

CRIMES (IDENTITY OF OFFENDERS)

AMENDMENT BILL 1992

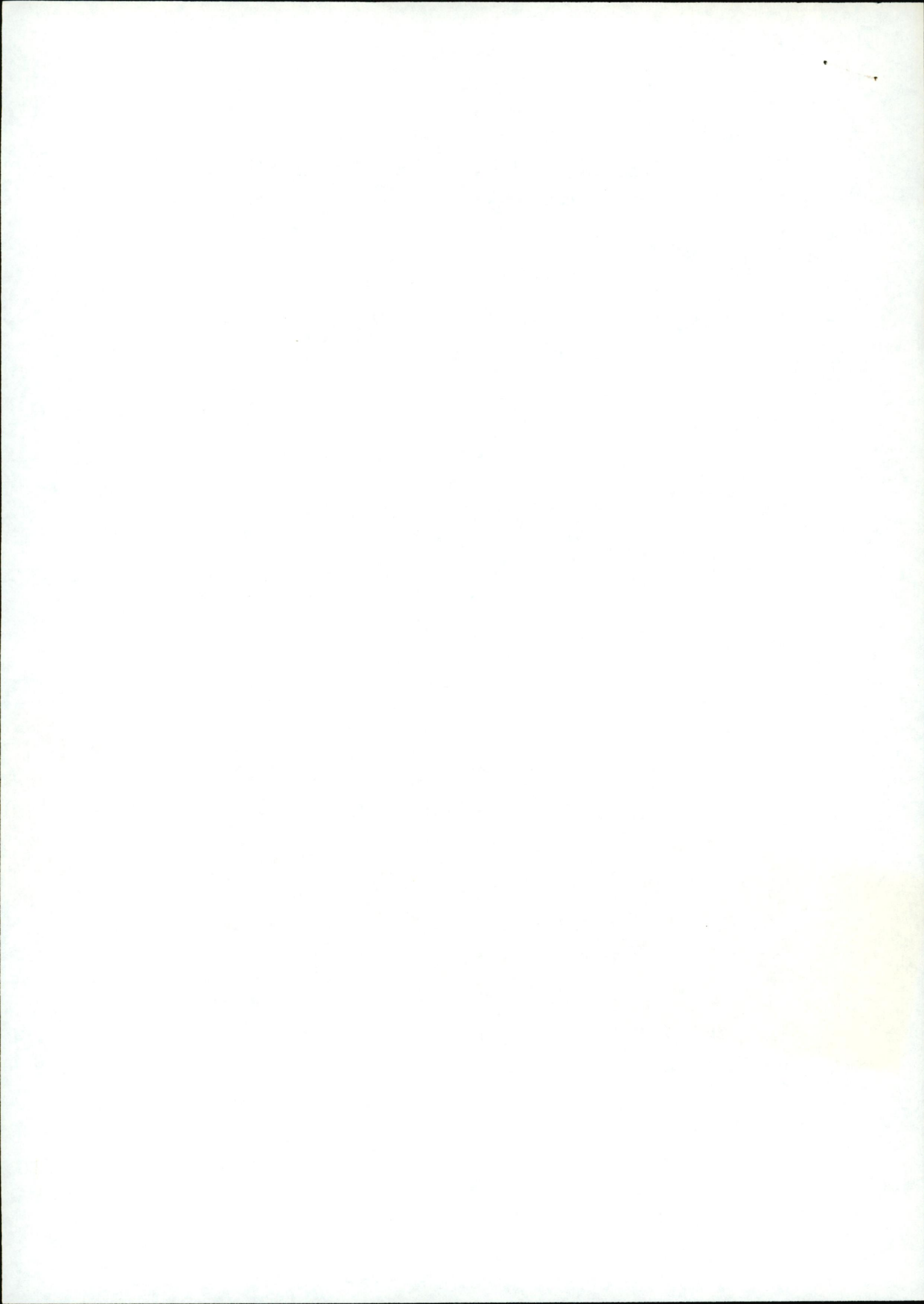
SECOND READING SPEECH
LEGISLATIVE COUNCIL

MR PICKERING TO SAY:

MR PRESIDENT -

I MOVE THAT THIS BILL BE NOW READ
A SECOND TIME.

