

FIRST PRINT

**PROTECTION OF CHILDREN FROM INDECENT IMAGES
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 protect children from exposure to images of a sexually degrading, violent or otherwise unsuitable nature displayed in connection with publications for sale or distribution at shops and other public places. The Bill provides that, with certain specified exceptions, an offence is committed if such material is displayed in a public place so that children under the age of 10 would have access to it. A person is not guilty of any offence if the material concerned is not displayed for a commercial purpose or has serious artistic, educational or scientific value.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for its commencement 2 months after assent, unless an earlier date is proclaimed for its commencement.

Clause 3 defines a "child" to be a person under the age of 10 years and gives the meanings of "sexually degrading image", "sexually violent image" and other expressions used in the proposed Act. A "sexually explicit image" is an image depicting sexual acts or nudity. A "sexually degrading image" is a sexually explicit image depicting the degradation of a person in a manner calculated to promote or reinforce gender-based inequality in the community.

Clause 4 prohibits the display, in public places, of a publication containing sexually degrading or sexually violent images unless the images are hidden (by a cover, for example) or the publication is so displayed that the images cannot be seen without handling the publication. The prohibition does not apply, in particular, to restricted publications areas or to the display of a publication for any non-commercial purpose.

Clause 5 prohibits the display, in public places, for a commercial purpose of a publication containing sexually explicit images unless the images are hidden (by a cover, for example) or the publication is so displayed that the images cannot be seen

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without handling the publication. The prohibition does not apply, in particular, to restricted publications areas, art galleries or museums.

Clause 6 provides defences to a prosecution for an offence under the proposed Act. A defence is available to a defendant who can satisfy the court that the image had serious artistic, educational or scientific value or that children in fact do not have access to the area in which it was displayed.

Clause 7 provides that a person who is one of the directors or managers of a corporation that contravenes the proposed Act may be proceeded against and convicted of the same contravention if the person knowingly authorised or permitted the contravention.

Clause 8 provides for proceedings for offences against the proposed Act to be taken before a Local Court.

Clause 9 provides for a review of the proposed Act to be undertaken after a period of 5 years.

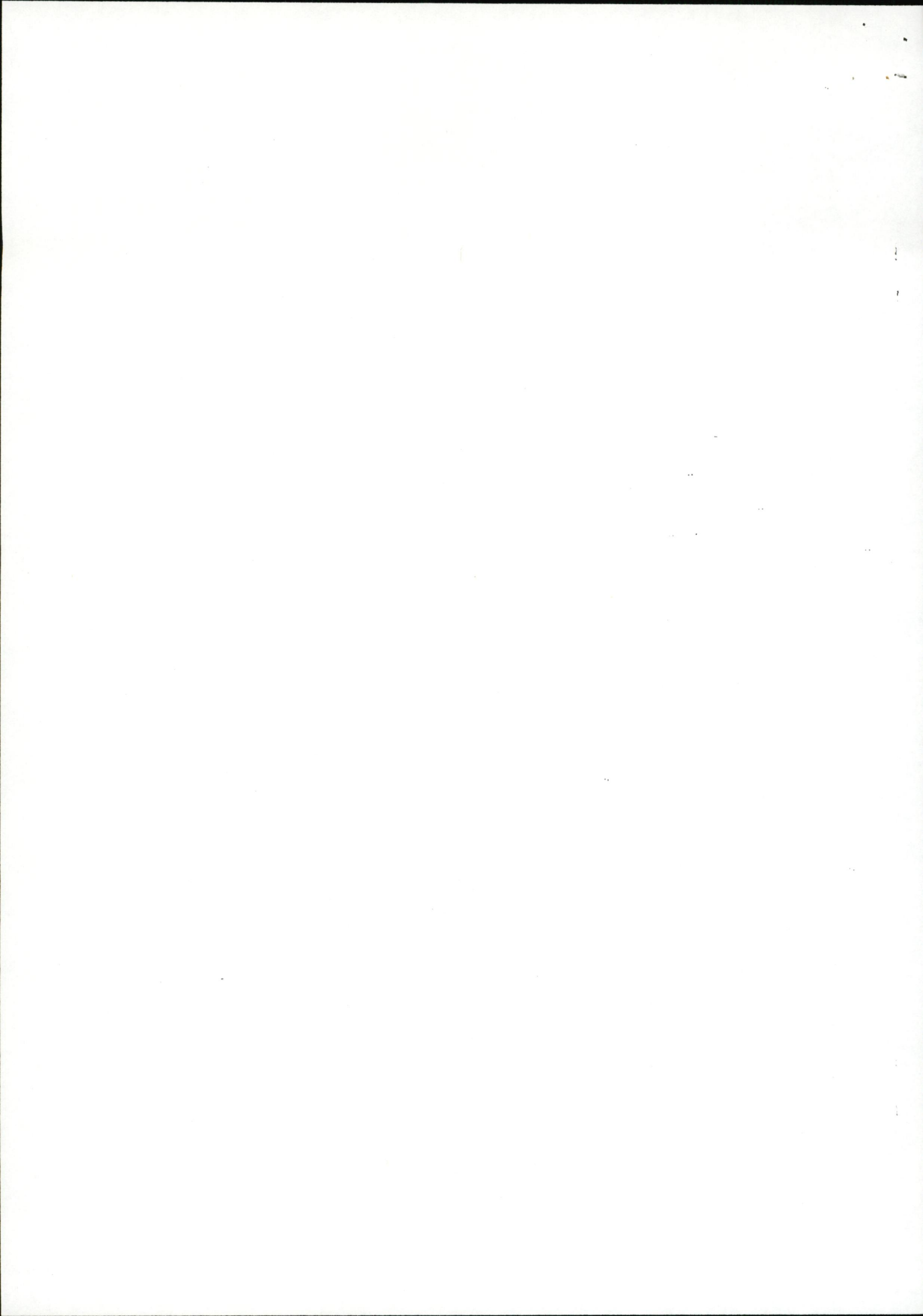
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**PROTECTION OF CHILDREN FROM INDECENT IMAGES
BILL 1994**

