

FIRST PRINT

**CRIMES (PROHIBITED MATERIAL) AMENDMENT
BILL 1994**

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 to prohibit the possession of certain films, computer games and publications containing child pornography and other indecent or prohibited material. The Bill also amends the Film and Computer Game Classification Act 1984 and the Indecent Articles and Classified Publications Act 1975 in related respects as described below.

Possession of prohibited material—Schedule 1

Schedule 1 (1) contains consequential amendments to the Crimes Act 1900.

Schedule 1 (2) inserts proposed section 310A into the Crimes Act 1900. The proposed section makes it an offence (penalty of 12 months imprisonment or a fine of \$10,000, or both) for a person to possess the following material:

- Films or computer games which have been, or which are subsequently, refused classification under the Film and Computer Game Classification Act 1984. Examples of the sort of material that is classified as “refused classification” under that Act are child abuse films (i.e. films depicting children in a manner likely to cause offence to a reasonable adult) and films and computer games which describe or depict matters of sex, drug misuse or addiction, crime, cruelty or violence, or revolting or abhorrent phenomena, in a manner likely to cause offence to a reasonable adult, and computer games which promote, incite or instruct in matters of crime or violence. A film or computer game containing child pornography would fall within this classification.
- Publications (e.g. books, newspapers, magazines, photographs or other pictorial matter) which have been, or which are subsequently, classified as prohibited publications under the Indecent Articles and Classified Publications Act 1975. The sort of material classified as a “prohibited publication” under that Act is similar to the material described above in relation to films and computer games, and a publication containing child pornography material would be classified as a “prohibited publication”.

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Proposed section 310A provides that proceedings for an offence under the section must be commenced not later than 6 months after the date of the alleged offence (i.e. when the person was in possession of the material). Certain defences are also provided, in particular that the person depicted or described in the material was of or above the age of 16 when the material was made, taken, produced or published.

Schedule 1 (3) inserts proposed section 357EB into the Crimes Act 1900. The proposed section empowers a police officer to apply for a search warrant authorising the entry and search of premises on which the officer believes on reasonable grounds that an offence under proposed section 310A is being committed.

Other amendments—Schedules 2 and 3

Schedule 2 amends the Search Warrants Act 1985 as a consequence of the insertion of proposed section 357EB into the Crimes Act 1900.

Schedules 2 and 3 amend the Film and Computer Game Classification Act 1984 and the Indecent Articles and Publications Act 1975 as follows:

- (a) The amendments to these Acts contained in **Schedule 2** do two things:
- Firstly, the definition of a “child” for the purposes of classifying a film, computer game or publication is amended so that it covers a person who is a child or who, *in the opinion of the censor, looks like a child*. This is a modification of the present test of assessing whether the person depicted or described is a child.
 - Secondly, the wider test that currently applies for refusing to classify computer games on the basis that they *promote, incite or instruct in matters of crime or violence* is extended so that it will also apply in respect of films and publications (these are currently refused classification, or are prohibited, if they promote, incite or encourage terrorism).
- (b) The amendments to these Acts contained in **Schedule 3** increase the relevant age (from 16 to 18 years) in relation to material that is refused classification, or is prohibited, because it depicts or describes children in an offensive manner. In other words, the amendments raise the age for material that constitutes “child pornography” from 16 to 18 years.

As a consequence of raising the relevant age limit, the new offence provision (section 310A) to be inserted into the Crimes Act 1900 is also consequentially amended by Schedule 3.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