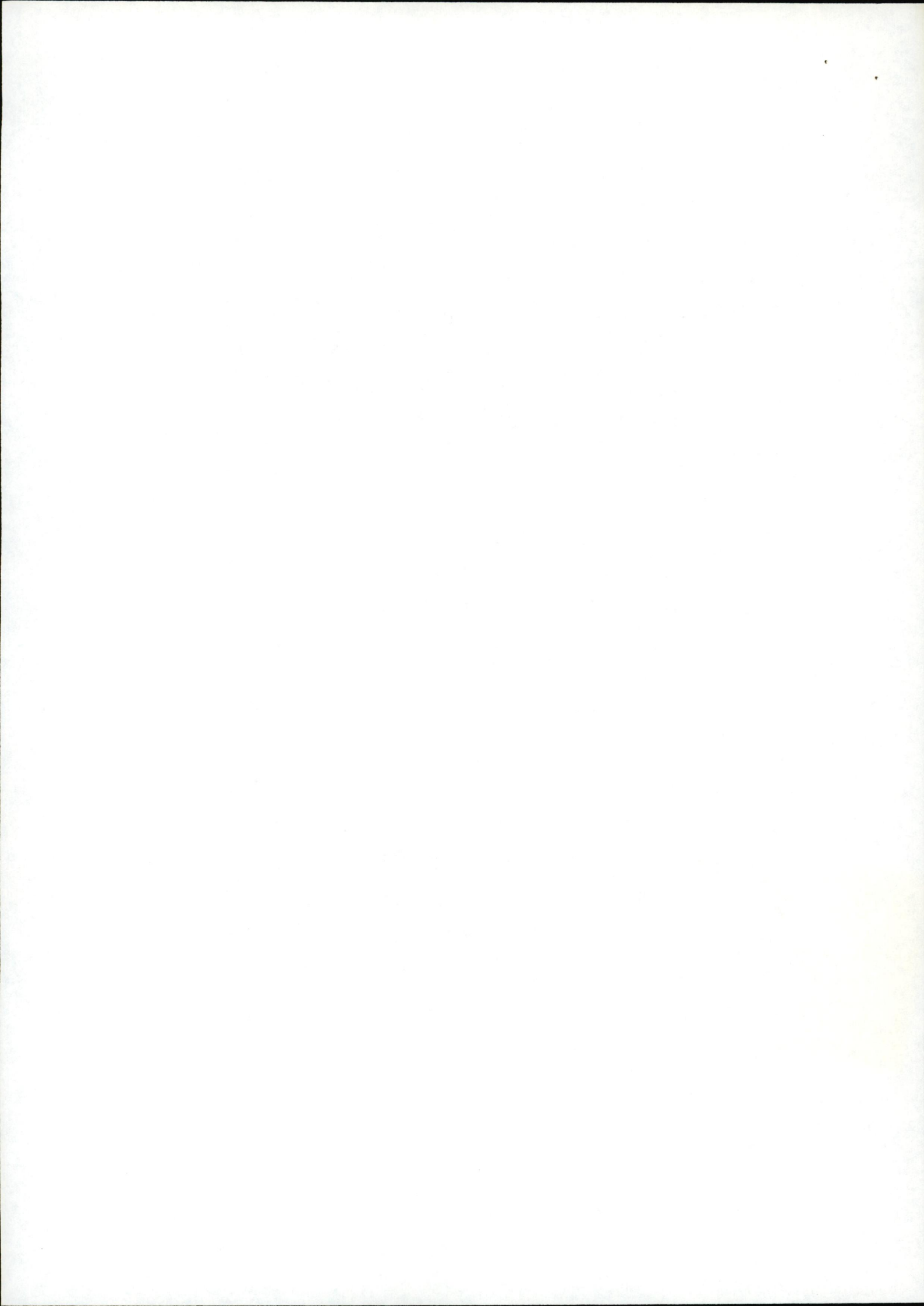
CONCERN HAS BEEN EXPRESSED BY THE JUDICIARY
AND THE POLICE WITH RESPECT TO THE DIFFICULTY
OF LINKING AN OFFENDER WITH HIS OR HER
CRIMINAL RECORD. THE PROBLEM ARISES BECAUSE
POLICE POWERS TO OBTAIN FINGERPRINTS AND
OTHER PARTICULARS OF IDENTIFICATION DEPEND ON
WHETHER A PROSECUTION IS COMMENCED BY WAY OF
ARREST OR SUMMONS.



WHEN A PERSON IS IN LAWFUL CUSTODY FOR AN OFFENCE PUNISHABLE ON INDICTMENT OR SUMMARY CONVICTION, SECTION 353A(3) OF THE CRIMES ACT 1900 GIVES POLICE THE POWER TO TAKE ALL PARTICULARS NECESSARY FOR IDENTIFICATION, INCLUDING PHOTOGRAPHS, FINGERPRINTS AND PALMPRINTS.

WHERE A CHILD UNDER THE AGE OF FOURTEEN IS TAKEN INTO CUSTODY, SECTION 353AA(2) OF THE CRIMES ACT 1900 PROHIBITS THE TAKING OF THESE IDENTIFYING PARTICULARS, UNLESS AN APPLICATION IS MADE TO THE CHILDREN'S COURT OR, IN LIMITED CIRCUMSTANCES, TO A JUSTICE.

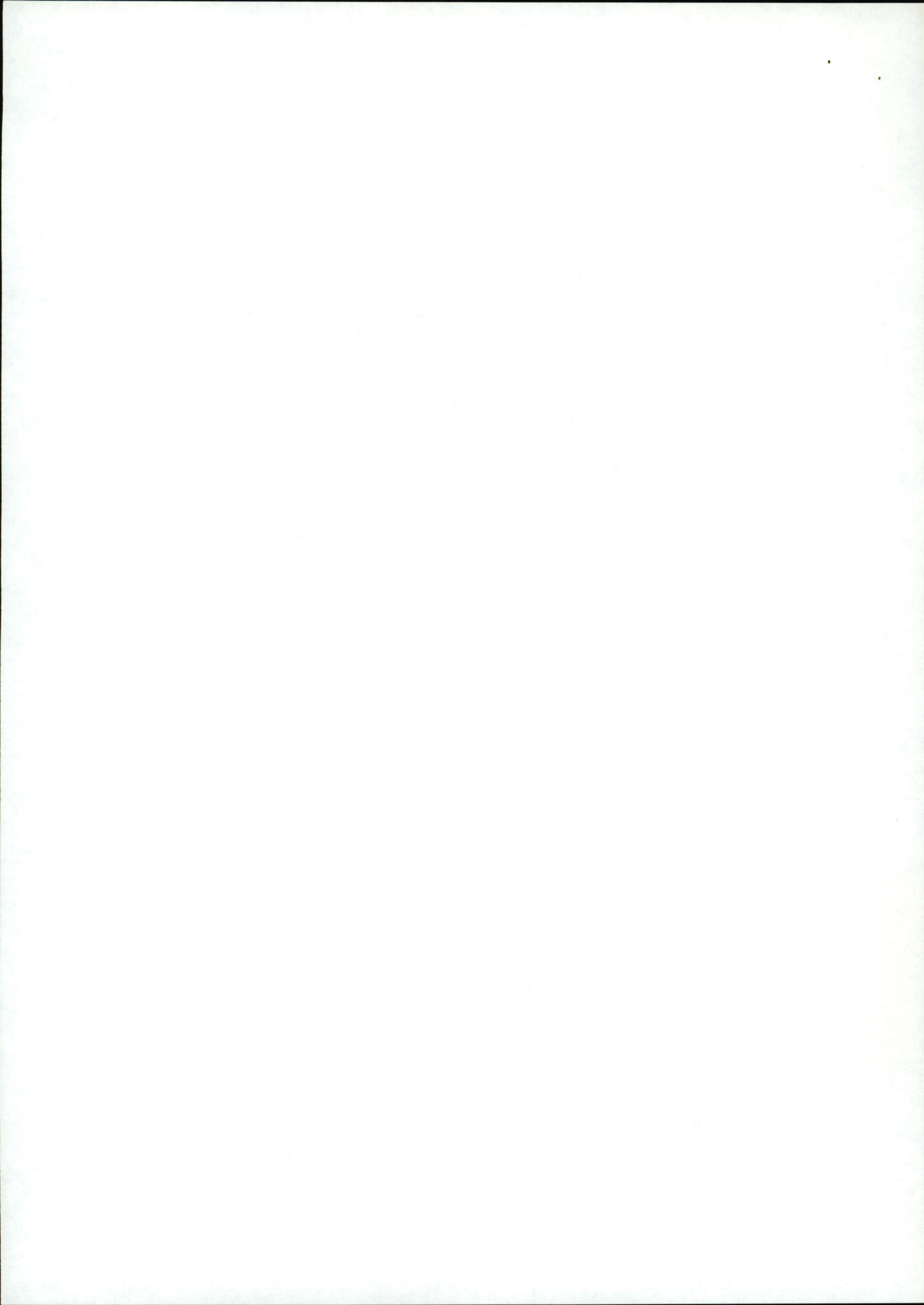
THESE PROVISIONS APPLY ONLY WHERE THE OFFENDER IS IN CUSTODY. WHERE A MATTER IS COMMENCED BY WAY OF SUMMONS, THE POLICE HAVE NO POWER TO TAKE THE PERSON'S FINGERPRINTS. IN SUCH CASES THE OFFENDER IS NOT ARRESTED AND CHARGED AND THUS IS NEVER IN LAWFUL CUSTODY AS REQUIRED BY SECTIONS 353A(3) AND 353AA(3) OF THE CRIMES ACT 1900.