NEW SOUTH WALES

No. , 1994

A BILL FOR

An Act to prohibit the display of sexually explicit images in retail stores and other public places accessible to children.

Protection of Children from Indecent Images 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Protection of Children from Indecent Images Act 1994.

5 Commencement

2. This Act commences 2 months after the date of assent, unless sooner commenced by proclamation.

Definitions

3. In this Act:

10 “**child**” means a person under the age of 10 years;

“**image**” means any photograph, lithograph, drawing or representation;

15 “**public place**” means any place open to the public, whether on payment or the provision of any other consideration or otherwise, and includes a shop, stall, vehicle or other place to which persons are invited or permitted to resort to obtain, view or inspect goods or to obtain a service;

“**publication**” includes any book, magazine, periodical, paper, newspaper, pamphlet, poster or billboard;

20 “**restricted publications area**” means an area that is a restricted publications area for the purposes of the Indecent Articles and Classified Publications Act 1975;

“**sexually degrading image**” means a sexually explicit image depicting the degradation of a person in a manner calculated to promote or reinforce gender-based inequality in the community;

25 “**sexually explicit image**” means an image depicting sexual acts or depicting a person who is naked or apparently naked;

“**sexually violent image**” means a sexually explicit image depicting a person being subjected to physical violence in a sexual context.

30 Display of publications containing sexually degrading or sexually violent images

4. (1) A person must not display in a public place a publication containing a sexually degrading or sexually violent image, unless the

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image, because it is hidden by a cover or is displayed on a rack or other device, or for some other reason, cannot be seen except by handling the publication.

Maximum penalty: 50 penalty units in the case of a corporation and 10 penalty units in any other case. 5

(2) Nothing in this section prohibits the display of any image in a restricted publications area or in an area which is by law inaccessible to children.

(3) It is a defence to a prosecution for an offence under this section if the defendant satisfies the court that the publication concerned was not displayed for a commercial purpose. 10

Display of publications containing sexually explicit images

5. (1) A person must not display in a public place, for a commercial purpose, a publication containing a sexually explicit image in which the genitalia of a man or woman, or the nipples of a woman, are exposed unless the image, because it is hidden by a cover or is displayed on a rack or other device, or for some other reason, cannot be seen except by handling the publication. 15

Maximum penalty: 25 penalty units in the case of a corporation and 5 penalty units in any other case. 20

(2) Nothing in this section prohibits the display of any publication in a restricted publications area, in an area that is by law inaccessible to children, in an art gallery or in a museum.

Defences

6. It is a defence to a prosecution for an offence under this Act if the defendant satisfies the court: 25

(a) that the image concerned had serious artistic, educational or scientific value; or

(b) that the area in which it was displayed, although not an area that is by law inaccessible to children, was in fact not a place to which children have access. 30

Offences by corporations

7. (1) If a corporation contravenes a provision of this Act, each person who:

(a) is a director of the corporation; or 35

(b) is concerned in the management of the corporation,

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is to be treated as having contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may, under this section, be proceeded against and convicted for a contravention of a provision of this Act whether or not the
5 corporation has been proceeded against or convicted for a contravention of the same provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act.

Proceedings for offences

10 8. Proceedings for an offence under this Act may only be taken before a Local Court constituted by a Magistrate sitting alone.

Review of Act

15 9. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.
