</p>
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31.4 Pages 44 to 55

Act No. 32 of 2007	Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007	<p>(a) The Index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by—</p> <p>(i) the insertion of the following Part and items after item 11:</p> <p style="text-align: center;"><u>"Part 3A</u></p> <p style="text-align: center;"><i><u>Persons 18 years or older: Harmful disclosure of pornography and orders to protect victims against the harmful effects of disclosure of pornography</u></i></p> <p><u>11A Harmful disclosure of pornography</u></p> <p><u>11B Orders to protect victim against harmful disclosure of pornography</u></p> <p><u>11C Electronic communications service provider or person who provides a private electronic communications service to furnish particulars to court</u></p> <p><u>11D Orders on finalisation of criminal proceedings</u>";</p> <p>(ii) the substitution for the heading to Part 2 of Chapter 3 of the following heading:</p> <p>“Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child pornography or</p>
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		<p>pornography to children, <u>child pornography</u> and using children for pornographic purposes or benefiting from child pornography”; and</p> <p>(iii) the insertion after item 19 of the following item: <u>“19A. Offences relating to child pornography”</u>.</p> <p>(b) The amendment of section 1—</p> <p>(i) by the insertion, after the definition of "complainant" of the following definition: <u>"disclose' in relation to the harmful disclosure of pornography contemplated in section 11A, without derogating from the ordinary meaning of that word, includes—</u></p> <p><u>(a) to send the pornography to a person who is the intended recipient of the electronic communication or any other person;</u></p> <p><u>(b) to store the pornography on an electronic communications network, where the pornography can be viewed, copied or downloaded; or</u></p> <p><u>(c) to send or otherwise make available to a person, a link to the pornography that has been stored on an electronic communication network, where the pornography can be viewed, copied or downloaded.”;</u></p> <p>(ii) by the insertion, after the definition of "Director of Public Prosecutions" of the following definitions: <u>"Electronic Communications Act' means the Electronic Communications Act, 2005 (Act No. 36 of 2005);</u> <u>'electronic communications identity number' means a technical identification label which represents the origin or destination of electronic communications traffic;</u> <u>'electronic communications network' means an 'electronic communications network' as defined in section 1 of the Electronic Communications Act, and includes a</u></p>
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		<p>computer system;</p> <p><u>'electronic communications service'</u> means any service which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services as defined in section 1 of the Electronic Communications Act, 2005;</p> <p><u>'electronic communications service provider'</u> means—</p> <p>(a) <u>any person who provides an electronic communications service to the public, sections of the public, the State, or the subscribers to such service, under and in accordance with an electronic communications service licence issued to that person in terms of the Electronic Communications Act, 2005, or who is deemed to be licensed or exempted from being licensed as such in terms of that Act; and</u></p> <p>(b) <u>a person who has lawful authority to control the operation or use of a private electronic communications network used primarily for providing electronic communications services for the owner's own use and which is exempted from being licensed in terms of the Electronic Communications Act, 2005;</u>" and</p> <p>(iii) by the insertion, after the definition of "genital organs" of the following definition:</p> <p><u>"host'</u> means to store information on an electronic communications network that is used to provide an electronic communications service, where the information can be accessed;".</p> <p>(c) The following Part and sections are hereby inserted in Chapter 2 after section 11:</p> <p style="text-align: center;"><u>"Part 3A</u> <u>Persons 18 years or older: Harmful disclosure</u> <u>of pornography and orders to protect</u></p>