FOLLOWING THE ARREST OF AN ALLEGED OFFENDER, THE POLICE SUBMIT A CRIME REPORT. DETAILS OF THE INCIDENT ARE PLACED ON THE CRIME INFORMATION AND INTELLIGENCE SYSTEM (C.I.I.S.) AND WHEN FINGERPRINTS ARE TAKEN THE RELEVANT INFORMATION IS ENTERED ON THE CRIMINAL HISTORIES SYSTEM.

TO PRESERVE THE INTEGRITY OF THE CRIMINAL RECORD SYSTEM, A CRIMINAL HISTORY RECORD IS ONLY CREATED OR UPDATED WHERE THE OFFENDER'S IDENTITY IS VERIFIED BY FINGERPRINTS. THEREFORE, CONVICTIONS OR FINDINGS OF GUILT RESULTING FROM MATTERS COMMENCED BY SUMMONS, WHERE NO FINGERPRINTS ARE TAKEN, ARE NOT RECORDED ON A CRIMINAL HISTORY.

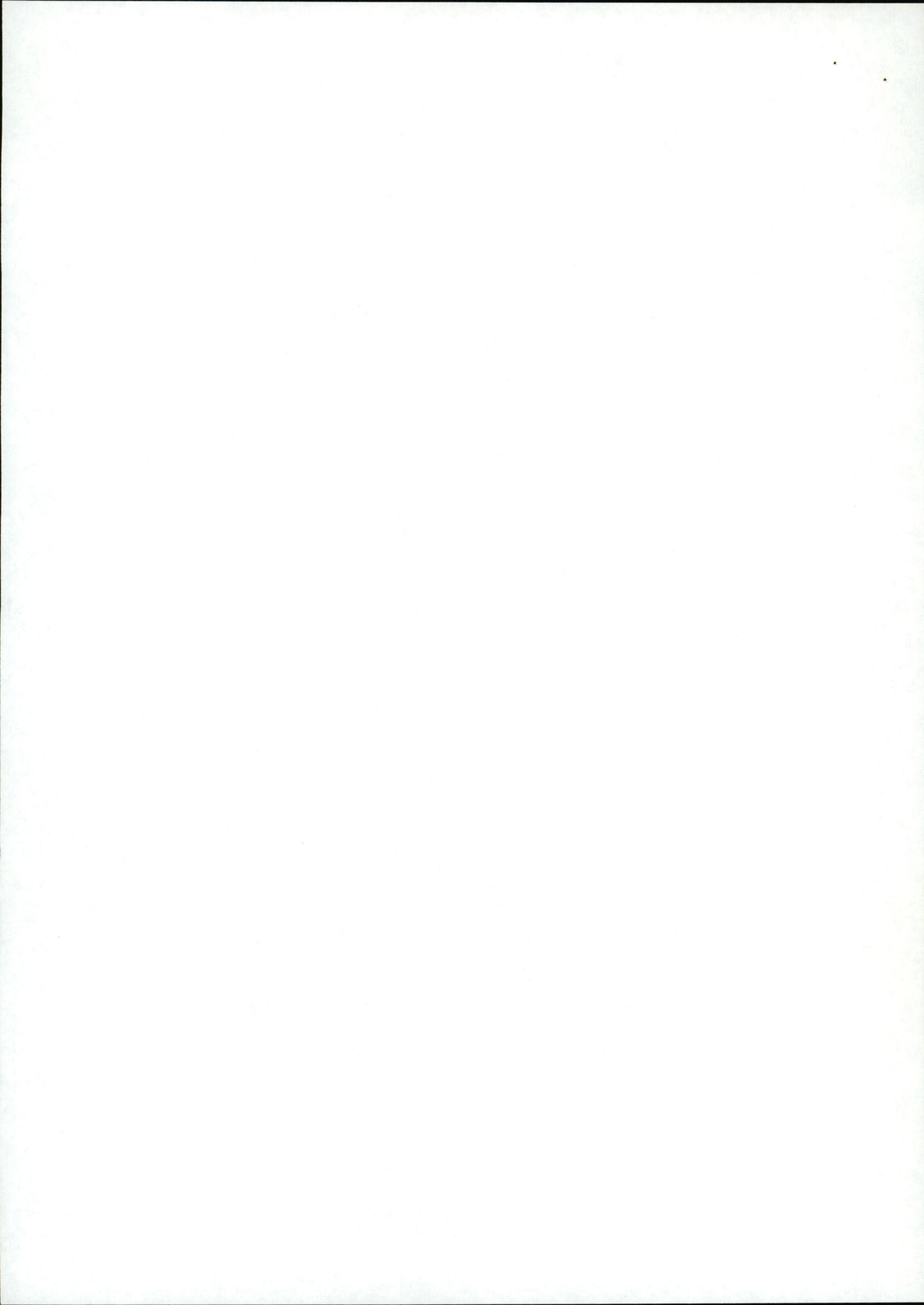
AS HONOURABLE MEMBERS WOULD BE AWARE, THIS MAY RESULT IN A PERSON GOING BEFORE A COURT AND BEING DEALT WITH AS A FIRST OFFENDER WHEN HE OR SHE HAS IN FACT BEEN CONVICTED ON PREVIOUS OCCASIONS. THIS PROBLEM MAY ARISE, FOR EXAMPLE, WHERE A PERSON HAS COMMITTED A NUMBER OF CORPORATE CRIMES WHICH MAY BE COMMENCED BY SUMMONS RATHER THAN BY ARREST AND CHARGE, OR, HAS BEEN CONVICTED IN A PRIVATE PROSECUTION.