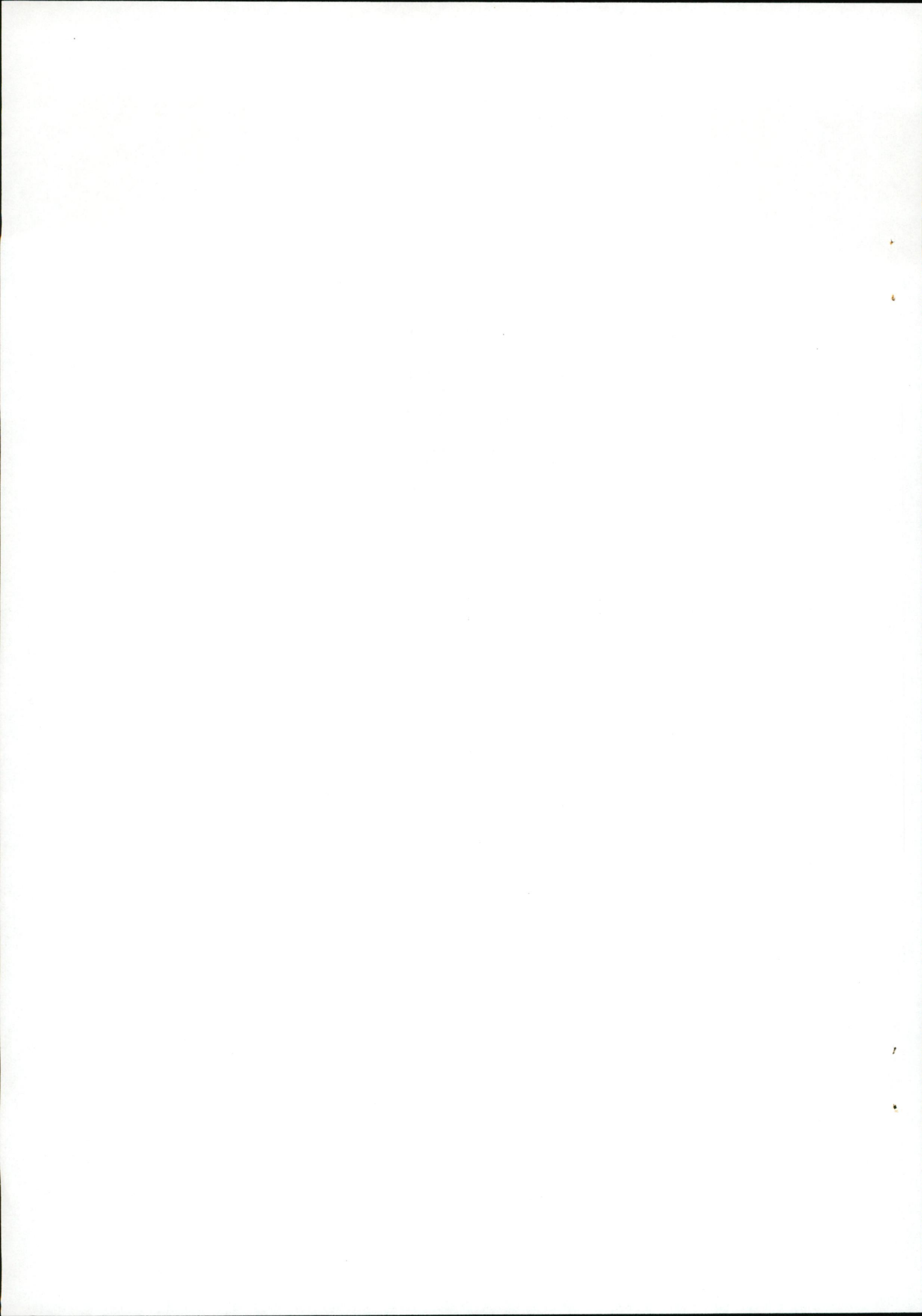
Clause 3 gives effect to the Schedule of amendments to the Crimes Act 1900 relating to possession of prohibited material.

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Clause 4 gives effect to the Schedules of amendments to the Film and Computer Game Classification Act 1984, the Indecent Articles and Classified Publications Act 1975 and the Search Warrants Act 1985.

Clause 5 gives effect to the Schedule of amendments in relation to the relevant age for material constituting child pornography.

Schedules 1-3 make the amendments described above.