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		<p style="text-align: center;"><u>victims against the harmful effects of disclosure of pornography</u></p> <p><u>Harmful disclosure of pornography</u></p> <p><u>11A.</u> (1) <u>A person (“A”) who unlawfully and intentionally discloses or causes the disclosure of pornography in which a person 18 years or older (“B”) appears or is described and such disclosure—</u></p> <p><u>(a) takes place without the consent of B;</u> <u>and</u></p> <p><u>(b) causes any harm, including mental, psychological, physical, social or economic harm, to B or any member of the family of B or any other person in a close relationship to B, is guilty of the offence of harmful disclosure of pornography.</u></p> <p><u>(2) A person (“A”) who unlawfully and intentionally threatens to disclose or threatens to cause the disclosure of pornography referred to in subsection (1) and such threat causes, or such disclosure could reasonably be expected to cause, any harm referred to in subsection (1)(b), is guilty of the offence of threatening to disclose pornography that will cause harm.</u></p> <p><u>(3) A person (“A”) who unlawfully and intentionally threatens to disclose or threatens to cause the disclosure of pornography referred to in subsection (1), for the purposes of obtaining any advantage from B or any member of the family of B or any other person in a close relationship to B, is guilty of the offence of harmful disclosure of pornography related extortion.</u></p> <p><u>Orders to protect victim against harmful disclosure of pornography</u></p> <p><u>11B.</u> (1) <u>A person against whom an offence contemplated in section 11A(1), (2) or (3), has allegedly been committed (hereinafter referred to as the applicant), may on an <i>ex parte</i> basis, in</u></p>
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		<p><u>the prescribed form and manner, apply to a magistrate's court for a protection order to—</u></p> <p><u>(a) prohibit any person to disclose, or cause the disclosure or threaten the applicant with the disclosure or causing the disclosure of such pornography;</u></p> <p><u>(b) order any person who is in possession or control of such pornography, to destroy the pornography; or</u></p> <p><u>(c) order an electronic communications service provider whose electronic communications service is used to host or disclose such pornography to remove or disable access to such pornography.</u></p> <p><u>(2) The court must as soon as is reasonably possible consider an application submitted to it in terms of subsection (1) and may, for that purpose consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of proceedings.</u></p> <p><u>(3) If the court is satisfied that there is —</u></p> <p><u>(a) prima facie evidence that an offence referred to in section 11A(1), (2) or (3), has allegedly been committed against the applicant;</u></p> <p><u>(b) reasonable grounds to believe that a person referred to in subsection (1)(a) disclosed, or caused the disclosure or threatened the applicant with the disclosure or causing the disclosure of such pornography;</u></p> <p><u>(c) reasonable grounds to believe that a person referred to in subsection (1)(a) or (b) is in possession or in control of such pornography; or</u></p> <p><u>(d) reasonable grounds to believe that the electronic communications service of the electronic communications service provider is used to host or disclose such pornography,</u></p>
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		<p><u>the court may, subject to such conditions as the court may deem fit, issue the order referred to in subsection (1), in the prescribed form.</u></p> <p><u>(4) The order, referred to in subsection (3), must be served on the person referred to in subsection (1)(a) or (b) or electronic communications service provider, referred to in subsection (1)(c), in the prescribed form and manner: Provided, that if the court is satisfied that the order cannot be served in the prescribed form and manner, the court may make an order allowing service to be effected in the manner specified in that order.</u></p> <p><u>(5) An order referred to in subsection (3) is of force and effect from the time it is issued by the court and the existence thereof has been brought to the attention of the person referred to in subsection (1)(a) or (b) or electronic communications service provider referred to in subsection (1)(c).</u></p> <p><u>(6) A person referred to in subsection (1)(a) or (b), or an electronic communications service, referred to in subsection (1)(c) may, within 14 days after the order has been served on him, her or it in terms of subsection (4) or within such further period as the court may allow, upon notice to the magistrate's court concerned, in the prescribed form and manner, apply to the court for the setting aside or amendment of the order referred to in subsection (3).</u></p> <p><u>(7) (a) The court must as soon as is reasonably possible consider an application submitted to it in terms of subsection (6) and may for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.</u></p> <p><u>(b) The court may if good cause has been shown for the variation or setting aside of the protection order, issue an order to this effect.</u></p> <p><u>(8) The court may, for</u></p>