THE PROBLEMS WITH THE CURRENT SITUATION ARE AGGRAVATED WHERE THE LAW PROVIDES THAT REPEAT OFFENDERS ARE TO BE TREATED DIFFERENTLY FROM FIRST OFFENDERS. ONE EXAMPLE IS AN OFFENCE OF DRIVING WITH A PRESCRIBED CONCENTRATION OF ALCOHOL, DEALT WITH BY WAY OF SUMMONS FOLLOWING A BLOOD ANALYSIS.

IN SUCH A CASE THE COURT COULD, IN IGNORANCE OF A PRIOR CONVICTION, IMPOSE AN INAPPROPRIATE OR INCORRECT PENALTY.

A PARTICULAR CASE AROSE RECENTLY WHEN A WITNESS APPEARED BEFORE MR R V GYLES, QC WHO WAS CONDUCTING THE ROYAL COMMISSION INTO THE BUILDING INDUSTRY. COUNSEL ASSISTING TENDERED EVIDENCE CONCERNING THE WITNESS' CRIMINAL RECORD. IT WAS KNOWN TO MR GYLES THAT THIS WITNESS HAD PLEADED GUILTY A NUMBER OF YEARS AGO TO AN INDICTABLE OFFENCE INVOLVING DISHONESTY, AS MR GYLES HAD HIMSELF APPEARED AS DEFENCE COUNSEL. HOWEVER, AS THAT PARTICULAR CASE HAD BEEN COMMENCED BY WAY OF SUMMONS BY THE CORPORATE AFFAIRS COMMISSION, THE CONVICTION DID NOT APPEAR ON THE CRIMINAL RECORD.



ACCESS TO ACCURATE IDENTIFICATION RECORDS ASSISTS THE POLICE IN THE INVESTIGATION OF CRIME AS WELL AS ENABLING THEM TO PROVIDE PROPER CRIMINAL HISTORIES TO A COURT IN RELATION TO SENTENCE. IN ORDER FOR SUCH RECORDS TO BE PROPERLY MAINTAINED, THOSE PERSONS CONVICTED OF INDICTABLE OFFENCES AND CERTAIN SUMMARY OFFENCES SHOULD BE CAPABLE OF BEING REQUIRED TO GIVE FINGERPRINTS AND OTHER PARTICULARS OF IDENTIFICATION, WHETHER THE MATTER WAS COMMENCED BY ARREST AND CHARGE OR SUMMONS.

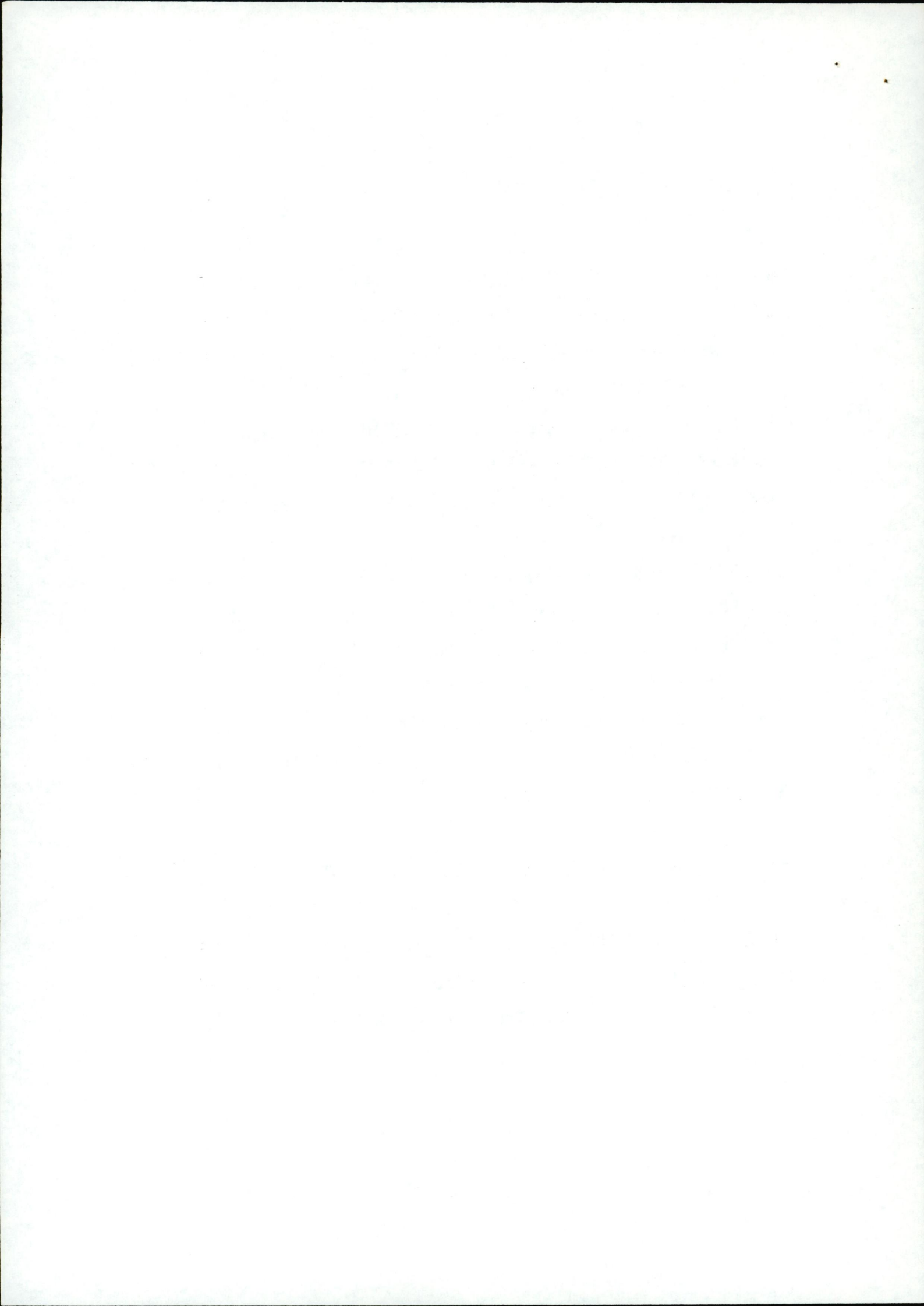
THE AMENDMENTS CONTAINED IN THIS BILL EMPOWER A COURT, ON THE APPLICATION OF A PROSECUTOR, OR OF ITS OWN MOTION, TO ORDER THAT THE PERSON AGAINST WHOM AN OFFENCE HAS BEEN PROVED PRESENT TO A SPECIFIED POLICE STATION TO HAVE PARTICULARS OF IDENTIFICATION TAKEN.