C-069
AD (EK)

LEGISLATIVE COUNCIL

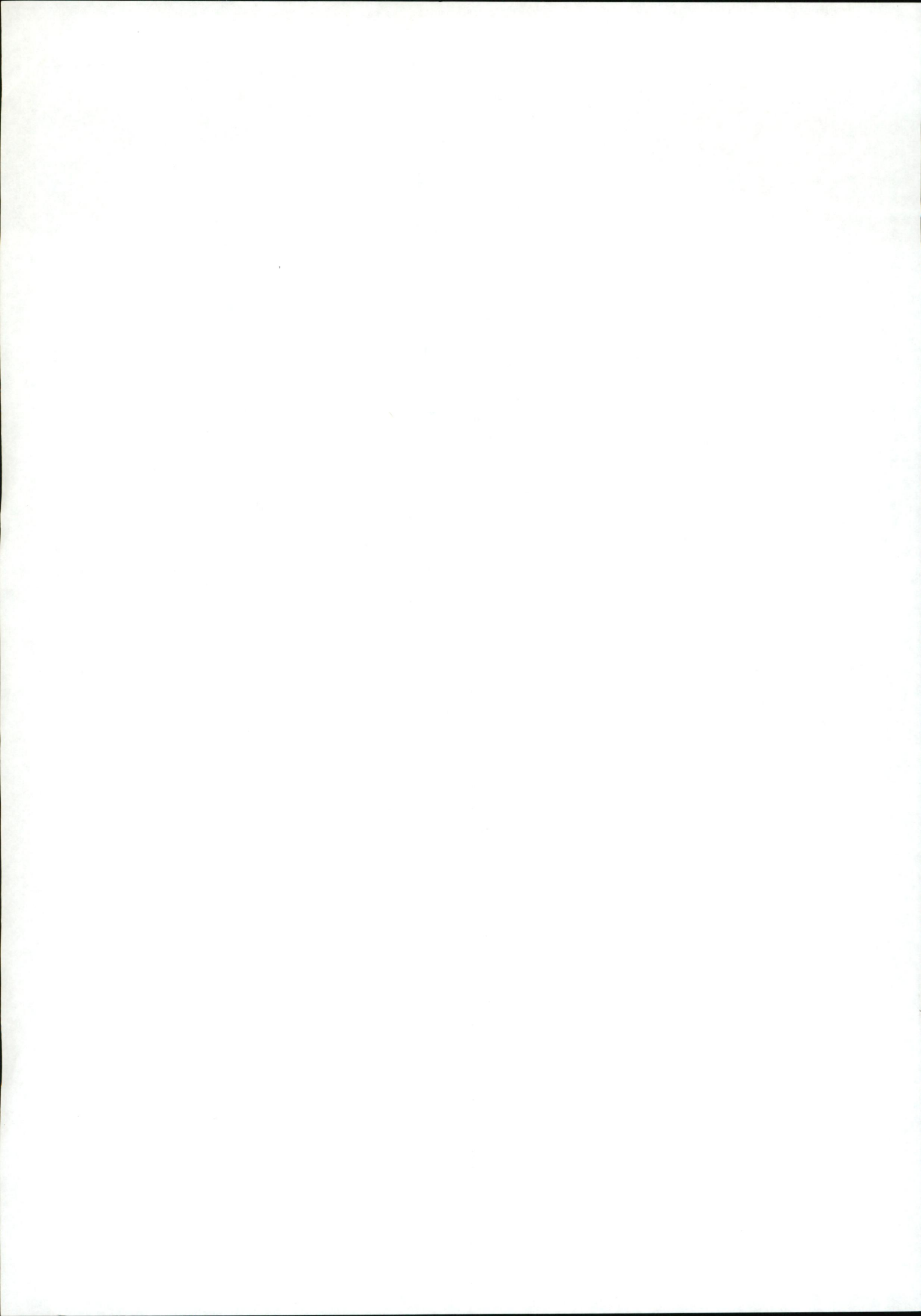
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Amendments to be moved in Committee