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		<p><u>purposes of subsections (2) and (7), in the prescribed form and manner cause to be subpoenaed any person as a witness at those proceedings or to provide any book, document or object, if the evidence of that person or book, document or object appears to the court essential to the just decision of the case.</u></p> <p><u>(9) Any person referred to in subsection (1)(a) or (b) or electronic communications service provider, referred to in subsection (1)(c), that fails to comply with an order referred to in subsection (3) or any variation thereof, is guilty of an offence.</u></p> <p><u>(10) Any person who is subpoenaed in terms of subsection (8) to attend proceedings and who fails to—</u> <u>(a) attend or to remain in attendance;</u> <u>(b) appear at the place and on the date and at the time to which the proceedings in question may be adjourned;</u> <u>(c) remain in attendance at those proceedings as so adjourned; or</u> <u>(d) produce any book, document or object specified in the subpoena.</u> <u>is guilty of an offence.</u></p> <p><u>(11) The provisions in respect of appeal and review as provided for in the Magistrates' Courts Act, 1944, and the Superior Courts Act, 2013, apply to proceedings in terms of this section.</u></p> <p><u>(12) Sections 8 and 9(3) of the Protection from Harassment Act, 2011 (Act No. 17 of 2011), applies with the necessary changes required by the context to proceedings contemplated in subsections (2) and (7).</u></p> <p>Electronic communications service provider to furnish particulars to court</p> <p>11C. <u>(1) If an application for a protection order is made in terms of section 11B(1) and the court is satisfied in terms of section 11B(3) that a protection order must be issued and the</u></p>
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		<p><u>particulars of the person referred to in section 11B(1)(a) or (b) or the electronic communications service provider, referred to in section 11B(1)(c), whose service is used to host or disclose such pornography, is not known, the court may—</u></p> <p><u>(a) adjourn the proceedings to any time and date on the terms and conditions which the court deems appropriate; and</u></p> <p><u>(b) issue a direction in the prescribed form, directing an electronic communications service provider, that is believed to be able to furnish such particulars, to furnish the court in the prescribed manner by means of an affidavit in the prescribed form with—</u></p> <p><u>(i) the electronic communications identity number from where such pornography originated;</u></p> <p><u>(ii) the name, surname, identity number and address of the person to whom the electronic communications identity number has been assigned;</u></p> <p><u>(iii) any information which indicates that such pornography was or was not sent from the electronic communications identity number of the person to the electronic communications identity number of the applicant;</u></p> <p><u>(iv) any information that is available to an electronic communications service provider that may be of assistance to the court to identify the person referred to in section 11B(1)(a) or (b), or the electronic communications service provider referred to in section 11B(1)(c), which provides a service to that person;</u></p> <p><u>(v) any information that is available to an electronic communications service provider which—</u></p> <p><u>(aa) confirms whether or not its electronic communications service is used to host or disclose such pornography;</u></p>
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		<p><u>or</u></p> <p><u>(bb) may be of assistance to the court to identify the electronic communications service provider whose service is used to host or disclose such pornography;</u></p> <p><u>and</u></p> <p><u>(vi) an assessment whether or not the electronic communications service provider is in a position—</u></p> <p><u>(aa) to remove such pornography or a link to such pornography; or</u></p> <p><u>(bb) to disable access to such pornography or a link to such pornography.</u></p> <p><u>(2) If the court issues a direction in terms of subsection (1) the court must direct that the direction be served on the electronic communications service provider in the prescribed manner.</u></p> <p><u>(3) (a) The information referred to in subsection (1)(b) must be provided to the court within five ordinary court days from the time that the direction is served on an electronic communications service provider.</u></p> <p><u>(b) An electronic communications service provider on which a direction is served, may in the prescribed manner by means of an affidavit in the prescribed form apply to the court for—</u></p> <p><u>(i) an extension of the period of five ordinary court days referred to in paragraph (a) for a further period of five ordinary court days on the grounds that the information cannot be provided timeously; or</u></p> <p><u>(ii) the cancellation of the direction on the grounds that—</u></p> <p><u>(aa) it does not provide an electronic communications service to the applicant or the person referred to in section 11B(1)(a) or (b);</u></p> <p><u>(bb) the requested information is not available in the records of the electronic communications</u></p>