THE ORDER MAY BE MADE IMMEDIATELY AFTER THE PERSON IS SENTENCED, OR BEFORE SENTENCE IF THE COURT IS SATISFIED THAT IT WOULD ASSIST IN RESOLVING DOUBT ABOUT THE IDENTITY OF THE OFFENDER. THE OFFENCES FOR WHICH AN ORDER MAY BE MADE ARE SET OUT IN SUBSECTION (7) OF THE BILL.

THE BILL ALSO INCLUDES A PROVISION IN SUBSECTION (6) TO ENSURE THAT NON-COMPLIANCE WITH AN ORDER CAN BE DEALT WITH. SO THAT PERSONS ARE MADE AWARE OF THE REPERCUSSIONS OF NON-COMPLIANCE, THE BILL SPECIFIES IN SUBSECTION (4) THAT THE COURT IS TO WARN A PERSON THAT FAILURE TO COMPLY WITH THE ORDER MAY RESULT IN THAT PERSON'S APPREHENSION.

IN ADDITION TO THE ASSISTANCE IT WILL GIVE TO POLICE AND TO THE COURTS IN THE SENTENCING PROCESS, THE INTRODUCTION OF THESE AMENDMENTS WILL ENCOURAGE THE COMMENCEMENT OF PROCEEDINGS BY WAY OF SUMMONS. THIS WILL MINIMISE UNNECESSARY INTRUSION FOR A PERSON ACCUSED OF COMMITTING AN OFFENCE.

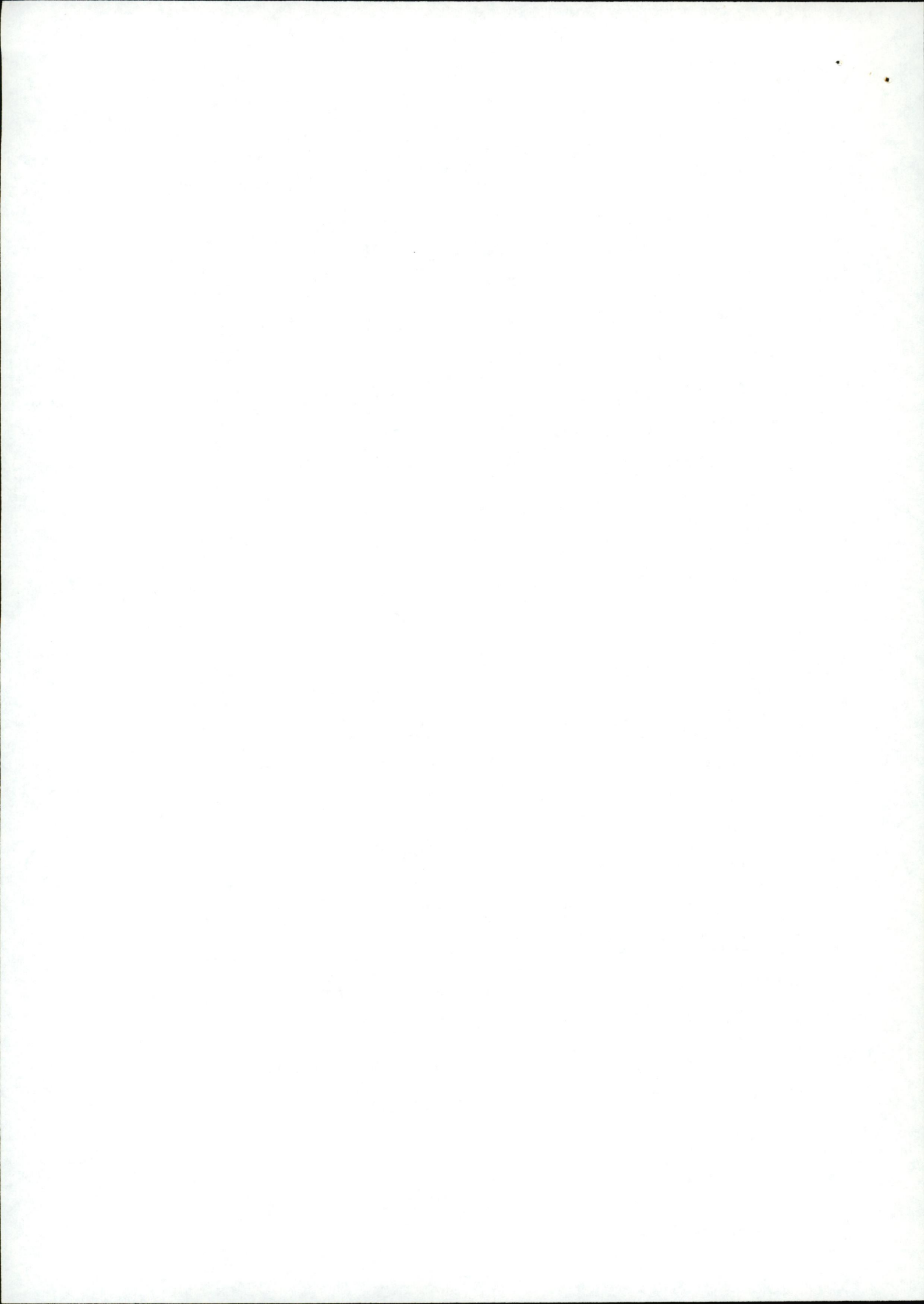
BY EMPOWERING THE COURTS TO ORDER FINGERPRINTS AND OTHER PARTICULARS OF IDENTIFICATION TO BE TAKEN, CONVICTIONS IN MATTERS COMMENCED BY SUMMONS WILL BE RECORDED ON A PERSON'S CRIMINAL HISTORY.