- No. 1 Page 3, line 14. Omit "Magistrate", insert instead "court".
- No. 2 Page 3, line 15. Omit "12 months, or to a fine of 100", insert instead "2 years, or to a fine of 1,000".
- No. 3 Page 3, line 23. Omit "Magistrate", insert instead "court".
- No. 4 Page 3, line 24. Omit "12 months, or to a fine of 100", insert instead "2 years, or to a fine of 1,000".
- No. 5 Page 5. After line 11, insert:

(9) If proceedings for an offence under this section are brought in a Local Court constituted by a Magistrate sitting alone, the maximum penalty that the Local Court may impose for the offence is 100 penalty units or imprisonment for 12 months, or both.



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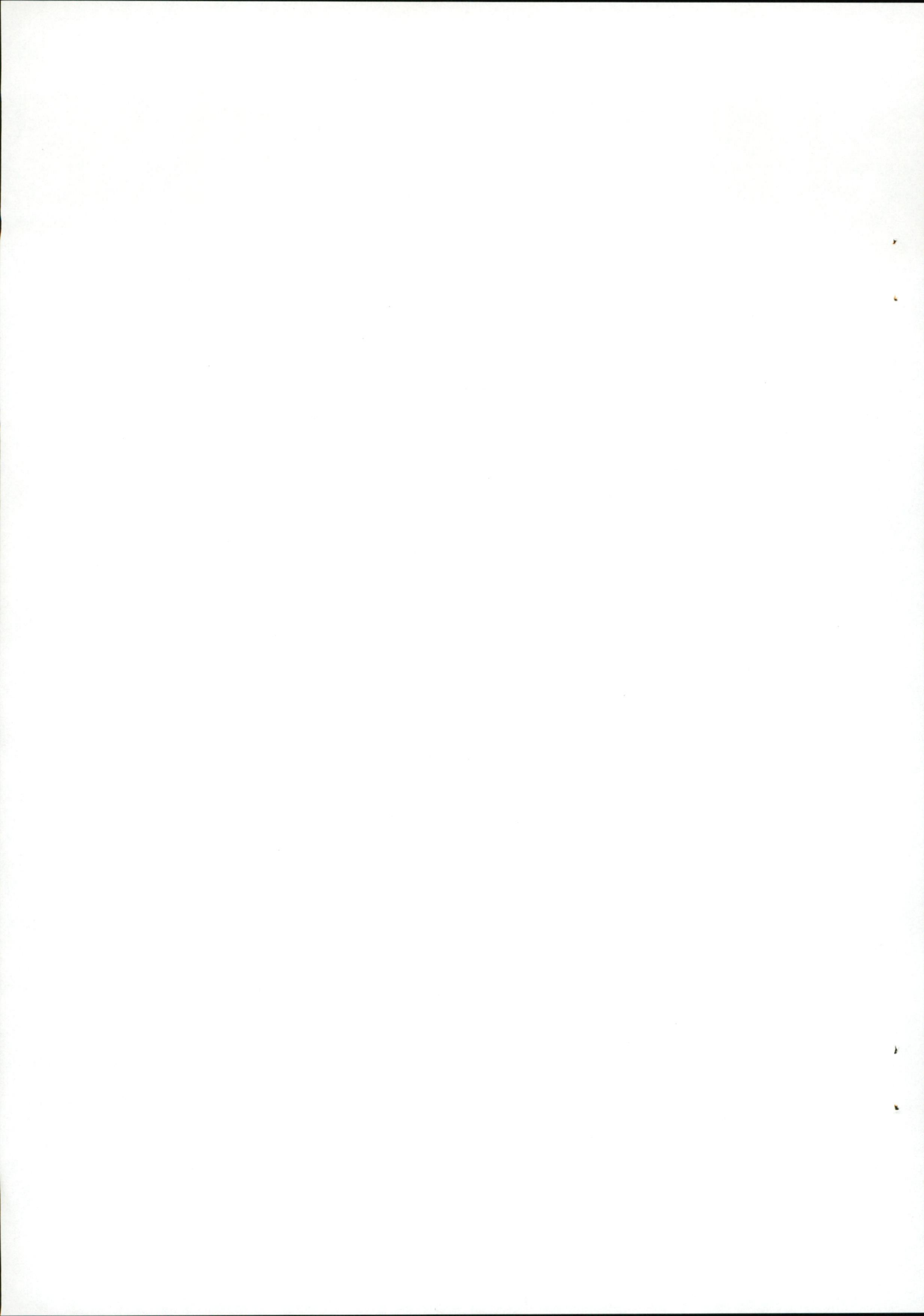
TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