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		<p><u>service provider; or</u></p> <p><u>(cc) its service is not used to host or disclose such pornography.</u></p> <p><u>(4) After receipt of an application in terms of subsection (3)(b), the court—</u></p> <p><u>(a) must consider the application;</u></p> <p><u>(b) may, in the prescribed manner, request such additional evidence by way of affidavit from the electronic communications service provider as it deems fit;</u></p> <p><u>(c) must give a decision in respect thereof; and</u></p> <p><u>(d) must inform the electronic communications service provider in the prescribed form and in the prescribed manner of the outcome of the application.</u></p> <p><u>(5) (a) The court may, on receipt of an affidavit from an electronic communications service provider which contains the information referred to in subsection (1)(b), consider the issuing of a protection order in terms of section 11B(3) against the person or electronic communications service provider.</u></p> <p><u>(b) Any information furnished to the court in terms of subsection (1)(b) forms part of the evidence that a court may consider in terms of section 11B(3).</u></p> <p><u>(6) The Cabinet member responsible for the administration of justice may, by notice in the Gazette, prescribe reasonable tariffs of compensation payable to electronic communications service providers for providing the information referred to in subsection (1)(b).</u></p> <p><u>(7) Any electronic communications service provider or employee of an electronic communications service provider who—</u></p> <p><u>(a) fails to furnish the required information within five ordinary court days from the time that the direction is served on such electronic communications service provider to a court in terms of subsection (3)(a) or such extended</u></p>
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		<p><u>period allowed by the court in terms of subsection (3)(b); or</u> <u>(b) makes a false statement in an affidavit referred to in subsection (1)(b) or (3)(b) in a material respect,</u> <u>is guilty of an offence.</u></p> <p><u>Orders on finalisation of criminal proceedings</u></p> <p><u>11D.</u> <u>(1) The trial court, on convicting a person of any offence referred to in section 11A(1), (2) or (3), must order—</u></p> <p><u>(a) the destruction of the pornography which relates to the charge on which the person has been convicted;</u></p> <p><u>(b) any person who has been identified to be in the possession of such pornography, to destroy the pornography and to submit an affidavit in the prescribed form to the prosecutor identified in the order that the pornography has been so destroyed; or</u></p> <p><u>(c) an electronic communications service provider whose service is used to host or disclose such pornography to remove or disable access to such pornography.</u></p> <p><u>(2) The order referred to in subsection (1), in so far as it relates to a person referred to in subsection (1)(b), other than the person who has been convicted of the offence or an electronic communications service provider, referred to in subsection (1)(c), must be in the prescribed form and must be served on the person or electronic communications service provider in the prescribed manner: Provided, that if the trial court is satisfied that the order cannot be served in the prescribed form and manner, the court may make an order allowing service to be effected in the manner specified in that order.</u></p> <p><u>(3) Any person or electronic communications service provider who fails to comply with an order referred to</u></p>
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		<p><u>in subsection (1) is guilty of an offence.</u></p> <p><u>(4) An _____ electronic communications service provider, may, within 14 days after the order referred to in subsection (1)(c) has been served on it, in terms of subsection (2), upon notice to the trial court concerned, in the prescribed form and manner, apply to the trial court for the setting aside or amendment of the order.</u></p> <p><u>(5) (a) The trial court must as soon as is reasonably possible consider an application submitted to it in terms of subsection (4) and may for that purpose, consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of the proceedings.</u></p> <p><u>(b) The trial court may if good cause has been shown for the variation or setting aside of the order, issue an order to this effect.</u></p> <p><u>(6) The trial court may, for purposes of subsections (5)(a), in the prescribed form and manner cause to be subpoenaed any person as a witness at those proceedings or to provide any book, document or object, if the evidence of that person or book, document or object appears to the court essential to the just decision of the case.</u></p> <p><u>(7) Any person who is subpoenaed in terms of subsection (6) to attend proceedings and who fails to—</u></p> <p><u>(a) attend or to remain in attendance;</u></p> <p><u>(b) appear at the place and on the date and at the time to which the proceedings in question may be adjourned;</u></p> <p><u>(c) remain in attendance at those proceedings as so adjourned; or</u></p> <p><u>(d) produce any book, document or object specified in the subpoena, is guilty of an offence.</u></p> <p><u>(8) For purposes of this section “trial court” means—</u></p> <p><u>(a) a magistrate’s court established under section 2(1)(f)(i) of the Magistrates’ Courts Act, 1944;</u></p>