WHERE THE ORDER IS MADE TO ENSURE THE ACCURACY OF THE PERSON'S CRIMINAL RECORD FOR FUTURE PURPOSES, THE MOST APPROPRIATE TIME FOR THE ORDER TO BE MADE WILL BE AT THE TIME OF SENTENCING. THE OFFENDER WILL BE IN COURT AND THUS WILL IMMEDIATELY BE MADE AWARE OF HIS OR HER OBLIGATIONS. THE MATTER CAN BE FINALISED AT THAT STAGE.

IF, HOWEVER, THERE IS DOUBT AS TO THE PERSON'S IDENTITY, THE MOST APPROPRIATE TIME FOR THE ORDER TO BE MADE IS PRIOR TO SENTENCING. SUCH AN ORDER MAY ARISE WHERE AN OFFENDER WHOSE MATTER IS COMMENCED BY SUMMONS HAS ALLEGEDLY GIVEN FALSE INFORMATION ABOUT HIS OR HER IDENTITY.

IF SUCH A SITUATION AROSE AT PRESENT, NO FINGERPRINTS WOULD HAVE BEEN TAKEN BEFORE SENTENCING, SO THE PERSON'S CRIMINAL HISTORY COULD NOT BE MADE AVAILABLE TO THE SENTENCING COURT. THE COURT WOULD THEREFORE HAVE NO KNOWLEDGE OF THE PRIOR CONVICTIONS OF THE ALLEGED OFFENDER.



THE AMENDMENTS CONTAINED IN THIS BILL WILL HAVE THE IMPORTANT EFFECT OF ENSURING THAT ALL RELEVANT MATERIAL IS AVAILABLE TO A COURT BEFORE SENTENCE IS PASSED. IT ALSO ENSURES THAT THOSE PERSONS WHOSE MATTERS HAVE BEEN COMMENCED OTHER THAN BY ARREST AND CHARGE WILL NOT BE UNFAIRLY TREATED.

I COMMEND THE BILL TO THE HOUSE.

FIRST PRINT

**CRIMES (IDENTITY OF OFFENDERS) AMENDMENT
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Crimes Act 1900:

- so that a court, after sentencing a person for an indictable offence or for any of certain summary offences, may require the offender to submit to the taking of his or her finger-prints and other particulars of identification so as to facilitate preservation in official files of a record of the person's conviction for the offence; and
- so that, in cases where there is doubt as to the identity of a person against whom an offence is proved, a court may require particulars of identification of the person to be taken before sentencing, or before proceeding to conviction, in order to verify the identity of the person and determine whether the person has a criminal record under another name.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 provides that the new procedures do not apply in respect of offences found proved before the commencement of the amendments made by the proposed Act.

SCHEDULE 1—AMENDMENTS

Existing powers of police

Police powers to take photographs, finger-prints and palm-prints of an adult person are set out in section 353A (3) of the Crimes Act 1900. According to this provision, when a person is in lawful custody for an offence, the officer in charge of the police station where the person is detained may authorise the taking of finger-prints and other particulars of identification.

Crimes (Identity of Offenders) Amendment 1992

When a child under the age of 14 is taken into custody, section 353AA (2) of the Crimes Act 1900 *prima facie* prohibits the taking of finger-prints and other identifying particulars. The police, however, may apply to the Children's Court or, in limited circumstances, to a Justice for authorisation to allow photographing, finger-printing and palm-printing for the purpose of identification of the child (section 353AA (3) of the Crimes Act 1900).

It will be seen that these provisions only apply where the defendant is in custody. By contrast, if a matter is commenced by way of summons, the police have no power to take the person's finger-prints or other identifying particulars. This is because the offender is not arrested and charged and thus is never in lawful custody in the manner contemplated by section 353A (3) and 353AA (3).

Criminal records

Following the arrest of an alleged offender, the police submit a crime report. Details of the incident are placed on a computerised system and, when finger-prints are taken, the relevant information is placed on a system called the Criminal Histories System. To preserve the integrity of the criminal record system, however, a criminal history record is only created or updated where the offender's identity is verified by finger-prints. Only those matters where arrest and subsequent conviction have been supported by positive finger-print identification are recorded. Accordingly, convictions resulting from matters commenced by summons, where no finger-prints are taken, are not recorded on a criminal history.

By allowing a court to order that particulars of identification be taken from an offender who has been prosecuted by summons, the amendment to section 353A cures this deficiency.

Identity of offenders

The fact that convictions resulting from matters commenced by summons have generally remained unrecorded on a criminal history may result in a situation where a person who goes before a court is dealt with as a first offender when he or she has in fact been convicted on previous occasions. This situation may arise where, for example, a person has committed a number of corporate crimes which are commenced by summons rather than by arresting the accused.

The problem is aggravated where the enacted law provides for a repeat offender to be dealt with differently. One example is an offence of driving with the prescribed concentration of alcohol. If a person has been dealt with by way of summons following a blood analysis, a court could unwittingly impose a penalty, and order a disqualification from holding a licence, otherwise than in accordance with the Traffic Act 1909 because of an unrevealed prior conviction occurring within the previous five years. This offence, and other offences of this type, are expressly contemplated by the amendment. The amendment also provides for other relevant offences to be prescribed by the regulations.