SCHEDULE 2—AMENDMENT OF OTHER ACTS

SCHEDULE 3—CERTAIN OTHER AMENDMENTS RELATING TO AGE



**CRIMES (PROHIBITED MATERIAL) AMENDMENT
BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Crimes Act 1900 with respect to the possession of certain films, computer games and publications; to amend that Act, the Film and Computer Game Classification Act 1984 and the Indecent Articles and Classified Publications Act 1975 for related purposes; and to consequentially amend the Search Warrants Act 1985.

Crimes (Prohibited Material) Amendment 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Prohibited Material) Amendment Act 1994.

5 **Commencement**

2. This Act commences on a day or days 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.

10 **Amendment of other Acts**

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Certain other amendments relating to age

15 5. Each Act specified in Schedule 3 is amended as set out in that Schedule.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

(a) After the matter relating to Part 6, insert:

20 **PART 6A—POSSESSION OF CERTAIN
FILMS, COMPUTER GAMES AND
PUBLICATIONS—s. 310A**

(b) After item (2AA) of the matter relating to Part 10, instead:

25 **(2AB) Powers of entry and search in respect of certain
films, computer games and publications—s. 357EB**

*Crimes (Prohibited Material) Amendment 1994*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(2) Part 6A (section 310A):

After Part 6, insert:

**PART 6A—POSSESSION OF CERTAIN FILMS,
COMPUTER GAMES AND PUBLICATIONS** 5**Possession of certain films, computer games and
publications**

310A. (1) A person is guilty of an offence if the person has in his or her possession a film or computer game:

(a) that has been refused classification under the 1984 Act; or 10

(b) that is subsequently refused classification under that Act,

and is liable, on summary conviction before a Magistrate, to imprisonment for 12 months, or to a fine of 100 penalty units, or both. 15

(2) A person is guilty of an offence if the person has in his or her possession a publication:

(a) that has been classified as a prohibited publication under the 1975 Act; or 20

(b) that is subsequently classified as a prohibited publication under that Act,

and is liable, on summary conviction before a Magistrate, to imprisonment for 12 months, or to a fine of 100 penalty units, or both. 25

(3) A police officer may seize:

(a) any film or computer game that the officer reasonably suspects would be refused classification under the 1984 Act; or

(b) any publication that the officer reasonably suspects would be prohibited under the 1975 Act, 30

for the purpose of having it classified under the relevant Act.

(4) Nothing in this section makes it an offence:

(a) for any member or officer of a law enforcement agency to have any such film, computer game or publication in his or her possession in the exercise 35

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law; or
- 5 (b) for any person to have any such film, computer game or publication in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under
- 10 any Act or law; or
- (c) for a person to have in his or her possession a film which has been classified under the Classification of Publications Ordinance 1983 of the Australian Capital Territory.
- 15 (5) Proceedings for an offence under this section cannot be commenced later than 6 months after the date of the alleged offence.
- (6) It is a defence to a prosecution under this section to prove:
- 20 (a) that the defendant did not know, or could not reasonably be expected to have known, that the material concerned had been refused classification or had been prohibited; or
- 25 (b) that the defendant could not have been reasonably expected to suspect that the material concerned would be likely to be refused classification (or would be likely to be prohibited); or
- 30 (c) in the case of material that depicts a person who looks like a child, that the person depicted was of or above the age of 16 at the time when the film, computer game or publication was made, taken, produced or published.
- (7) In any proceedings for an offence under this section:
- 35 (a) a certificate signed or purporting to be signed by the censor stating that a film or computer game has been refused classification under the 1984 Act is conclusive evidence of the matter stated in the certificate; and