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		<p><u>(b) a court for a regional division established under section 2(1)(g)(i) of the Magistrates' Courts Act, 1944; or</u></p> <p><u>(c) a High Court referred to in section 6(1) of the Superior Courts Act, 2013.</u></p> <p><u>(9) Whenever a person is convicted of an offence referred to in section 11A(1), (2) or (3), the trial court must issue an order that the person so convicted must reimburse all expenses reasonably incurred by—</u></p> <p><u>(a) a complainant as a result of any direction issued in terms of section 11B(1)(b); or</u></p> <p><u>(b) an electronic communications service provider to remove or disable access to such pornography,</u> <u>whereupon the provisions of section 300 of the Criminal Procedure Act, 1977, shall apply with the necessary changes required by the context, to such order.</u></p> <p>(d) Chapter 3 is hereby amended—</p> <p>(i) by the substitution for the heading to Part II of Chapter 3 of the following heading: <i>“Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child pornography or pornography to children, offences relating to child pornography and using children for pornographic purposes or benefiting from child pornography”;</i></p> <p>(ii) by the insertion of the following section after section 19 of the Act: <u>“Offences relating to child pornography</u> <u>19A. (1) Any person who unlawfully and intentionally creates, makes or produces child pornography, is guilty of an offence.</u> <u>(2) Any person who unlawfully and intentionally, in any manner assists in,</u></p>
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		<p><u>or facilitates the creation, making or production of child pornography, is guilty of an offence.</u></p> <p><u>(3) Any person who unlawfully and intentionally possesses child pornography, is guilty of an offence.</u></p> <p><u>(4) Any person who unlawfully and intentionally, in any manner—</u> <u>(a) distributes;</u> <u>(b) makes available;</u> <u>(c) transmits;</u> <u>(d) offers for sale;</u> <u>(e) sells;</u> <u>(f) offers to procure;</u> <u>(g) procures;</u> <u>(h) accesses;</u> <u>(i) downloads; or</u> <u>(j) views,</u> <u>child pornography, is guilty of an offence.</u></p> <p><u>(5) Any person who unlawfully and intentionally, in any manner assists in, or facilitates the—</u> <u>(a) distribution;</u> <u>(b) making available;</u> <u>(c) transmission;</u> <u>(d) offering for sale;</u> <u>(e) selling;</u> <u>(f) offering to procure;</u> <u>(g) procuring;</u> <u>(h) accessing;</u> <u>(i) downloading; or</u> <u>(j) viewing,</u> <u>of child pornography, is guilty of an offence.</u></p> <p><u>(6) Any person who unlawfully and intentionally advocates, advertises, encourages or promotes—</u> <u>(a) child pornography; or</u> <u>(b) the sexual exploitation of children,</u> <u>is guilty of an offence.</u></p> <p><u>(7) Any person who unlawfully and intentionally processes or facilitates a financial transaction, knowing that such transaction will facilitate a contravention of subsections (1) to (6), is guilty of an offence.</u></p> <p><u>(8) Any person who, having knowledge of the commission of any offence referred to in subsections (1) to (7), or having reason to suspect that such an offence has been or is being or will</u></p>
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		<p><u>probably be committed and unlawfully and intentionally fails to—</u></p> <p><u>(a) report such knowledge or suspicion as soon as possible to the South African Police Service; or</u></p> <p><u>(b) furnish, at the request of the South African Police Service, all particulars of such knowledge or suspicion,</u></p> <p><u>is guilty of an offence.</u></p> <p><u>(9) An _____ electronic communications service provider that is aware or becomes aware that its electronic communications service or electronic communications network is used or involved in the commission of any offence provided for in subsections (1) to (7), must—</u></p> <p><u>(a) immediately report the offence to the South African Police Service;</u></p> <p><u>(b) preserve any information which may be of assistance to the South African Police Service in investigating the offence; and</u></p> <p><u>(c) take all reasonable steps to prevent access to the child pornography by any person.”; and</u></p> <p>(iii) by the addition to section 20 of the following subsections:</p> <p><u>“(3) Any person who unlawfully and intentionally—</u></p> <p><u>(a) attends; or</u></p> <p><u>(b) views,</u></p> <p><u>a live performance involving child pornography, is guilty of the offence of attending or viewing a performance involving child pornography.</u></p> <p><u>(4) Any person (“A”) who unlawfully and intentionally recruits 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—</u></p> <p><u>(a) creating, making or producing of child pornography, is guilty of the offence of recruiting a child for child pornography; or</u></p> <p><u>(b) participating in a live performance involving child pornography, as contemplated in subsection (3), is</u></p>