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**CRIMES (IDENTITY OF OFFENDERS) AMENDMENT
BILL 1992**

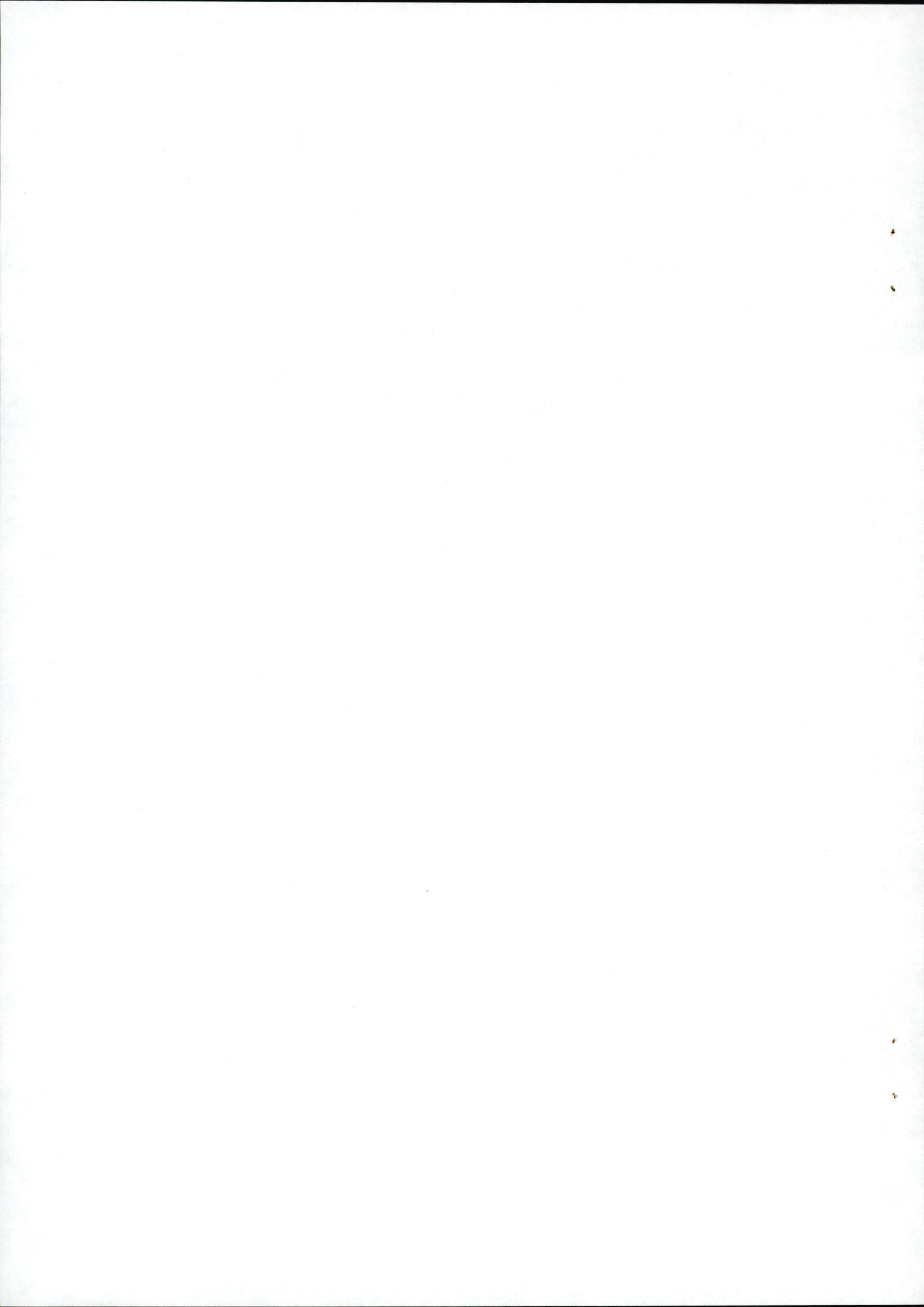
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Transitional provision

SCHEDULE 1—AMENDMENTS



**CRIMES (IDENTITY OF OFFENDERS) AMENDMENT
BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Crimes Act 1900 to provide for particulars of identification of offenders to be taken in certain cases.

Crimes (Identity of Offenders) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Identity of Offenders) Amendment Act 1992.

5 **Commencement**

2. This Act commences on a day to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Transitional provision

10 4. Section 353A (4) of the Crimes Act 1900 does not apply in relation to an offence found proved before the commencement of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

15 (1) Section 353A (**Power to search person, make medical examination, take photograph, finger-prints etc.**):

After section 353A (3), insert:

20 (4) A court that finds an offence prescribed by or under subsection (7) to be proved against a person may order that the person present himself or herself in accordance with the terms of the order and submit to the taking, by the officer in charge of a police station specified in the order, of all such particulars as may be thought necessary for the identification of the person, including the person's photograph, finger-prints and palm-prints. When making the order, the court is to warn the person that a failure to comply with the order may result in the person's apprehension in accordance with subsection (6).

25 (5) An order under subsection (4) may be made on the application of the prosecutor or on the court's own motion, and may be made:

30 (a) immediately after the person is sentenced; or

Crimes (Identity of Offenders) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (b) before the person is sentenced, if the court is satisfied that the making of such an order would assist in resolving doubt about the defendant's identity.
- (6) At the direction of the officer in charge of the police station specified in an order under subsection (4), a person who does not present himself or herself in accordance with the terms of the order may be apprehended without warrant and taken into custody for such time as may be reasonably necessary for the taking of particulars in accordance with the order. 5 10
- (7) An order under subsection (4) may be made in respect of any of the following offences:
- (a) any indictable offence;
- (b) the offence under section 4 of the Traffic Act 1909 of driving a motor vehicle upon a public street furiously or recklessly or at a speed or in a manner which is dangerous to the public; 15
- (c) an offence under section 4AA, section 4E (1D), (1E) (a) or (b), (1F) (a) or (b), (1G) (a) or (b) or (7), section 4F (7), section 5 (2) (a) or (b), section 5AC (2) or section 8 (2) of the Traffic Act 1909; 20
- (d) an offence prescribed, or of a kind or description prescribed, by the regulations.
- (8) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section. 25
- (2) Section 353AA (**Photographing, finger-printing etc. children under 14 years of age**): 30
- In section 353AA (2), after "with this section.", insert "Nothing in this section, however, prevents the taking of any child's photograph, finger-prints or palm-prints in accordance with the order of a court under section 353A (4).".
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**CRIMES (IDENTITY OF OFFENDERS) AMENDMENT
ACT 1992 No. 19**