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SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- (b) a copy of a notification under section 14 (1) of the 1975 Act which specifies that a publication has been classified as a prohibited publication under that Act is conclusive evidence that the publication has been so classified. 5
- (8) A court that convicts a person of an offence under this section may order that any film, computer game or publication in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit. 10
- (9) In this section:
- “ **censor** ”, “ **computer game** ” and “ **film** ” have the same meanings as in the 1984 Act;
- “ **law enforcement agency** ” has the same meaning as in section 13 of the Criminal Records Act 1991, and includes a person or body prescribed by the regulations for the purpose of this definition; 15
- “ **publication** ” has the same meaning as in the 1975 Act; 20
- “ **the 1975 Act** ” means the Indecent Articles and Classified Publications Act 1975;
- “ **the 1984 Act** ” means the Film and Computer Game Classification Act 1984.
- (3) Section 357EB: 25
- After section 357EA, insert:
- Powers of entry and search in respect of certain films, computer games and publications*
- Police may enter and search premises for certain films, computer games and publications** 30
- 357EB. (1) A police officer may apply to an authorised justice for the issue of a search warrant if the police officer believes on reasonable grounds that an offence against section 310A is being committed on any premises.

*Crimes (Prohibited Material) Amendment 1994*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer:

- (a) to enter and search the premises concerned for evidence of an offence against section 310A; and
- (b) to seize any film, computer game or publication (as referred to in section 310A) that may be evidence of such an offence.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section, “authorised justice” has the same meaning as in the Search Warrants Act 1985.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 4)

Film and Computer Game Classification Act 1984 No. 155(1) Section 3 (**Definitions**):

From the definition of “child abuse film” in section 3 (1), omit “, or who is apparently, a child”, insert instead “a child (or who looks like a child)”.

(2) Section 9 (**Classification of films**):

(a) Omit section 9 (2) (b), insert instead:

(b) is, in the opinion of the censor, a child abuse film;

(b) Omit section 9 (2) (d), insert instead:

(d) promotes, incites or instructs in matters of crime or violence.

(3) Section 9AA (**Classification of computer games**):

From section 9AA (2) (b), omit “, or who is apparently, a child”, insert instead “a child (or who, in the opinion of the censor, looks like a child)”.

Crimes (Prohibited Material) Amendment 1994

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

Indecent Articles and Classified Publications Act 1975 No. 32

Section 13 (Classification of publications):

- (a) From section 13 (3) (a), omit “, or who is apparently, under”, insert instead “under (or, in the opinion of the classifying authority, is under)”; 5
- (b) Omit section 13 (3) (f), insert instead:
 - (f) promotes, incites or instructs in matters of crime or violence,

Search Warrants Act 1985 No. 37 10

Section 10 (Definitions):

From the definition of “search warrant”, omit the matter relating to the Crimes Act 1900, insert instead:
sections 357EA and 357EB of the Crimes Act 1900;

SCHEDULE 3—CERTAIN OTHER AMENDMENTS RELATING TO AGE 15

(Sec. 5)

Crimes Act 1900 No. 40

Section 310A (Possession of certain films, computer games and publications) as inserted by the Crimes (Prohibited Material) Amendment Act 1994: 20

From section 310A (6) (c), omit “16”, insert instead “18”.

Film and Computer Game Classification Act 1984 No. 155

Section 3 (Definitions): 25

From the definition of “child” in section 3 (1), omit “16”, insert instead “18”.

Crimes (Prohibited Material) Amendment 1994

**SCHEDULE 3—CERTAIN OTHER AMENDMENTS RELATING
TO AGE—*continued***

Indecent Articles and Classified Publications Act 1975 No. 32

Section 13 (Classification of publications):

From section 13 (3) (a), omit “16”, insert instead “18”.

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