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		<p><u>guilty of the offence of recruiting a child for participating in a live performance involving child pornography.”.</u></p> <p>(e) Section 56A of the Act is amended by the addition of the following subsections:</p> <p><u>“(3) (a) Any person who contravenes the provisions of section 11A(1) or (2) is liable, on conviction to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.</u></p> <p><u>(b) Any person who contravenes the provisions of section 11A(3) is liable, on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.</u></p> <p><u>(c) Any person or electronic communications service provider that is convicted of an offence referred to in section 11B(9) or (10), is liable, on conviction to a fine or to imprisonment for a period not exceeding 2 years or to both such fine and imprisonment.</u></p> <p><u>(d) Any person or electronic communications service provider that is convicted of an offence referred to in section 11C(7), is liable, on conviction to a fine or to imprisonment for a period not exceeding 2 years or to both such fine and imprisonment.</u></p> <p><u>(e) Any electronic communications service provider or person that is convicted of an offence referred to in section 11D(3) or (7), is liable, on conviction to a fine or to imprisonment for a period not exceeding 2 years or to both such fine and imprisonment.</u></p> <p><u>(4) Any person who contravenes the provisions of section 19A(3), (4)(f), (g), (h), (i) or (j), or (5)(f), (g), (h), (i) or (j) is liable—</u></p> <p><u>(a) in the case of a first conviction, to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment;</u></p>
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		<p><u>(b) in the case of a second conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment; or</u></p> <p><u>(c) in the case of a third or subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.</u></p> <p><u>(5) Any person who contravenes the provisions of section 19A(4)(a), (b), (c), (d), or (e), (5)(a), (b), (c), (d) or (e), (6) or 20(3), is liable—</u></p> <p><u>(a) in the case of a first conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment; or</u></p> <p><u>(b) in the case of a second and subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.</u></p> <p><u>(6) Any person who contravenes the provisions of section 19A(7), is liable—</u></p> <p><u>(a) in the case of a first conviction, to a fine of R1 000 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment; or</u></p> <p><u>(b) in the case of a second or subsequent conviction, to a fine of R 2000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.</u></p> <p><u>(7) Any person who contravenes the provisions of section 19A(8), is liable, on conviction to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.</u></p> <p><u>(8) Any electronic communications service provider who contravenes the provisions of section 19A(9), is liable, on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.”.</u></p>
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31.5 Pages 55 to 56

Act No. 75 of 2008	Child Justice Act, 2008	<p>(a) The addition of the following item to Schedule 1:</p> <p><u>"19. (a) An offence contemplated in section 2 of the Cybercrimes Act, 2002, which did not result in any damage.</u></p> <p><u>(b) An offence contemplated in section 4 of the Cybercrimes Act, 2002, where the software or hardware tool was used or possessed to commit an offence referred to in paragraph (a).</u></p> <p><u>(c) An offence contemplated in section 14, 15 or 16 of the Cybercrimes Act, 2020.</u></p> <p>(b) The addition of the following item to Schedule 2:</p> <p><u>"26. Any offence contemplated in—</u></p> <p><u>(a) section 2, of the Cybercrimes Act, 2020, where the damage cause is below R3000;</u></p> <p><u>(b) section 3 of the Cybercrimes Act, 2020;</u></p> <p><u>(c) section 4 of the Cybercrimes Act, 2020, where the software or hardware tool was used or possessed to commit the offence referred to in paragraph (a), or section 3(1), 5(1), 6(1) or 7(3) of that Act;</u></p> <p><u>(d) section 5, 6, 7 or 11(1) of the Cybercrimes Act, 2020, where the damage caused is below an amount of R3000; or</u></p> <p><u>(e) section 8, 9 or 10 of the Cybercrimes Act, 2019, where the amount involved is below R1500."</u></p> <p>(c) The addition of the following item to Schedule 3:</p> <p><u>"23. Any offence contemplated in—</u></p> <p><u>(a) section 5, 6, 7 or 11(1) of the Cybercrimes Act, 2020, where the damage caused exceeds an amount of R3000;</u></p> <p><u>(b) section 8, 9 or 10 of the Cybercrimes Act, 2019, where the amount</u></p>
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		involved exceeds R1500; or (c) <u>section 11(2) of the Cybercrimes Act, 2019.</u> ”.
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