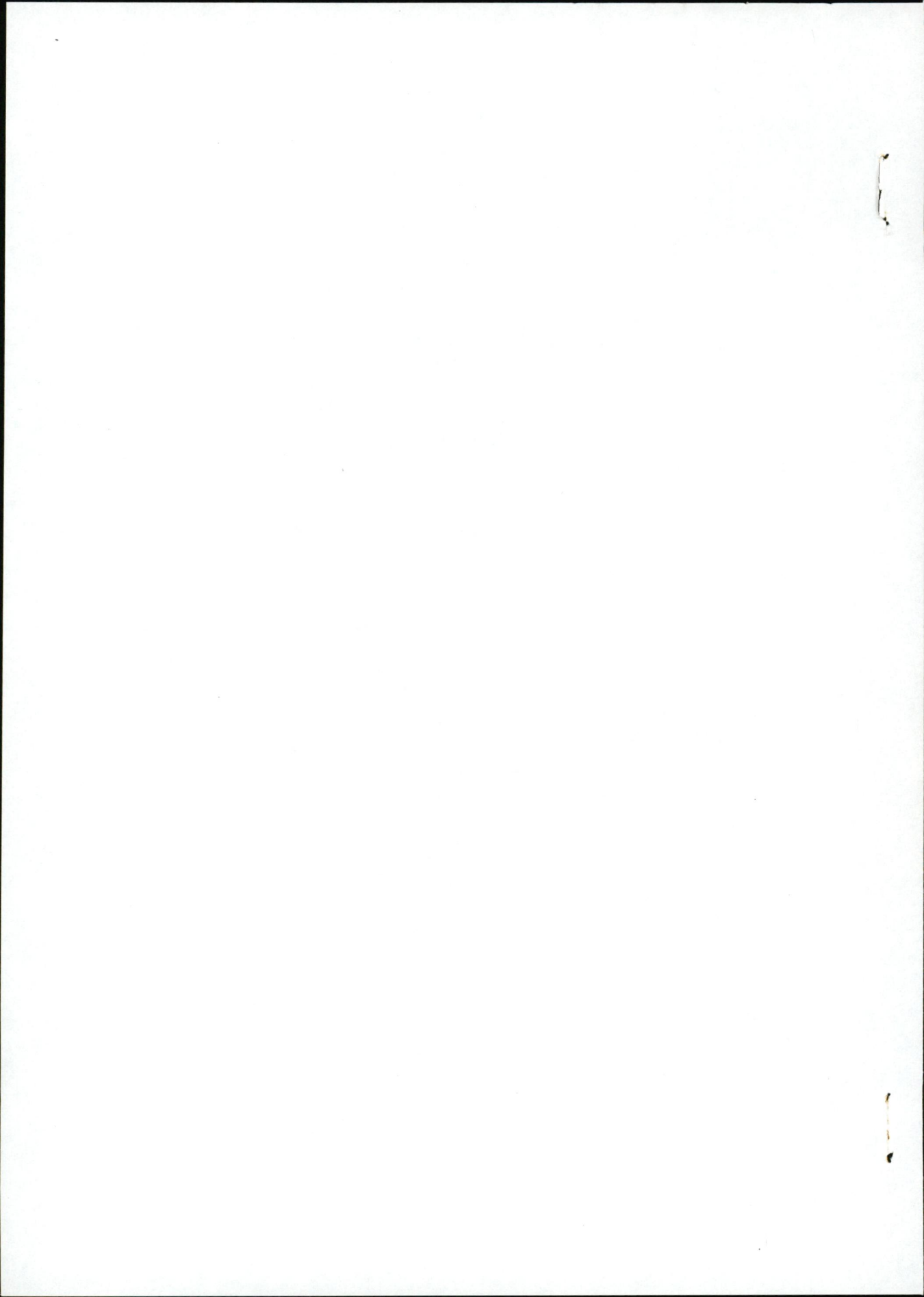
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Transitional provision

SCHEDULE 1—AMENDMENTS



**CRIMES (IDENTITY OF OFFENDERS) AMENDMENT
ACT 1992 No. 19**

NEW SOUTH WALES



Act No. 19, 1992

An Act to amend the Crimes Act 1900 to provide for particulars of identification of offenders to be taken in certain cases. [Assented to 14 May 1992]

Crimes (Identity of Offenders) Amendment Act 1992 No. 19

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Identity of Offenders) Amendment Act 1992.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Transitional provision

4. Section 353A (4) of the Crimes Act 1900 does not apply in relation to an offence found proved before the commencement of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 353A (**Power to search person, make medical examination, take photograph, finger-prints etc.**):

After section 353A (3), insert:

(4) A court that finds an offence prescribed by or under subsection (7) to be proved against a person may order that the person present himself or herself in accordance with the terms of the order and submit to the taking, by the officer in charge of a police station specified in the order, of all such particulars as may be thought necessary for the identification of the person, including the person's photograph, finger-prints and palm-prints. When making the order, the court is to warn the person that a failure to comply with the order may result in the person's apprehension in accordance with subsection (6).

Crimes (Identity of Offenders) Amendment Act 1992 No. 19

SCHEDULE 1—AMENDMENTS—*continued*

(5) An order under subsection (4) may be made on the application of the prosecutor or on the court's own motion, and may be made:

- (a) immediately after the person is sentenced; or
- (b) before the person is sentenced, if the court is satisfied that the making of such an order would assist in resolving doubt about the defendant's identity.

(6) At the direction of the officer in charge of the police station specified in an order under subsection (4), a person who does not present himself or herself in accordance with the terms of the order may be apprehended without warrant and taken into custody for such time as may be reasonably necessary for the taking of particulars in accordance with the order.

(7) An order under subsection (4) may be made in respect of any of the following offences:

- (a) any indictable offence;
- (b) the offence under section 4 of the Traffic Act 1909 of driving a motor vehicle upon a public street furiously or recklessly or at a speed or in a manner which is dangerous to the public;
- (c) an offence under section 4AA, section 4E (1D), (1E) (a) or (b), (1F) (a) or (b), (1G) (a) or (b) or (7), section 4F (7), section 5 (2) (a) or (b), section 5AC (2) or section 8 (2) of the Traffic Act 1909;
- (d) an offence prescribed, or of a kind or description prescribed, by the regulations.

(8) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.

Crimes (Identity of Offenders) Amendment Act 1992 No. 19

SCHEDULE 1—AMENDMENTS—*continued*

- (2) Section 353AA (**Photographing, finger-printing etc. children under 14 years of age**):

In section 353AA (2), after “with this section.”, insert “Nothing in this section, however, prevents the taking of any child’s photograph, finger-prints or palm-prints in accordance with the order of a court under section 353A (4).”.

[*Minister’s second reading speech made in—
Legislative Assembly on 26 March 1992
Legislative Council on 5 May 1992*]